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

January 7, 2026
Date of Report (Date of earliest event reported)

Commission File Number	Name of Registrant; State or Other Jurisdiction of Incorporation; Address of Principal Executive Offices; and Telephone Number	IRS Employer Identification Number
001-41137	CONSTELLATION ENERGY CORPORATION (a Pennsylvania corporation) 1310 Point Street Baltimore, Maryland 21231-3380 (833) 883-0162	87-1210716
333-85496	CONSTELLATION ENERGY GENERATION, LLC (a Pennsylvania limited liability company) 200 Energy Way Kennett Square, Pennsylvania 19348-2473 (833) 883-0162	23-3064219

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

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

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

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

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
CONSTELLATION ENERGY CORPORATION:		
Common Stock, without par value	CEG	The Nasdaq Stock Market LLC

Indicate by check mark whether any of the registrants are emerging growth companies 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 any of the registrants have elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Introductory Note

On January 7, 2026, Constellation Energy Corporation (Nasdaq: CEG), a Pennsylvania corporation ("CEG Parent") and Constellation Energy Generation, LLC, a Pennsylvania limited liability company ("Constellation"), completed the previously announced transactions contemplated by the Agreement and Plan of Merger, dated January 10, 2025 (the "Merger Agreement"), by and among CEG Parent, Calpine Corporation, a Delaware corporation ("Calpine"), CPN CS Holdco Corp., a Delaware corporation and wholly owned subsidiary of Calpine ("New Company"), CPN CKS Corp., a Delaware corporation and wholly owned subsidiary of New Company ("Company Merger Sub"), Cascade Transco Inc., a Delaware corporation and an indirect, wholly owned subsidiary of CEG Parent ("First Merger Sub"), Cascade Transco – 1, LLC, a Delaware limited liability company and an indirect, wholly owned subsidiary of CEG Parent ("Second Merger Sub"), and Volt Energy Holdings GP, LLC, a Delaware limited liability company, solely in its capacity as the representative of the stockholders of Calpine. Capitalized terms used but not defined herein have the meanings ascribed to them in the Merger Agreement. As a result of the transactions contemplated by the Merger Agreement, Calpine became a wholly owned subsidiary of Constellation.

Section 1 – Registrant's Business and Operations
Item 1.01. Entry into a Material Definitive Agreement

Registration Rights Agreement

On January 7, 2026, in connection with the closing of the Mergers (as defined below), CEG Parent entered into a registration rights agreement (the "Registration Rights Agreement") with certain of the former stockholders of Calpine who received shares of Stock Consideration (as defined below) in the Mergers, each of whom is listed on the signature pages thereto (the "RRA Parties"), pursuant to which the RRA Parties will have certain customary demand, "piggy-back" and shelf registration rights relating to the shares of Stock Consideration received by such RRA Parties as a result of the Mergers.

Pursuant to the Registration Rights Agreement, CEG Parent is required to (subject to certain conditions and exceptions), use its reasonable best efforts to prepare and file with the U.S. Securities and Exchange Commission ("SEC"), on the closing date of the Mergers, a registration statement on Form S-3 that becomes effective upon filing registering for resale the shares of Stock Consideration received by the RRA Parties as a result of the Mergers.

Under the Registration Rights Agreement, the RRA Parties are subject to a lock-up, subject to certain exceptions, with respect to the transfer of the shares of Stock Consideration received by such RRA Parties as a result of the Mergers, with one-half of such shares released from the lock-up on June 30, 2026, and the remaining one-half of such shares released from the lock-up on June 30, 2027.

The foregoing description of the Registration Rights Agreement does not purport to be complete and is qualified in its entirety by reference to the Registration Rights Agreement, a copy of which is attached hereto as Exhibit 10.1 and incorporated herein by reference.

Calpine Notes

Upon the closing of the Mergers on January 7, 2026, Calpine (as a wholly owned subsidiary of Constellation) remained the issuer of (i) $1,400 million in aggregate principal amount of 5.125% Senior Notes due 2028 (the "2028 Senior Notes") issued under Calpine's indenture, dated December 27, 2019 (the "2028 Senior Notes Indenture"), between Calpine and Wilmington Trust, National Association, as trustee; (ii) $650 million in aggregate principal amount of 4.625% Senior Notes due 2029 (the "2029 Senior Notes") issued under Calpine's indenture, dated August 10, 2020 (the "2029 Senior Notes Indenture"), between Calpine and Wilmington Trust, National Association, as trustee; (iii) $850 million in aggregate principal amount of 5.000% Senior Notes due 2031 (the "2031 Senior Notes") issued under Calpine's indenture, dated August 10, 2020 (the "2031 Senior Notes Indenture" and, together with the 2028 Senior Notes Indenture and the 2029 Senior Notes Indenture, the "Calpine Unsecured Notes Indentures"), between Calpine and Wilmington Trust, National Association, as trustee; (iv) $1,250 million in aggregate principal amount of 4.500% Senior Secured Notes due 2028 (the "2028 Senior Secured Notes") issued under Calpine's indenture, dated December 20, 2019 (as supplemented, the "2028 Senior Secured Notes Indenture"), among Calpine, the guarantors party thereto from time to time and Wilmington Trust, National Association, as trustee; and (v) $900 million in aggregate principal amount of 3.750% Senior Secured Notes due 2031 (the "2031 Senior Secured Notes" and, together with the 2028 Senior Notes, the 2029 Senior Notes, the 2031 Senior Notes and the 2028 Senior Secured Notes, the "Calpine Notes") issued under Calpine's indenture, dated December 16, 2020 (as supplemented, the "2031 Senior Secured Notes Indenture" and, together with the 2028 Senior Secured Notes Indenture, the "Calpine Secured Notes Indentures"), among Calpine, the guarantors party thereto from time to time and Wilmington Trust, National Association, as trustee.

Pursuant to the 2028 Senior Notes Indenture, interest on the 2028 Senior Notes accrues at a rate of 5.125% per annum on the outstanding principal amount thereof, payable semi-annually on March 15 and September 15 of each year. The 2028 Senior Notes will mature on March 15, 2028. Prior to March 15, 2026, Calpine may on any one or more occasions redeem all or a portion of the 2028 Senior Notes at a price equal to 100.854% of the principal amount of the 2028 Senior Notes plus accrued and unpaid interest to, but excluding, the redemption date. On and after March 15, 2026, Calpine may on any one or more occasions redeem all or a portion of the 2028 Senior Notes at par plus accrued and unpaid interest to, but excluding, the redemption date.

Pursuant to the 2029 Senior Notes Indenture, interest on the 2029 Senior Notes accrues at a rate of 4.625% per annum on the outstanding principal amount thereof, payable semi-annually on February 1 and August 1 of each year. The 2029 Senior Notes will mature on February 1, 2029. Prior to February 1, 2026, Calpine may on any one or more occasions redeem all or a portion of the 2029 Senior Notes at a price equal to 101.156% of the principal amount of the 2029 Senior Notes plus accrued and unpaid interest to, but excluding, the redemption date. On and after February 1, 2026, Calpine may on any one or more occasions redeem all or a portion of the 2029 Senior Notes at par plus accrued and unpaid interest to, but excluding, the redemption date.

Pursuant to the 2031 Senior Notes Indenture, interest on the 2031 Senior Notes accrues at a rate of 5.000% per annum on the outstanding principal amount thereof, payable semi-annually on February 1 and August 1 of each year. The 2031 Senior Notes will mature on February 1, 2031. Prior to February 1, 2026, Calpine may on any one or more occasions redeem all or a portion of the 2031 Senior Notes at a price equal to 100% of the principal amount of the 2031 Senior Notes plus a “make-whole” premium and accrued and unpaid interest to, but excluding, the redemption date. Beginning on February 1, 2026 until February 1, 2027, Calpine may on any one or more occasions redeem all or a portion of the 2031 Senior Notes at a price equal to 102.500% of the principal amount of the 2031 Senior Notes plus accrued and unpaid interest to, but excluding, the redemption date. Thereafter until February 1, 2028, Calpine may on any one or more occasions redeem all or a portion of the 2031 Senior Notes at a price equal to 101.667% of the principal amount of the 2031 Senior Notes plus accrued and unpaid interest to, but excluding, the redemption date. Thereafter until February 1, 2029, Calpine may on any one or more occasions redeem all or a portion of the 2031 Senior Notes at a price equal to 100.833% of the principal amount of the 2031 Senior Notes plus accrued and unpaid interest to, but excluding, the redemption date. Thereafter, Calpine may on any one or more occasions redeem all or a portion of the 2031 Senior Notes at par plus accrued and unpaid interest to, but excluding, the redemption date.

Pursuant to the 2028 Senior Secured Notes Indenture, interest on the 2028 Senior Secured Notes accrues at a rate of 4.500% per annum on the outstanding principal amount thereof, payable semi-annually on February 15 and August 15 of each year. The 2028 Senior Secured Notes will mature on February 15, 2028. Prior to February 15, 2026, Calpine may on any one or more occasions redeem all or a portion of the 2028 Senior Secured Notes at a price equal to 100.750% of the principal amount of the 2028 Senior Secured Notes plus accrued and unpaid interest to, but excluding, the redemption date. On and after February 15, 2026, Calpine may on any one or more occasions redeem all or a portion of the 2028 Senior Secured Notes at par plus accrued and unpaid interest to, but excluding, the redemption date.

Pursuant to the 2031 Senior Secured Notes Indenture, interest on the 2031 Senior Secured Notes accrues at a rate of 3.750% per annum on the outstanding principal amount thereof, payable semi-annually on March 1 and September 1 of each year. The 2031 Senior Secured Notes will mature on March 1, 2031. Prior to March 1, 2026, Calpine may on any one or more occasions redeem all or a portion of the 2031 Senior Secured Notes at a price equal to 100% of the principal amount of the 2031 Senior Secured Notes plus a “make-whole” premium and accrued and unpaid interest to, but excluding, the redemption date. Beginning on March 1, 2026 until March 1, 2027, Calpine may on any one or more occasions redeem all or a portion of the 2031 Senior Secured Notes at a price equal to 101.875% of the principal amount of the 2031 Senior Secured Notes plus accrued and unpaid interest to, but excluding, the redemption date. Thereafter until March 1, 2028, Calpine may on any one or more occasions redeem all or a portion of the 2031 Senior Secured Notes at a price equal to 101.250% of the principal amount of the 2031 Senior Secured Notes plus accrued and unpaid interest to, but excluding, the redemption date. Thereafter until March 1, 2029, Calpine may on any one or more occasions redeem all or a portion of the 2031 Senior Secured Notes at a price equal to 100.625% of the principal amount of the 2031 Senior Secured Notes plus accrued and unpaid interest to, but excluding, the redemption date. Thereafter, Calpine may on any one or more occasions redeem all or a portion of the 2031 Senior Secured Notes at par plus accrued and unpaid interest to, but excluding, the redemption date.

Subject to certain qualifications and exceptions, the Calpine Unsecured Notes Indentures, among other things, limit Calpine’s ability and the ability of certain covered subsidiaries of Calpine to create or incur liens and consolidate, merge or transfer all or substantially all of Calpine’s assets and the assets of Calpine’s subsidiaries on a combined basis.

Subject to certain qualifications and exceptions, the Calpine Secured Notes Indentures, among other things, limit Calpine's ability and the ability of the guarantors of the 2028 Senior Secured Notes and the 2031 Senior Secured Notes to incur or guarantee additional first lien indebtedness; enter into certain types of commodity hedge agreements that can be secured by first lien collateral; enter into sale and leaseback transactions; create or incur liens; and consolidate, merge or transfer all or substantially all of Calpine's assets and the assets of Calpine's restricted subsidiaries on a combined basis.

The foregoing description of the Calpine Notes and the indentures governing the Calpine Notes does not purport to be complete and is qualified in its entirety by reference to the Calpine Notes and the indentures governing the Calpine Notes, including the supplemental indentures thereto (as applicable), copies of which are attached hereto as Exhibits 4.1, 4.2, 4.3, 4.4, 4.5, 4.6 and 4.7 and incorporated herein by reference.

CCFC Term Loan

Upon the closing of the Mergers on January 7, 2026, Calpine Construction Finance Company, L.P., an indirect, wholly owned subsidiary of Calpine ("CCFC"), remains party to a Credit Agreement with Citibank, N.A. (as successor to Credit Suisse AG, Cayman Islands Branch), as administrative agent and as collateral agent, and the lenders party thereto from time to time, originally dated December 15, 2017 (as amended, amended and restated and supplemented, the "CCFC Term Loan Agreement"). The CCFC Term Loan Agreement consists of a first lien senior secured term loan (the "CCFC Term Loan"). On August 2, 2023, CCFC and the other parties thereto amended and restated the original CCFC Term Loan Agreement. On June 6, 2024, CCFC completed a repricing of the CCFC Term Loan to reduce the applicable spread over the SOFR rate from 2.25% to 2.00% and remove the quarterly principal payments prior to the maturity of the debt. On September 16, 2024, CCFC completed a refinancing to increase the total notional principal amount of the CCFC Term Loan from $1.244 billion to $1.875 billion. Subsequently, on November 18, 2025, CCFC incurred a replacement tranche of first lien senior secured term loans, which increased its existing CCFC Term Loan by $225 million and repriced such existing CCFC Term Loan to reduce the applicable spread over the SOFR rate from 2.00% to 1.75% under the CCFC Term Loan Agreement. The CCFC Term Loan matures on July 31, 2030.

The foregoing description of the CCFC Term Loan Agreement and the CCFC Term Loan does not purport to be complete and is qualified in its entirety by reference to the CCFC Term Loan Agreement, including amendments thereto, copies of which are attached hereto as Exhibits 10.2, 10.3, 10.4, 10.5 and 10.6 and incorporated herein by reference.

GPC Term Loan

Upon the closing of the Mergers on January 7, 2026, Geysers Power Company, LLC, an indirect, wholly owned subsidiary of Calpine, and certain of its subsidiaries acting as guarantors remain parties to a Credit Agreement with MUFG Bank, Ltd., as administrative agent, MUFG Union Bank, N.A., as first lien collateral agent, and the lenders party thereto, dated June 9, 2020 (as amended, on November 9, 2021 and May 31, 2022, and as otherwise amended, the "GPC Term Loan Agreement"). The GPC Term Loan Agreement consists of a $1,771 million senior secured term loan facility (of which $1,415 million term loans are currently outstanding (the "GPC Term Loans")) and a $250 million letter of credit facility. The GPC Term Loans bear interest at Term SOFR plus a percentage equal to (a) until May 31, 2025, 1.5%, (b) from such date until May 31, 2028, 1.625%, and (c) from such date until the maturity of the GPC Term Loans, 1.75% (*plus*, in each case, applicable Term SOFR adjustment). The GPC Term Loans mature on May 31, 2029.

The foregoing description of the GPC Term Loan Agreement and the GPC Term Loans does not purport to be complete and is qualified in its entirety by reference to the GPC Term Loan Agreement, including amendments thereto, copies of which are attached hereto as Exhibits 10.7, 10.8 and 10.9 and incorporated herein by reference.

Section 2 – Financial Information
Item 2.01. Completion of Acquisition or Disposition of Assets

As discussed in the Introductory Note above, on January 7, 2026, CEG Parent and Constellation completed the previously announced transactions contemplated by the Merger Agreement.

Pursuant to the Merger Agreement, (i) on January 2, 2026, Calpine, New Company and Company Merger Sub completed an internal reorganization pursuant to which Company Merger Sub merged with and into Calpine, with Calpine surviving the merger as a wholly owned subsidiary of New Company and the holders of Company Common Shares and Company Restricted Stock Units becoming holders of Common Shares and Restricted Stock Units of New Company ("RSUs"), and on January 5, 2026, Calpine converted into a Delaware limited liability company (the "Reorganization"), (ii) on January 7, 2026, at the First Effective Time, First Merger Sub merged with and into New Company, with New Company surviving the merger as a wholly owned subsidiary of Constellation and (iii) on January 7, 2026, at the Second Effective Time, New Company merged with and into Second Merger Sub, with Second Merger Sub surviving the merger as a wholly owned subsidiary of Constellation (clauses (ii) and (iii), collectively, the "Mergers"). As a result of the Reorganization and the Mergers, Calpine became a wholly owned subsidiary of Constellation.

The merger consideration consisted of (i) an aggregate of 50,000,000 newly issued shares of common stock, no par value, of CEG Parent (the "Stock Consideration") and (ii) $4.50 billion in cash minus the amount of Company Expenses. As a result of the Mergers, the former stockholders of Calpine received approximately 13.8% of the outstanding CEG Parent common stock in the aggregate based upon the outstanding shares of CEG Parent common stock as of January 6, 2026.

In connection with closing of the Mergers, outstanding Calpine equity-based awards were treated as follows:

At the First Effective Time, each outstanding RSU issued by New Company in respect of Company Restricted Stock Units issued by Calpine pursuant to the Calpine Corporation 2024 Equity Incentive Plan (whether vested or unvested) was fully vested, canceled and converted into the right to receive, in respect of each such RSU: (i) the Per Share Cash Consideration, without interest, (ii) the Per Share Stock Consideration, (iii) any cash in lieu of fractional shares of CEG Parent common stock was paid in accordance with the Merger Agreement and (iv) an amount in cash (without interest and less any applicable taxes required to be withheld) equal to any dividend equivalents with respect to such RSU that were unpaid as of the First Effective Time (which amounts in respect of such dividend equivalents were first satisfied from any escrow account related thereto).

The foregoing description of the Merger Agreement does not purport to be complete and is qualified in its entirety by reference to the Merger Agreement, a copy of which was attached as Exhibit 2.1 to the Current Report on Form 8-K dated January 13, 2025 (File No. 001-41137) and is incorporated herein by reference. The Merger Agreement has been incorporated by reference into this Current Report on Form 8-K to provide information regarding its terms. It is not intended to provide any other factual information about CEG Parent, Constellation, Calpine or any other party. The Merger Agreement contains representations and warranties that the parties thereto made to each other as of a specific date. The assertions embodied in the representations and warranties in the Merger Agreement were made solely for purposes of the Merger Agreement and the transactions and agreements contemplated thereby among the respective parties thereto and may be subject to important qualifications and limitations agreed to by the parties thereto in connection with negotiating the terms thereof and are not intended to, and do not, confer upon any person other than the parties thereto any rights or remedies thereunder, including the right to rely upon the representations and warranties set forth therein. Moreover, some of those representations and warranties may not be accurate or complete as of any specified date, may be subject to a contractual standard of materiality different from those generally applicable to stockholders or may have been used for the purpose of allocating risk among the parties to the Merger Agreement rather than establishing matters as facts.

Section 2 – Financial Information
Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

The disclosure set forth in Item 1.01 under the heading "Calpine Notes" is incorporated by reference in this Item 2.03.

Section 3 - Securities and Trading Markets
Item 3.02. Unregistered Sales of Equity Securities

The disclosure set forth in Item 2.01 above is incorporated by reference in this Item 3.02. The issuance of the Stock Consideration to the former stockholders of Calpine was made in reliance upon the exemption from the registration requirements of the Securities Act of 1933, as amended, provided by Section 4(a)(2) thereof as a transaction by an issuer not involving any public offering.

Section 5 - Corporate Governance and Management
Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

Effective upon the closing of the Mergers on January 7, 2026, Daniel Eggers, CEG Parent's Executive Vice President and Chief Financial Officer, was promoted to Senior Executive Vice President, Finance and Data Economy, and no longer serves as Chief Financial Officer, and Shane Smith, CEG Parent's Senior Vice President, Treasury and Credit, was promoted to Executive Vice President and Chief Financial Officer. Concurrently with the effectiveness of Mr. Smith's promotion, Mr. Smith also assumed the additional role of principal financial officer of CEG Parent, replacing Mr. Eggers. As previously reported, Mr. Smith's compensation includes an annual base salary of $725,000, an annual incentive program target opportunity of 85% of his base salary, and a long-term incentive target valued at $2,500,000, consistent with the terms of the Constellation Energy Corporation 2022 Long-Term Incentive Plan.

Mr. Smith, age 46, had served as CEG Parent's Senior Vice President, Treasury and Credit since CEG Parent's separation from Exelon in February 2022, prior to which Mr. Smith served as Vice President, Finance, Constellation for Exelon beginning in April 2020. Mr. Smith received his bachelor's degree with a dual concentration in Finance and Marketing from Boston College and his MBA from the University of Maryland.

There are no arrangements or understandings between Mr. Smith and any other person pursuant to which Mr. Smith was appointed as Executive Vice President and Chief Financial Officer, and there are no family relationships among any of CEG Parent's directors or executive officers and Mr. Smith. Mr. Smith does not have any direct or indirect material interest in any transaction or proposed transaction required to be reported under Item 404(a) of Regulation S-K.

Section 7 - Regulation FD
Item 7.01. Regulation FD Disclosure

On January 7, 2026, CEG Parent issued a press release announcing the completion of the Mergers. The press release is attached to this Current Report on Form 8-K as Exhibit 99.1, is incorporated herein by reference and is being furnished to, but not filed with, the SEC.

Section 9 - Financial Statements and Exhibits
Item 9.01. Financial Statements and Exhibits

(a) Financial statements of business acquired

The audited consolidated financial statements of Calpine as of December 31, 2024 and 2023 and for the years ended December 31, 2024, 2023 and 2022, and the related notes to the consolidated financial statements, were previously filed with the SEC by CEG Parent and Constellation (File No. 001-41137, Form 8-K dated December 9, 2025, Exhibit 99.1), and, pursuant to General Instruction B.3 of Form 8-K, are not required to be filed herewith.

The unaudited consolidated financial statements of Calpine as of September 30, 2025 and 2024 and for the three and nine months ended September 30, 2025 and 2024, and the related notes to the consolidated financial statements, were previously filed with the SEC by CEG Parent and Constellation (File No. 001-41137, Form 8-K dated December 9, 2025, Exhibit 99.2), and, pursuant to General Instruction B.3 of Form 8-K, are not required to be filed herewith.

(b) Pro forma financial information

The unaudited pro forma combined financial statements of CEG Parent and Constellation as of September 30, 2025 and for the nine months ended September 30, 2025 and for the year ended December 31, 2024, and the related notes to the pro forma combined financial statements, were previously filed with the SEC by CEG Parent and Constellation (File No. 001-41137, Form 8-K dated December 9, 2025, Exhibit 99.3), and, pursuant to General Instruction B.3 of Form 8-K, are not required to be filed herewith.

(d) Exhibits.

Exhibit No.	Description
2.1*	Agreement and Plan of Merger, dated January 10, 2025, by and among Calpine Corporation, CPN CS Holdco Corp., CPN CKS Corp., Constellation Energy Corporation, Cascade Transco Inc., Cascade Transco - 1, LLC and Volt Energy Holdings GP, LLC, solely in its capacity as the representative of the stockholders of Calpine Corporation (File No. 001-41137, Form 8-K dated January 13, 2025, Exhibit 2.1).
4.1	Indenture, dated December 27, 2019, between Calpine Corporation and Wilmington Trust, National Association, as trustee (including Form of 5.125% Senior Note due 2028).
4.2	Indenture, dated August 10, 2020, between Calpine Corporation and Wilmington Trust, National Association, as trustee (including Form of 4.625% Senior Note due 2029).
4.3	Indenture, dated August 10, 2020, between Calpine Corporation and Wilmington Trust, National Association, as trustee (including Form of 5.000% Senior Note due 2031).
4.4	Indenture, dated December 20, 2019, among Calpine Corporation, the guarantors party thereto from time to time and Wilmington Trust, National Association, as trustee (including Form of 4.500% Senior Secured Notes due 2028).
4.5	First Supplemental Indenture, dated August 20, 2025, among Calpine Corporation, the guarantors party thereto and Wilmington Trust, National Association, as trustee.
4.6	Indenture, dated December 16, 2020, among Calpine Corporation, the guarantors party thereto from time to time and Wilmington Trust, National Association, as trustee (including Form of 3.750% Senior Secured Notes due 2031).
4.7	First Supplemental Indenture, dated August 20, 2025, among Calpine Corporation, the guarantors party thereto and Wilmington Trust, National Association, as trustee.
10.1**	Registration Rights Agreement, dated January 7, 2026, by and among Constellation Energy Corporation and the parties thereto from time to time.
10.2*	Credit Agreement, dated December 15, 2017, among Calpine Construction Finance Company, L.P., as borrower, the lenders party thereto from time to time, and Credit Suisse AG, Cayman Islands Branch, as administrative agent and collateral agent.
10.3*	Amendment No. 3 to Credit Agreement, dated August 2, 2023, among Calpine Construction Finance Company, L.P., as borrower, the lenders party thereto, and Credit Suisse AG, Cayman Islands Branch, as administrative agent and collateral agent.
10.4*	Amendment No. 4 to Credit Agreement, dated June 6, 2024, among Calpine Construction Finance Company, L.P., as borrower, the lenders party thereto, and Citibank, N.A., as administrative agent and collateral agent.
10.5	2024 Incremental Term Loan Commitment Supplement, dated September 16, 2024, among Calpine Construction Finance Company, L.P., as borrower, the lenders party thereto, and Citibank, N.A., as administrative agent and collateral agent.
10.6*	Amendment No. 5 to Credit Agreement, dated November 18, 2025, among Calpine Construction Finance Company, L.P., as borrower, the lenders party thereto, and Citibank, N.A., as administrative agent and collateral agent.
10.7*	Credit Agreement, dated June 9, 2020, among Geysers Power Company, LLC, the guarantors party thereto, MUFG Bank, Ltd, as administrative agent, MUFG Union Bank, N.A., as first lien collateral agent, and the lenders and issuing banks parties thereto.
10.8*	Omnibus Amendment Agreement, dated November 9, 2021, among Geysers Power Company, LLC, the guarantors party thereto, MUFG Bank, Ltd, as administrative agent, MUFG Union Bank, N.A., as first lien collateral agent, and the lenders and issuing banks parties thereto.
10.9*	Second Omnibus Amendment Agreement, dated May 31, 2022, among Geysers Power Company, LLC, the guarantors party thereto, MUFG Bank, Ltd, as administrative agent, MUFG Union Bank, N.A., as first lien collateral agent, and the lenders and issuing banks parties thereto.
99.1	Press release.
101	Cover Page Interactive Data File - the cover page XBRL tags are embedded within the Inline XBRL document
104	The cover page from this Current Report on Form 8-K, formatted as Inline XBRL

* Schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K. CEG Parent will furnish the omitted schedules to the SEC upon request by the SEC.

** Portions of this exhibit have been redacted in accordance with Item 601(a)(6) of Regulation S-K.

* * * * *

This combined Current Report on Form 8-K is being furnished separately by Constellation Energy Corporation and Constellation Energy Generation, LLC, (collectively, the "Registrants"). Information contained herein relating to one of the Registrants has been furnished by such Registrant on its own behalf. Neither Registrant makes any representation as to information relating to the other Registrant.

This Current Report on Form 8-K contains certain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 that are subject to risks and uncertainties. Words such as "could," "may," "expects," "anticipates," "will," "targets," "goals," "projects," "intends," "plans," "believes," "seeks," "estimates," "predicts," and variations on such words, and similar expressions that reflect the Registrants' current views with respect to future events and operational, economic, and financial performance, are intended to identify such forward-looking statements. These forward-looking statements include, but are not limited to, statements regarding the pro forma combined company and its operations, strategies, plans, synergies, opportunities and anticipated future performance and capital structure. Information adjusted for the Mergers should not be considered a forecast of future results. Although the Registrants believe these forward-looking statements are reasonable, statements made regarding future results are not guarantees of future performance and are subject to numerous assumptions, uncertainties and risks that are difficult to predict. Forward-looking statements are based on current expectations, estimates and assumptions that involve a number of risks and uncertainties that could cause actual results to differ materially from those projected.

Actual outcomes and results may differ materially from the results stated or implied in the forward-looking statements included in this Current Report on Form 8-K due to a number of factors, including, but not limited to the risk that problems may arise in successfully integrating the businesses of the companies, which may result in the combined company not operating as effectively and efficiently as expected, and the risk that the combined company may be unable to achieve synergies or other anticipated benefits of the Mergers or it may take longer than expected to achieve those synergies or benefits. Other unpredictable or unknown factors not discussed in this Current Report on Form 8-K could also have material adverse effects on forward-looking statements.

The factors that could cause actual results to differ materially from the forward-looking statements made by the Registrants include those factors discussed herein, as well as the items discussed in (1) the Registrants' 2024 Annual Report on Form 10-K in (a) Part I, ITEM 1A. Risk Factors, (b) Part II, ITEM 7. Management's Discussion and Analysis of Financial Condition and Results of Operations, and (c) Part II, ITEM 8. Financial Statements and Supplementary Data: Note 18, Commitments and Contingencies; (2) the Registrants' Third Quarter 2025 Quarterly Report on Form 10-Q in (a) Part II, ITEM 1A. Risk Factors, (b) Part I, ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations, and (c) Part I, ITEM 1. Financial Statements: Note 14, Commitments and Contingencies; and (3) other factors discussed in filings with the SEC by the Registrants.

Investors are cautioned not to place undue reliance on these forward-looking statements, whether written or oral, which apply only as of the date of this Current Report on Form 8-K. Neither Registrant undertakes any obligation to publicly release any revision to its forward-looking statements to reflect events or circumstances after the date of this Current Report on Form 8-K.

SIGNATURES

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

CONSTELLATION ENERGY CORPORATION

/s/ Shane P. Smith
Shane P. Smith
Executive Vice President and Chief Financial Officer

CONSTELLATION ENERGY GENERATION, LLC

/s/ Shane P. Smith
Shane P. Smith
Executive Vice President and Chief Financial Officer

January 7, 2026

Exhibit 4.1

Execution Version

CALPINE CORPORATION

5.125% SENIOR NOTES DUE 2028

INDENTURE

Dated as of December 27, 2019

Wilmington Trust, National Association
as Trustee

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EXHIBITS

Exhibit A	FORM OF NOTE
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Exhibit C	FORM OF CERTIFICATE OF EXCHANGE
Exhibit D	FORM OF CERTIFICATE OF ACQUIRING INSTITUTIONAL ACCREDITED INVESTOR

INDENTURE dated as of December 27, 2019 between Calpine Corporation, a Delaware corporation, and Wilmington Trust, National Association, as 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 5.125% Senior Notes due 2028 (the "*Notes*"):

ARTICLE 1
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 *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 will be issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 144A.

"*2022 Secured Notes*" means the Company's 6.000% Senior Secured Notes due 2022.

"*2024 Secured Notes*" means the Company's 5.875% Senior Secured Notes due 2024.

"*2028 Secured Notes*" means the Company's 4.500% Senior Secured Notes due 2028.

"*Additional Notes*" means additional Notes (other than the Initial Notes) issued under this Indenture in accordance with Section 2.02 hereof, as part of the same series as the Initial Notes.

"*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. For purposes of this definition, the terms "controlling," "controlled by" and "under common control with" have correlative meanings.

"*Agent*" means any Registrar, co-registrar, Paying Agent, additional paying agent, transfer agent or authenticating agent.

"*Applicable Law*" means, as to any Person, any ordinance, law, treaty, rule or regulation or any determination, ruling or other directive by and from an arbitrator or a court or other Governmental Authority, in each case, applicable to or binding on such Person or any of its property or assets or to which such Person or any of its property is subject.

"*Applicable Premium*" means, with respect to any Note on any redemption date, as calculated by the Company, the greater of:

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

(2) the excess of:

(a) the present value at such redemption date of (i) the redemption price of the Note at March 15, 2023 (such redemption price being set forth in the table appearing in Section 3.07(e) hereof) plus (ii) all required interest payments due on the Note through March 15, 2023 (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 75 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.

"*Authorized Officer*" means, with respect to (i) delivering an Officer's Certificate pursuant to this Indenture, the principal executive officer, the principal financial officer, the chief legal officer, the treasurer or the principal accounting officer of the Company and (ii) any other matter in connection with this Indenture, the chairman of the board, the chief executive officer, the president, the chief operating officer, the chief financial officer, the chief legal officer, the treasurer, any assistant treasurer, the controller, the secretary or any vice president of such person or any other person of the Company having substantially the same responsibilities as the aforementioned officers.

"*Bankruptcy Law*" means Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq., as amended from time to time, or any similar federal or state or other 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. The terms "*Beneficially Owns*" and "*Beneficially Owned*" have a corresponding meaning.

"*Board of Directors*" means:

(1) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board;

(2) with respect to a partnership, the board of directors of the general partner of the partnership;

(3) with respect to a limited liability company, the managing member or members or any controlling committee of managing members thereof; and

(4) with respect to any other Person, the board or committee of such Person serving a similar function.

"*Business Day*" means any day other than a Legal Holiday.

"*Capital Lease Obligation*" means, at the time any determination is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet prepared in accordance with GAAP as in effect from time to time; *provided*, *however*, that if any operating lease (whether in effect on the date of this Indenture or hereafter incurred) would be recharacterized as a capital lease due to changes in the accounting treatment of such operating leases under GAAP since December 31, 2018, then solely with respect to the accounting treatment of any such lease, GAAP shall be interpreted as it was in effect on December 31, 2018; *provided further* that any lease that is treated as an operating lease for purposes of GAAP as of December 31, 2018 shall not be treated as indebtedness or as a Capital Lease Obligation and shall continue to be treated as an operating lease (and any future lease, if it were in effect on the date of this Indenture, that would be treated as an operating lease for purposes of GAAP as of December 31, 2018, shall be treated as an operating lease), in each case for purposes of this Indenture, notwithstanding any actual or proposed change in or application of GAAP after December 31, 2018.

"*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; 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.

"*Change of Control*" means the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any "person" (as that term is used in Section 13(d) of the Exchange Act, but excluding any employee benefit plan of the Company of any of its Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than one or more Designated Holders, becomes the Beneficial Owner, directly or indirectly, of more than 50% of the Voting Stock of the Company, measured by voting power rather than number of shares.

"*Change of Control Triggering Event*" means the occurrence of both a Change of Control and a Rating Event.

"*Clearstream*" means Clearstream Banking, S.A.

"*Commission*" means the U.S. Securities and Exchange Commission.

"*Company*" means Calpine Corporation, and any and all successors thereto.

"*Corporate Trust Office of the Trustee*" will be at the address of the Trustee specified in Section 11.01 hereof or such other address as to which the Trustee may give notice to the Company.

"*Covered Subsidiary*" means any Subsidiary of the Company that is or becomes a guarantor of indebtedness for borrowed money represented by notes, bonds, debentures or other evidences of indebtedness of the Company that is secured by a first lien on substantially all of the Company's assets.

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

"*Default*" means any event, act or condition which, with notice or lapse of time or both, would (without cure or waiver hereunder), constitute an Event of Default.

"*Definitive Note*" means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 2.06 hereof, 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 2.03 hereof 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 provision of this Indenture.

"*Designated Holders*" means Energy Capital Partners III, LP (together with its parallel funds), Access Industries Inc., Canadian Pension Plan Investment Board and the respective Affiliates (other than any portfolio operating companies) of each of the foregoing.

"*Disqualified Stock*" means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder of the Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the date that is 91 days after the date on which the Notes mature (other than pursuant to a change of control or asset sale prepayment offer provision).

"*Environmental CapEx Debt*" means indebtedness for borrowed money represented by notes, bonds, debentures or other evidences of indebtedness of the Company or its Subsidiaries incurred for the purpose of financing Environmental Capital Expenditures.

"*Environmental Capital Expenditures*" means capital expenditures deemed necessary by the Company or its Subsidiaries to comply with Environmental Laws.

"*Environmental Law*" means any applicable Federal, state, foreign or local statute, law, rule, regulation, ordinance, code and rule of common law now or hereafter in effect and in each case as amended, and any binding judicial or administrative interpretation thereof, including without limitation any binding judicial or administrative order, consent decree or judgment, relating to the environment, human health or safety (as such relates to exposure to Hazardous Materials) or Hazardous Materials.

"*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).

"*Equity Offering*" means any public or private sale of (1) Capital Stock of the Company (other than Disqualified Stock and other than to a Subsidiary of the Company) or (2) Capital Stock of a direct or indirect parent entity of the Company (other than to the Company or a Subsidiary of the Company) to the extent that the net cash proceeds therefrom are contributed to the common equity capital of the Company.

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

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended, or any successor statute or statutes thereto.

"*GAAP*" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect from time to time.

"*Global Note Legend*" means the legend set forth in Section 2.06(f)(2) hereof, which is required to be placed on all Global Notes issued under this Indenture.

"*Global Notes*" means, individually and collectively, each of the Restricted Global Notes and the Unrestricted Global Notes deposited with or on behalf of and 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 Section 2.01, 2.06(b)(3), 2.06(b)(4) or 2.06(d)(2) hereof.

"*Government Securities*" means direct obligations of, or obligations guaranteed by, the United States of America (including any agency or instrumentality thereof) for the payment of which obligations or guarantees the full faith and credit of the United States of America is pledged and which are not callable or redeemable at the issuer's option.

"*Governmental Authority*" means any nation or government, or any state, province, territory or other 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, or any governmental or non-governmental authority regulating the generation and/or transmission of energy, including Electric Reliability Council of Texas.

"*Hazardous Materials*" means (a) any petroleum or petroleum products, radioactive materials, friable asbestos, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing regulated levels of polychlorinated biphenyls and radon gas; (b) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous waste," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," "toxic substances," "toxic pollutants," "contaminants," or "pollutants" or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, which is prohibited, limited or regulated by any Environmental Law.

"*Holder*" means a Person in whose name a Note is registered.

"*IAI 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 will be issued in a denomination equal to the outstanding principal amount of the Notes sold to Institutional Accredited Investors.

"*Indenture*" means this Indenture, as amended or supplemented from time to time.

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

"*Initial Notes*" means the $1,400,000,000 aggregate principal amount of Notes issued under this Indenture on the date hereof.

"*Initial Purchasers*" means Credit Suisse Securities (USA) LLC, BofA Securities, Inc., Barclays Capital Inc., BNP Paribas Securities Corp., Citigroup Global Markets Inc., Credit Agricole Securities (USA) Inc., Deutsche Bank Securities Inc., Goldman Sachs & Co. LLC, J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC, MUFG Securities Americas Inc., Natixis Securities Americas LLC, RBC Capital Markets, LLC, SMBC Nikko Securities America, Inc., and ING Financial Markets LLC.

"*Institutional Accredited Investor*" means an institution that is an "accredited investor" as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act, who are not also QIBs.

"*Legal Holiday*" means a Saturday, a Sunday or a day on which banking institutions in the City of New York or at a place of payment are authorized by law, regulation or executive order to remain closed. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue on such payment for the intervening period.

"*Limited Recourse Debt*" means indebtedness for borrowed money represented by notes, bonds, debentures or other evidences of indebtedness of a Project Subsidiary or Project Subsidiaries (or a Subsidiary or Subsidiaries directly or indirectly holding the Capital Stock of one or more of such Project Subsidiaries) that is incurred to finance the improvement, installment, design, engineering, construction, acquisition, development, completion, maintenance or operation of, or otherwise affects any such act in respect of, all or any portion of the applicable Project or Projects, or to refinance such indebtedness or any refinancing thereof, with respect to which the recourse of the holder or obligee of such indebtedness is limited to (i) assets (and revenues and proceeds from such assets) associated with or ancillary to such Project or Projects (which in any event shall not include assets held by any Subsidiary other than a Subsidiary, if any, whose sole business is the ownership and/or operation of such Project or Projects (or the direct or indirect ownership of one or more of the relevant Project Subsidiaries) and substantially all of whose assets are associated with or ancillary to such Project or Projects) in respect of which such indebtedness was incurred and/or (ii) such Subsidiary or Subsidiaries, and/or such Project Subsidiary or Project Subsidiaries and/or the Capital Stock in one or more of such entity or entities, but in the case of clause (ii) only if such Subsidiary's or Project Subsidiary's sole business is the ownership and/or operation of such Project or Projects (or the direct or indirect ownership of one or more of the relevant Project Subsidiaries) and substantially all of such Subsidiary's or Project Subsidiary's assets are associated with or ancillary to such Project or Projects. Indebtedness of a Subsidiary of the Company shall not fail to be Limited Recourse Debt by reason of the holders of such Limited Recourse Debt having recourse to the Company or another Subsidiary of the Company pursuant to a performance guarantee.

"*Material Subsidiary*" of any Person means, as of any date, any Subsidiary of such Person's proportionate share of such Subsidiary's Total Assets (after intercompany eliminations) exceeds 15.0% of the Total Assets of such Person on a consolidated basis.

"*Moody's*" means Moody's Investors Services, Inc., or any successor thereto.

"*Necessary Capital Expenditures*" means capital expenditures that are required by Applicable Law (other than Environmental Laws) or undertaken for health and safety reasons or to prevent catastrophic failure of a unit. The term "Necessary Capital Expenditures" does not include any capital expenditure undertaken primarily to increase the efficiency of, expand or re-power any power generation facility.

"*Non-U.S. Person*" means a Person who is not a U.S. Person.

"*Notes*" has the meaning assigned to it in the preamble to this Indenture. The Initial Notes and the Additional Notes shall be treated as a single class for all purposes under this Indenture, and unless the context otherwise requires, all references to the Notes shall include the Initial Notes and any Additional Notes.

"*Obligations*" means any principal, interest, penalties, fees, expenses, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any indebtedness.

"*Offering Memorandum*" the Company's Offering Memorandum dated December 19, 2019, relating to the initial offering of the Notes.

"*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 Chief Legal Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Vice-President of such Person.

"*Officer's Certificate*" means a certificate signed on behalf of the Company by an Authorized Officer of the Company, that meets the requirements of Section 11.03 hereof.

"*Opinion of Counsel*" means an opinion from legal counsel who is reasonably acceptable to the Trustee, that meets the requirements of Section 11.03 hereof. The counsel may be an employee of or counsel to the Company, any Subsidiary of the Company or the Trustee.

"*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 Liens*" means:

(1) liens securing indebtedness for borrowed money under Revolving Credit Facilities in an aggregate principal amount not to exceed $2.0 billion;

(2) liens securing indebtedness for borrowed money in an aggregate principal amount not to exceed the aggregate principal amount of the Company's secured notes and term loans outstanding immediately prior to the issuance of the Notes, *less* the aggregate principal amount of the 2022 Secured Notes and the 2024 Secured Notes repurchased or redeemed after the issuance of the notes with the net proceeds of the issuance of the 2028 Secured Notes;

(3) liens securing indebtedness for borrowed money represented by notes, bonds, debentures or other evidences of indebtedness in an aggregate principal amount not to exceed 10.0% of Total Assets (determined at the time of incurrence of such indebtedness and without giving effect to subsequent changes) and liens securing indebtedness incurred to extend, increase, renew, refund, replace (whether upon or after termination or otherwise) or refinance in whole or in part from time to time such indebtedness secured pursuant to this clause (3);

(4) liens in favor of the Company;

(5) liens created for the benefit of (or to secure) the Notes;

(6) any lien existing on any property or asset (including Capital Stock) prior to the acquisition thereof (or the acquisition of, or merger or consolidation with, the Person owning such property or asset) by the Company or any of its Subsidiaries, and any lien securing obligations incurred to refinance, replace, refund, renew or extend the obligations secured by such liens; *provided* that in each case (i) such lien is not created in contemplation or in connection with such acquisition, (ii) such lien does not apply to any other property or assets of the Company or any of its Subsidiaries (other than fixtures and improvements on any such real property), and (iii) the principal amount of any indebtedness secured by such liens shall not be increased (except by the amount of premiums, penalties, accrued and unpaid interest, fees and expenses associated with such refinancing, replacement, refunding, renewal or extension of such indebtedness);

(7) liens to secure indebtedness for borrowed money represented by notes, bonds, debentures or other evidences of indebtedness incurred to finance Necessary Capital Expenditures that encumber only the assets purchased, installed or otherwise acquired with the proceeds of such indebtedness;

(8) liens to secure Environmental CapEx Debt that encumber only the assets purchased, installed or otherwise acquired with the proceeds of such Environmental CapEx Debt;

(9) liens on assets of any Subsidiary of the Company or Project Subsidiary, in each case to the extent such liens secure Limited Recourse Debt;

(10) liens securing (a) Capital Lease Obligations and (b) other indebtedness of the Company or any of its Subsidiaries incurred to finance all or any part of the acquisition, lease, construction, installation or improvement of any assets, and any refinancing, replacement, refunding, renewal or extension of any such indebtedness without any increase thereof, in an aggregate amount not to exceed $150.0 million at any one time outstanding, so long as (i) such liens are initially created or arise prior to or within the 90 days after the completion of such acquisition, lease, construction, installation or improvement and (ii) such liens do not attach to assets of the Company or any Subsidiary of the Company other than the relevant assets acquired, leased, constructed, installed or improved; and

(11) liens securing indebtedness for borrowed money represented by notes, bonds, debentures or other evidences of indebtedness in an aggregate amount, together with all other indebtedness for borrowed money secured by liens pursuant to this clause (11), not to exceed $100.0 million at any one time outstanding.

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

"*Principal Property*" means any building, structure or other facility (together with the land on which it is erected and fixtures comprising a part thereof) owned by the Company or any Covered Subsidiary and used primarily for manufacturing, processing, research, warehousing or distribution, in each case located within the United States, that has a book value on the date of which the determination is being made, without deduction of any depreciation reserves, exceeding 2.0% of Total Assets, other than any such facility (or portion thereof) that the Company reasonably determines is not material to the business of the Company and its Subsidiaries, taken as a whole.

"*Private Placement Legend*" means the legend set forth in Section 2.06(f)(1) hereof to be placed on all Notes issued under this Indenture except where otherwise permitted by the provisions of this Indenture.

"*Project*" means any (a) electrical generation plant, (b) cogeneration plant, (c) facility for the exploration or drilling for fuel or other resources, or for the development, storage, transport or transmission of, electricity, steam, fuel, syngas or other resources for the generation of electricity or (d) facility engaged in another line of business in which the Company and its Subsidiaries are permitted to be engaged hereunder, in each case for which a Subsidiary or Subsidiaries of the Company was, is or will be (as the case may be) an owner, lessee, operator, manager, developer or builder, and shall also mean any two or more of such plants or facilities in which an interest has been acquired in a single transaction; *provided* that a Project shall cease to be a Project of the Company and its Subsidiaries at such time that the Company or any of its Subsidiaries ceases to have any existing or future rights or obligations (whether direct or indirect, contingent or matured) associated therewith.

"*Project Subsidiary*" means any Subsidiary of the Company whose sole business is the ownership and/ or operation of a Project or Projects and substantially all of the assets of which are associated with or acquired or utilized in such Project.

"*QIB*" means a "qualified institutional buyer" as defined in Rule 144A.

"*Qualifying Equity Interests*" means Equity Interests of the Company other than Disqualified Stock.

"*Rating Agencies*" means (1) each of Moody's and S&P and (2) if any of Moody's or S&P ceases to rate the Notes or fails to make a rating of the Notes publicly available for reasons outside of the Company's control, a "nationally recognized statistical rating organization" as defined in Section 3(a)(62) of the Exchange Act selected by the Company as a replacement agency for Moody's or S&P, or both of them, as the case may be.

"*Rating Event*" means the rating on the Notes is lowered by both of the Rating Agencies on any day within the 60-day period (which 60-day period will be extended so long as the rating of the Notes is under publicly announced consideration for a possible downgrade by either of the Rating Agencies) after the earlier of (1) the occurrence of a Change of Control and (2) public disclosure by the Company of the occurrence of a Change of Control or the Company's intention to effect a Change of Control; *provided*, *however*, that a Rating Event otherwise arising by virtue of a particular reduction in rating will not be deemed to have occurred in respect of a particular Change of Control (and thus will not be deemed a Rating Event for purposes of the definition of Change of Control Triggering Event) if the Rating Agencies making the reduction in rating to which this definition would otherwise apply do not announce or publicly confirm or inform the Trustee in writing at the Company's or the Trustee's request that the reduction was the result, in whole or in part, of any event or circumstance comprised of or arising as a result of, or in respect of, the applicable Change of Control (whether or not the applicable Change of Control has occurred at the time of the Rating Event).

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

"*Regulation S 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, issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 903 of Regulation S.

"*Responsible Officer*" means, when used with respect to the Trustee, any officer within the Corporate Trust Office of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter related to this Indenture is referred because of such person's knowledge of and familiarity with the particular subject and, in each case, who shall have direct responsibility for the administration of this Indenture.

"*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 Period*" means the 40-day distribution compliance period as defined in Regulation S.

"*Revolving Credit Facilities*" means any credit agreement, loan agreement or other agreement or instrument evidencing or governing the terms of any indebtedness or other financial accommodation that provides for revolving borrowings.

"*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 thereto.

"*Securities Act*" means the Securities Act of 1933, as amended, or any successor statute or statutes thereto.

"*Stated Maturity*" means, with respect to any installment of interest or principal on any series of indebtedness, the date on which the payment of interest or principal is scheduled to be paid in the documentation governing such indebtedness, and will not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

"*Subsidiary*" means, with respect to any specified Person:

(1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, 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).

"*Total Assets*" means, as of any date of determination, the total consolidated assets of the Company and its Subsidiaries, determined in accordance with GAAP, as shown on the most recent internally available balance sheet of the Company, and after giving *pro forma* effect to any acquisition or disposal of any property or assets consummated after the date of the applicable balance sheet and on or prior to the date of determination.

"*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 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 March 15, 2023; provided, however, that if the period from the redemption date to March 15, 2023 is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

"*Trustee*" means Wilmington Trust, National Association until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

"*Unrestricted Definitive Note*" means a Definitive Note that does not bear and is not required to bear the Private Placement Legend.

"*Unrestricted Global Note*" means a Global Note that does not bear and is not required to bear the Private Placement Legend.

"*U.S. Person*" means a U.S. Person as defined in Rule 902(k) promulgated under the Securities Act.

"*Voting Stock*" of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

Section 1.02 *Other Definitions*.

Term	Defined in Section
"Authentication Order"	2.02
"Change of Control Offer"	4.09
"Change of Control Payment"	4.09
"Change of Control Payment Date"	4.09
"Covenant Defeasance"	8.03
"DTC"	2.03
"Event of Default"	6.01
"Legal Defeasance"	8.02
"Paying Agent"	2.03
"Payment Default"	6.01
"Registrar"	2.03
"Trustee"	8.05

Section 1.03 *Rules of Construction*.

(a) Unless the context otherwise requires:

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

(2) unless otherwise specified herein, an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP as in effect from time to time;

(3) "or" is not exclusive;

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

(5) "will" shall be interpreted to express a command;

(6) provisions apply to successive events and transactions; and

(7) references to sections of or rules under the Securities Act will be deemed to include substitute, replacement of successor sections or rules adopted by the Commission from time to time.

(b) Any reference herein to a merger, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, limited partnership or trust, or an allocation of assets to a series of a limited liability company, limited partnership or trust (or the unwinding of such a division or allocation), as if it were a merger, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company, limited partnership or trust shall constitute a separate Person hereunder (and each division of any limited liability company, limited partnership or trust that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

ARTICLE 2
THE NOTES

Section 2.01 *Form and Dating*.

(a) *General*. The Notes and the Trustee's certificate of authentication will 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 will be dated the date of its authentication. The Notes 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 will constitute, and are hereby expressly made, a part of this Indenture and the Company 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 will 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 will 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 will represent such of the outstanding Notes as will be specified therein and each shall provide that it represents 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 will be made by the Trustee or the Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.06 hereof.

(c) *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 will be applicable to transfers of beneficial interests in the Regulation S Global Note that are held by Participants through Euroclear or Clearstream.

Section 2.02 *Execution and Authentication*.

At least one Officer must sign the Notes for the Company by manual or facsimile signature.

If an Officer whose signature is on a Note no longer holds that office at the time a Note is authenticated, the Note will nevertheless be valid.

A Note will not be valid until authenticated by the manual signature of the Trustee. The signature will be conclusive evidence that the Note has been authenticated under this Indenture.

The Trustee will, upon receipt of a written order of the Company signed by an Officer (an "*Authentication Order*"), authenticate Notes for original issue that may be validly issued under this Indenture, including any Additional Notes. The aggregate principal amount of Notes outstanding at any time may not exceed the aggregate principal amount of Notes authorized for issuance by the Company pursuant to one or more Authentication Orders, except as provided in Section 2.07 hereof.

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 2.03 *Registrar and Paying Agent*.

The Company will maintain an office or agency where Notes may be presented for registration of transfer or for exchange ("*Registrar*") and an office or agency where Notes may be presented for payment ("*Paying Agent*"). The Registrar will 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 notice to any Holder. The Company will 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.

The Company initially appoints The Depository Trust Company ("*DTC*") to act as Depositary with respect to the Global Notes.

The Company initially appoints the Trustee to act as the Registrar and Paying Agent and to act as Custodian with respect to the Global Notes.

Section 2.04 *Paying Agent to Hold Money in Trust*.

The Company will require each Paying Agent other than the Trustee to agree in writing that the Paying Agent will hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal, premium, if any, or interest on the Notes, and will 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 a Subsidiary) will have no further liability for the money. If the Company or a Subsidiary acts as Paying Agent, it will 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 will serve as Paying Agent for the Notes.

Section 2.05 *Holder Lists*.

The Trustee will 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 will furnish to the Trustee at least seven 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.

Section 2.06 *Transfer and Exchange*.

(a) *Transfer and Exchange of Global Notes*. A Global Note may not be transferred except as a whole 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. Global Notes may only be exchanged for Definitive Notes if:

(1) the Company delivers to the Trustee notice from the Depositary that it 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 120 days after the date of such notice from the Depositary;

(2) the Company in its sole discretion determines that the Global Notes (in whole but not in part) should be exchanged for Definitive Notes and delivers a written notice to such effect to the Trustee; or

(3) there has occurred and is continuing a Default or Event of Default with respect to the Notes.

Upon the occurrence of any of the preceding events in (1), (2) or (3) 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 2.07 and 2.10 hereof. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 2.06 or Section 2.07 or 2.10 hereof, 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 2.06(a), however, beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.06(b) or (c) hereof.

(b) *Transfer and Exchange of Beneficial Interests in the Global Notes*. The transfer and exchange of beneficial interests in the Global Notes will be effected through the Depositary, in accordance with the provisions of this Indenture and the Applicable Procedures. Beneficial interests in the Restricted Global Notes will 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 will require compliance with either subparagraph (1) or (2) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(1) *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; *provided*, *however*, that prior to the expiration of the Restricted Period, transfers of beneficial interests in the Regulation S Global Note may not be made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). 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. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.06(b)(1).

(2) *All Other Transfers and Exchanges of Beneficial Interests in Global Notes*. In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.06(b)(1) above, the transferor of such beneficial interest must deliver to the Registrar either:

(A) both:

(i) 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

(ii) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase; or

(B) both:

(i) 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

(ii) 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 (i) 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 of the relevant Global Note(s) pursuant to Section 2.06(g) 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 2.06(b)(2) above and the Registrar receives the following:

(A) if the transferee will 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 hereto, including the certifications in item (1) thereof;

(B) if the transferee will take delivery in the form of a beneficial interest in the Regulation S Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; and

(C) if the transferee will take delivery in the form of a beneficial interest in the IAI Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3)(c) thereof, if applicable.

(4) *Transfer and Exchange of Beneficial Interests in a Restricted Global Note for Beneficial Interests in an 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 2.06(b)(2) above and:

(A) the Registrar receives the following:

(i) 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

(ii) 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 hereto, including the applicable certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), 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 subparagraph (A) 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 2.02 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 subparagraph (A) above.

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*. 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, in each case after the occurrence of an event specified in Section 2.06(a), 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, a certificate to the effect set forth in Exhibit B 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 in accordance with Rule 903 or Rule 904, a certificate to the effect set forth in Exhibit B 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, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such beneficial interest is being transferred to an Institutional Accredited Investor 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 hereto, including the certifications, certificates and Opinion of Counsel required by item (3)(c) thereof, if applicable; or

(F) 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 hereto, including the certifications in item (3)(b) thereof,

the Trustee shall cause the aggregate principal amount of the applicable Restricted Global Note to be reduced accordingly pursuant to Section 2.06(g) hereof, and the Company shall execute and the Trustee, upon receipt of an Authentication Order, shall authenticate and deliver to the Person designated in the instructions a Restricted Definitive Note in the appropriate principal amount. Any Restricted Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c) 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 Restricted Definitive Notes to the Persons in whose names such Notes are so registered. Any Restricted Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(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.* 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, in each case after the occurrence of an event specified in Section 2.06(a), only if:

(A) the Registrar receives the following:

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

(ii) 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 an Unrestricted Definitive Note, a certificate from such holder in the form of Exhibit B hereto, including the applicable certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), 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.

(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 an Unrestricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note, in each case after the occurrence of an event specified in Section 2.06(a), then, upon satisfaction of the conditions set forth in Section 2.06(b)(2) hereof, the Trustee will cause the aggregate principal amount of the applicable Unrestricted Global Note to be reduced accordingly pursuant to Section 2.06(g) hereof, and the Company will execute and the Trustee, upon receipt of an Authentication Order, will authenticate and deliver to the Person designated in the instructions an Unrestricted Definitive Note in the appropriate principal amount. Any Unrestricted Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(3) will be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest requests through instructions to the Registrar from or through the Depositary and the Participant or Indirect Participant. The Trustee will deliver such Unrestricted Definitive Notes to the Persons in whose names such Notes are so registered. Any Unrestricted Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(3) will not bear the Private Placement Legend.

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

(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, a certificate to the effect set forth in Exhibit B 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 in accordance with Rule 903 or Rule 904, a certificate to the effect set forth in Exhibit B 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, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such Restricted Definitive Note is being transferred to an Institutional Accredited Investor 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 hereto, including the certifications, certificates and Opinion of Counsel required by item (3)(c) thereof, if applicable; or

(F) 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 hereto, including the certifications in item (3)(b) thereof,

the Trustee will 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, in the case of clause (C) above, the Regulation S Global Note, and in all other cases, the IAI 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:

(A) the Registrar receives the following:

(i) 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

(ii) 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 hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), 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 the conditions of any of the subparagraphs in this Section 2.06(d)(2), the Trustee will cancel the Restricted 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 Unrestricted 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 will cancel the applicable Unrestricted Definitive Note and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Notes.

If any such exchange or transfer from a Definitive Note to a beneficial interest is effected pursuant to subparagraphs (2)(A) or (3) above at a time when an Unrestricted Global Note has not yet been issued, the Company will issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee will 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 2.06(e), the Registrar will register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder must 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 must provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.06(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 will be made pursuant to Rule 144A, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof;

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

(C) if the transfer will 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 hereto, including the certifications, certificates and Opinion of Counsel required by item (3)(c) 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 if:

(A) the Registrar receives the following:

(i) 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

(ii) 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 hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), 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.

(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) *Legends*. The following legends will 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*.

(A) Except as permitted by subparagraph (B) 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:

"THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH BELOW. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT OR (C) IT IS AN ACCREDITED INVESTOR (AS DEFINED IN RULE 501(a)(1), (2), (3), OR (7) UNDER THE SECURITIES ACT (AN "ACCREDITED INVESTOR"), (2) AGREES THAT IT WILL NOT WITHIN ONE YEAR AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY RESELL OR OTHERWISE TRANSFER THIS SECURITY EXCEPT (A) TO THE ISSUER OR ANY SUBSIDIARY THEREOF, (B) INSIDE THE UNITED STATES TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) INSIDE THE UNITED STATES TO AN ACCREDITED INVESTOR THAT, PRIOR TO SUCH TRANSFER, FURNISHES (OR HAS FURNISHED ON ITS BEHALF BY A U.S. BROKER-DEALER) TO THE TRUSTEE A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THIS SECURITY (THE FORM OF WHICH LETTER CAN BE OBTAINED FROM THE TRUSTEE FOR THIS SECURITY), (D) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT (IF AVAILABLE), (E) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), (F) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (AND BASED UPON AN OPINION OF COUNSEL IF THE ISSUER SO REQUESTS), OR (G) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IN CONNECTION WITH ANY TRANSFER OF THIS SECURITY WITHIN ONE YEAR AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY, IF THE PROPOSED TRANSFEREE IS AN ACCREDITED INVESTOR, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE TRUSTEE AND THE ISSUER SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS EITHER OF THEM MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. AS USED HEREIN, THE TERMS "OFFSHORE TRANSACTION," "UNITED STATES" AND "U.S. PERSON" HAVE THE MEANING GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT."

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

"THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (1) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 2.06 OF THE INDENTURE, (2) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06(a) OF THE INDENTURE, (3) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.11 OF THE INDENTURE AND (4) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE COMPANY.

UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) ("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 SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN."

(g) *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 will be returned to or retained and canceled by the Trustee in accordance with Section 2.11 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who will 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 will be reduced accordingly and an endorsement will 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 will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note will be increased accordingly and an endorsement will be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

(h) *General Provisions Relating to Transfers and Exchanges*.

(1) To permit registrations of transfers and exchanges, the Company will execute and the Trustee will authenticate Global Notes and Definitive Notes upon receipt of an Authentication Order in accordance with Section 2.02 hereof or at the Registrar's request.

(2) No service charge will 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 2.10, 3.06, 4.09 and 9.04 hereof).

(3) The Registrar will not be required to register the transfer of or exchange of any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

(4) All Global Notes and Definitive Notes issued upon any registration of transfer or exchange of Global Notes or Definitive Notes will be the valid 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) Neither the Registrar nor the Company will be required:

(A) to issue, to register the transfer of or to 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 3.02 hereof and ending at the close of business on the day of selection;

(B) to register the transfer of or to exchange any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part; or

(C) to register the transfer of or to 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, upon receipt of an Authentication Order, will authenticate Global Notes and Definitive Notes in accordance with the provisions of Section 2.02 hereof.

(8) All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 2.06 to effect a registration of transfer or exchange may be submitted by facsimile.

(9) Each Holder of a Note agrees to indemnify the Company against any liability that may result from the transfer, exchange or assignment of such Holder's Note in violation of any provision of this Indenture and/or applicable United States federal or state securities laws.

(10) Neither the Trustee nor any agent of the Trustee shall have any responsibility for any actions taken or not taken by the Depositary.

(11) The Trustee shall have no responsibility or obligation to any Participant or Indirect Participant or any other Person with respect to the accuracy of the books or records, or the acts or omissions, of the Depositary or its nominee or of any participant or member thereof, with respect to any ownership interest in the Notes or with respect to the delivery to any Participant or Indirect Participant or other Person (other than the Depositary) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such Notes. All notices and communications to be given to the Holders and all payments to be made to Holders under the Notes shall be given or made only to or upon the order of the registered Holders (which shall be the Depositary or its nominee in the case of a Global Note). The rights of beneficial owners in any Global Note shall be exercised only through the Depositary subject to the customary procedures of the Depositary. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depositary with respect to its Participants or Indirect Participants.

(12) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Participants or Indirect Participants in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 2.07 *Replacement Notes*.

If any mutilated Note is surrendered to the Trustee or the Company and the Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Note, the Company will issue and the Trustee, upon receipt of an Authentication Order, will 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 may charge for its expenses in replacing a Note.

Every replacement Note is an additional obligation of the Company and will be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

Section 2.08 *Outstanding Notes*.

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 hereof, and those described in this Section 2.08 as not outstanding. Except as set forth in Section 2.09 hereof, a Note does not cease to be outstanding because the Company or an Affiliate of the Company holds the Note; however, Notes held by the Company or a Subsidiary of the Company shall not be deemed to be outstanding for purposes of Section 3.07(a) hereof.

If a Note is replaced pursuant to Section 2.07 hereof, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a protected purchaser.

If the principal amount of any Note is considered paid under Section 4.01 hereof, it ceases to be outstanding and interest on it ceases to accrue.

If the Paying Agent (other than the Company, a Subsidiary or an Affiliate of any thereof) holds, on a redemption date or maturity date, money sufficient to pay Notes payable on that date, then on and after that date such Notes will be deemed to be no longer outstanding and will cease to accrue interest.

Section 2.09 *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, will be considered as though not outstanding, except that for the purposes of determining whether the Trustee will be protected in relying on any such direction, waiver or consent, only Notes that the Trustee knows are so owned will be so disregarded.

Section 2.10 *Temporary Notes*.

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

Holders of temporary Notes will be entitled to all of the benefits of this Indenture.

Section 2.11 *Cancellation*.

The Company at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent will forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else will cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and will destroy canceled Notes (subject to the record retention requirement of the Exchange Act). Upon request of the Company, certification of the destruction of all canceled Notes will be delivered to the Company. The Company may not issue new Notes to replace Notes that it has paid or that have been delivered to the Trustee for cancellation.

Section 2.12 *Defaulted Interest*.

If the Company defaults in a payment of interest on the Notes, it will 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 a subsequent special record date, in each case at the rate provided in the Notes and in Section 4.01 hereof. The Company will 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 will fix or cause to be fixed each such special record date and payment date; *provided* that no such special record date may 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) will 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.

ARTICLE 3
REDEMPTION AND PREPAYMENT

Section 3.01 *Notices to Trustee*.

If the Company elects to redeem Notes pursuant to the optional redemption provisions of Section 3.07 hereof, it must furnish to the Trustee, at least 30 days but not more than 60 days before a redemption date, an Officer's Certificate setting forth:

(1) the clause of this Indenture pursuant to which the redemption shall occur;

(2) the redemption date;

(3) the principal amount of Notes to be redeemed; and

(4) the redemption price.

Section 3.02 *Selection of Notes to Be Redeemed or Purchased*.

If less than all of the Notes are to be redeemed or purchased in an offer to purchase at any time, the Trustee will select Notes for redemption or purchase on a *pro rata* basis to the extent practicable or by lot or such other similar method in accordance with the procedures of DTC unless otherwise required by law or applicable stock exchange requirements.

In the event of partial redemption or purchase by lot, the particular Notes to be redeemed or purchased will be selected, unless otherwise provided herein, not less than 30 nor more than 60 days prior to the redemption or purchase date by the Trustee from the outstanding Notes not previously called for redemption or purchase.

The Trustee will promptly notify the Company in writing of the Notes selected for redemption or purchase and, in the case of any Note selected for partial redemption or purchase, the principal amount thereof to be redeemed or purchased. Notes and portions of Notes selected will 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 or purchased, the entire outstanding amount of Notes held by such Holder, even if not a multiple of $1,000, shall be redeemed or purchased. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption or purchase also apply to portions of Notes called for redemption or purchase.

Section 3.03 *Notice of Redemption*.

At least 30 days but not more than 60 days before a redemption date, the Company will mail or cause to be mailed by first class mail or delivered electronically a notice of redemption to each Holder whose Notes are to be redeemed at its registered address, except that (i) redemption notices may be mailed or delivered electronically at least 10 days prior to the redemption date if the notice is issued in connection with a redemption pursuant to Section 3.07(c) hereof and (ii) redemption notices may be mailed or delivered electronically more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture pursuant to Articles 8 or 10 hereof.

The notice will identify the Notes to be redeemed and will state:

(1) the redemption date;

(2) the redemption price;

(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 will be issued upon cancellation of the 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;

(6) that, unless the Company defaults in making such redemption payment, interest 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 number, if any, listed in such notice or printed on the Notes.

At the Company's request, the Trustee will give the notice of redemption in the Company's name and at its expense; *provided*, *however*, that the Company has delivered to the Trustee, at least 45 days prior to the redemption date, an Officer's 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.

Section 3.04 *Effect of Notice of Redemption*.

Subject to the following paragraph, once notice of redemption is sent in accordance with Section 3.03 hereof, Notes called for redemption become irrevocably due and payable on the redemption date at the redemption price.

Any notice of redemption may, in the Company's discretion, be subject to the satisfaction of one or more conditions precedent. If such redemption is subject to the satisfaction of one of more conditions precedent, such notice 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 by the Company in its sole discretion), such redemption may not occur and such notice may be rescinded in the event that any or all of such conditions shall not have been satisfied (or waived by the Company in its sole discretion) by the redemption date, or by the redemption date so delayed.

Section 3.05 *Deposit of Redemption or Purchase Price*.

One Business Day prior to the redemption or purchase date, the Company will deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption or purchase price of and accrued interest on all Notes to be redeemed
or purchased on that date. The Trustee or the Paying Agent will 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 or purchase price of, and accrued interest on, all Notes to be redeemed or purchased.

If the Company complies with the provisions of the preceding paragraph, on and after the redemption or purchase date, interest will cease to accrue on the Notes or the portions of Notes called for redemption or purchase. If a Note is redeemed or purchased 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 Person in whose name such Note was registered at the close of business on such record date. If any Note called for redemption or purchase is not so paid upon surrender for redemption or purchase because of the failure of the Company to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption or purchase 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 4.01 hereof.

Section 3.06 *Notes Redeemed or Purchased in Part*.

Upon surrender of a Note that is redeemed or purchased in part, the Company will issue and, upon receipt of an Authentication Order, the Trustee will authenticate for the Holder at the expense of the Company a new Note equal in principal amount to the unredeemed or unpurchased portion of the Note surrendered.

Section 3.07 *Optional Redemption*.

(a) At any time prior to March 15, 2023, the Company may on any one or more occasions redeem up to 35% of the aggregate principal amount of Notes issued under this Indenture, upon not less than 30 nor more than 60 days' notice, at a redemption price equal to 105.125% of the principal amount of the Notes redeemed, plus accrued and unpaid interest, if any, to but excluding 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 the proceeds of one or more Equity Offerings; *provided* that:

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

(2) the redemption occurs within 90 days of the date of the closing of such Equity Offering.

(b) At any time prior to March 15, 2023, the Company may on any one or more occasions redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' notice, 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 but excluding 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) At any time, in connection with any tender offer for the Notes, including a Change of Control Offer, if Holders of not less than 90% in aggregate principal amount of the outstanding Notes validly tender and do not withdraw such Notes in such tender offer and the Company, or any third party making such tender offer in lieu of the Company, purchases all of the Notes validly tendered and not withdrawn by such Holders, the Company may, upon not less than 10 nor more than 60 days' prior notice, given not more than 30 days following such purchase date, redeem all Notes that remain outstanding following such purchase at a redemption price equal to the price paid to each other Holder in such tender offer plus, to the extent not included in the tender offer payment, accrued and unpaid interest, if any, thereon, to, but not excluding, the date of such redemption (subject to the rights of Holders on the relevant record date to receive interest on the relevant interest payment date).

(d) Except pursuant to the preceding paragraphs (a), (b) and (c) of this Section 3.07, the Notes will not be redeemable at the Company's option prior to March 15, 2023. The Company is not prohibited, however, from acquiring the Notes in market transactions by means other than a redemption, whether pursuant to a tender offer or otherwise.

(e) On or after March 15, 2023, the Company may on any one or more occasions redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' notice, 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 but excluding the applicable date of redemption, if redeemed during the twelve-month period beginning on March 15 of the 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
2023	102.563%
2024	101.708%
2025	100.854%
2026 and thereafter	100.000%

Unless the Company defaults in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable redemption date.

(f) Any redemption pursuant to this Section 3.07 shall be made pursuant to the provisions of Sections 3.01 through 3.06 hereof.

Section 3.08 *Mandatory Redemption*.

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

ARTICLE 4
COVENANTS

Section 4.01 *Payment of Notes*.

The Company will 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 will be considered paid on the date due if the Paying Agent, if other than the Company or a Subsidiary thereof, holds as of 10:00 a.m. Eastern 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 then due.

Section 4.02 *Maintenance of Office or Agency*.

The Company will maintain an office or agency (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or co-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 will 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 fails to maintain any such required office or agency or fails 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.

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; provided, however, that no such designation or rescission will in any manner relieve the Company of its obligation to maintain an office or agency for such purposes. The Company will 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.

The Company hereby designates the Corporate Trust Office of the Trustee as one such office or agency of the Company in accordance with Section 2.03 hereof; *provided* that the Corporate Trust Office of the Trustee shall not be an office or agency of the Company for the purpose of service of legal process on the Company.

Section 4.03 *Reports*.

Whether or not required by the Commission's rules and regulations, so long as any Notes are outstanding, the Company will furnish to the Trustee, within 30 days after a large accelerated filer would be required to file such reports with the Commission under the Commission's then existing rules and regulations:

(1) annual reports of the Company containing substantially all of the information that would have been required to be contained in an Annual Report on Form 10-K under the Exchange Act if the Company had been a reporting company under the Exchange Act, including (A) "Management's Discussion and Analysis of Financial Condition and Results of Operations" and (B) audited financial statements prepared in accordance with GAAP as in effect from time to time;

(2) quarterly reports of the Company containing substantially all of the information that would have been required to be contained in a Quarterly Report on Form 10-Q under the Exchange Act if the Company had been a reporting company under the Exchange Act, including (A) "Management's Discussion and Analysis of Financial Condition and Results of Operations" and (B) unaudited quarterly financial statements prepared in accordance with GAAP as in effect from time to time and reviewed pursuant to Statement on Auditing Standards No. 100 (or any successor provision); and

(3) current reports containing substantially all of the information that would have been required to be contained in a Current Report on Form 8-K under the Exchange Act if the Company had been a reporting company under the Exchange Act; *provided*, *however*, that no such current report will be required to be furnished if the Company determines in its good faith judgment that such event is not material to the Holders or the business, assets, operations, financial positions or prospects of the Company and its Subsidiaries, taken as a whole.

Notwithstanding the foregoing, in no event will the Company be required by this Indenture to (A) comply with Section 302 or Section 404 of the Sarbanes-Oxley Act of 2002, or related Items 307 and 308 of Regulation S-K promulgated by the Commission, or Item 10(e) of Regulation S-K (with respect to any non-GAAP financial measures contained therein) and Regulation G, (B) include the separate financial information for guarantors or other entities contemplated by Rule 3-10 and/or 3-16 of Regulation S-X promulgated by the Commission or (C) provide any additional information in respect of Item 402 of Regulation S-K beyond information of the type included in the Offering Memorandum.

The Company's reporting obligations with respect to clauses (1) through (3) above will be satisfied in the event it timely files such reports with the Commission on EDGAR and such reports are publicly available.

So long as any Notes are outstanding, if at any time the Company is not filing with the Commission the reports required by the preceding paragraphs of this Section 4.03, the Company will also maintain a website to which Holders, prospective investors, broker-dealers and securities analysts are given access and to which all of the reports and press releases required by this Section 4.03 are posted.

In addition, if at any time the Company is not filing with the Commission the reports required by this Section 4.03, the Company shall furnish to Holders, prospective investors, broker-dealers and securities analysts, upon their request, any information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act so long as the Notes constitute "restricted securities" under Rule 144.

Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute actual or constructive knowledge or notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates with respect thereto).

Section 4.04 *Compliance Certificate*.

(a) The Company shall deliver to the Trustee, within 90 days after the end of each fiscal year, an Officer's 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 Officer with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to such Officer signing such certificate, that to the best of his or her knowledge the Company has kept, observed, performed and fulfilled each and every covenant contained in this Indenture and is not in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (or, if a Default or Event of Default has occurred, 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) and that to the best of his or her knowledge no event has occurred and remains in existence by reason of which payments on account of the principal of, premium or interest, if any, on the Notes is prohibited or if such event has occurred, a description of the event and what action the Company is taking or proposes to take with respect thereto.

(b) So long as any of the Notes are outstanding, the Company will deliver to the Trustee, forthwith upon any Officer becoming aware of any Default or Event of Default, an Officer's Certificate specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto.

Section 4.05 *Taxes*.

The Company will pay, prior to delinquency, all 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 is not adverse in any material respect to the Holders.

Section 4.06 *Stay, Extension and Usury Laws*.

The Company covenants (to the extent that it may lawfully do so) that it will 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 will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.07 *Liens*.

The Company will not, and will not permit any Covered Subsidiary to, create, incur, assume or suffer to exist any mortgage, pledge or other lien (other than Permitted Liens) upon any Principal Property to secure indebtedness for borrowed money represented by notes, bonds, debentures or other evidences of indebtedness, unless all payments due under this Indenture and the Notes issued hereunder are secured on an equal and ratable basis with the obligations so secured until such time as such obligations are no longer secured by such mortgage, pledge or other lien.

Section 4.08 *Corporate Existence*.

Subject to Article 5 hereof, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and the rights (charter and statutory), licenses and franchises of the Company; provided, however, that the Company shall not be required to preserve any such right, license or franchise, or corporate
existence, if (a) the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company, and that the loss thereof is not adverse in any material respect to the Holders of the Notes.

Section 4.09 *Offer to Repurchase Upon Change of Control Triggering Event*.

(a) If a Change of Control Triggering Event occurs, each Holder will have the right to require the Company to make an offer (a "*Change of Control Offer*") to each Holder to repurchase all or any part (equal to $2,000 or an integral multiple of $1,000 in excess thereof) of that Holder's Notes at a purchase price in cash equal to 101% of the aggregate principal amount of Notes repurchased plus accrued and unpaid interest, if any, on the Notes repurchased to but excluding the date of purchase, subject to the rights of Holders on the relevant record date to receive interest due on the relevant interest payment date (the "*Change of Control Payment*"). Within 30 days following any Change of Control Triggering Event, the Company will mail (or deliver electronically) a notice to each Holder describing the transaction or transactions that constitute the Change of Control Triggering Event and stating:

(1) that the Change of Control Offer is being made pursuant to this Section 4.09 and that all Notes tendered will be accepted for payment;

(2) the purchase price and the purchase date, which shall be no earlier than 30 days and no later than 60 days from the date such notice is mailed or delivered electronically (the "*Change of Control Payment Date*");

(3) that any Note not tendered will 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 after the Change of Control Payment Date;

(5) that Holders electing to have any Notes purchased pursuant to a Change of Control Offer will be required to surrender the Notes, with the form entitled "Option of Holder to Elect Purchase" attached to the Notes completed, or transfer by book-entry transfer, to the Paying Agent 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 election if the Paying Agent receives, not later than the close of business on the second Business Day preceding the Change of Control Payment Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of Notes delivered for purchase, and a statement that such Holder is withdrawing his election to have the Notes purchased; and

(7) that Holders whose Notes are being purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered, which unpurchased portion must be equal to $2,000 in principal amount or an integral multiple of $1,000 in excess of $2,000.

The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change of Control Triggering Event. To the extent that the provisions of any securities laws or regulations conflict with this Section 4.09, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Section 4.09 by virtue of such compliance.

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

(1) accept for payment all Notes or portions of Notes properly tendered pursuant to the Change of Control Offer;

(2) deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all Notes or portions of Notes properly tendered; and

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

The Paying Agent will promptly mail (but in any case not later than five days after the Change of Control Payment Date) to each Holder of Notes properly tendered the Change of Control Payment for such Notes, and the Trustee will promptly, upon receipt of an Authentication Order, 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 new Note will be in a principal amount of $2,000 or an integral multiple of $1,000 in excess thereof. The Company will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

(c) Notwithstanding anything to the contrary in this Section 4.09, the Company will not be required to make a Change of Control Offer upon a Change of Control Triggering Event if (1) 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 Section 4.09 hereof and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer, or (2) notice of redemption has been given pursuant to Section 3.07 hereof, unless and until there is a default in payment of the applicable redemption price. A Change of Control Offer may be made in advance of a Change of Control Triggering Event, with the obligation to pay and the timing of payment conditioned upon the consummation of the Change of Control, if a definitive agreement to effect a Change of Control is in place at the time of the Change of Control Offer.

ARTICLE 5
SUCCESSORS

Section 5.01 *Merger, Consolidation, or Sale of Assets*.

(a) The Company may not, directly or indirectly: (1) consolidate or merge with or into another Person (whether or not the Company is the surviving corporation) or (2) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company and its Subsidiaries, taken as a whole, in one or more related transactions, to another Person; unless:

(1) either (A) the Company is the surviving corporation; or (B) the Person formed by or surviving any such consolidation or merger (if other than the Company) or to which such sale, assignment, transfer, conveyance or other disposition has been made is a corporation, partnership or limited liability company organized or existing under the laws of the United States, any state of the United States or the District of Columbia; provided that if the Person is a partnership or limited liability company, then a corporation wholly-owned by such Person organized or existing under the laws of the United States, any state of the United States or the District of Columbia that does not and will not have any material assets or operations shall become a co-issuer of the Notes pursuant to a supplemental indenture duly executed by the Trustee;

(2) the Person formed by or surviving any such consolidation or merger (if other than the Company) or the Person to which such sale, assignment, transfer, conveyance or other disposition has been made assumes all the obligations of the Company under the Notes and this Indenture pursuant to a supplemental indenture duly executed by the Trustee; and

(3) immediately after such transaction, no Default or Event of Default exists.

(b) In addition, the Company will not, directly or indirectly, lease all or substantially all of the properties and assets of the Company and its Subsidiaries, taken as a whole, in one or more related transactions, to any other Person.

This Section 5.01 will not apply to:

(1) a merger of the Company with an Affiliate solely for the purpose of reincorporating the Company in another jurisdiction or forming a direct holding company of the Company; and

(2) any sale, transfer, assignment, conveyance, lease or other disposition of assets between or among the Company and its Subsidiaries, including by way of merger or consolidation.

Section 5.02 *Successor Corporation Substituted*.

Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the properties or assets of the Company in a transaction that is subject to, and that complies with the provisions of, Section 5.01 hereof, the successor Person formed by such consolidation or into or with which the Company is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, assignment, transfer, lease, conveyance or other disposition, the provisions of this Indenture referring to the "Company" shall refer instead to the successor Person and not to the Company), and may exercise every right and power of the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein; provided, however, that the predecessor Company shall not be relieved from the obligation to pay the principal of and interest on the Notes except in the case of a sale of all of the Company's assets in a transaction that is subject to, and that complies with the provisions of, Section 5.01 hereof.

ARTICLE 6
DEFAULTS AND REMEDIES

Section 6.01 *Events of Default*.

Each of the following is an "*Event of Default*" with respect to the Notes:

(1) default for 30 days in the payment when due of interest on the Notes;

(2) default in payment when due of the principal of, or premium, if any, on, the Notes;

(3) failure by the Company for 60 days after notice from the Trustee or the Holders of at least 25% in aggregate principal amount of the outstanding Notes to comply with any of the other agreements in this Indenture;

(4) default under any document evidencing any indebtedness of the Company for borrowed money represented by notes, bonds, debentures or other evidences of indebtedness by the Company, whether such indebtedness now exists or is created after the date of this Indenture, if that default:

(A) is caused by a failure to pay principal when due at final (and not any interim) maturity on or prior to the expiration of any grace period provided in such indebtedness (a "*Payment Default*"); or

(B) results in the acceleration of such indebtedness prior to its express maturity (without such acceleration having been rescinded, annulled or otherwise cured),

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 (without such acceleration having been rescinded, annulled or otherwise cured), aggregates $100,000,000 or more; *provided* that this clause (4) shall not apply to (i) secured indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such indebtedness and (ii) any indebtedness that is required to be converted into Qualifying Equity Interests upon the occurrence of certain designated events so long as no payments in cash or otherwise are required to be made in accordance with such conversion); or

(5) (A) a court of competent jurisdiction (i) enters an order or decree under any Bankruptcy Law that is for relief against the Company or any of its Material Subsidiaries in an involuntary case; (ii) appoints a custodian of the Company for all or substantially all of the property of the Company or any of its Material Subsidiaries; or (iii) orders the liquidation of the Company or any of its Material Subsidiaries and, in each case of clauses (i), (ii) and (iii), the order, appointment or decree remains unstayed and in effect for 60 consecutive days; or (B) the Company or any of its Material Subsidiaries, pursuant to or within the meaning of Bankruptcy Law, (i) commences a voluntary case; (ii) consents to the entry of an order for relief against it in an involuntary case; (iii) consents to the appointment of a custodian of it or for all or substantially all of its property; or (iv) makes a general assignment for the benefit of its creditors.

Section 6.02 *Acceleration*.

In the case of an Event of Default specified in clause (5) of Section 6.01 hereof, 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 by written notice to the Company or the Holders of at least 25% in aggregate principal amount of the then outstanding Notes by written notice to the Company and the Trustee may declare all the Notes to be due and payable immediately. Upon any such declaration, the Notes shall become due and payable immediately. The Holders of a majority in aggregate principal amount of the then outstanding Notes by written notice to the Trustee may, on behalf of all of the Holders, rescind an acceleration and its consequences, if the rescission would not conflict with any judgment or decree and if all existing Events of Default (except nonpayment of principal, interest or premium that has become due solely because of the acceleration) have been cured or waived.

Section 6.03 *Other Remedies*.

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, and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

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 in exercising any right or remedy accruing upon 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 6.04 *Waiver of Past Defaults*.

Holders of not less than a majority in aggregate principal amount of the then outstanding Notes by written notice to the Trustee may on behalf of the Holders of all of the Notes waive an existing Default or Event of Default and its consequences hereunder, except a continuing Default or Event of Default in the payment of the principal of, premium, if any, or interest on, the Notes (including in connection with an offer to purchase); *provided*, *however*, that the Holders of a majority in aggregate principal amount of the then outstanding Notes may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration. 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 6.05 *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 it. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture that the Trustee determines may be unduly prejudicial to the rights of other Holders or that may involve the Trustee in personal liability.

Section 6.06 *Limitation on Suits*.

Except to enforce the right to receive payment of principal, premium (if any) or interest when due, no Holder may pursue any remedy with respect to this Indenture or the Notes unless:

(1) such Holder has previously given the Trustee written notice that an Event of Default is continuing;

(2) Holders of at least 25% in aggregate principal amount of the then outstanding Notes have requested the Trustee to pursue the remedy;

(3) such Holders have offered the Trustee security or indemnity satisfactory to the Trustee against any loss, liability or expense;

(4) the Trustee has not complied with such request within 60 days after the receipt thereof and the offer of security or indemnity; and

(5) Holders of a majority in aggregate principal amount of the outstanding Notes have not given the Trustee a direction inconsistent with such request within such 60-day period.

Section 6.07 *Rights of Holders to Receive Payment*.

Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal, premium, if any, and interest on the Note, on or after the respective due dates expressed in the 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; *provided* that a Holder shall not have the right to institute any such suit for the enforcement of payment if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver or loss of the lien of this Indenture upon any property subject to such lien.

Section 6.08 *Collection Suit by Trustee*.

If an Event of Default specified in Section 6.01(1) or (2) hereof occurs 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 principal of, premium, if any, and interest remaining unpaid on, the Notes and interest on overdue principal and, to the extent lawful, 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 6.09 *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 allowed in any judicial proceedings relative to the Company (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 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 7.06 hereof. 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 7.06 hereof 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 6.10 *Priorities*.

If the Trustee collects any money or property pursuant to this Article 6, it shall pay out the money or property in the following order:

First: to the Trustee, its agents and attorneys for amounts due under Section 7.06 hereof, including payment of all compensation, expenses and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

Second: to Holders 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.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 6.10.

Section 6.11 *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, 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 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07 hereof, or a suit by Holders of more than 10% in aggregate principal amount of the then outstanding Notes.

ARTICLE 7
TRUSTEE

Section 7.01 *Duties of Trustee*.

(a) If an Event of Default has occurred and is continuing, the Trustee will 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 will 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 will examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of calculations or other facts stated therein).

(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 7.01;

(2) the Trustee will not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved in a court of competent jurisdiction that the Trustee was negligent in ascertaining the pertinent facts; and

(3) the Trustee will 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 6.05 hereof.

(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), (c) and (e) of this Section 7.01.

(e) No provision of this Indenture will require the Trustee to expend or risk its own funds or incur any liability. The Trustee will be under no obligation to exercise any of its rights and powers under this Indenture at the request of any Holders, unless such Holder has offered to the Trustee indemnity satisfactory to it or security satisfactory to it against any loss, liability or expense.

(f) The Trustee will not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

Section 7.02 *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 Officer's Certificate or an Opinion of Counsel or both. The Trustee will not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel. The Trustee may consult with counsel and the written advice of such counsel or any Opinion of Counsel will 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 will not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee will 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 will be sufficient if signed by an Officer of the Company.

(f) The Trustee will 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 have offered to the Trustee indemnity or security satisfactory to it against the losses, liabilities and expenses that might be incurred by it in compliance with such request or direction.

(g) In no event shall the Trustee be required to take notice of any default or breach hereof or any Event of Default hereunder, except for Events of Default specified in Section 6.01(1) and/or 6.01(2) hereof (and then, only if the Trustee is also the Paying Agent), unless and until the Trustee shall have received from a Holder or from the Company express written notice of the circumstances constituting the breach, default or Event of Default and stating that said circumstances constitute an Event of Default.

(h) In no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(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 (including, without limitation, as Custodian, Registrar and Paying Agent), and each agent, custodian and other Person employed to act hereunder.

(j) The Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture.

(k) The Trustee shall have no duty to inquire as to the performance of the Company with respect to the covenants contained in Article 4.

(l) Any permissive right or authority granted to the Trustee shall not be construed as a mandatory duty.

(m) The Company shall provide prompt written notice to the Trustee of any change to its respective fiscal year.

Section 7.03 *Individual Rights of Trustee*.

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Company or any Affiliate of the Company with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the Commission for permission to continue as trustee or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Section 7.09 hereof.

Section 7.04 *Trustee's Disclaimer*.

The Trustee will not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, 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 will not be responsible for the use or
application of any money received by any Paying Agent other than the Trustee, it will not be responsible for and makes no representation as to the validity, and it will 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 7.05 *Notice of Defaults*.

If a Default or Event of Default occurs and is continuing and if it is known to the Trustee, the Trustee will mail to Holders a notice of the Default or Event of Default within 90 days after it occurs. 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.

Section 7.06 *Compensation and Indemnity*.

(a) The Company will pay to the Trustee from time to time reasonable compensation for its acceptance of this Indenture and services hereunder. The Trustee's compensation will not be limited by any law on compensation of a trustee of an express trust. The Company will reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses will include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

(b) The Company will indemnify the Trustee against any and all losses, liabilities or 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 (including this Section 7.06) and defending itself against any claim (whether asserted by the Company, 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 negligence or bad faith as determined by a court of competent jurisdiction in a final non-appealable decision. The Trustee will notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company will not relieve the Company of its obligations hereunder. The Company will defend the claim and the Trustee will cooperate in the defense. The Trustee may have separate counsel and the Company will pay the reasonable fees and expenses of such counsel. The Company need not pay for any settlement made without its consent, which consent will not be unreasonably withheld.

(c) The obligations of the Company under this Section 7.06 will survive the satisfaction and discharge of this Indenture or the earlier resignation or removal of the Trustee.

(d) To secure the Company's payment obligations in this Section 7.06, the Trustee will 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 and interest on particular Notes. Such lien will survive the satisfaction and discharge of this Indenture.

(e) When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(5) hereof 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 7.07 *Replacement of Trustee*.

(a) A resignation or removal of the Trustee and appointment of a successor Trustee will become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.07.

(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 aggregate 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 7.09 hereof;

(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 will promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in aggregate 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 60 days after the retiring Trustee resigns or is removed, the retiring Trustee (at the Company's expense), the Company, or the Holders of at least 10% in aggregate principal amount of the then outstanding Notes may petition 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 six months, fails to comply with Section 7.09 hereof, 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 will deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon, the resignation or removal of the retiring Trustee will become effective, and the successor Trustee will have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee will mail a notice of its succession to Holders. The retiring Trustee will 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 7.06 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 7.07, the Company's obligations under Section 7.06 hereof will continue for the benefit of the retiring Trustee.

Section 7.08 *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 corporation, the successor corporation without any further act will be the successor Trustee.

Section 7.09 *Eligibility; Disqualification*.

There will 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 trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least $100.0 million as set forth in its most recent published annual report of condition.

ARTICLE 8
LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 8.01 *Option to Effect Legal Defeasance or Covenant Defeasance*.

The Company may at any time, at the option of its Board of Directors evidenced by a resolution set forth in an Officer's Certificate, elect to have either Section 8.02 or 8.03 hereof be applied to all outstanding Notes upon compliance with the conditions set forth below in this Article 8.

Section 8.02 *Legal Defeasance and Discharge*.

(a) Upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.02, the Company will, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be deemed to have been discharged from its obligations with respect to all outstanding Notes on the date the conditions set forth below are satisfied (hereinafter, "*Legal Defeasance*"). For this purpose, Legal Defeasance means that the Company will be deemed to have paid and discharged the entire indebtedness represented by the outstanding Notes, which will thereafter be deemed to be "outstanding" only for the purposes of Section 8.05 hereof and the other Sections of this Indenture referred to in clauses (1) and (2) below, and to have satisfied all its other obligations under such Notes and this Indenture (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 will survive until otherwise terminated or discharged hereunder:

(1) the rights of Holders of outstanding Notes to receive payments in respect of the principal of, or interest or premium, if any, on, such Notes when such payments are due from the trust referred to in Section 8.04 hereof;

(2) the Company's obligations with respect to such Notes under Article 2 and Section 4.02 hereof;

(3) the rights, powers, trusts, duties and immunities of the Trustee hereunder and the Company's obligations in connection therewith; and

(4) this Article 8.

Subject to compliance with this Article 8, the Company may exercise its option under this Section 8.02 notwithstanding the prior exercise of its option under Section 8.03 hereof.

Section 8.03 *Covenant Defeasance*.

Upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.03, the Company will, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be released from its obligations under the covenants contained in Sections 4.03, 4.04, 4.05, 4.07 and 4.09 hereof with respect to the outstanding Notes on
and after the date the conditions set forth in Section 8.04 hereof are satisfied (hereinafter, "*Covenant Defeasance*"), and the Notes will 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 will continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes will not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes, the Company may omit to comply with and will 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 will not constitute a Default or an Event of Default under Section 6.01 hereof, but, except as specified above, the remainder of this Indenture and such Notes will be unaffected thereby. In addition, upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.03, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, Sections 6.01(3) and 6.01(4) hereof will not constitute Events of Default.

Section 8.04 *Conditions to Legal or Covenant Defeasance*.

In order to exercise either Legal Defeasance or Covenant Defeasance under either Section 8.02 or 8.03 hereof:

(1) the Company must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities, or a combination thereof, in amounts as will be sufficient, in the opinion of a nationally recognized investment bank, appraisal firm or firm of independent public accountants, to pay the principal of, interest and premium, if any, on, the then outstanding Notes on the final stated maturity thereof or on the applicable redemption date, as the case may be, and the Company must specify whether such Notes are being defeased to maturity or to a particular redemption date;

(2) in the case of an election under Section 8.02 hereof, the Company must deliver to the Trustee an Opinion of Counsel confirming 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 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;

(3) in the case of an election under Section 8.03 hereof, the Company must deliver to the Trustee an Opinion of Counsel confirming that the Holders 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;

(4) no Default or Event of Default shall have occurred and be continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit);

(5) such Legal Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than this Indenture) to which the Company is a party or by which the Company is bound;

(6) the Company must deliver to the Trustee an Officer's Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders over the other creditors of the Company with the intent of defeating, hindering, delaying or defrauding any creditors of the Company or others; and

(7) the Company must deliver to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

The Legal Defeasance or Covenant Defeasance, as applicable, will be effective on the day on which the conditions in clauses (1) through (7) of this Section 8.04 have been satisfied.

Section 8.05 *Deposited Money and Government Securities to be Held in Trust; Other Miscellaneous Provisions*.

Subject to Section 8.06 hereof, all money and non-callable Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.05, the "*Trustee*") pursuant to Section 8.04 hereof in respect of the outstanding Notes will 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.

The Company will pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable Government Securities deposited pursuant to Section 8.04 hereof 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.

Notwithstanding anything in this Article 8 to the contrary, the Trustee will deliver or pay to the Company from time to time upon the request of the Company any money or non-callable Government Securities held by it as provided in Section 8.04 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.04(1) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

Section 8.06 *Repayment to 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) will be discharged from such trust; and the Holder of such Note will thereafter be permitted to 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, will thereupon cease; *provided*, *however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in the New York Times and The Wall Street Journal (national edition), notice that such money remains unclaimed and that, after a date specified therein, which will not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining will be repaid to the Company.

Section 8.07 *Reinstatement*.

If the Trustee or Paying Agent is unable to apply any U.S. dollars or non-callable Government Securities in accordance with Section 8.02 or 8.03 hereof, 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 under this Indenture and the Notes and will be revived and reinstated as though no deposit had occurred pursuant to Section 8.02 or 8.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.02 or 8.03 hereof, 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 will 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 9
AMENDMENT, SUPPLEMENT AND WAIVER

Section 9.01 *Without Consent of Holders*.

Notwithstanding Section 9.02 of this Indenture, the Company and the Trustee may amend or supplement this Indenture or the Notes, without the consent of any Holder:

(1) to cure any ambiguity, defect or inconsistency in this Indenture or the Notes in a manner that does not adversely affect the rights of any Holder;

(2) to provide for uncertificated Notes in addition to or in place of certificated Notes;

(3) to provide for the assumption of the Company's obligations to Holders in the case of a merger or consolidation or sale of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole;

(4) to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the legal rights hereunder of any Holder;

(5) to conform the text of this Indenture or the Notes to any provision of the "Description of Notes" section of the Offering Memorandum, to the extent that such provision in that "Description of Notes" was intended to be a verbatim or substantially verbatim recitation of a provision of this Indenture or the Notes;

(6) to evidence and provide for the acceptance and appointment under this Indenture of successor trustees pursuant to the requirements thereof; or

(7) to provide for the issuance of Additional Notes of the same or an additional series in accordance with the limitations set forth in this Indenture as of the date hereof.

Upon the request of the Company accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture, and upon receipt by the Trustee of the documents described in Sections 7.02 and 9.05 hereof, the Trustee will join with the Company 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 will not be obligated to enter into such amended or supplemental indenture that affects its own rights, duties or immunities under this Indenture or otherwise.

Section 9.02 *With Consent of Holders*.

Except as provided below in this Section 9.02, the Company and the Trustee may amend or supplement this Indenture and the Notes with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes (including, without limitation, Additional Notes, if any) voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes), and, subject to Sections 6.04 and 6.07 hereof, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium, if any, or interest on, the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture or the Notes may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes (including, without limitation, Additional Notes, if any) voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes).

Upon the request of the Company accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture, and upon the filing with the Trustee of evidence satisfactory to the Trustee of the consent of the Holders as aforesaid, and upon receipt by the Trustee of the documents described in Sections 7.02 and 9.05 hereof, the Trustee will join with the Company 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 will not be obligated to, enter into such amended or supplemental indenture.

It is not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed amendment, supplement or waiver, but it is sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Company will mail to the Holders affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Company to mail such notice, or any defect therein, will not, however, in any way impair or affect the validity of any such amended or supplemental indenture or waiver. Subject to Sections 6.04 and 6.07 hereof, the Holders of a majority in aggregate principal amount of the Notes then outstanding voting as a single class may waive compliance in a particular instance by the Company with any provision of this Indenture or the Notes. However, without the consent of each Holder affected, an amendment, supplement or waiver under this Section 9.02 may not (with respect to any Notes held by a non-consenting Holder):

(1) reduce the principal amount of Notes whose Holders must consent to an amendment, supplement or waiver;

(2) reduce the principal of or change the fixed maturity of any Note or alter the provisions with respect to the redemption of the Notes (other than provisions relating to Section 4.09 hereof and provisions relating to the number of days of notice to be given in the event of a redemption);

(3) reduce the rate of or change the time for payment of interest on any Note;

(4) waive a Default or Event of Default in the payment of principal of, or interest or premium, if any, on, such Notes (except a rescission of acceleration of such Notes by the Holders of at least a majority in aggregate principal amount of Notes and a waiver of the payment default that resulted from such acceleration);

(5) make any Note payable in currency other than that stated in such Note;

(6) make any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of Holders of such Notes to receive payments of principal of, or interest or premium, if any, on, the Notes;

(7) waive a redemption payment with respect to any Note (other than a payment required by Section 4.09 hereof); or

(8) make any change in the preceding amendment and waiver provisions.

Section 9.03 *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 9.04 *Notation on or Exchange of Notes*.

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.

Failure to make the appropriate notation or issue a new Note will not affect the validity and effect of such amendment, supplement or waiver.

Section 9.05 *Trustee to Sign Amendments, etc*.

The Trustee will sign any amended or supplemental indenture authorized pursuant to this Article 9 if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. The Company may not sign an amended or supplemental indenture until the Board of Directors of the Company approves it. In executing any amended or supplemental indenture, the Trustee will be entitled to receive and (subject to Section 7.01 hereof) will be fully protected in relying upon, in addition to the documents required by Section 11.02 hereof, an Officer's Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture is authorized or permitted by this Indenture and that such amended or supplemental indenture is the legal, valid and binding obligation of the Company, enforceable against them in accordance with its terms, subject to customary exceptions and complies with provisions hereof.

ARTICLE 10
SATISFACTION AND DISCHARGE

Section 10.01 *Satisfaction and Discharge*.

This Indenture will be discharged and will cease to be of further effect as to all Notes issued hereunder, when:

(1) either:

(a) all Notes that have been authenticated, except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust and thereafter repaid to the Company, have been delivered to the Trustee for cancellation; or

(b) all Notes that have not been delivered to the Trustee for cancellation have become due and payable by reason of the mailing or delivering electronically of a notice of redemption or otherwise or will become due and payable within one year and the Company has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities, or a combination thereof, in such amounts as will be sufficient, without consideration of any reinvestment of interest, to pay and discharge the entire indebtedness on the Notes not delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption;

(2) no Default or Event of Default has occurred and is continuing on the date of the deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit) and the deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which the Company is a party or by which the Company is bound;

(3) the Company has paid or caused to be paid all sums payable by it under this Indenture; and

(4) the Company has delivered irrevocable instructions to the Trustee under this Indenture to apply the deposited money toward the payment of the Notes at maturity or on the redemption date, as the case may be.

In addition, the Company must deliver an Officer's Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

Notwithstanding the satisfaction and discharge of this Indenture, if money has been deposited with the Trustee pursuant to subclause (b) of clause (1) of this Section 10.01, the provisions of Sections 10.02 and 8.06 hereof will survive. In addition, nothing in this Section 10.01 will be deemed to discharge those provisions of Section 7.06 hereof, that, by their terms, survive the satisfaction and discharge of this Indenture.

Section 10.02 *Application of Trust Money*.

Subject to the provisions of Section 8.06 hereof, all money deposited with the Trustee pursuant to Section 10.01 hereof 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.

If the Trustee or Paying Agent is unable to apply any money or Government Securities in accordance with Section 10.01 hereof by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 10.01 hereof; *provided* that if the Company has made any payment of principal of, premium, if any, or interest on, any Notes because of 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 or Government Securities held by the Trustee or Paying Agent.

ARTICLE 11
MISCELLANEOUS

Section 11.01 *Notices*.

Any notice or communication by the Company or the Trustee to the others is duly given if in writing and delivered in Person or by first class mail (registered or certified, return receipt requested), facsimile transmission or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Company:

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, Texas 77002
Facsimile No.: (832) 325-1508
Attention: General Counsel

With a copy to:

White & Case LLP
1221 Avenue of the Americas
New York, New York 10020
Facsimile No.: (212) 354-8113
Attention: Gary Kashar

If to the Trustee:

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Facsimile No.: (612) 217-5651
Attention: Calpine Corporation Administrator

With a copy to:

Shipman & Goodwin LLP
One Constitution Plaza
Hartford, Connecticut 06103
Facsimile No.: (860) 251-5212
Attention: Marie C. Pollio

The Company or the Trustee, by notice to the others, may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) will be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when receipt acknowledged, if transmitted by facsimile; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

Any notice or communication to a Holder will 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 will not affect its sufficiency with respect to other Holders.

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.

If the Company mails a notice or communication to Holders, it will mail a copy to the Trustee and each Agent at the same time.

Notwithstanding any other provision of this Indenture or any Note, where this Indenture or any Note provides for notice of any event (including any notice of redemption) to a Holder of a Global Note (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depositary for such Note (or its designee), pursuant to the customary procedures of such Depositary.

Section 11.02 *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 Officer's Certificate in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 11.03 hereof) 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 in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 11.03 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

Section 11.03 *Statements Required in Certificate or Opinion*.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture must 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 or her 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 11.04 *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 11.05 *No Personal Liability of Directors, Officers, Employees and Stockholders*.

No director, officer, employee, incorporator or stockholder of the Company, as such, will have any liability for any obligations of the Company under the Notes or this Indenture, or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under the federal securities laws.

Section 11.06 *Governing Law*.

THE INTERNAL LAW OF THE STATE OF NEW YORK WILL GOVERN AND BE USED TO CONSTRUE THIS INDENTURE AND THE NOTES WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

Section 11.07 *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 its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 11.08 *Successors*.

All agreements of the Company in this Indenture and the Notes will bind its successors. All agreements of the Trustee in this Indenture will bind its successors.

Section 11.09 *Severability*.

In case any provision in this Indenture or in the Notes is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

Section 11.10 *Counterpart Originals*.

The parties may sign any number of copies of this Indenture. Each signed copy will be an original, but all of them together represent the same agreement. Delivery of an executed counterpart of a signature page to this Indenture by telecopier, facsimile or other electronic transmission (i.e. a "pdf" or "tif") shall be effective as delivery of a manually executed counterpart thereof.

Section 11.11 *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 will in no way modify or restrict any of the terms or provisions hereof.

Section 11.12 *Force Majeure.*

In no event shall the Trustee be responsible or liable, nor shall the Company be responsible or liable to the Trustee, for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee or the Company, as the case may be, shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

[Signatures on following page]

SIGNATURES

Dated as of December 27, 2019

Calpine Corporation

By: /s/ W. Thaddeus Miller
Name: W. Thaddeus Miller
Title: Executive Vice President, Chief Legal Officer and Secretary of Calpine Corporation

Wilmington Trust, National Association
as Trustee

By: /s/ Hallie E. Field
Name: Hallie E. Field
Title: Vice President

EXHIBIT A

[Face of Note]

[Insert the Global Note Legend, if applicable pursuant to the provisions of the Indenture]
[Insert the Private Placement Legend, if applicable pursuant to the provisions of the Indenture]

CUSIP/ISIN _____

[RULE 144A][REGULATION S][GLOBAL] NOTE

5.125% Senior Notes due 2028

No. ___ $_____

CALPINE CORPORATION

promises to pay to _____ or registered assigns,

the principal sum of _____ DOLLARS on March 15, 2028.

Interest Payment Dates: March 15 and September 15

Record Dates: March 1 and September 1

[*Signature Page Follows*]

IN WITNESS HEREOF, the Company has caused this Note to be signed manually or by facsimile by its duly authorized officer as of the date first written above.

CALPINE CORPORATION

By: _____
Name:
Title:

This is one of the Notes referred to in the within-mentioned Indenture:

Dated: _____ , ____

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Signatory

[Back of Note]
5.125% Senior Notes due 2028

Capitalized terms used herein have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

(1) *INTEREST*. Calpine Corporation, a Delaware corporation (the "*Company*"), promises to pay interest on the principal amount of this Note at 5.125% per annum from December 27, 2019[1] until maturity. The Company will pay interest semi-annually in arrears on March 15 and September 15 of each year (each, an "*Interest Payment Date*"), or if any such day is not a Business Day, on the next succeeding Business Day. Interest on the Notes will accrue from the most recent Interest Payment Date to which interest has been paid or, if no interest has been paid, from the date of issuance; *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 September 15, 2020[2]. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

(2) *METHOD OF PAYMENT*. The Company will pay interest on the Notes (except defaulted interest) to the Persons who are registered Holders at the close of business on March 1 or September 1 next preceding the 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 2.12 of the Indenture with respect to defaulted interest. The Notes will 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; *provided* that payment by wire transfer of immediately available funds will be required with respect to principal of and interest, premium on, all Global Notes and all other Notes the Holders of which will have provided wire transfer instructions to the Company or the Paying Agent. Such payment will 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.

(3) *PAYING AGENT AND REGISTRAR*. Initially, Wilmington Trust, National Association, the Trustee under the Indenture, will 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 December 27, 2019 (as amended or supplemented from time to time, the "*Indenture*") among the Company and the Trustee. 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, the provisions of the Indenture shall govern and be controlling. The Notes are unsecured obligations of the Company. The indenture does not limit the aggregate principal amount of Notes that may be issued thereunder.

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[1] *With respect to the Initial Notes.*

[2] *With respect to the Initial Notes.*

(5) *OPTIONAL REDEMPTION*.

(a) On or after March 15, 2023, the Company may on any one or more occasions redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' notice, 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 but excluding the applicable date of redemption, if redeemed during the twelve-month period beginning on March 15 of the 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
2023	102.563%
2024	101.708%
2025	100.854%
2026 and thereafter	100.000%

Unless the Company defaults in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable redemption date.

(b) At any time prior to March 15, 2023, the Company may on any one or more occasions redeem up to 35% of the aggregate principal amount of Notes issued under the Indenture, upon not less than 30 nor more than 60 days' notice, at a redemption price equal to 105.125% of the principal amount of the Notes redeemed, plus accrued and unpaid interest, if any, to but excluding 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 the proceeds of one or more Equity Offerings; *provided* that: (i) at least 65% of the aggregate principal amount of Notes originally issued under the Indenture (excluding Notes held by the Company and its Subsidiaries) remains outstanding immediately after the occurrence of such redemption; and (ii) the redemption occurs within 90 days of the date of the closing of such Equity Offering.

(c) At any time prior to March 15, 2023, the Company may on any one or more occasions redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' notice, 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 but excluding 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.

(d) At any time, in connection with any tender offer for the Notes, including a Change of Control Offer, if Holders of not less than 90% in aggregate principal amount of the outstanding Notes validly tender and do not withdraw such Notes in such tender offer and the Company, or any third party making such tender offer in lieu of the Company, purchases all of the Notes validly tendered and not withdrawn by such Holders, the Company may, upon not less than 10 nor more than 60 days' prior notice, given not more than 30 days following such purchase date, redeem all Notes that remain outstanding following such purchase at a redemption price equal to the price paid to each other Holder in such tender offer plus, to the extent not included in the tender offer payment, accrued and unpaid interest, if any, thereon, to, but not excluding, the date of such redemption (subject to the rights of Holders on the relevant record date to receive interest on the relevant interest payment date).

(6) *MANDATORY REDEMPTION*.

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

(7) *REPURCHASE AT THE OPTION OF HOLDER*. If a Change of Control Triggering Event occurs, each Holder will have the right to require the Company to make an offer (a "*Change of Control Offer*") to each Holder to repurchase all or any part (equal to $2,000 or an integral multiple of $1,000 in excess thereof) of that Holder's Notes at a purchase price in cash equal to 101% of the aggregate principal amount of Notes repurchased plus accrued and unpaid interest, if any, on the Notes repurchased to but excluding the date of purchase, subject to the rights of Holders on the relevant record date to receive interest due on the relevant interest payment date (the "*Change of Control Payment*"). Within 30 days following any Change of Control Triggering Event, the Company will mail (or deliver electronically) a notice to each Holder describing the transaction or transactions that constitute the Change of Control Triggering Event as required by the Indenture.

(8) *NOTICE OF REDEMPTION*. Notice of redemption will be mailed or delivered electronically at least 30 days but not more than 60 days before the redemption date to each Holder whose Notes are to be redeemed at its registered address, except that (i) redemption notices may be mailed or delivered electronically at least 10 days prior to the redemption date if the notice is issued in connection with a redemption pursuant to Section 3.07(c) of the Indenture and (ii) redemption notices may be mailed or delivered electronically more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction or discharge of the Indenture. Notes in denominations larger than $2,000 may be redeemed in part but only in whole multiples of $1,000, unless all of the Notes held by a Holder are to be redeemed. Any redemption notice may, in the Company's discretion, be subject to the satisfaction of one or more conditions precedent. If such redemption is subject to the satisfaction of one of more conditions precedent, such notice 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 by the Company in its sole discretion), such redemption may not occur and such notice may be rescinded in the event that any or all of such conditions shall not have been satisfied (or waived by the Company in its sole discretion) by the redemption date, or by the redemption date so delayed.

(9) *DENOMINATIONS, TRANSFER, EXCHANGE*. The Notes are in registered form without coupons in minimum denominations of $2,000 and integral 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 and fees required by law or permitted by the Indenture. The Company need not exchange or register the transfer of any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part. Also, the Company need not exchange or register the transfer of any Notes for a period of 15 days before a selection of Notes to be redeemed or during the period between a record date and the corresponding Interest Payment Date.

(10) *PERSONS DEEMED OWNERS*. The registered Holder of a Note may be treated as its owner for all purposes.

(11) *AMENDMENT, SUPPLEMENT AND WAIVER*. Subject to certain exceptions, the Indenture or the Notes may be amended or supplemented with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes including Additional Notes, if any, voting as a single class, and any existing Default or Event or Default or compliance with any provision of the Indenture or the Notes may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes including Additional Notes, if any, voting as a single class. Without the consent of any Holder, the Indenture or the Notes, may be amended or supplemented to cure any ambiguity, defect or inconsistency in the Indenture or the Notes in a manner that does not adversely affect the rights of any Holder, to provide for uncertificated Notes in addition to or in place of certificated Notes, to provide for the assumption of the Company's obligations to Holders in case of a merger or consolidation or sale of all or substantially all of the Company's assets, to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the legal rights under the Indenture of any such Holder, to conform the text of the Indenture or the Notes to any provision of the "Description of Notes" section of the Offering Memorandum, to the extent that such provision in that "Description of Notes" was intended to be a verbatim or substantially verbatim recitation of a provision of the Indenture or this Note, to evidence and provide for the acceptance and appointment under the Indenture of successor trustees pursuant to the requirements thereof or to provide for the issuance of Additional Notes of the same or an additional series in accordance with the limitations set forth in the Indenture as of the date hereof.

(12) *DEFAULTS AND REMEDIES*. Events of Default include: (i) default for 30 days in the payment when due of interest on the Notes; (ii) default in payment when due of the principal of, or premium, if any, on, the Notes; (iii) failure by the Company for 60 days after notice from the Trustee or the Holders of at least 25% in aggregate principal amount of the outstanding Notes to comply with any of the other agreements in the Indenture; (iv) default under any document evidencing any indebtedness of the Company for borrowed money represented by notes, bonds, debentures or other evidences of indebtedness by the Company, whether such indebtedness now exists, or is created after the date of the Indenture, if that default is caused by a failure to pay principal when due at final (and not any interim) maturity (on or prior to the expiration of any applicable grace period provided in such indebtedness) (a "*Payment Default*") or results in the acceleration of such indebtedness prior to its express maturity (without such acceleration having been rescinded, annulled or otherwise cured), 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 (without such acceleration having been rescinded, annulled or otherwise cured), aggregates $100,000,000 or more; *provided* that this clause (iv) shall not apply to (a) secured indebtedness that becomes due as a result of the voluntary sale or transfer of property or assets securing such indebtedness and (b) any indebtedness that is required to be converted into Qualifying Equity Interests upon the occurrence of certain designated events so long as no payments in cash or otherwise are required to be made in accordance with such conversion; and (v) (a) a court of competent jurisdiction (x) enters an order or decree under any Bankruptcy Law that is for relief against the Company or any of its Material Subsidiaries in an involuntary case; (y) appoints a custodian for all or substantially all of the property of the Company or any of its Material Subsidiaries; or (z) orders the liquidation of the Company or any of its Material Subsidiaries and, in each of clauses (x), (y) or (z), the order, appointment or decree remains unstayed and in effect for at least 60 consecutive days; or (b) the Company or any of its Material Subsidiaries, pursuant to or within the meaning of Bankruptcy Law, (w) commences a voluntary case; (x) consents to the entry of an order for relief against it in an involuntary case; (y) consents to the appointment of a custodian of it or for all or substantially all of its property; or (z) makes a general assignment for the benefit of its creditors. In the case of an Event of Default of the type specified in clause (v) above, 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 at least 25% in aggregate principal amount of the then outstanding Notes may declare all the Notes to be due and payable immediately. Holders may not enforce the Indenture or the Notes except as provided in the Indenture. Subject to certain limitations, Holders of a majority in aggregate principal amount of the then outstanding Notes may direct the Trustee in its exercise of any trust or power. 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 or premium, if any,) if it determines that withholding notice is in their interest. The Holders of a majority in aggregate principal amount of the then outstanding Notes by notice to the Trustee may, on behalf of the Holders of all of the Notes, rescind an acceleration or waive any existing Default or Event of Default and its consequences under the Indenture except a continuing Default or Event of Default in the payment of interest or premium, if any, on, or the principal of, the Notes. The Company is required to deliver to the Trustee annually a statement regarding compliance with the Indenture, and the Company is required, upon becoming aware of any Default or Event of Default, to deliver to the Trustee a statement specifying such Default or Event of Default.

(13) *TRUSTEE DEALINGS WITH 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*. A director, officer, employee, incorporator or stockholder of the Company, as such, will not have any liability for any obligations of the Company under the Notes or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the Notes.

(15) *AUTHENTICATION*. This Note will not be valid until authenticated by the manual signature of the Trustee or an authenticating agent.

(16) *ABBREVIATIONS*. Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

(17) *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 placed only on the other identification numbers placed thereon.

(18) *GOVERNING LAW*. THE INTERNAL LAW OF THE STATE OF NEW YORK WILL GOVERN AND BE USED TO CONSTRUE THE INDENTURE AND THIS NOTE WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

The Company will furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to:

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, Texas 77002
Attention: General Counsel

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: _____

Your 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 4.09 of the Indenture, check the box below:

☐ Section 4.09

If you want to elect to have only part of the Note purchased by the Company pursuant to Section 4.09 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 of this Global Note	Amount of increase in Principal Amount of this Global Note	Principal Amount of this Global Note following such decrease (or increase)	Signature of authorized officer of Trustee or Custodian

* *This schedule should be included only if the Note is issued in global form.*

EXHIBIT B

FORM OF CERTIFICATE OF TRANSFER

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, Texas 77002
Facsimile No.: (832) 325-1508

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Facsimile No.: (612) 217-5651

Re: 5.125% Senior Notes due 2028

Reference is hereby made to the Indenture, dated as of December 27, 2019 (as amended or supplemented from time to time, the "*Indenture*"), between Calpine Corporation, as issuer (the "*Company*"), and Wilmington Trust, 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 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 Restricted Definitive Note pursuant to Rule 144A**. The Transfer is being effected pursuant to and in accordance with Rule 144A under the 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 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 Restricted 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 Restricted 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 Restricted Definitive Note and in the Indenture and the Securities Act.

3. ☐ **Check and complete if Transferee will take delivery of a beneficial interest in the IAI Global Note or a Restricted 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 to an Institutional Accredited Investor and pursuant to an exemption from the registration requirements of the Securities Act other than Rule 144A, Rule 144, Rule 903 or Rule 904, and the Transferor hereby further certifies that it has not engaged in any general solicitation within the meaning of Regulation D under the Securities Act and the Transfer complies with the transfer restrictions applicable to beneficial interests in a Restricted Global Note or Restricted Definitive Notes and the requirements of the exemption claimed, which certification is supported by (1) a certificate executed by the Transferee in the form of Exhibit D to the Indenture and (2) an Opinion of Counsel provided by the Transferor or the Transferee (a copy of which the Transferor has attached to this certification), to the effect that such Transfer is in 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 be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the IAI Global Note and/or the Restricted Definitive Notes and in the Indenture and 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 _____), or

(ii) ☐ Regulation S Global Note (CUSIP _____), or

(iii) ☐ IAI Global Note (CUSIP _____); or

(b) ☐ a Restricted Definitive Note.

2. After the Transfer the Transferee will hold:

[CHECK ONE]

(a) ☐ a beneficial interest in the:

(i) ☐ 144A Global Note (CUSIP _____), or

(ii) ☐ Regulation S Global Note (CUSIP _____), or

(iii) ☐ IAI Global Note (CUSIP _____); or

(iv) ☐ Unrestricted Global Note (CUSIP _____); or

(b) ☐ a Restricted Definitive Note; or

(c) ☐ an Unrestricted Definitive Note,

in accordance with the terms of the Indenture.

EXHIBIT C

FORM OF CERTIFICATE OF EXCHANGE

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, Texas 77002
Facsimile No.: (832) 325-1508

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Facsimile No.: (612) 217-5651

Re: 5.125% Senior Notes due 2028

(CUSIP _____)

Reference is hereby made to the Indenture, dated as of December 27, 2019 (as amended or supplemented from time to time, the "*Indenture*"), between Calpine Corporation, as issuer (the "*Company*"), and Wilmington Trust, 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 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, 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 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, 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, ☐ IAI Global Note with an equal principal amount, 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 CERTIFICATE FROM
ACQUIRING INSTITUTIONAL ACCREDITED INVESTOR

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, Texas 77002
Facsimile No.: (832) 325-1508

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Facsimile No.: (612) 217-5651

Re: 5.125% Senior Notes due 2028

Reference is hereby made to the Indenture, dated as of December 27, 2019 (as amended or supplemented from time to time, the "*Indenture*"), between Calpine Corporation, as issuer (the "*Company*"), and Wilmington Trust, National Association, as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

In connection with our proposed purchase of $_____ aggregate principal amount of:

(a) ☐ a beneficial interest in a Global Note, or

(b) ☐ a Definitive Note,

we confirm that:

1. We understand that any subsequent transfer of the Notes or any interest therein is subject to certain restrictions and conditions set forth in the Indenture and the undersigned agrees to be bound by, and not to resell, pledge or otherwise transfer the Notes or any interest therein except in compliance with, such restrictions and conditions and the Securities Act of 1933, as amended (the "*Securities Act*").

2. We understand that the offer and sale of the Notes have not been registered under the Securities Act, and that the Notes and any interest therein may not be offered or sold except as permitted in the following sentence. We agree, on our own behalf and on behalf of any accounts for which we are acting as hereinafter stated, that if we should sell the Notes or any interest therein, we will do so only (A) to the Company or any subsidiary thereof, (B) in accordance with Rule 144A under the Securities Act to a "qualified institutional buyer" (as defined therein), (C) to an institutional "accredited investor" (as defined below) that, prior to such transfer, furnishes (or has furnished on its behalf by a U.S. broker-dealer) to you and to the Company a signed letter substantially in the form of this letter and an Opinion of Counsel in form reasonably acceptable to the Company to the effect that such transfer is in compliance with the Securities Act, (D) outside the United States in accordance with Rule 904 of Regulation S under the Securities Act, (E) pursuant to the provisions of Rule 144(k) under the Securities Act or (F) pursuant to an effective registration statement under the Securities Act, and we further agree to provide to any Person purchasing the Definitive Note or beneficial interest in a Global Note from us in a transaction meeting the requirements of clauses (A) through (E) of this paragraph a notice advising such purchaser that resales thereof are restricted as stated herein.

3. We understand that, on any proposed resale of the Notes or beneficial interest therein, we will be required to furnish to you and the Company such certifications, legal opinions and other information as you and the Company may reasonably require to confirm that the proposed sale complies with the foregoing restrictions. We further understand that the Notes purchased by us will bear a legend to the foregoing effect.

4. We are an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act) and have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Notes, and we and any accounts for which we are acting are each able to bear the economic risk of our or its investment.

5. We are acquiring the Notes or beneficial interest therein purchased by us for our own account or for one or more accounts (each of which is an institutional "accredited investor") as to each of which we exercise sole investment discretion.

You and the Company are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

_____
[Insert Name of Accredited Investor]

By: _____
Name:
Title:

Dated: _____

Exhibit 4.2

Execution Version

CALPINE CORPORATION

4.625% SENIOR NOTES DUE 2029

INDENTURE

Dated as of August 10, 2020

Wilmington Trust, National Association
as Trustee

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EXHIBITS

Exhibit A	FORM OF NOTE
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INDENTURE dated as of August 10, 2020 between Calpine Corporation, a Delaware corporation, and Wilmington Trust, National Association, as 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 4.625% Senior Notes due 2029 (the "*Notes*"):

ARTICLE 1
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 *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 will be issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 144A.

"*Additional Notes*" means additional Notes (other than the Initial Notes) issued under this Indenture in accordance with Section 2.02 hereof, as part of the same series as the Initial Notes.

"*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. For purposes of this definition, the terms "controlling," "controlled by" and "under common control with" have correlative meanings.

"*Agent*" means any Registrar, co-registrar, Paying Agent, additional paying agent, transfer agent or authenticating agent.

"*Applicable Law*" means, as to any Person, any ordinance, law, treaty, rule or regulation or any determination, ruling or other directive by and from an arbitrator or a court or other Governmental Authority, in each case, applicable to or binding on such Person or any of its property or assets or to which such Person or any of its property is subject.

"*Applicable Premium*" means, with respect to any Note on any redemption date, as calculated by the Company, the greater of:

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

(2) the excess of:

(a) the present value at such redemption date of (i) the redemption price of the Note at February 1, 2024 (such redemption price being set forth in the table appearing in Section 3.07(e) hereof) plus (ii) all required interest payments due on the Note through February 1, 2024 (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 75 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.

"*Authorized Officer*" means, with respect to (i) delivering an Officer's Certificate pursuant to this Indenture, the principal executive officer, the principal financial officer, the chief legal officer, the treasurer or the principal accounting officer of the Company and (ii) any other matter in connection with this Indenture, the chairman of the board, the chief executive officer, the president, the chief operating officer, the chief financial officer, the chief legal officer, the treasurer, any assistant treasurer, the controller, the secretary or any vice president of such person or any other person of the Company having substantially the same responsibilities as the aforementioned officers.

"*Bankruptcy Law*" means Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq., as amended from time to time, or any similar federal or state or other 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. The terms "*Beneficially Owns*" and "*Beneficially Owned*" have a corresponding meaning.

"*Board of Directors*" means:

(1) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board;

(2) with respect to a partnership, the board of directors of the general partner of the partnership;

(3) with respect to a limited liability company, the managing member or members or any controlling committee of managing members thereof; and

(4) with respect to any other Person, the board or committee of such Person serving a similar function.

"*Business Day*" means any day other than a Legal Holiday.

"*Capital Lease Obligation*" means, at the time any determination is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet prepared in accordance with GAAP as in effect from time to time; *provided*, *however*, that if any operating lease (whether in effect on the date of this Indenture or hereafter incurred) would be recharacterized as a capital lease due to changes in the accounting treatment of such operating leases under GAAP since December 31, 2018, then solely with respect to the accounting treatment of any such lease, GAAP shall be interpreted as it was in effect on December 31, 2018; *provided further* that any lease that is treated as an operating lease for purposes of GAAP as of December 31, 2018 shall not be treated as indebtedness or as a Capital Lease Obligation and shall continue to be treated as an operating lease (and any future lease, if it were in effect on the date of this Indenture, that would be treated as an operating lease for purposes of GAAP as of December 31, 2018, shall be treated as an operating lease), in each case for purposes of this Indenture, notwithstanding any actual or proposed change in or application of GAAP after December 31, 2018.

"*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; 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.

"*Change of Control*" means the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any "person" (as that term is used in Section 13(d) of the Exchange Act, but excluding any employee benefit plan of the Company of any of its Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than one or more Designated Holders, becomes
the Beneficial Owner, directly or indirectly, of more than 50% of the Voting Stock of the Company, measured by voting power rather than number of shares.

"*Change of Control Triggering Event*" means the occurrence of both a Change of Control and a Rating Event.

"*Clearstream*" means Clearstream Banking, S.A.

"*Commission*" means the U.S. Securities and Exchange Commission.

"*Company*" means Calpine Corporation, and any and all successors thereto.

"*Corporate Trust Office of the Trustee*" will be at the address of the Trustee specified in Section 11.01 hereof or such other address as to which the Trustee may give notice to the Company.

"*Covered Subsidiary*" means any Subsidiary of the Company that is or becomes a guarantor of indebtedness for borrowed money represented by notes, bonds, debentures or other evidences of indebtedness of the Company that is secured by a first lien on substantially all of the Company's assets.

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

"*Default*" means any event, act or condition which, with notice or lapse of time or both, would (without cure or waiver hereunder), constitute an Event of Default.

"*Definitive Note*" means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 2.06 hereof, 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 2.03 hereof 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 provision of this Indenture.

"*Designated Holders*" means Energy Capital Partners III, LP (together with its parallel funds), Access Industries Inc., Canadian Pension Plan Investment Board and the respective Affiliates (other than any portfolio operating companies) of each of the foregoing.

"*Disqualified Stock*" means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder of the Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the date that is 91 days after the date on which the Notes mature (other than pursuant to a change of control or asset sale prepayment offer provision).

"*Environmental CapEx Debt*" means indebtedness for borrowed money represented by notes, bonds, debentures or other evidences of indebtedness of the Company or its Subsidiaries incurred for the purpose of financing Environmental Capital Expenditures.

"*Environmental Capital Expenditures*" means capital expenditures deemed necessary by the Company or its Subsidiaries to comply with Environmental Laws.

"*Environmental Law*" means any applicable Federal, state, foreign or local statute, law, rule, regulation, ordinance, code and rule of common law now or hereafter in effect and in each case as amended, and any binding judicial or administrative interpretation thereof, including without limitation any binding judicial or administrative order, consent decree or judgment, relating to the environment, human health or safety (as such relates to exposure to Hazardous Materials) or Hazardous Materials.

"*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).

"*Equity Offering*" means any public or private sale of (1) Capital Stock of the Company (other than Disqualified Stock and other than to a Subsidiary of the Company) or (2) Capital Stock of a direct or indirect parent entity of the Company (other than to the Company or a Subsidiary of the Company) to the extent that the net cash proceeds therefrom are contributed to the common equity capital of the Company.

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

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended, or any successor statute or statutes thereto.

"*GAAP*" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect from time to time.

"*Global Note Legend*" means the legend set forth in Section 2.06(f)(2) hereof, which is required to be placed on all Global Notes issued under this Indenture.

"*Global Notes*" means, individually and collectively, each of the Restricted Global Notes and the Unrestricted Global Notes deposited with or on behalf of and 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 Section 2.01, 2.06(b)(3), 2.06(b)(4) or 2.06(d)(2) hereof.

"*Government Securities*" means direct obligations of, or obligations guaranteed by, the United States of America (including any agency or instrumentality thereof) for the payment of which obligations or guarantees the full faith and credit of the United States of America is pledged and which are not callable or redeemable at the issuer's option.

"*Governmental Authority*" means any nation or government, or any state, province, territory or other 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, or any governmental or non-governmental authority regulating the generation and/or transmission of energy, including Electric Reliability Council of Texas.

"*Hazardous Materials*" means (a) any petroleum or petroleum products, radioactive materials, friable asbestos, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing regulated levels of polychlorinated biphenyls and radon gas; (b) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous waste," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," "toxic substances," "toxic pollutants," "contaminants," or "pollutants" or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, which is prohibited, limited or regulated by any Environmental Law.

"*Holder*" means a Person in whose name a Note is registered.

"*IAI 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 will be issued in a denomination equal to the outstanding principal amount of the Notes sold to Institutional Accredited Investors.

"*Indenture*" means this Indenture, as amended or supplemented from time to time.

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

"*Initial Notes*" means the $650,000,000 aggregate principal amount of Notes issued under this Indenture on the date hereof.

"*Initial Purchasers*" means Credit Suisse Securities (USA) LLC, Barclays Capital Inc., BNP Paribas Securities Corp., BofA Securities, Inc., Citigroup Global Markets Inc., Credit Agricole Securities (USA) Inc., Deutsche Bank Securities Inc., Goldman Sachs & Co. LLC, J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC, MUFG Securities Americas Inc., Natixis Securities Americas LLC, RBC Capital Markets, LLC, SMBC Nikko Securities America, Inc., Mizuho Securities USA LLC, and SunTrust Robinson Humphrey, Inc.

"*Institutional Accredited Investor*" means an institution that is an "accredited investor" as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act, who are not also QIBs.

"*Legal Holiday*" means a Saturday, a Sunday or a day on which banking institutions in the City of New York or at a place of payment are authorized by law, regulation or executive order to remain closed. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue on such payment for the intervening period.

"*Limited Recourse Debt*" means indebtedness for borrowed money represented by notes, bonds, debentures or other evidences of indebtedness of a Project Subsidiary or Project Subsidiaries (or a Subsidiary or Subsidiaries directly or indirectly holding the Capital Stock of one or more of such Project Subsidiaries) that is incurred to finance the improvement, installment, design, engineering, construction, acquisition, development, completion, maintenance or operation of, or otherwise affects any such act in respect of, all or any portion of the applicable Project or Projects, or to refinance such indebtedness or any refinancing thereof, with respect to which the recourse of the holder or obligee of such indebtedness is limited to (i) assets (and revenues and proceeds from such assets) associated with or ancillary to such Project or Projects (which in any event shall not include assets held by any Subsidiary other than a Subsidiary, if any, whose sole business is the ownership and/or operation of such Project or Projects (or the direct or indirect ownership of one or more of the relevant Project Subsidiaries) and substantially all of whose assets are associated with or ancillary to such Project or Projects) in respect of which such indebtedness was incurred and/or (ii) such Subsidiary or Subsidiaries, and/or such Project Subsidiary or Project Subsidiaries and/or the Capital Stock in one or more of such entity or entities, but in the case of clause (ii) only if such Subsidiary's or Project Subsidiary's sole business is the ownership and/or operation of such Project or Projects (or the direct or indirect ownership of one or more of the relevant Project Subsidiaries) and substantially all of such Subsidiary's or Project Subsidiary's assets are associated with or ancillary to such Project or Projects. Indebtedness of a Subsidiary of the Company shall not fail to be Limited Recourse Debt by reason of the holders of such Limited Recourse Debt having recourse to the Company or another Subsidiary of the Company pursuant to a performance guarantee.

"*Material Subsidiary*" of any Person means, as of any date, any Subsidiary of such Person's proportionate share of such Subsidiary's Total Assets (after intercompany eliminations) exceeds 15.0% of the Total Assets of such Person on a consolidated basis.

"*Moody's*" means Moody's Investors Services, Inc., or any successor thereto.

"*Necessary Capital Expenditures*" means capital expenditures that are required by Applicable Law (other than Environmental Laws) or undertaken for health and safety reasons or to prevent catastrophic failure of a unit. The term "Necessary Capital Expenditures" does not include any capital expenditure undertaken primarily to increase the efficiency of, expand or re-power any power generation facility.

"*Non-U.S. Person*" means a Person who is not a U.S. Person.

"*Notes*" has the meaning assigned to it in the preamble to this Indenture. The Initial Notes and the Additional Notes shall be treated as a single class for all purposes under this Indenture, and unless the context otherwise requires, all references to the Notes shall include the Initial Notes and any Additional Notes.

"*Obligations*" means any principal, interest, penalties, fees, expenses, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any indebtedness.

"*Offering Memorandum*" the Company's Offering Memorandum dated July 27, 2020, relating to the initial offering of the Notes.

"*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 Chief Legal Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Vice-President of such Person.

"*Officer's Certificate*" means a certificate signed on behalf of the Company by an Authorized Officer of the Company, that meets the requirements of Section 11.03 hereof.

"*Opinion of Counsel*" means an opinion from legal counsel who is reasonably acceptable to the Trustee, that meets the requirements of Section 11.03 hereof. The counsel may be an employee of or counsel to the Company, any Subsidiary of the Company or the Trustee.

"*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 Liens*" means:

(1) liens securing indebtedness for borrowed money under Revolving Credit Facilities in an aggregate principal amount not to exceed $2.0 billion;

(2) liens securing indebtedness for borrowed money in an aggregate principal amount not to exceed the aggregate principal amount of the Company's secured notes and term loans outstanding immediately prior to the issuance of the Notes;

(3) liens securing indebtedness for borrowed money represented by notes, bonds, debentures or other evidences of indebtedness in an aggregate principal amount not to exceed 10.0% of Total Assets (determined at the time of incurrence of such indebtedness and without giving effect to subsequent changes) and liens securing indebtedness incurred to extend, increase, renew, refund, replace (whether upon or after termination or otherwise) or refinance in whole or in part from time to time such indebtedness secured pursuant to this clause (3);

(4) liens in favor of the Company;

(5) liens created for the benefit of (or to secure) the Notes;

(6) any lien existing on any property or asset (including Capital Stock) prior to the acquisition thereof (or the acquisition of, or merger or consolidation with, the Person owning such property or asset) by the Company or any of its Subsidiaries, and any lien securing obligations incurred to refinance, replace, refund, renew or extend the obligations secured by such liens; *provided* that in each case (i) such lien is not created in contemplation or in connection with such acquisition, (ii) such lien does not apply to any other property or assets of the Company or any of its Subsidiaries (other than fixtures and improvements on any such real property), and (iii) the principal amount of any indebtedness secured by such liens shall not be increased (except by the amount of premiums, penalties, accrued and unpaid interest, fees and expenses associated with such refinancing, replacement, refunding, renewal or extension of such indebtedness);

(7) liens to secure indebtedness for borrowed money represented by notes, bonds, debentures or other evidences of indebtedness incurred to finance Necessary Capital Expenditures that encumber only the assets purchased, installed or otherwise acquired with the proceeds of such indebtedness;

(8) liens to secure Environmental CapEx Debt that encumber only the assets purchased, installed or otherwise acquired with the proceeds of such Environmental CapEx Debt;

(9) liens on assets of any Subsidiary of the Company or Project Subsidiary, in each case to the extent such liens secure Limited Recourse Debt;

(10) liens securing (a) Capital Lease Obligations and (b) other indebtedness of the Company or any of its Subsidiaries incurred to finance all or any part of the acquisition, lease, construction, installation or improvement of any assets, and any refinancing, replacement, refunding, renewal or extension of any such indebtedness without any increase thereof, in an aggregate amount not to exceed $150.0 million at any one time outstanding, so long as (i) such liens are initially created or arise prior to or within the 90 days after the completion of such acquisition, lease, construction, installation or improvement and (ii) such liens do not attach to assets of the Company or any Subsidiary of the Company other than the relevant assets acquired, leased, constructed, installed or improved; and

(11) liens securing indebtedness for borrowed money represented by notes, bonds, debentures or other evidences of indebtedness in an aggregate amount, together with all other indebtedness for borrowed money secured by liens pursuant to this clause (11), not to exceed $100.0 million at any one time outstanding.

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

"*Principal Property*" means any building, structure or other facility (together with the land on which it is erected and fixtures comprising a part thereof) owned by the Company or any Covered Subsidiary and used primarily for manufacturing, processing, research, warehousing or distribution, in each case located within the United States, that has a book value on the date of which the determination is being made, without deduction of any depreciation reserves, exceeding 2.0% of Total Assets, other than any such facility (or portion thereof) that the Company reasonably determines is not material to the business of the Company and its Subsidiaries, taken as a whole.

"*Private Placement Legend*" means the legend set forth in Section 2.06(f)(1) hereof to be placed on all Notes issued under this Indenture except where otherwise permitted by the provisions of this Indenture.

"*Project*" means any (a) electrical generation plant, (b) cogeneration plant, (c) facility for the exploration or drilling for fuel or other resources, or for the development, storage, transport or transmission of, electricity, steam, fuel, syngas or other resources for the generation of electricity or (d) facility engaged in another line of business in which the Company and its Subsidiaries are permitted to be engaged hereunder, in each case for which a Subsidiary or Subsidiaries of the Company was, is or will be (as the case may be) an owner, lessee, operator, manager, developer or builder, and shall also mean any two or more of such plants or facilities in which an interest has been acquired in a single transaction; *provided* that a Project shall cease to be a Project of the Company and its Subsidiaries at such time that the Company or any of its Subsidiaries ceases to have any existing or future rights or obligations (whether direct or indirect, contingent or matured) associated therewith.

"*Project Subsidiary*" means any Subsidiary of the Company whose sole business is the ownership and/ or operation of a Project or Projects and substantially all of the assets of which are associated with or acquired or utilized in such Project.

"*QIB*" means a "qualified institutional buyer" as defined in Rule 144A.

"*Qualifying Equity Interests*" means Equity Interests of the Company other than Disqualified Stock.

"*Rating Agencies*" means (1) each of Moody's and S&P and (2) if any of Moody's or S&P ceases to rate the Notes or fails to make a rating of the Notes publicly available for reasons outside of the Company's control, a "nationally recognized statistical rating organization" as defined in Section 3(a)(62) of the Exchange Act selected by the Company as a replacement agency for Moody's or S&P, or both of them, as the case may be.

"*Rating Event*" means the rating on the Notes is lowered by both of the Rating Agencies on any day within the 60-day period (which 60-day period will be extended so long as the rating of the Notes is under publicly announced consideration for a possible downgrade by either of the Rating Agencies) after the earlier of (1) the occurrence of a Change of Control and (2) public disclosure by the Company of the occurrence of a Change of Control or the Company's intention to effect a Change of Control; *provided*, *however*, that a Rating Event otherwise arising by virtue of a particular reduction in rating will not be deemed to have occurred in respect of a particular Change of Control (and thus will not be deemed a Rating Event for purposes of the definition of Change of Control Triggering Event) if the Rating Agencies making the reduction in rating to which this definition would otherwise apply do not announce or publicly confirm or inform the Trustee in writing at the Company's or the Trustee's request that the reduction was the result, in whole or in part, of any event or circumstance comprised of or arising as a result of, or in respect of, the applicable Change of Control (whether or not the applicable Change of Control has occurred at the time of the Rating Event).

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

"*Regulation S 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, issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 903 of Regulation S.

"*Responsible Officer*" means, when used with respect to the Trustee, any officer within the Corporate Trust Office of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter related to this Indenture is referred because of such person's knowledge of and familiarity with the particular subject and, in each case, who shall have direct responsibility for the administration of this Indenture.

"*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 Period*" means the 40-day distribution compliance period as defined in Regulation S.

"*Revolving Credit Facilities*" means any credit agreement, loan agreement or other agreement or instrument evidencing or governing the terms of any indebtedness or other financial accommodation that provides for revolving borrowings.

"*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 thereto.

"*Securities Act*" means the Securities Act of 1933, as amended, or any successor statute or statutes thereto.

"*Stated Maturity*" means, with respect to any installment of interest or principal on any series of indebtedness, the date on which the payment of interest or principal is scheduled to be paid in the documentation governing such indebtedness, and will not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

"*Subsidiary*" means, with respect to any specified Person:

(1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, 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).

"*Total Assets*" means, as of any date of determination, the total consolidated assets of the Company and its Subsidiaries, determined in accordance with GAAP, as shown on the most recent internally available balance sheet of the Company, and after giving *pro forma* effect to any acquisition or disposal of any property or assets consummated after the date of the applicable balance sheet and on or prior to the date of determination.

"*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 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 February 1, 2024; *provided*, *however*, that if the period from the redemption date to February 1, 2024 is less than one year, the weekly average yield on actively traded United States Treasury securities adjusted to a constant maturity of one year will be used.

"*Trustee*" means Wilmington Trust, National Association until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

"*Unrestricted Definitive Note*" means a Definitive Note that does not bear and is not required to bear the Private Placement Legend.

"*Unrestricted Global Note*" means a Global Note that does not bear and is not required to bear the Private Placement Legend.

"*U.S. Person*" means a U.S. Person as defined in Rule 902(k) promulgated under the Securities Act.

"*Voting Stock*" of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

Section 1.02 *Other Definitions*.

Term	Defined in Section
"*Authentication Order"*	*2.02*
"Change of Control Offer"	*4.09*
"Change of Control Payment"	4.09
"Change of Control Payment Date"	*4.09*
"Covenant Defeasance"	8.03
"DTC"	*2.03*
"Event of Default"	*6.01*
"Legal Defeasance"	8.02
"Paying Agent"	2.03
"Payment Default"	*6.01*
"Registrar"	*2.03*
"*Trustee"*	*8.05*

Section 1.03 *Rules of Construction*.

(a) Unless the context otherwise requires:

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

(2) unless otherwise specified herein, an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP as in effect from time to time;

(3) "or" is not exclusive;

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

(5) "will" shall be interpreted to express a command;

(6) provisions apply to successive events and transactions; and

(7) references to sections of or rules under the Securities Act will be deemed to include substitute, replacement of successor sections or rules adopted by the Commission from time to time.

(b) Any reference herein to a merger, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, limited partnership or trust, or an allocation of assets to a series of a limited liability company, limited partnership or trust (or the unwinding of such a division or allocation), as if it were a merger, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company, limited partnership or trust shall constitute a separate Person hereunder (and each division of any limited liability company, limited partnership or trust that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

ARTICLE 2
THE NOTES

Section 2.01 *Form and Dating*.

(a) *General*. The Notes and the Trustee's certificate of authentication will 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 will be dated the date of its authentication. The Notes 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 will constitute, and are hereby expressly made, a part of this Indenture and the Company 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 will 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 will 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 will represent such of the outstanding Notes as will be specified therein and each shall provide that it represents 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 will be made by the Trustee or the Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.06 hereof.

(c) *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 will be applicable to transfers of beneficial interests in the Regulation S Global Note that are held by Participants through Euroclear or Clearstream.

Section 2.02 *Execution and Authentication*.

At least one Officer must sign the Notes for the Company by manual or facsimile signature.

If an Officer whose signature is on a Note no longer holds that office at the time a Note is authenticated, the Note will nevertheless be valid.

A Note will not be valid until authenticated by the manual signature of the Trustee. The signature will be conclusive evidence that the Note has been authenticated under this Indenture.

The Trustee will, upon receipt of a written order of the Company signed by an Officer (an "*Authentication Order*"), authenticate Notes for original issue that may be validly issued under this Indenture, including any Additional Notes. The aggregate principal amount of Notes outstanding at any time may not exceed the aggregate principal amount of Notes authorized for issuance by the Company pursuant to one or more Authentication Orders, except as provided in Section 2.07 hereof.

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 2.03 *Registrar and Paying Agent*.

The Company will maintain an office or agency where Notes may be presented for registration of transfer or for exchange ("*Registrar*") and an office or agency where Notes may be presented for payment ("*Paying Agent*"). The Registrar will 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 notice to any Holder. The Company will 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.

The Company initially appoints The Depository Trust Company ("*DTC*") to act as Depositary with respect to the Global Notes.

The Company initially appoints the Trustee to act as the Registrar and Paying Agent and to act as Custodian with respect to the Global Notes.

Section 2.04 *Paying Agent to Hold Money in Trust*.

The Company will require each Paying Agent other than the Trustee to agree in writing that the Paying Agent will hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal, premium, if any, or interest on the Notes, and will 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 a Subsidiary) will have no further liability for the money. If the Company or a Subsidiary acts as Paying Agent, it will 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 will serve as Paying Agent for the Notes.

Section 2.05 *Holder Lists*.

The Trustee will 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 will furnish to the Trustee at least seven 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.

Section 2.06 *Transfer and Exchange*.

(a) *Transfer and Exchange of Global Notes*. A Global Note may not be transferred except as a whole 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. Global Notes may only be exchanged for Definitive Notes if:

(1) the Company delivers to the Trustee notice from the Depositary that it 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 120 days after the date of such notice from the Depositary;

(2) the Company in its sole discretion determines that the Global Notes (in whole but not in part) should be exchanged for Definitive Notes and delivers a written notice to such effect to the Trustee; or

(3) there has occurred and is continuing a Default or Event of Default with respect to the Notes.

Upon the occurrence of any of the preceding events in (1), (2) or (3) 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 2.07 and 2.10 hereof. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 2.06 or Section 2.07 or 2.10 hereof, 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 2.06(a), however, beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.06(b) or (c) hereof.

(b) *Transfer and Exchange of Beneficial Interests in the Global Notes*. The transfer and exchange of beneficial interests in the Global Notes will be effected through the Depositary, in accordance with the provisions of this Indenture and the Applicable Procedures. Beneficial interests in the Restricted Global Notes will 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 will require compliance with either subparagraph (1) or (2) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(1) *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; *provided*, *however*, that prior to the expiration of the Restricted Period, transfers of beneficial interests in the Regulation S Global Note may not be made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). 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. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.06(b)(1).

(2) *All Other Transfers and Exchanges of Beneficial Interests in Global Notes*. In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.06(b)(1) above, the transferor of such beneficial interest must deliver to the Registrar either:

(A) both:

(i) 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

(ii) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase; or

(B) both:

(i) 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

(ii) 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 (i) 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 of the relevant Global Note(s) pursuant to Section 2.06(g) 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 2.06(b)(2) above and the Registrar receives the following:

(A) if the transferee will 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 hereto, including the certifications in item (1) thereof;

(B) if the transferee will take delivery in the form of a beneficial interest in the Regulation S Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; and

(C) if the transferee will take delivery in the form of a beneficial interest in the IAI Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3)(c) thereof, if applicable.

(4) *Transfer and Exchange of Beneficial Interests in a Restricted Global Note for Beneficial Interests in an 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 2.06(b)(2) above and:

(A) the Registrar receives the following:

(i) 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

(ii) 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 hereto, including the applicable certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), 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 subparagraph (A) 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 2.02 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 subparagraph (A) above.

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*. 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, in each case after the occurrence of an event specified in Section 2.06(a), 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, a certificate to the effect set forth in Exhibit B 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 in accordance with Rule 903 or Rule 904, a certificate to the effect set forth in Exhibit B 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, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such beneficial interest is being transferred to an Institutional Accredited Investor 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 hereto, including the certifications, certificates and Opinion of Counsel required by item (3)(c) thereof, if applicable; or

(F) 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 hereto, including the certifications in item (3)(b) thereof,

the Trustee shall cause the aggregate principal amount of the applicable Restricted Global Note to be reduced accordingly pursuant to Section 2.06(g) hereof, and the Company shall execute and the Trustee, upon receipt of an Authentication Order, shall authenticate and deliver to the Person designated in the instructions a Restricted Definitive Note in the appropriate principal amount. Any Restricted Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c) 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 Restricted Definitive Notes to the Persons in whose names such Notes are so registered. Any Restricted Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(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.* 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, in each case after the occurrence of an event specified in Section 2.06(a), only if:

(A) the Registrar receives the following:

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

(ii) 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 an Unrestricted Definitive Note, a certificate from such holder in the form of Exhibit B hereto, including the applicable certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), 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.

(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 an Unrestricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note, in each case after the occurrence of an event specified in Section 2.06(a), then, upon satisfaction of the conditions set forth in Section 2.06(b)(2) hereof, the Trustee will cause the aggregate principal amount of the applicable Unrestricted Global Note to be reduced accordingly pursuant to Section 2.06(g) hereof, and the Company will execute and the Trustee, upon receipt of an Authentication Order, will authenticate and deliver to the Person designated in the instructions an Unrestricted Definitive Note in the appropriate principal amount. Any Unrestricted Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(3) will be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest requests through instructions to the Registrar from or through the Depositary and the Participant or Indirect Participant. The Trustee will deliver such Unrestricted Definitive Notes to the Persons in whose names such Notes are so registered. Any Unrestricted Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(3) will not bear the Private Placement Legend.

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

(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, a certificate to the effect set forth in Exhibit B 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 in accordance with Rule 903 or Rule 904, a certificate to the effect set forth in Exhibit B 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, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such Restricted Definitive Note is being transferred to an Institutional Accredited Investor 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 hereto, including the certifications, certificates and Opinion of Counsel required by item (3)(c) thereof, if applicable; or

(F) 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 hereto, including the certifications in item (3)(b) thereof,

the Trustee will 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, in the case of clause (C) above, the Regulation S Global Note, and in all other cases, the IAI 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:

(A) the Registrar receives the following:

(i) 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

(ii) 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 hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), 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 the conditions of any of the subparagraphs in this Section 2.06(d)(2), the Trustee will cancel the Restricted 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 Unrestricted 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 will cancel the applicable Unrestricted Definitive Note and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Notes.

If any such exchange or transfer from a Definitive Note to a beneficial interest is effected pursuant to subparagraphs (2)(A) or (3) above at a time when an Unrestricted Global Note has not yet been issued, the Company will issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee will 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 2.06(e), the Registrar will register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder must 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 must provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.06(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 will be made pursuant to Rule 144A, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof;

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

(C) if the transfer will 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 hereto, including the certifications, certificates and Opinion of Counsel required by item (3)(c) 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 if:

(A) the Registrar receives the following:

(i) 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

(ii) 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 hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), 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.

(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) *Legends*. The following legends will 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*.

(A) Except as permitted by subparagraph (B) 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:

"THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH BELOW. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT OR (C) IT IS AN ACCREDITED INVESTOR (AS DEFINED IN RULE 501(a)(1), (2), (3), OR (7) UNDER THE SECURITIES ACT (AN "ACCREDITED INVESTOR"), (2) AGREES THAT IT WILL NOT WITHIN ONE YEAR AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY RESELL OR OTHERWISE TRANSFER THIS SECURITY EXCEPT (A) TO THE ISSUER OR ANY SUBSIDIARY THEREOF, (B) INSIDE THE UNITED STATES TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) INSIDE THE UNITED STATES TO AN ACCREDITED INVESTOR THAT, PRIOR TO SUCH TRANSFER, FURNISHES (OR HAS FURNISHED ON ITS BEHALF BY A U.S. BROKER-DEALER) TO THE TRUSTEE A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THIS SECURITY (THE FORM OF WHICH LETTER CAN BE OBTAINED FROM THE TRUSTEE FOR THIS SECURITY), (D) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT (IF AVAILABLE), (E) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), (F) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (AND BASED UPON AN OPINION OF COUNSEL IF THE ISSUER SO REQUESTS), OR (G) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IN CONNECTION WITH ANY TRANSFER OF THIS SECURITY WITHIN ONE YEAR AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY, IF THE PROPOSED TRANSFEREE IS AN ACCREDITED INVESTOR, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE TRUSTEE AND THE ISSUER SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS EITHER OF THEM MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. AS USED HEREIN, THE TERMS "OFFSHORE TRANSACTION," "UNITED STATES" AND "U.S. PERSON" HAVE THE MEANING GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT."

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

"THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS
HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (1) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 2.06 OF THE INDENTURE, (2) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06(a) OF THE INDENTURE, (3) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.11 OF THE INDENTURE AND (4) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE COMPANY.

UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) ("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 SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN."

(g) *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 will be returned to or retained and canceled by the Trustee in accordance with Section 2.11 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who will 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 will be reduced accordingly and an endorsement will 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 will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note will be increased accordingly and an endorsement will be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

(h) *General Provisions Relating to Transfers and Exchanges*.

(1) To permit registrations of transfers and exchanges, the Company will execute and the Trustee will authenticate Global Notes and Definitive Notes upon receipt of an Authentication Order in accordance with Section 2.02 hereof or at the Registrar's request.

(2) No service charge will 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 2.10, 3.06, 4.09 and 9.04 hereof).

(3) The Registrar will not be required to register the transfer of or exchange of any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

(4) All Global Notes and Definitive Notes issued upon any registration of transfer or exchange of Global Notes or Definitive Notes will be the valid 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) Neither the Registrar nor the Company will be required:

(A) to issue, to register the transfer of or to 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 3.02 hereof and ending at the close of business on the day of selection;

(B) to register the transfer of or to exchange any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part; or

(C) to register the transfer of or to 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, upon receipt of an Authentication Order, will authenticate Global Notes and Definitive Notes in accordance with the provisions of Section 2.02 hereof.

(8) All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 2.06 to effect a registration of transfer or exchange may be submitted by facsimile.

(9) Each Holder of a Note agrees to indemnify the Company against any liability that may result from the transfer, exchange or assignment of such Holder's Note in violation of any provision of this Indenture and/or applicable United States federal or state securities laws.

(10) Neither the Trustee nor any agent of the Trustee shall have any responsibility for any actions taken or not taken by the Depositary.

(11) The Trustee shall have no responsibility or obligation to any Participant or Indirect Participant or any other Person with respect to the accuracy of the books or records, or the acts or omissions, of the Depositary or its nominee or of any participant or member thereof, with respect to any ownership interest in the Notes or with respect to the delivery to any Participant or Indirect Participant or other Person (other than the Depositary) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such Notes. All notices and communications to be given to the Holders and all payments to be made to Holders under the Notes shall be given or made only to or upon the order of the registered Holders (which shall be the Depositary or its nominee in the case of a Global Note). The rights of beneficial owners in any Global Note shall be exercised only through the Depositary subject to the customary procedures of the Depositary. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depositary with respect to its Participants or Indirect Participants.

(12) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Participants or Indirect Participants in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 2.07 *Replacement Notes*.

If any mutilated Note is surrendered to the Trustee or the Company and the Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Note, the Company will issue and the Trustee, upon receipt of an Authentication Order, will 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 may charge for its expenses in replacing a Note.

Every replacement Note is an additional obligation of the Company and will be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

Section 2.08 *Outstanding Notes*.

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 hereof, and those described in this Section 2.08 as not outstanding. Except as set forth in Section 2.09 hereof, a Note does not cease to be outstanding because the Company or an Affiliate of the Company holds the Note; however, Notes held by the Company or a Subsidiary of the Company shall not be deemed to be outstanding for purposes of Section 3.07(a) hereof.

If a Note is replaced pursuant to Section 2.07 hereof, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a protected purchaser.

If the principal amount of any Note is considered paid under Section 4.01 hereof, it ceases to be outstanding and interest on it ceases to accrue.

If the Paying Agent (other than the Company, a Subsidiary or an Affiliate of any thereof) holds, on a redemption date or maturity date, money sufficient to pay Notes payable on that date, then on and after that date such Notes will be deemed to be no longer outstanding and will cease to accrue interest.

Section 2.09 *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, will be considered as though not outstanding, except that for the purposes of determining whether the Trustee will be protected in relying on any such direction, waiver or consent, only Notes that the Trustee knows are so owned will be so disregarded.

Section 2.10 *Temporary Notes*.

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

Holders of temporary Notes will be entitled to all of the benefits of this Indenture.

Section 2.11 *Cancellation*.

The Company at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent will forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else will cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and will destroy canceled Notes (subject to the record retention requirement of the Exchange Act). Upon request of the Company, certification of the destruction of all canceled Notes will be delivered to the Company. The Company may not issue new Notes to replace Notes that it has paid or that have been delivered to the Trustee for cancellation.

Section 2.12 *Defaulted Interest*.

If the Company defaults in a payment of interest on the Notes, it will 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 a subsequent special record date, in each case at the rate provided in the Notes and in Section 4.01 hereof. The Company will 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 will fix or cause to be fixed each such special record date and payment date; *provided* that no such special record date may 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) will 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.

ARTICLE 3
REDEMPTION AND PREPAYMENT

Section 3.01 *Notices to Trustee*.

If the Company elects to redeem Notes pursuant to the optional redemption provisions of Section 3.07 hereof, it must furnish to the Trustee, at least 30 days but not more than 60 days before a redemption date, an Officer's Certificate setting forth:

(1) the clause of this Indenture pursuant to which the redemption shall occur;

(2) the redemption date;

(3) the principal amount of Notes to be redeemed; and

(4) the redemption price.

Section 3.02 *Selection of Notes to Be Redeemed or Purchased*.

If less than all of the Notes are to be redeemed or purchased in an offer to purchase at any time, the Trustee will select Notes for redemption or purchase on a *pro rata* basis to the extent practicable or by lot or such other similar method in accordance with the procedures of DTC unless otherwise required by law or applicable stock exchange requirements.

In the event of partial redemption or purchase by lot, the particular Notes to be redeemed or purchased will be selected, unless otherwise provided herein, not less than 30 nor more than 60 days prior to the redemption or purchase date by the Trustee from the outstanding Notes not previously called for redemption or purchase.

The Trustee will promptly notify the Company in writing of the Notes selected for redemption or purchase and, in the case of any Note selected for partial redemption or purchase, the principal amount thereof to be redeemed or purchased. Notes and portions of Notes selected will 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 or purchased, the entire outstanding amount of Notes held by such
Holder, even if not a multiple of $1,000, shall be redeemed or purchased. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption or purchase also apply to portions of Notes called for redemption or purchase.

Section 3.03 *Notice of Redemption*.

At least 30 days but not more than 60 days before a redemption date, the Company will mail or cause to be mailed by first class mail or delivered electronically a notice of redemption to each Holder whose Notes are to be redeemed at its registered address, except that (i) redemption notices may be mailed or delivered electronically at least 10 days prior to the redemption date if the notice is issued in connection with a redemption pursuant to Section 3.07(c) hereof and (ii) redemption notices may be mailed or delivered electronically more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture pursuant to Articles 8 or 10 hereof.

The notice will identify the Notes to be redeemed and will state:

(1) the redemption date;

(2) the redemption price;

(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 will be issued upon cancellation of the 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;

(6) that, unless the Company defaults in making such redemption payment, interest 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 number, if any, listed in such notice or printed on the Notes.

At the Company's request, the Trustee will give the notice of redemption in the Company's name and at its expense; *provided*, *however*, that the Company has delivered to the Trustee, at least 45 days prior to the redemption date, an Officer's 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.

Section 3.04 *Effect of Notice of Redemption*.

Subject to the following paragraph, once notice of redemption is sent in accordance with Section 3.03 hereof, Notes called for redemption become irrevocably due and payable on the redemption date at the redemption price.

Any notice of redemption may, in the Company's discretion, be subject to the satisfaction of one or more conditions precedent. If such redemption is subject to the satisfaction of one of more conditions precedent, such notice 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 by the Company in its sole discretion), such redemption may not occur and such notice may be rescinded in the event that any or all of such conditions shall not have been satisfied (or waived by the Company in its sole discretion) by the redemption date, or by the redemption date so delayed.

Section 3.05 *Deposit of Redemption or Purchase Price*.

One Business Day prior to the redemption or purchase date, the Company will deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption or purchase price of and accrued interest on all Notes to be redeemed or purchased on that date. The Trustee or the Paying Agent will 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 or purchase price of, and accrued interest on, all Notes to be redeemed or purchased.

If the Company complies with the provisions of the preceding paragraph, on and after the redemption or purchase date, interest will cease to accrue on the Notes or the portions of Notes called for redemption or purchase. If a Note is redeemed or purchased 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 Person in whose name such Note was registered at the close of business on
such record date. If any Note called for redemption or purchase is not so paid upon surrender for redemption or purchase because of the failure of the Company to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption or purchase 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 4.01 hereof.

Section 3.06 *Notes Redeemed or Purchased in Part*.

Upon surrender of a Note that is redeemed or purchased in part, the Company will issue and, upon receipt of an Authentication Order, the Trustee will authenticate for the Holder at the expense of the Company a new Note equal in principal amount to the unredeemed or unpurchased portion of the Note surrendered.

Section 3.07 *Optional Redemption*.

(a) At any time prior to February 1, 2024, the Company may on any one or more occasions redeem up to 35% of the aggregate principal amount of Notes issued under this Indenture, upon not less than 30 nor more than 60 days' notice, at a redemption price equal to 104.625% of the principal amount of the Notes redeemed, plus accrued and unpaid interest, if any, to but excluding 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 the proceeds of one or more Equity Offerings; *provided* that:

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

(2) the redemption occurs within 90 days of the date of the closing of such Equity Offering.

(b) At any time prior to February 1, 2024, the Company may on any one or more occasions redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' notice, 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 but excluding 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) At any time, in connection with any tender offer for the Notes, including a Change of Control Offer, if Holders of not less than 90% in aggregate principal amount of the outstanding Notes validly tender and do not withdraw such Notes in such tender offer and the Company, or any third party making such tender offer in lieu of the Company, purchases all of the Notes validly tendered and not withdrawn by such Holders, the Company may, upon not less than 10 nor more than 60 days' prior notice, given not more than 30 days following such purchase date, redeem all Notes that remain outstanding following such purchase at a redemption price equal to the price paid to each other Holder in such tender offer plus, to the extent not included in the tender offer payment, accrued and unpaid interest, if any, thereon, to, but not excluding, the date of such redemption (subject to the rights of Holders on the relevant record date to receive interest on the relevant interest payment date).

(d) Except pursuant to the preceding paragraphs (a), (b) and (c) of this Section 3.07, the Notes will not be redeemable at the Company's option prior to February 1, 2024. The Company is not prohibited, however, from acquiring the Notes in market transactions by means other than a redemption, whether pursuant to a tender offer or otherwise.

(e) On or after February 1, 2024, the Company may on any one or more occasions redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' notice, 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 but excluding the applicable date of redemption, if redeemed during the twelve-month period beginning on February 1 of the 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
2024	102.313%
2025	101.156%
2026 and thereafter	100.000%

Unless the Company defaults in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable redemption date.

(f) Any redemption pursuant to this Section 3.07 shall be made pursuant to the provisions of Sections 3.01 through 3.06 hereof.

Section 3.08 *Mandatory Redemption*.

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

ARTICLE 4
COVENANTS

Section 4.01 *Payment of Notes*.

The Company will 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 will be considered paid on the date due if the Paying Agent, if other than the Company or a Subsidiary thereof, holds as of 10:00 a.m. Eastern 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 then due.

Section 4.02 *Maintenance of Office or Agency*.

The Company will maintain an office or agency (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or co-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 will 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 fails to maintain any such required office or agency or fails 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.

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; provided, however, that no such designation or rescission will in any manner relieve the Company of its obligation to maintain an office or agency for such purposes. The Company will 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.

The Company hereby designates the Corporate Trust Office of the Trustee as one such office or agency of the Company in accordance with Section 2.03 hereof; *provided* that the Corporate Trust Office of the Trustee shall not be an office or agency of the Company for the purpose of service of legal process on the Company.

Section 4.03 *Reports*.

Whether or not required by the Commission's rules and regulations, so long as any Notes are outstanding, the Company will furnish to the Trustee, within 30 days after a large accelerated filer would be required to file such reports with the Commission under the Commission's then existing rules and regulations:

(1) annual reports of the Company containing substantially all of the information that would have been required to be contained in an Annual Report on Form 10-K under the Exchange Act if the Company had been a reporting company under the Exchange Act, including (A) "Management's Discussion and Analysis of Financial Condition and Results of Operations" and (B) audited financial statements prepared in accordance with GAAP as in effect from time to time;

(2) quarterly reports of the Company containing substantially all of the information that would have been required to be contained in a Quarterly Report on Form 10-Q under the Exchange Act if the Company had been a reporting company under the Exchange Act, including (A) "Management's Discussion and Analysis of Financial Condition and Results of Operations" and (B) unaudited quarterly financial statements prepared in accordance with GAAP as in effect from time to time and reviewed pursuant to Statement on Auditing Standards No. 100 (or any successor provision); and

(3) current reports containing substantially all of the information that would have been required to be contained in a Current Report on Form 8-K under the Exchange Act if the Company had been a reporting company under the Exchange Act; *provided*, *however*, that no such current report will be required to be furnished if the Company determines in its good faith judgment that such event is not material to the Holders or the business, assets, operations, financial positions or prospects of the Company and its Subsidiaries, taken as a whole.

Notwithstanding the foregoing, in no event will the Company be required by this Indenture to (A) comply with Section 302 or Section 404 of the Sarbanes-Oxley Act of 2002, or related Items 307 and 308 of Regulation S-K promulgated by the Commission, or Item 10(e) of Regulation S-K (with respect to any non-GAAP financial measures contained therein) and Regulation G, (B) include the separate financial information for guarantors or other entities contemplated by Rule 3-10 and/or 3-16 of Regulation S-X promulgated by the Commission or (C) provide any additional information in respect of Item 402 of Regulation S-K beyond information of the type included in the Offering Memorandum.

The Company's reporting obligations with respect to clauses (1) through (3) above will be satisfied in the event it timely files such reports with the Commission on EDGAR and such reports are publicly available.

So long as any Notes are outstanding, if at any time the Company is not filing with the Commission the reports required by the preceding paragraphs of this Section 4.03, the Company will also maintain a website to which Holders,
prospective investors, broker-dealers and securities analysts are given access and to which all of the reports and press releases required by this Section 4.03 are posted.

In addition, if at any time the Company is not filing with the Commission the reports required by this Section 4.03, the Company shall furnish to Holders, prospective investors, broker-dealers and securities analysts, upon their request, any information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act so long as the Notes constitute "restricted securities" under Rule 144.

Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute actual or constructive knowledge or notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates with respect thereto).

Section 4.04 *Compliance Certificate*.

(a) The Company shall deliver to the Trustee, within 90 days after the end of each fiscal year, an Officer's 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 Officer with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to such Officer signing such certificate, that to the best of his or her knowledge the Company has kept, observed, performed and fulfilled each and every covenant contained in this Indenture and is not in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (or, if a Default or Event of Default has occurred, 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) and that to the best of his or her knowledge no event has occurred and remains in existence by reason of which payments on account of the principal of, premium or interest, if any, on the Notes is prohibited or if such event has occurred, a description of the event and what action the Company is taking or proposes to take with respect thereto.

(b) So long as any of the Notes are outstanding, the Company will deliver to the Trustee, forthwith upon any Officer becoming aware of any Default or Event of Default, an Officer's Certificate specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto.

Section 4.05 *Taxes*.

The Company will pay, prior to delinquency, all 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 is not adverse in any material respect to the Holders.

Section 4.06 *Stay, Extension and Usury Laws*.

The Company covenants (to the extent that it may lawfully do so) that it will 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 will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.07 *Liens*.

The Company will not, and will not permit any Covered Subsidiary to, create, incur, assume or suffer to exist any mortgage, pledge or other lien (other than Permitted Liens) upon any Principal Property to secure indebtedness for borrowed money represented by notes, bonds, debentures or other evidences of indebtedness, unless all payments due under this Indenture and the Notes issued hereunder are secured on an equal and ratable basis with the obligations so secured until such time as such obligations are no longer secured by such mortgage, pledge or other lien.

Section 4.08 *Corporate Existence*.

Subject to Article 5 hereof, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and the rights (charter and statutory), licenses and franchises of the Company; provided, however, that the Company shall not be required to preserve any such right, license or franchise, or corporate existence, if (a) the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company, and that the loss thereof is not adverse in any material respect to the Holders of the Notes.

Section 4.09 *Offer to Repurchase Upon Change of Control Triggering Event*.

(a) If a Change of Control Triggering Event occurs, each Holder will have the right to require the Company to make an offer (a "*Change of Control Offer*") to each Holder to repurchase all or any part (equal to $2,000 or an integral multiple of $1,000 in excess thereof) of that Holder's Notes at a purchase price in cash equal to 101% of the aggregate principal amount of Notes repurchased plus accrued and unpaid interest, if any, on the Notes repurchased to but excluding the date of purchase, subject to the rights of Holders on the relevant record date to receive interest due on the relevant interest payment date (the "*Change of Control Payment*"). Within 30 days following any Change of Control Triggering Event, the Company will mail (or deliver electronically) a notice to each Holder describing the transaction or transactions that constitute the Change of Control Triggering Event and stating:

(1) that the Change of Control Offer is being made pursuant to this Section 4.09 and that all Notes tendered will be accepted for payment;

(2) the purchase price and the purchase date, which shall be no earlier than 30 days and no later than 60 days from the date such notice is mailed or delivered electronically (the "*Change of Control Payment Date*");

(3) that any Note not tendered will 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 after the Change of Control Payment Date;

(5) that Holders electing to have any Notes purchased pursuant to a Change of Control Offer will be required to surrender the Notes, with the form entitled "Option of Holder to Elect Purchase" attached to the Notes completed, or transfer by book-entry transfer, to the Paying Agent 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 election if the Paying Agent receives, not later than the close of business on the second Business Day preceding the Change of Control Payment Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of Notes delivered for purchase, and a statement that such Holder is withdrawing his election to have the Notes purchased; and

(7) that Holders whose Notes are being purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered, which unpurchased portion must be equal to $2,000 in principal amount or an integral multiple of $1,000 in excess of $2,000.

The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change of Control Triggering Event. To the extent that the provisions of any securities laws or regulations conflict with this Section 4.09, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Section 4.09 by virtue of such compliance.

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

(1) accept for payment all Notes or portions of Notes properly tendered pursuant to the Change of Control Offer;

(2) deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all Notes or portions of Notes properly tendered; and

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

The Paying Agent will promptly mail (but in any case not later than five days after the Change of Control Payment Date) to each Holder of Notes properly tendered the Change of Control Payment for such Notes, and the Trustee will promptly, upon receipt of an Authentication Order, 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 new Note will be in a principal amount of $2,000 or an integral multiple of $1,000 in excess thereof. The Company will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

(c) Notwithstanding anything to the contrary in this Section 4.09, the Company will not be required to make a Change of Control Offer upon a Change of Control Triggering Event if (1) 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 Section 4.09 hereof and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer, or (2) notice of redemption has been given pursuant to Section 3.07 hereof, unless and until there is a default in payment of the applicable redemption price. A Change of Control Offer may be made in advance of a Change of Control Triggering Event, with the obligation to pay and the timing of payment conditioned upon the consummation of the Change of Control, if a definitive agreement to effect a Change of Control is in place at the time of the Change of Control Offer.

ARTICLE 5
SUCCESSORS

Section 5.01 *Merger, Consolidation, or Sale of Assets*.

(a) The Company may not, directly or indirectly: (1) consolidate or merge with or into another Person (whether or not the Company is the surviving corporation) or (2) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company and its Subsidiaries, taken as a whole, in one or more related transactions, to another Person; unless:

(1) either (A) the Company is the surviving corporation; or (B) the Person formed by or surviving any such consolidation or merger (if other than the Company) or to which such sale, assignment, transfer, conveyance or other disposition has been made is a corporation, partnership or limited liability company organized or existing under the laws of the United States, any state of the United States or the District of Columbia; provided that if the Person is a partnership or limited liability company, then a corporation wholly-owned by such Person organized or existing under the laws of the United States, any state of the United States or the District of Columbia that does not and will not have any material assets or operations shall become a co-issuer of the Notes pursuant to a supplemental indenture duly executed by the Trustee;

(2) the Person formed by or surviving any such consolidation or merger (if other than the Company) or the Person to which such sale, assignment, transfer, conveyance or other disposition has been made assumes all the obligations of the Company under the Notes and this Indenture pursuant to a supplemental indenture duly executed by the Trustee; and

(3) immediately after such transaction, no Default or Event of Default exists.

(b) In addition, the Company will not, directly or indirectly, lease all or substantially all of the properties and assets of the Company and its Subsidiaries, taken as a whole, in one or more related transactions, to any other Person.

This Section 5.01 will not apply to:

(1) a merger of the Company with an Affiliate solely for the purpose of reincorporating the Company in another jurisdiction or forming a direct holding company of the Company; and

(2) any sale, transfer, assignment, conveyance, lease or other disposition of assets between or among the Company and its Subsidiaries, including by way of merger or consolidation.

Section 5.02 *Successor Corporation Substituted*.

Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the properties or assets of the Company in a transaction that is subject to, and that complies with the provisions of, Section 5.01 hereof, the successor Person formed by such consolidation or into or with which the Company is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, assignment, transfer, lease, conveyance or other disposition, the provisions of this Indenture referring to the "Company" shall refer instead to the successor Person and not to the Company), and may exercise every right and power of the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein; provided, however, that the predecessor Company shall not be relieved from the obligation to pay the principal of and interest on the Notes except in the case of a sale of all of the Company's assets in a transaction that is subject to, and that complies with the provisions of, Section 5.01 hereof.

ARTICLE 6
DEFAULTS AND REMEDIES

Section 6.01 *Events of Default*.

Each of the following is an "*Event of Default*" with respect to the Notes:

(1) default for 30 days in the payment when due of interest on the Notes;

(2) default in payment when due of the principal of, or premium, if any, on, the Notes;

(3) failure by the Company for 60 days after notice from the Trustee or the Holders of at least 25% in aggregate principal amount of the outstanding Notes to comply with any of the other agreements in this Indenture;

(4) default under any document evidencing any indebtedness of the Company for borrowed money represented by notes, bonds, debentures or other evidences of indebtedness by the Company, whether such indebtedness now exists or is created after the date of this Indenture, if that default:

(A) is caused by a failure to pay principal when due at final (and not any interim) maturity on or prior to the expiration of any grace period provided in such indebtedness (a "*Payment Default*"); or

(B) results in the acceleration of such indebtedness prior to its express maturity (without such acceleration having been rescinded, annulled or otherwise cured),

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 (without such acceleration having been rescinded, annulled or otherwise cured), aggregates $100,000,000 or more; *provided* that this clause (4) shall not apply to (i) secured indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such indebtedness and (ii) any indebtedness that is required to be converted into Qualifying Equity Interests upon the occurrence of certain designated events so long as no payments in cash or otherwise are required to be made in accordance with such conversion); or

(5) (A) a court of competent jurisdiction (i) enters an order or decree under any Bankruptcy Law that is for relief against the Company or any of its Material Subsidiaries in an involuntary case; (ii) appoints a custodian of the Company for all or substantially all of the property of the Company or any of its Material Subsidiaries; or (iii) orders the liquidation of the Company or any of its Material Subsidiaries and, in each case of clauses (i), (ii) and (iii), the order, appointment or decree remains unstayed and in effect for 60 consecutive days; or (B) the Company or any of its Material Subsidiaries, pursuant to or within the meaning of Bankruptcy Law, (i) commences a voluntary case; (ii) consents to the entry of an order for relief against it in an involuntary case; (iii) consents to the appointment of a custodian of it or for all or substantially all of its property; or (iv) makes a general assignment for the benefit of its creditors.

Section 6.02 *Acceleration*.

In the case of an Event of Default specified in clause (5) of Section 6.01 hereof, 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 by written notice to the Company or the Holders of at least 25% in aggregate principal amount of the then outstanding Notes by written notice to the Company and the Trustee may declare all the Notes to be due and payable immediately. Upon any such declaration, the Notes shall become due and payable immediately. The Holders of a majority in aggregate principal amount of the then outstanding Notes by written notice to the Trustee may, on behalf of all of the Holders, rescind an acceleration and its consequences, if the rescission would not conflict with any judgment or decree and if all existing Events of Default (except nonpayment of principal, interest or premium that has become due solely because of the acceleration) have been cured or waived.

Section 6.03 *Other Remedies*.

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, and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

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 in exercising any right or remedy accruing upon 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 6.04 *Waiver of Past Defaults*.

Holders of not less than a majority in aggregate principal amount of the then outstanding Notes by written notice to the Trustee may on behalf of the Holders of all of the Notes waive an existing Default or Event of Default and its consequences hereunder, except a continuing Default or Event of Default in the payment of the principal of, premium, if any, or interest on, the Notes (including in connection with an offer to purchase); *provided*, *however*, that the Holders of a majority in aggregate principal amount of the then outstanding Notes may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration. 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 6.05 *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 it. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture that the Trustee determines may be unduly prejudicial to the rights of other Holders or that may involve the Trustee in personal liability.

Section 6.06 *Limitation on Suits*.

Except to enforce the right to receive payment of principal, premium (if any) or interest when due, no Holder may pursue any remedy with respect to this Indenture or the Notes unless:

(1) such Holder has previously given the Trustee written notice that an Event of Default is continuing;

(2) Holders of at least 25% in aggregate principal amount of the then outstanding Notes have requested the Trustee to pursue the remedy;

(3) such Holders have offered the Trustee security or indemnity satisfactory to the Trustee against any loss, liability or expense;

(4) the Trustee has not complied with such request within 60 days after the receipt thereof and the offer of security or indemnity; and

(5) Holders of a majority in aggregate principal amount of the outstanding Notes have not given the Trustee a direction inconsistent with such request within such 60-day period.

Section 6.07 *Rights of Holders to Receive Payment*.

Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal, premium, if any, and interest on the Note, on or after the respective due dates expressed in the 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; *provided* that a Holder shall not have the right to institute any such suit for the enforcement of payment if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver or loss of the lien of this Indenture upon any property subject to such lien.

Section 6.08 *Collection Suit by Trustee*.

If an Event of Default specified in Section 6.01(1) or (2) hereof occurs 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 principal of, premium, if any, and interest remaining unpaid on, the Notes and interest on overdue principal and, to the extent lawful, 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 6.09 *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 allowed in any judicial proceedings relative to the Company (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 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 7.06 hereof. 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 7.06 hereof 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 6.10 *Priorities*.

If the Trustee collects any money or property pursuant to this Article 6, it shall pay out the money or property in the following order:

First: to the Trustee, its agents and attorneys for amounts due under Section 7.06 hereof, including payment of all compensation, expenses and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

Second: to Holders 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.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 6.10.

Section 6.11 *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, 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 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07 hereof, or a suit by Holders of more than 10% in aggregate principal amount of the then outstanding Notes.

ARTICLE 7
TRUSTEE

Section 7.01 *Duties of Trustee*.

(a) If an Event of Default has occurred and is continuing, the Trustee will 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 will 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 will examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of calculations or other facts stated therein).

(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 7.01;

(2) the Trustee will not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved in a court of competent jurisdiction that the Trustee was negligent in ascertaining the pertinent facts; and

(3) the Trustee will 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 6.05 hereof.

(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), (c) and (e) of this Section 7.01.

(e) No provision of this Indenture will require the Trustee to expend or risk its own funds or incur any liability. The Trustee will be under no obligation to exercise any of its rights and powers under this Indenture at the request of any Holders, unless such Holder has offered to the Trustee indemnity satisfactory to it or security satisfactory to it against any loss, liability or expense.

(f) The Trustee will not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

Section 7.02 *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 Officer's Certificate or an Opinion of Counsel or both. The Trustee will not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel. The Trustee may consult with counsel and the written advice of such counsel or any Opinion of Counsel will 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 will not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee will 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 will be sufficient if signed by an Officer of the Company.

(f) The Trustee will 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 have offered to the Trustee indemnity or security satisfactory to it against the losses, liabilities and expenses that might be incurred by it in compliance with such request or direction.

(g) In no event shall the Trustee be required to take notice of any default or breach hereof or any Event of Default hereunder, except for Events of Default specified in Section 6.01(1) and/or 6.01(2) hereof (and then, only if the Trustee is also the Paying Agent), unless and until the Trustee shall have received from a Holder or from the Company express written notice of the circumstances constituting the breach, default or Event of Default and stating that said circumstances constitute an Event of Default.

(h) In no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(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 (including, without limitation, as Custodian, Registrar and Paying Agent), and each agent, custodian and other Person employed to act hereunder.

(j) The Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture.

(k) The Trustee shall have no duty to inquire as to the performance of the Company with respect to the covenants contained in Article 4.

(l) Any permissive right or authority granted to the Trustee shall not be construed as a mandatory duty.

(m) The Company shall provide prompt written notice to the Trustee of any change to its respective fiscal year.

Section 7.03 *Individual Rights of Trustee*.

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Company or any Affiliate of the Company with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the Commission for permission to continue as trustee or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Section 7.09 hereof.

Section 7.04 *Trustee's Disclaimer*.

The Trustee will not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, 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 will not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, it will not be responsible for and makes no representation as to the validity, and it will 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 7.05 *Notice of Defaults*.

If a Default or Event of Default occurs and is continuing and if it is known to the Trustee, the Trustee will mail to Holders a notice of the Default or Event of Default within 90 days after it occurs. 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.

Section 7.06 *Compensation and Indemnity*.

(a) The Company will pay to the Trustee from time to time reasonable compensation for its acceptance of this Indenture and services hereunder. The Trustee's compensation will not be limited by any law on compensation of a trustee of an express trust. The Company will reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses will include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

(b) The Company will indemnify the Trustee against any and all losses, liabilities or 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 (including this Section 7.06) and defending itself against any claim (whether asserted by the Company, 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 negligence or bad faith as determined by a court of competent jurisdiction in a final non-appealable decision. The Trustee will notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company will not relieve the Company of its obligations hereunder. The Company will defend the claim and the Trustee will cooperate in the defense. The Trustee may have separate counsel and the Company will pay the reasonable fees and expenses of such counsel. The Company need not pay for any settlement made without its consent, which consent will not be unreasonably withheld.

(c) The obligations of the Company under this Section 7.06 will survive the satisfaction and discharge of this Indenture or the earlier resignation or removal of the Trustee.

(d) To secure the Company's payment obligations in this Section 7.06, the Trustee will 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 and interest on particular Notes. Such lien will survive the satisfaction and discharge of this Indenture.

(e) When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(5) hereof 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 7.07 *Replacement of Trustee*.

(a) A resignation or removal of the Trustee and appointment of a successor Trustee will become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.07.

(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 aggregate 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 7.09 hereof;

(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 will promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in aggregate 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 60 days after the retiring Trustee resigns or is removed, the retiring Trustee (at the Company's expense), the Company, or the Holders of at least 10% in aggregate principal amount of the then outstanding Notes may petition 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 six months, fails to comply with Section 7.09 hereof, 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 will deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon, the resignation or removal of the retiring Trustee will become effective, and the successor Trustee will have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee will mail a notice of its succession to Holders. The retiring Trustee will 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 7.06 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 7.07, the Company's obligations under Section 7.06 hereof will continue for the benefit of the retiring Trustee.

Section 7.08 *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 corporation, the successor corporation without any further act will be the successor Trustee.

Section 7.09 *Eligibility; Disqualification*.

There will 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 trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least $100.0 million as set forth in its most recent published annual report of condition.

ARTICLE 8
LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 8.01 *Option to Effect Legal Defeasance or Covenant Defeasance*.

The Company may at any time, at the option of its Board of Directors evidenced by a resolution set forth in an Officer's Certificate, elect to have either Section 8.02 or 8.03 hereof be applied to all outstanding Notes upon compliance with the conditions set forth below in this Article 8.

Section 8.02 *Legal Defeasance and Discharge*.

(a) Upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.02, the Company will, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be deemed to have been discharged from its obligations with respect to all outstanding Notes on the date the conditions set forth below are satisfied (hereinafter, "*Legal Defeasance*"). For this purpose, Legal Defeasance means that the Company will be deemed to have paid and discharged the entire indebtedness represented by the outstanding Notes, which will thereafter be deemed to be "outstanding" only for the purposes of Section 8.05 hereof and the other Sections of this Indenture referred to in clauses (1) and (2) below, and to have satisfied all its other obligations under such Notes and this Indenture (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 will survive until otherwise terminated or discharged hereunder:

(1) the rights of Holders of outstanding Notes to receive payments in respect of the principal of, or interest or premium, if any, on, such Notes when such payments are due from the trust referred to in Section 8.04 hereof;

(2) the Company's obligations with respect to such Notes under Article 2 and Section 4.02 hereof;

(3) the rights, powers, trusts, duties and immunities of the Trustee hereunder and the Company's obligations in connection therewith; and

(4) this Article 8.

Subject to compliance with this Article 8, the Company may exercise its option under this Section 8.02 notwithstanding the prior exercise of its option under Section 8.03 hereof.

Section 8.03 *Covenant Defeasance*.

Upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.03, the Company will, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be released from its obligations under the covenants contained in Sections 4.03, 4.04, 4.05, 4.07 and 4.09 hereof with respect to the outstanding Notes on and after the date the conditions set forth in Section 8.04 hereof are satisfied (hereinafter, "*Covenant Defeasance*"), and the Notes will 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 will continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes will not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes, the Company may omit to comply with and will 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 will not constitute a Default or an Event of Default under Section 6.01 hereof, but, except as specified above, the remainder of this Indenture and such Notes will be unaffected thereby. In addition, upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.03, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, Sections 6.01(3) and 6.01(4) hereof will not constitute Events of Default.

Section 8.04 *Conditions to Legal or Covenant Defeasance*.

In order to exercise either Legal Defeasance or Covenant Defeasance under either Section 8.02 or 8.03 hereof:

(1) the Company must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities, or a combination thereof, in amounts as will be sufficient, in the opinion of a nationally recognized investment bank, appraisal firm or firm of independent public accountants, to pay the principal of, interest and premium, if any, on, the then outstanding Notes on the final stated maturity thereof or on the applicable redemption date, as the case may be, and the Company must specify whether such Notes are being defeased to maturity or to a particular redemption date;

(2) in the case of an election under Section 8.02 hereof, the Company must deliver to the Trustee an Opinion of Counsel confirming 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 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;

(3) in the case of an election under Section 8.03 hereof, the Company must deliver to the Trustee an Opinion of Counsel confirming that the Holders 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;

(4) no Default or Event of Default shall have occurred and be continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit);

(5) such Legal Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than this Indenture) to which the Company is a party or by which the Company is bound;

(6) the Company must deliver to the Trustee an Officer's Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders over the other creditors of the Company with the intent of defeating, hindering, delaying or defrauding any creditors of the Company or others; and

(7) the Company must deliver to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

The Legal Defeasance or Covenant Defeasance, as applicable, will be effective on the day on which the conditions in clauses (1) through (7) of this Section 8.04 have been satisfied.

Section 8.05 *Deposited Money and Government Securities to be Held in Trust; Other Miscellaneous Provisions*.

Subject to Section 8.06 hereof, all money and non-callable Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.05, the "*Trustee*") pursuant to Section 8.04 hereof in respect of the outstanding Notes will 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.

The Company will pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable Government Securities deposited pursuant to Section 8.04 hereof 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.

Notwithstanding anything in this Article 8 to the contrary, the Trustee will deliver or pay to the Company from time to time upon the request of the Company any money or non-callable Government Securities held by it as provided in Section 8.04 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.04(1) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

Section 8.06 *Repayment to 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) will be discharged from such trust; and the Holder of such Note will thereafter be permitted to 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, will thereupon cease; *provided*, *however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in the New York Times and The Wall Street Journal (national edition), notice that such money remains unclaimed and that, after a date specified therein, which will not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining will be repaid to the Company.

Section 8.07 *Reinstatement*.

If the Trustee or Paying Agent is unable to apply any U.S. dollars or non-callable Government Securities in accordance with Section 8.02 or 8.03 hereof, 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 under this Indenture and the Notes and will be revived and reinstated as though no deposit had occurred pursuant to Section 8.02 or 8.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.02 or 8.03 hereof, 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 will 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 9
AMENDMENT, SUPPLEMENT AND WAIVER

Section 9.01 *Without Consent of Holders*.

Notwithstanding Section 9.02 of this Indenture, the Company and the Trustee may amend or supplement this Indenture or the Notes, without the consent of any Holder:

(1) to cure any ambiguity, defect or inconsistency in this Indenture or the Notes in a manner that does not adversely affect the rights of any Holder;

(2) to provide for uncertificated Notes in addition to or in place of certificated Notes;

(3) to provide for the assumption of the Company's obligations to Holders in the case of a merger or consolidation or sale of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole;

(4) to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the legal rights hereunder of any Holder;

(5) to conform the text of this Indenture or the Notes to any provision of the "Description of Notes" section of the Offering Memorandum, to the extent that such provision in that "Description of Notes" was intended to be a verbatim or substantially verbatim recitation of a provision of this Indenture or the Notes;

(6) to evidence and provide for the acceptance and appointment under this Indenture of successor trustees pursuant to the requirements thereof; or

(7) to provide for the issuance of Additional Notes of the same or an additional series in accordance with the limitations set forth in this Indenture as of the date hereof.

Upon the request of the Company accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture, and upon receipt by the Trustee of the documents described in Sections 7.02 and 9.05 hereof, the Trustee will join with the Company 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 will not be obligated to enter into such amended or supplemental indenture that affects its own rights, duties or immunities under this Indenture or otherwise.

Section 9.02 *With Consent of Holders*.

Except as provided below in this Section 9.02, the Company and the Trustee may amend or supplement this Indenture and the Notes with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes (including, without limitation, Additional Notes, if any) voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes), and, subject to Sections 6.04 and 6.07 hereof, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium, if any, or interest on, the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture or the Notes may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes (including, without limitation, Additional Notes, if any) voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes).

Upon the request of the Company accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture, and upon the filing with the Trustee of evidence satisfactory to the Trustee of the consent of the Holders as aforesaid, and upon receipt by the Trustee of the documents described in Sections 7.02 and 9.05 hereof, the Trustee will join with the Company 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 will not be obligated to, enter into such amended or supplemental indenture.

It is not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed amendment, supplement or waiver, but it is sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Company will mail to the Holders affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Company to mail such notice, or any defect therein, will not, however, in any way impair or affect the validity of any such amended or supplemental indenture or waiver. Subject to Sections 6.04 and 6.07 hereof, the Holders of a majority in aggregate principal amount of the Notes then outstanding voting as a single class may waive compliance in a particular instance by the Company with any provision of this Indenture or the Notes. However, without the consent of each Holder affected, an amendment, supplement or waiver under this Section 9.02 may not (with respect to any Notes held by a non-consenting Holder):

(1) reduce the principal amount of Notes whose Holders must consent to an amendment, supplement or waiver;

(2) reduce the principal of or change the fixed maturity of any Note or alter the provisions with respect to the redemption of the Notes (other than provisions relating to Section 4.09 hereof and provisions relating to the number of days of notice to be given in the event of a redemption);

(3) reduce the rate of or change the time for payment of interest on any Note;

(4) waive a Default or Event of Default in the payment of principal of, or interest or premium, if any, on, such Notes (except a rescission of acceleration of such Notes by the Holders of at least a majority in aggregate principal amount of Notes and a waiver of the payment default that resulted from such acceleration);

(5) make any Note payable in currency other than that stated in such Note;

(6) make any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of Holders of such Notes to receive payments of principal of, or interest or premium, if any, on, the Notes;

(7) waive a redemption payment with respect to any Note (other than a payment required by Section 4.09 hereof); or

(8) make any change in the preceding amendment and waiver provisions.

Section 9.03 *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 9.04 *Notation on or Exchange of Notes*.

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.

Failure to make the appropriate notation or issue a new Note will not affect the validity and effect of such amendment, supplement or waiver.

Section 9.05 *Trustee to Sign Amendments, etc*.

The Trustee will sign any amended or supplemental indenture authorized pursuant to this Article 9 if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. The Company may not sign an amended or supplemental indenture until the Board of Directors of the Company approves it. In executing any amended or supplemental indenture, the Trustee will be entitled to receive and (subject to Section 7.01 hereof) will be fully protected in relying upon, in addition to the documents required by Section 11.02 hereof, an Officer's Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture is authorized or permitted by this Indenture and that such amended or supplemental indenture is the legal, valid and binding obligation of the Company, enforceable against them in accordance with its terms, subject to customary exceptions and complies with provisions hereof.

ARTICLE 10
SATISFACTION AND DISCHARGE

Section 10.01 *Satisfaction and Discharge*.

This Indenture will be discharged and will cease to be of further effect as to all Notes issued hereunder, when:

(1) either:

(a) all Notes that have been authenticated, except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust and thereafter repaid to the Company, have been delivered to the Trustee for cancellation; or

(b) all Notes that have not been delivered to the Trustee for cancellation have become due and payable by reason of the mailing or delivering electronically of a notice of redemption or otherwise or will become due and payable within one year and the Company has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities, or a combination thereof, in such amounts as will be sufficient, without consideration of any reinvestment of interest, to pay and discharge the entire indebtedness on the Notes not delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption;

(2) no Default or Event of Default has occurred and is continuing on the date of the deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit) and the deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which the Company is a party or by which the Company is bound;

(3) the Company has paid or caused to be paid all sums payable by it under this Indenture; and

(4) the Company has delivered irrevocable instructions to the Trustee under this Indenture to apply the deposited money toward the payment of the Notes at maturity or on the redemption date, as the case may be.

In addition, the Company must deliver an Officer's Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

Notwithstanding the satisfaction and discharge of this Indenture, if money has been deposited with the Trustee pursuant to subclause (b) of clause (1) of this Section 10.01, the provisions of Sections 10.02 and 8.06 hereof will survive. In addition, nothing in this Section 10.01 will be deemed to discharge those provisions of Section 7.06 hereof, that, by their terms, survive the satisfaction and discharge of this Indenture.

Section 10.02 *Application of Trust Money*.

Subject to the provisions of Section 8.06 hereof, all money deposited with the Trustee pursuant to Section 10.01 hereof 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.

If the Trustee or Paying Agent is unable to apply any money or Government Securities in accordance with Section 10.01 hereof by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 10.01 hereof; *provided that if the Company has made any payment of principal of, premium, if any, or interest on, any Notes because of 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 or Government Securities held by the Trustee or Paying Agent.*

ARTICLE 11
MISCELLANEOUS

Section 11.01 *Notices*.

Any notice or communication by the Company or the Trustee to the others is duly given if in writing and delivered in Person or by first class mail (registered or certified, return receipt requested), facsimile transmission or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Company:

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, Texas 77002
Facsimile No.: (832) 325-1508
Attention: General Counsel

With a copy to:

White & Case LLP
1221 Avenue of the Americas
New York, New York 10020
Facsimile No.: (212) 354-8113
Attention: Gary Kashar

If to the Trustee:

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Facsimile No.: (612) 217-5651
Attention: Calpine Corporation Administrator

With a copy to:

Shipman & Goodwin LLP
One Constitution Plaza
Hartford, Connecticut 06103
Facsimile No.: (860) 251-5212
Attention: Marie C. Pollio

The Company or the Trustee, by notice to the others, may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) will be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when receipt acknowledged, if transmitted by facsimile; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

Any notice or communication to a Holder will 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 will not affect its sufficiency with respect to other Holders.

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.

If the Company mails a notice or communication to Holders, it will mail a copy to the Trustee and each Agent at the same time.

Notwithstanding any other provision of this Indenture or any Note, where this Indenture or any Note provides for notice of any event (including any notice of redemption) to a Holder of a Global Note (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depositary for such Note (or its designee), pursuant to the customary procedures of such Depositary.

Section 11.02 *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 Officer's Certificate in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 11.03 hereof) 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 in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 11.03 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

Section 11.03 *Statements Required in Certificate or Opinion*.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture must 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 or her 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 11.04 *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 11.05 *No Personal Liability of Directors, Officers, Employees and Stockholders*.

No director, officer, employee, incorporator or stockholder of the Company, as such, will have any liability for any obligations of the Company under the Notes or this Indenture, or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under the federal securities laws.

Section 11.06 *Governing Law*.

THE INTERNAL LAW OF THE STATE OF NEW YORK WILL GOVERN AND BE USED TO CONSTRUE THIS INDENTURE AND THE NOTES WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

Section 11.07 *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 its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 11.08 *Successors*.

All agreements of the Company in this Indenture and the Notes will bind its successors. All agreements of the Trustee in this Indenture will bind its successors.

Section 11.09 *Severability*.

In case any provision in this Indenture or in the Notes is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

Section 11.10 *Counterpart Originals*.

The parties may sign any number of copies of this Indenture. Each signed copy will be an original, but all of them together represent the same agreement. Delivery of an executed counterpart of a signature page to this Indenture by telecopier, facsimile or other electronic transmission (i.e. a "pdf" or "tif") shall be effective as delivery of a manually executed counterpart thereof.

Section 11.11 *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 will in no way modify or restrict any of the terms or provisions hereof.

Section 11.12 *Force Majeure.*

In no event shall the Trustee be responsible or liable, nor shall the Company be responsible or liable to the Trustee, for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee or the Company, as the case may be, shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

[Signatures on following page]

SIGNATURES

Dated as of August 10, 2020

Calpine Corporation

By: /s/ W. Thaddeus Miller
Name: W. Thaddeus Miller
Title: Executive Vice Chairman and Chief Legal Officer

Wilmington Trust, National Association
as Trustee

By: /s/ Hallie E. Field
Name: Hallie E. Field
Title: Vice President

EXHIBIT A

[Face of Note]

[Insert the Global Note Legend, if applicable pursuant to the provisions of the Indenture]
[Insert the Private Placement Legend, if applicable pursuant to the provisions of the Indenture]

CUSIP/ISIN _____

[RULE 144A][REGULATION S][GLOBAL] NOTE

4.625% Senior Notes due 2029

No. ___ $_____

CALPINE CORPORATION

promises to pay to _____ or registered assigns,

the principal sum of _____ DOLLARS on February 1, 2029.

Interest Payment Dates: February 1 and August 1

Record Dates: January 15 and July 15

[*Signature Page Follows*]

IN WITNESS HEREOF, the Company has caused this Note to be signed manually or by facsimile by its duly authorized officer as of the date first written above.

CALPINE CORPORATION

By: _____
Name:
Title:

This is one of the Notes referred to in the within-mentioned Indenture:

Dated: _____ , ____

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Signatory

Capitalized terms used herein have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

(1) *INTEREST*. Calpine Corporation, a Delaware corporation (the "*Company*"), promises to pay interest on the principal amount of this Note at 4.625% per annum from August 10, 2020[1] until maturity. The Company will pay interest semi-annually in arrears on February 1 and August 1 of each year (each, an "*Interest Payment Date*"), or if any such day is not a Business Day, on the next succeeding Business Day. Interest on the Notes will accrue from the most recent Interest Payment Date to which interest has been paid or, if no interest has been paid, from the date of issuance; *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 February 1, 2021[2]. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

(2) *METHOD OF PAYMENT*. The Company will pay interest on the Notes (except defaulted interest) to the Persons who are registered Holders at the close of business on January 15 or July 15 next preceding the 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 2.12 of the Indenture with respect to defaulted interest. The Notes will 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; *provided* that payment by wire transfer of immediately available funds will be required with respect to principal of and interest, premium on, all Global Notes and all other Notes the Holders of which will have provided wire transfer instructions to the Company or the Paying Agent. Such payment will 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.

(3) *PAYING AGENT AND REGISTRAR*. Initially, Wilmington Trust, National Association, the Trustee under the Indenture, will 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 August 10, 2020 (as amended or supplemented from time to time, the "*Indenture*") among the Company and the Trustee. 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, the provisions of the Indenture shall govern and be controlling. The Notes are unsecured obligations of the Company. The indenture does not limit the aggregate principal amount of Notes that may be issued thereunder.

[1] *With respect to the Initial Notes.*

[2] *With respect to the Initial Notes.*

(5) *OPTIONAL REDEMPTION*.

(a) On or after February 1, 2024, the Company may on any one or more occasions redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' notice, 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 but excluding the applicable date of redemption, if redeemed during the twelve-month period beginning on February 1 of the 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
2024	102.313%
2025	101.156%
2026 and thereafter	100.000%

Unless the Company defaults in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable redemption date.

(b) At any time prior to February 1, 2024, the Company may on any one or more occasions redeem up to 35% of the aggregate principal amount of Notes issued under the Indenture, upon not less than 30 nor more than 60 days' notice, at a redemption price equal to 104.625% of the principal amount of the Notes redeemed, plus accrued and unpaid interest, if any, to but excluding 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 the proceeds of one or more Equity Offerings; *provided* that: (i) at least 65% of the aggregate principal amount of Notes originally issued under the Indenture (excluding Notes held by the Company and its Subsidiaries) remains outstanding immediately after the occurrence of such redemption; and (ii) the redemption occurs within 90 days of the date of the closing of such Equity Offering.

(c) At any time prior to February 1, 2024, the Company may on any one or more occasions redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' notice, 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 but excluding 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.

(d) At any time, in connection with any tender offer for the Notes, including a Change of Control Offer, if Holders of not less than 90% in aggregate principal amount of the outstanding Notes validly tender and do not withdraw such Notes in such tender offer and the Company, or any third party making such tender offer in lieu of the Company, purchases all of the Notes validly tendered and not withdrawn by such Holders, the Company may, upon not less than 10 nor more than 60 days' prior notice, given not more than 30 days following such purchase date, redeem all Notes that remain outstanding following such purchase at a redemption price equal to the price paid to each other Holder in such tender offer plus, to the extent not included in the tender offer payment, accrued and unpaid interest, if any, thereon, to, but not excluding, the date of such redemption (subject to the rights of Holders on the relevant record date to receive interest on the relevant interest payment date).

(6) *MANDATORY REDEMPTION*.

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

(7) *REPURCHASE AT THE OPTION OF HOLDER*. If a Change of Control Triggering Event occurs, each Holder will have the right to require the Company to make an offer (a "*Change of Control Offer*") to each Holder to repurchase all or any part (equal to $2,000 or an integral multiple of $1,000 in excess thereof) of that Holder's Notes at a purchase price in cash equal to 101% of the aggregate principal amount of Notes repurchased plus accrued and unpaid interest, if any, on the Notes repurchased to but excluding the date of purchase, subject to the rights of Holders on the relevant record date to receive interest due on the relevant interest payment date (the "*Change of Control Payment*"). Within 30 days following any Change of Control Triggering Event, the Company will mail (or deliver electronically) a notice to each Holder describing the transaction or transactions that constitute the Change of Control Triggering Event as required by the Indenture.

(8) *NOTICE OF REDEMPTION*. Notice of redemption will be mailed or delivered electronically at least 30 days but not more than 60 days before the redemption date to each Holder whose Notes are to be redeemed at its registered address, except that (i) redemption notices may be mailed or delivered electronically at least 10 days prior to the redemption date if the notice is issued in connection with a redemption pursuant to Section 3.07(c) of the Indenture and (ii) redemption notices may be mailed or delivered electronically more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction or discharge of the Indenture. Notes in denominations larger than $2,000 may be redeemed in part but only in whole multiples of $1,000, unless all of the Notes held by a Holder are to be redeemed. Any redemption notice may, in the Company's discretion, be subject to the satisfaction of one or more conditions precedent. If such redemption is subject to the satisfaction of one of more conditions precedent, such notice 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 by the Company in its sole discretion), such redemption may not occur and such notice may be rescinded in the event that any or all of such conditions shall not have been satisfied (or waived by the Company in its sole discretion) by the redemption date, or by the redemption date so delayed.

(9) *DENOMINATIONS, TRANSFER, EXCHANGE*. The Notes are in registered form without coupons in minimum denominations of $2,000 and integral 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 and fees required by law or permitted by the Indenture. The Company need not exchange or register the transfer of any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part. Also, the Company need not exchange or register the transfer of any Notes for a period of 15 days before a selection of Notes to be redeemed or during the period between a record date and the corresponding Interest Payment Date.

(10) *PERSONS DEEMED OWNERS*. The registered Holder of a Note may be treated as its owner for all purposes.

(11) *AMENDMENT, SUPPLEMENT AND WAIVER*. Subject to certain exceptions, the Indenture or the Notes may be amended or supplemented with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes including Additional Notes, if any, voting as a single class, and any existing Default or Event or Default or compliance with any provision of the Indenture or the Notes may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes including Additional Notes, if any, voting as a single class. Without the consent of any Holder, the Indenture or the Notes, may be amended or supplemented to cure any ambiguity, defect or inconsistency in the Indenture or the Notes in a manner that does not adversely affect the rights of any Holder, to provide for uncertificated Notes in addition to or in place of certificated Notes, to provide for the assumption of the Company's obligations to Holders in case of a merger or consolidation or sale of all or substantially all of the Company's assets, to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the legal rights under the Indenture of any such Holder, to conform the text of the Indenture or the Notes to any provision of the "Description of Notes" section of the Offering Memorandum, to the extent that such provision in that "Description of Notes" was intended to be a verbatim or substantially verbatim recitation of a provision of the Indenture or this Note, to evidence and provide for the acceptance and appointment under the Indenture of successor trustees pursuant to the requirements thereof or to provide for the issuance of Additional Notes of the same or an additional series in accordance with the limitations set forth in the Indenture as of the date hereof.

(12) *DEFAULTS AND REMEDIES*. Events of Default include: (i) default for 30 days in the payment when due of interest on the Notes; (ii) default in payment when due of the principal of, or premium, if any, on, the Notes; (iii) failure by the Company for 60 days after notice from the Trustee or the Holders of at least 25% in aggregate principal amount of the outstanding Notes to comply with any of the other agreements in the Indenture; (iv) default under any document evidencing any indebtedness of the Company for borrowed money represented by notes, bonds, debentures or other evidences of indebtedness by the Company, whether such indebtedness now exists, or is created after the date of the Indenture, if that default is caused by a failure to pay principal when due at final (and not any interim) maturity (on or prior to the expiration of any applicable grace period provided in such indebtedness) (a "*Payment Default*") or results in the acceleration of such indebtedness prior to its express maturity (without such acceleration having been rescinded, annulled or otherwise cured), 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 (without such acceleration having been rescinded, annulled or otherwise cured), aggregates $100,000,000 or more; *provided* that this clause (iv) shall not apply to (a) secured indebtedness that becomes due as a result of the voluntary sale or transfer of property or assets securing such indebtedness and (b) any indebtedness that is required to be converted into Qualifying Equity Interests upon the occurrence of certain designated events so long as no payments in cash or otherwise are required to be made in accordance with such conversion; and (v) (a) a court of competent jurisdiction (x) enters an order or decree under any Bankruptcy Law that is for relief against the Company or any of its Material Subsidiaries in an involuntary case; (y) appoints a custodian for all or substantially all of the property of the Company or any of its Material Subsidiaries; or (z) orders the liquidation of the Company or any of its Material Subsidiaries and, in each of clauses (x), (y) or (z), the order, appointment or decree remains unstayed and in effect for at least 60 consecutive days; or (b) the Company or any of its Material Subsidiaries, pursuant to or within the meaning of Bankruptcy Law, (w) commences a voluntary case; (x) consents to the entry of an order for relief against it in an involuntary case; (y) consents to the appointment of a custodian of it or for all or substantially all of its property; or (z) makes a general assignment for the benefit of its creditors. In the case of an Event of Default of the type specified in clause (v) above, 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 at least 25% in aggregate principal amount of the then outstanding Notes may declare all the Notes to be due and payable immediately. Holders may not enforce the Indenture or the Notes except as provided in the Indenture. Subject to certain limitations, Holders of a majority in aggregate principal amount of the then outstanding Notes may direct the Trustee in its exercise of any trust or power. 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 or premium, if any,) if it determines that withholding notice is in their interest. The Holders of a majority in aggregate principal amount of the then outstanding Notes by notice to the Trustee may, on behalf of the Holders of all of the Notes, rescind an acceleration or waive any existing Default or Event of Default and its consequences under the Indenture except a continuing Default or Event of Default in the payment of interest or premium, if any, on, or the principal of, the Notes. The Company is required to deliver to the Trustee annually a statement regarding compliance with the Indenture, and the Company is required, upon becoming aware of any Default or Event of Default, to deliver to the Trustee a statement specifying such Default or Event of Default.

(13) *TRUSTEE DEALINGS WITH 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*. A director, officer, employee, incorporator or stockholder of the Company, as such, will not have any liability for any obligations of the Company under the Notes or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the Notes.

(15) *AUTHENTICATION*. This Note will not be valid until authenticated by the manual signature of the Trustee or an authenticating agent.

(16) *ABBREVIATIONS*. Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

(17) *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 placed only on the other identification numbers placed thereon.

(18) *GOVERNING LAW*. THE INTERNAL LAW OF THE STATE OF NEW YORK WILL GOVERN AND BE USED TO CONSTRUE THE INDENTURE AND THIS NOTE WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

The Company will furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to:

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, Texas 77002
Attention: General Counsel

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: _____

Your 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 4.09 of the Indenture, check the box below:

☐ Section 4.09

If you want to elect to have only part of the Note purchased by the Company pursuant to Section 4.09 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 of this Global Note	Amount of increase in Principal Amount of this Global Note	Principal Amount of this Global Note following such decrease (or increase)	Signature of authorized officer of Trustee or Custodian

* *This schedule should be included only if the Note is issued in global form.*

EXHIBIT B

FORM OF CERTIFICATE OF TRANSFER

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, Texas 77002
Facsimile No.: (832) 325-1508

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Facsimile No.: (612) 217-5651

Re: 4.625% Senior Notes due 2029

Reference is hereby made to the Indenture, dated as of August 10, 2020 (as amended or supplemented from time to time, the "*Indenture*"), between Calpine Corporation, as issuer (the "*Company*"), and Wilmington Trust, 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 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 Restricted Definitive Note pursuant to Rule 144A**. The Transfer is being effected pursuant to and in accordance with Rule 144A under the 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 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 Restricted 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 Restricted 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 Restricted Definitive Note and in the Indenture and the Securities Act.

3. ☐ **Check and complete if Transferee will take delivery of a beneficial interest in the IAI Global Note or a Restricted 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 to an Institutional Accredited Investor and pursuant to an exemption from the registration requirements of the Securities Act other than Rule 144A, Rule 144, Rule 903 or Rule 904, and the Transferor hereby further certifies that it has not engaged in any general solicitation within the meaning of Regulation D under the Securities Act and the Transfer complies with the transfer restrictions applicable to beneficial interests in a Restricted Global Note or Restricted Definitive Notes and the requirements of the exemption claimed, which certification is supported by (1) a certificate executed by the Transferee in the form of Exhibit D to the Indenture and (2) an Opinion of Counsel provided by the Transferor or the Transferee (a copy of which the Transferor has attached to this certification), to the effect that such Transfer is in 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 be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the IAI Global Note and/or the Restricted Definitive Notes and in the Indenture and 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 _____), or

(ii) ☐ Regulation S Global Note (CUSIP _____), or

(iii) ☐ IAI Global Note (CUSIP _____); or

(b) ☐ a Restricted Definitive Note.

2. After the Transfer the Transferee will hold:

[CHECK ONE]

(a) ☐ a beneficial interest in the:

(i) ☐ 144A Global Note (CUSIP _____), or

(ii) ☐ Regulation S Global Note (CUSIP _____), or

(iii) ☐ IAI Global Note (CUSIP _____); or

(iv) ☐ Unrestricted Global Note (CUSIP _____); or

(b) ☐ a Restricted Definitive Note; or

(c) ☐ an Unrestricted Definitive Note,

in accordance with the terms of the Indenture.

EXHIBIT C

FORM OF CERTIFICATE OF EXCHANGE

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, Texas 77002
Facsimile No.: (832) 325-1508

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Facsimile No.: (612) 217-5651

Re: 4.625% Senior Notes due 2029

(CUSIP _____)

Reference is hereby made to the Indenture, dated as of August 10, 2020 (as amended or supplemented from time to time, the "*Indenture*"), between Calpine Corporation, as issuer (the "*Company*"), and Wilmington Trust, 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 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, 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 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, 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, ☐ IAI Global Note with an equal principal amount, 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 CERTIFICATE FROM
ACQUIRING INSTITUTIONAL ACCREDITED INVESTOR

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, Texas 77002
Facsimile No.: (832) 325-1508

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Facsimile No.: (612) 217-5651

Re: 4.625% Senior Notes due 2029

Reference is hereby made to the Indenture, dated as of August 10, 2020 (as amended or supplemented from time to time, the "*Indenture*"), between Calpine Corporation, as issuer (the "*Company*"), and Wilmington Trust, National Association, as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

In connection with our proposed purchase of $_____ aggregate principal amount of:

(a) ☐ a beneficial interest in a Global Note, or

(b) ☐ a Definitive Note,

we confirm that:

1. We understand that any subsequent transfer of the Notes or any interest therein is subject to certain restrictions and conditions set forth in the Indenture and the undersigned agrees to be bound by, and not to resell, pledge or otherwise transfer the Notes or any interest therein except in compliance with, such restrictions and conditions and the Securities Act of 1933, as amended (the "*Securities Act*").

2. We understand that the offer and sale of the Notes have not been registered under the Securities Act, and that the Notes and any interest therein may not be offered or sold except as permitted in the following sentence. We agree, on our own behalf and on behalf of any accounts for which we are acting as hereinafter stated, that if we should sell the Notes or any interest therein, we will do so only (A) to the Company or any subsidiary thereof, (B) in accordance with Rule 144A under the Securities Act to a "qualified institutional buyer" (as defined therein), (C) to an institutional "accredited investor" (as defined below) that, prior to such transfer, furnishes (or has furnished on its behalf by a U.S. broker-dealer) to you and to the Company a signed letter substantially in the form of this letter and an Opinion of Counsel in form reasonably acceptable to the Company to the effect that such transfer is in compliance with the Securities Act, (D) outside the United States in accordance with Rule 904 of Regulation S under the Securities Act, (E) pursuant to the provisions of Rule 144(k) under the Securities Act or (F) pursuant to an effective registration statement under the Securities Act, and we further agree to provide to any Person purchasing the Definitive Note or beneficial interest in a Global Note from us in a transaction meeting the requirements of clauses (A) through (E) of this paragraph a notice advising such purchaser that resales thereof are restricted as stated herein.

3. We understand that, on any proposed resale of the Notes or beneficial interest therein, we will be required to furnish to you and the Company such certifications, legal opinions and other information as you and the Company may reasonably require to confirm that the proposed sale complies with the foregoing restrictions. We further understand that the Notes purchased by us will bear a legend to the foregoing effect.

4. We are an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act) and have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Notes, and we and any accounts for which we are acting are each able to bear the economic risk of our or its investment.

5. We are acquiring the Notes or beneficial interest therein purchased by us for our own account or for one or more accounts (each of which is an institutional "accredited investor") as to each of which we exercise sole investment discretion.

You and the Company are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

_____

[Insert Name of Accredited Investor]

By: _____

Name:

Title:

Dated: _____

Exhibit 4.3

Execution Version

CALPINE CORPORATION

5.000% SENIOR NOTES DUE 2031

INDENTURE

Dated as of August 10, 2020

Wilmington Trust, National Association
as Trustee

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EXHIBITS

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Exhibit D	FORM OF CERTIFICATE OF ACQUIRING INSTITUTIONAL ACCREDITED INVESTOR

INDENTURE dated as of August 10, 2020 between Calpine Corporation, a Delaware corporation, and Wilmington Trust, National Association, as 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 5.000% Senior Notes due 2031 (the "*Notes*"):

ARTICLE 1
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 *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 will be issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 144A.

"*Additional Notes*" means additional Notes (other than the Initial Notes) issued under this Indenture in accordance with Section 2.02 hereof, as part of the same series as the Initial Notes.

"*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. For purposes of this definition, the terms "controlling," "controlled by" and "under common control with" have correlative meanings.

"*Agent*" means any Registrar, co-registrar, Paying Agent, additional paying agent, transfer agent or authenticating agent.

"*Applicable Law*" means, as to any Person, any ordinance, law, treaty, rule or regulation or any determination, ruling or other directive by and from an arbitrator or a court or other Governmental Authority, in each case, applicable to or binding on such Person or any of its property or assets or to which such Person or any of its property is subject.

"*Applicable Premium*" means, with respect to any Note on any redemption date, as calculated by the Company, the greater of:

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

(2) the excess of:

(a) the present value at such redemption date of (i) the redemption price of the Note at February 1, 2026 (such redemption price being set forth in the table appearing in Section 3.07(e) hereof) plus (ii) all required interest payments due on the Note through February 1, 2026 (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 75 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.

"*Authorized Officer*" means, with respect to (i) delivering an Officer's Certificate pursuant to this Indenture, the principal executive officer, the principal financial officer, the chief legal officer, the treasurer or the principal accounting officer of the Company and (ii) any other matter in connection with this Indenture, the chairman of the board, the chief executive officer, the president, the chief operating officer, the chief financial officer, the chief legal officer, the treasurer, any assistant treasurer, the controller, the secretary or any vice president of such person or any other person of the Company having substantially the same responsibilities as the aforementioned officers.

"*Bankruptcy Law*" means Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq., as amended from time to time, or any similar federal or state or other 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. The terms "*Beneficially Owns*" and "*Beneficially Owned*" have a corresponding meaning.

"*Board of Directors*" means:

(1) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board;

(2) with respect to a partnership, the board of directors of the general partner of the partnership;

(3) with respect to a limited liability company, the managing member or members or any controlling committee of managing members thereof; and

(4) with respect to any other Person, the board or committee of such Person serving a similar function.

"*Business Day*" means any day other than a Legal Holiday.

"*Capital Lease Obligation*" means, at the time any determination is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet prepared in accordance with GAAP as in effect from time to time; *provided*, *however*, that if any operating lease (whether in effect on the date of this Indenture or hereafter incurred) would be recharacterized as a capital lease due to changes in the accounting treatment of such operating leases under GAAP since December 31, 2018, then solely with respect to the accounting treatment of any such lease, GAAP shall be interpreted as it was in effect on December 31, 2018; *provided further* that any lease that is treated as an operating lease for purposes of GAAP as of December 31, 2018 shall not be treated as indebtedness or as a Capital Lease Obligation and shall continue to be treated as an operating lease (and any future lease, if it were in effect on the date of this Indenture, that would be treated as an operating lease for purposes of GAAP as of December 31, 2018, shall be treated as an operating lease), in each case for purposes of this Indenture, notwithstanding any actual or proposed change in or application of GAAP after December 31, 2018.

"*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; 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.

"*Change of Control*" means the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any "person" (as that term is used in Section 13(d) of the Exchange Act, but excluding any employee benefit plan of the Company of any of its Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than one or more Designated Holders, becomes the Beneficial Owner, directly or indirectly, of more than 50% of the Voting Stock of the Company, measured by voting power rather than number of shares.

"*Change of Control Triggering Event*" means the occurrence of both a Change of Control and a Rating Event.

"*Clearstream*" means Clearstream Banking, S.A.

"*Commission*" means the U.S. Securities and Exchange Commission.

"*Company*" means Calpine Corporation, and any and all successors thereto.

"*Corporate Trust Office of the Trustee*" will be at the address of the Trustee specified in Section 11.01 hereof or such other address as to which the Trustee may give notice to the Company.

"*Covered Subsidiary*" means any Subsidiary of the Company that is or becomes a guarantor of indebtedness for borrowed money represented by notes, bonds, debentures or other evidences of indebtedness of the Company that is secured by a first lien on substantially all of the Company's assets.

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

"*Default*" means any event, act or condition which, with notice or lapse of time or both, would (without cure or waiver hereunder), constitute an Event of Default.

"*Definitive Note*" means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 2.06 hereof, 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 2.03 hereof 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 provision of this Indenture.

"*Designated Holders*" means Energy Capital Partners III, LP (together with its parallel funds), Access Industries Inc., Canadian Pension Plan Investment Board and the respective Affiliates (other than any portfolio operating companies) of each of the foregoing.

"*Disqualified Stock*" means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder of the Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the date that is 91 days after the date on which the Notes mature (other than pursuant to a change of control or asset sale prepayment offer provision).

"*Environmental CapEx Debt*" means indebtedness for borrowed money represented by notes, bonds, debentures or other evidences of indebtedness of the Company or its Subsidiaries incurred for the purpose of financing Environmental Capital Expenditures.

"*Environmental Capital Expenditures*" means capital expenditures deemed necessary by the Company or its Subsidiaries to comply with Environmental Laws.

"*Environmental Law*" means any applicable Federal, state, foreign or local statute, law, rule, regulation, ordinance, code and rule of common law now or hereafter in effect and in each case as amended, and any binding judicial or administrative interpretation thereof, including without limitation any binding judicial or administrative order, consent decree or judgment, relating to the environment, human health or safety (as such relates to exposure to Hazardous Materials) or Hazardous Materials.

"*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).

"*Equity Offering*" means any public or private sale of (1) Capital Stock of the Company (other than Disqualified Stock and other than to a Subsidiary of the Company) or (2) Capital Stock of a direct or indirect parent entity of the Company (other than to the Company or a Subsidiary of the Company) to the extent that the net cash proceeds therefrom are contributed to the common equity capital of the Company.

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

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended, or any successor statute or statutes thereto.

"*GAAP*" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements
of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect from time to time.

"*Global Note Legend*" means the legend set forth in Section 2.06(f)(2) hereof, which is required to be placed on all Global Notes issued under this Indenture.

"*Global Notes*" means, individually and collectively, each of the Restricted Global Notes and the Unrestricted Global Notes deposited with or on behalf of and 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 Section 2.01, 2.06(b)(3), 2.06(b)(4) or 2.06(d)(2) hereof.

"*Government Securities*" means direct obligations of, or obligations guaranteed by, the United States of America (including any agency or instrumentality thereof) for the payment of which obligations or guarantees the full faith and credit of the United States of America is pledged and which are not callable or redeemable at the issuer's option.

"*Governmental Authority*" means any nation or government, or any state, province, territory or other 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, or any governmental or non-governmental authority regulating the generation and/or transmission of energy, including Electric Reliability Council of Texas.

"*Hazardous Materials*" means (a) any petroleum or petroleum products, radioactive materials, friable asbestos, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing regulated levels of polychlorinated biphenyls and radon gas; (b) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous waste," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," "toxic substances," "toxic pollutants," "contaminants," or "pollutants" or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, which is prohibited, limited or regulated by any Environmental Law.

"*Holder*" means a Person in whose name a Note is registered.

"*IAI 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 will be issued in a denomination equal to the outstanding principal amount of the Notes sold to Institutional Accredited Investors.

"*Indenture*" means this Indenture, as amended or supplemented from time to time.

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

"*Initial Notes*" means the $850,000,000 aggregate principal amount of Notes issued under this Indenture on the date hereof.

"*Initial Purchasers*" means Credit Suisse Securities (USA) LLC, Barclays Capital Inc., BNP Paribas Securities Corp., BofA Securities, Inc., Citigroup Global Markets Inc., Credit Agricole Securities (USA) Inc., Deutsche Bank Securities Inc., Goldman Sachs & Co. LLC, J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC, MUFG Securities Americas Inc., Natixis Securities Americas LLC, RBC Capital Markets, LLC, SMBC Nikko Securities America, Inc., Mizuho Securities USA LLC, and SunTrust Robinson Humphrey, Inc.

"*Institutional Accredited Investor*" means an institution that is an "accredited investor" as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act, who are not also QIBs.

"*Legal Holiday*" means a Saturday, a Sunday or a day on which banking institutions in the City of New York or at a place of payment are authorized by law, regulation or executive order to remain closed. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue on such payment for the intervening period.

"*Limited Recourse Debt*" means indebtedness for borrowed money represented by notes, bonds, debentures or other evidences of indebtedness of a Project Subsidiary or Project Subsidiaries (or a Subsidiary or Subsidiaries directly or indirectly holding the Capital Stock of one or more of such Project Subsidiaries) that is incurred to finance the improvement, installment, design, engineering, construction, acquisition, development, completion, maintenance or operation of, or otherwise affects any such act in respect of, all or any portion of the applicable Project or Projects, or to refinance such indebtedness or any refinancing thereof, with respect to which the recourse of the holder or obligee of such indebtedness is limited to (i) assets (and revenues and proceeds from such assets) associated with or ancillary to such Project or Projects (which in any event shall not include assets held by any Subsidiary other than a Subsidiary, if any, whose sole business is the ownership and/or operation of such Project or Projects (or the direct or indirect ownership of one or more of the relevant Project Subsidiaries) and substantially all of whose assets are associated with or ancillary to such Project or Projects) in respect of which such indebtedness was incurred and/or (ii) such Subsidiary or Subsidiaries, and/or such Project Subsidiary or Project Subsidiaries and/or the Capital Stock in one or more of such entity or entities, but in the case of clause (ii) only if such Subsidiary's or Project Subsidiary's sole business is the ownership and/or operation of such Project or Projects (or the direct or indirect ownership of one or more of the relevant Project Subsidiaries) and substantially all of such Subsidiary's or Project Subsidiary's assets are associated with or ancillary to such Project or Projects. Indebtedness of a Subsidiary of the Company shall not fail to be Limited Recourse Debt by reason of the holders of such Limited Recourse Debt having recourse to the Company or another Subsidiary of the Company pursuant to a performance guarantee.

"*Material Subsidiary*" of any Person means, as of any date, any Subsidiary of such Person's proportionate share of such Subsidiary's Total Assets (after intercompany eliminations) exceeds 15.0% of the Total Assets of such Person on a consolidated basis.

"*Moody's*" means Moody's Investors Services, Inc., or any successor thereto.

"*Necessary Capital Expenditures*" means capital expenditures that are required by Applicable Law (other than Environmental Laws) or undertaken for health and safety reasons or to prevent catastrophic failure of a unit. The term "Necessary Capital Expenditures" does not include any capital expenditure undertaken primarily to increase the efficiency of, expand or re-power any power generation facility.

"*Non-U.S. Person*" means a Person who is not a U.S. Person.

"*Notes*" has the meaning assigned to it in the preamble to this Indenture. The Initial Notes and the Additional Notes shall be treated as a single class for all purposes under this Indenture, and unless the context otherwise requires, all references to the Notes shall include the Initial Notes and any Additional Notes.

"*Obligations*" means any principal, interest, penalties, fees, expenses, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any indebtedness.

"*Offering Memorandum*" the Company's Offering Memorandum dated July 27, 2020, relating to the initial offering of the Notes.

"*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 Chief Legal Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Vice-President of such Person.

"*Officer's Certificate*" means a certificate signed on behalf of the Company by an Authorized Officer of the Company, that meets the requirements of Section 11.03 hereof.

"*Opinion of Counsel*" means an opinion from legal counsel who is reasonably acceptable to the Trustee, that meets the requirements of Section 11.03 hereof. The counsel may be an employee of or counsel to the Company, any Subsidiary of the Company or the Trustee.

"*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 Liens*" means:

(1) liens securing indebtedness for borrowed money under Revolving Credit Facilities in an aggregate principal amount not to exceed $2.0 billion;

(2) liens securing indebtedness for borrowed money in an aggregate principal amount not to exceed the aggregate principal amount of the Company's secured notes and term loans outstanding immediately prior to the issuance of the Notes;

(3) liens securing indebtedness for borrowed money represented by notes, bonds, debentures or other evidences of indebtedness in an aggregate principal amount not to exceed 10.0% of Total Assets (determined at the time of incurrence of such indebtedness and without giving effect to subsequent changes) and liens securing indebtedness incurred to extend, increase, renew, refund, replace (whether upon or after termination or otherwise) or refinance in whole or in part from time to time such indebtedness secured pursuant to this clause (3);

(4) liens in favor of the Company;

(5) liens created for the benefit of (or to secure) the Notes;

(6) any lien existing on any property or asset (including Capital Stock) prior to the acquisition thereof (or the acquisition of, or merger or consolidation with, the Person owning such property or asset) by the Company or any of its Subsidiaries, and any lien securing obligations incurred to refinance, replace, refund, renew or extend the obligations secured by such liens; *provided* that in each case (i) such lien is not created in contemplation or in connection with such acquisition, (ii) such lien does not apply to any other property or assets of the Company or any of its Subsidiaries (other than fixtures and improvements on any such real property), and (iii) the principal amount of any indebtedness secured by such liens shall not be increased (except by the amount of premiums, penalties, accrued and unpaid interest, fees and expenses associated with such refinancing, replacement, refunding, renewal or extension of such indebtedness);

(7) liens to secure indebtedness for borrowed money represented by notes, bonds, debentures or other evidences of indebtedness incurred to finance Necessary Capital Expenditures that encumber only the assets purchased, installed or otherwise acquired with the proceeds of such indebtedness;

(8) liens to secure Environmental CapEx Debt that encumber only the assets purchased, installed or otherwise acquired with the proceeds of such Environmental CapEx Debt;

(9) liens on assets of any Subsidiary of the Company or Project Subsidiary, in each case to the extent such liens secure Limited Recourse Debt;

(10) liens securing (a) Capital Lease Obligations and (b) other indebtedness of the Company or any of its Subsidiaries incurred to finance all or any part of the acquisition, lease, construction, installation or improvement of any assets, and any refinancing, replacement, refunding, renewal or extension of any such indebtedness without any increase thereof, in an aggregate amount not to exceed $150.0 million at any one time outstanding, so long as (i) such liens are initially created or arise prior to or within the 90 days after the completion of such acquisition, lease, construction, installation or improvement and (ii) such liens do not attach to assets of the Company or any Subsidiary of the Company other than the relevant assets acquired, leased, constructed, installed or improved; and

(11) liens securing indebtedness for borrowed money represented by notes, bonds, debentures or other evidences of indebtedness in an aggregate amount, together with all other indebtedness for borrowed money secured by liens pursuant to this clause (11), not to exceed $100.0 million at any one time outstanding.

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

"*Principal Property*" means any building, structure or other facility (together with the land on which it is erected and fixtures comprising a part thereof) owned by the Company or any Covered Subsidiary and used primarily for manufacturing, processing, research, warehousing or distribution, in each case located within the United States, that has a book value on the date of which the determination is being made, without deduction of any depreciation reserves, exceeding 2.0% of Total Assets, other than any such facility (or portion thereof) that the Company reasonably determines is not material to the business of the Company and its Subsidiaries, taken as a whole.

"*Private Placement Legend*" means the legend set forth in Section 2.06(f)(1) hereof to be placed on all Notes issued under this Indenture except where otherwise permitted by the provisions of this Indenture.

"*Project*" means any (a) electrical generation plant, (b) cogeneration plant, (c) facility for the exploration or drilling for fuel or other resources, or for the development, storage, transport or transmission of, electricity, steam, fuel, syngas or other resources for the generation of electricity or (d) facility engaged in another line of business in which the Company and its Subsidiaries are permitted to be engaged hereunder, in each case for which a Subsidiary or Subsidiaries of the Company was, is or will be (as the case may be) an owner, lessee, operator, manager, developer or builder, and shall also mean any two or more of such plants or facilities in which an interest has been acquired in a single transaction; *provided* that a Project shall cease to be a Project of the Company and its Subsidiaries at such time that the Company or any of its Subsidiaries ceases to have any existing or future rights or obligations (whether direct or indirect, contingent or matured) associated therewith.

"*Project Subsidiary*" means any Subsidiary of the Company whose sole business is the ownership and/ or operation of a Project or Projects and substantially all of the assets of which are associated with or acquired or utilized in such Project.

"*QIB*" means a "qualified institutional buyer" as defined in Rule 144A.

"*Qualifying Equity Interests*" means Equity Interests of the Company other than Disqualified Stock.

"*Rating Agencies*" means (1) each of Moody's and S&P and (2) if any of Moody's or S&P ceases to rate the Notes or fails to make a rating of the Notes publicly available for reasons outside of the Company's control, a "nationally recognized statistical rating organization" as defined in Section 3(a)(62) of the Exchange Act selected by the Company as a replacement agency for Moody's or S&P, or both of them, as the case may be.

"*Rating Event*" means the rating on the Notes is lowered by both of the Rating Agencies on any day within the 60-day period (which 60-day period will be extended so long as the rating of the Notes is under publicly announced consideration for a possible downgrade by either of the Rating Agencies) after the earlier of (1) the occurrence of a Change of Control and (2) public disclosure by the Company of the occurrence of a Change of Control or the Company's intention to effect a Change of Control; *provided*, *however*, that a Rating Event otherwise arising by virtue of a particular reduction in rating will not be deemed to have occurred in respect of a particular Change of Control (and thus will not be deemed a Rating Event for purposes of the definition of Change of Control Triggering Event) if the Rating Agencies making the reduction in rating to which this definition would otherwise apply do not announce or publicly confirm or inform the Trustee in writing at the Company's or the Trustee's request that the reduction was the result, in whole or in part, of any event or circumstance comprised of or arising as a result of, or in respect of, the applicable Change of Control (whether or not the applicable Change of Control has occurred at the time of the Rating Event).

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

"*Regulation S 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, issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 903 of Regulation S.

"*Responsible Officer*" means, when used with respect to the Trustee, any officer within the Corporate Trust Office of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter related to this Indenture is referred because of such person's knowledge of and familiarity with the particular subject and, in each case, who shall have direct responsibility for the administration of this Indenture.

"*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 Period*" means the 40-day distribution compliance period as defined in Regulation S.

"*Revolving Credit Facilities*" means any credit agreement, loan agreement or other agreement or instrument evidencing or governing the terms of any indebtedness or other financial accommodation that provides for revolving borrowings.

"*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 thereto.

"*Securities Act*" means the Securities Act of 1933, as amended, or any successor statute or statutes thereto.

"*Stated Maturity*" means, with respect to any installment of interest or principal on any series of indebtedness, the date on which the payment of interest or principal is scheduled to be paid in the documentation governing such indebtedness, and will not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

"*Subsidiary*" means, with respect to any specified Person:

(1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, 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).

"*Total Assets*" means, as of any date of determination, the total consolidated assets of the Company and its Subsidiaries, determined in accordance with GAAP, as shown on the most recent internally available balance sheet of the Company, and after giving *pro forma* effect to any acquisition or disposal of any property or assets consummated after the date of the applicable balance sheet and on or prior to the date of determination.

"*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 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 February 1, 2026; *provided*, *however*, that if the period from the redemption date to February 1, 2026 is less than one year, the weekly average yield on actively traded United States Treasury securities adjusted to a constant maturity of one year will be used.

"*Trustee*" means Wilmington Trust, National Association until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

"*Unrestricted Definitive Note*" means a Definitive Note that does not bear and is not required to bear the Private Placement Legend.

"*Unrestricted Global Note*" means a Global Note that does not bear and is not required to bear the Private Placement Legend.

"*U.S. Person*" means a U.S. Person as defined in Rule 902(k) promulgated under the Securities Act.

"*Voting Stock*" of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

Section 1.02 *Other Definitions*.

Term	Defined in Section
"*Authentication Order"*	2.02
"Change of Control Offer"	4.09
"Change of Control Payment"	4.09
"Change of Control Payment Date"	4.09
"Covenant Defeasance"	8.03
"DTC"	2.03
"Event of Default"	6.01
"Legal Defeasance"	8.02
"Paying Agent"	2.03
"Payment Default"	6.01
"Registrar"	2.03
"*Trustee"*	8.05

Section 1.03 *Rules of Construction*.

(a) Unless the context otherwise requires:

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

(2) unless otherwise specified herein, an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP as in effect from time to time;

(3) "or" is not exclusive;

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

(5) "will" shall be interpreted to express a command;

(6) provisions apply to successive events and transactions; and

(7) references to sections of or rules under the Securities Act will be deemed to include substitute, replacement of successor sections or rules adopted by the Commission from time to time.

(b) Any reference herein to a merger, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, limited partnership or trust, or an allocation of assets to a series of a limited liability company, limited partnership or trust (or the unwinding of such a division or allocation), as if it were a merger, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company, limited partnership or trust shall constitute a separate Person hereunder (and each division of any limited liability company, limited partnership or trust that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

ARTICLE 2
THE NOTES

Section 2.01 *Form and Dating*.

(a) *General*. The Notes and the Trustee's certificate of authentication will 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 will be dated the date of its authentication. The Notes 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 will constitute, and are hereby expressly made, a part of this Indenture and the Company 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 will 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 will 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 will represent such of the outstanding Notes as will be specified therein and each shall provide that it represents 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 will be made by the Trustee or the Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.06 hereof.

(c) *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 will be applicable to transfers of beneficial interests in the Regulation S Global Note that are held by Participants through Euroclear or Clearstream.

Section 2.02 *Execution and Authentication*.

At least one Officer must sign the Notes for the Company by manual or facsimile signature.

If an Officer whose signature is on a Note no longer holds that office at the time a Note is authenticated, the Note will nevertheless be valid.

A Note will not be valid until authenticated by the manual signature of the Trustee. The signature will be conclusive evidence that the Note has been authenticated under this Indenture.

The Trustee will, upon receipt of a written order of the Company signed by an Officer (an "*Authentication Order*"), authenticate Notes for original issue that may be validly issued under this Indenture, including any Additional Notes. The aggregate principal amount of Notes outstanding at any time may not exceed the aggregate principal amount of Notes authorized for issuance by the Company pursuant to one or more Authentication Orders, except as provided in Section 2.07 hereof.

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 2.03 *Registrar and Paying Agent*.

The Company will maintain an office or agency where Notes may be presented for registration of transfer or for exchange ("*Registrar*") and an office or agency where Notes may be presented for payment ("*Paying Agent*"). The Registrar will 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 notice to any Holder. The Company will 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.

The Company initially appoints The Depository Trust Company ("*DTC*") to act as Depositary with respect to the Global Notes.

The Company initially appoints the Trustee to act as the Registrar and Paying Agent and to act as Custodian with respect to the Global Notes.

Section 2.04 *Paying Agent to Hold Money in Trust*.

The Company will require each Paying Agent other than the Trustee to agree in writing that the Paying Agent will hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal, premium, if any, or interest on the Notes, and will 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 a Subsidiary) will have no further liability for the money. If the Company or a Subsidiary acts as Paying Agent, it will 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 will serve as Paying Agent for the Notes.

Section 2.05 *Holder Lists*.

The Trustee will 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 will furnish to the Trustee at least seven 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.

Section 2.06 *Transfer and Exchange*.

(a) *Transfer and Exchange of Global Notes*. A Global Note may not be transferred except as a whole 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. Global Notes may only be exchanged for Definitive Notes if:

(1) the Company delivers to the Trustee notice from the Depositary that it 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 120 days after the date of such notice from the Depositary;

(2) the Company in its sole discretion determines that the Global Notes (in whole but not in part) should be exchanged for Definitive Notes and delivers a written notice to such effect to the Trustee; or

(3) there has occurred and is continuing a Default or Event of Default with respect to the Notes.

Upon the occurrence of any of the preceding events in (1), (2) or (3) 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 2.07 and 2.10 hereof. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 2.06 or Section 2.07 or 2.10 hereof, 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 2.06(a), however, beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.06(b) or (c) hereof.

(b) *Transfer and Exchange of Beneficial Interests in the Global Notes*. The transfer and exchange of beneficial interests in the Global Notes will be effected through the Depositary, in accordance with the provisions of this Indenture and the Applicable Procedures. Beneficial interests in the Restricted Global Notes will 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 will require compliance with either subparagraph (1) or (2) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(1) *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; *provided*, *however*, that prior to the expiration of the Restricted Period, transfers of beneficial interests in the Regulation S Global Note may not be made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). 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. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.06(b)(1).

(2) *All Other Transfers and Exchanges of Beneficial Interests in Global Notes*. In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.06(b)(1) above, the transferor of such beneficial interest must deliver to the Registrar either:

(A) both:

(i) 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

(ii) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase; or

(B) both:

(i) 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

(ii) 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 (i) 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 of the relevant Global Note(s) pursuant to Section 2.06(g) 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 2.06(b)(2) above and the Registrar receives the following:

(A) if the transferee will 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 hereto, including the certifications in item (1) thereof;

(B) if the transferee will take delivery in the form of a beneficial interest in the Regulation S Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; and

(C) if the transferee will take delivery in the form of a beneficial interest in the IAI Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3)(c) thereof, if applicable.

(4) *Transfer and Exchange of Beneficial Interests in a Restricted Global Note for Beneficial Interests in an 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 2.06(b)(2) above and:

(A) the Registrar receives the following:

(i) 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

(ii) 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 hereto, including the applicable certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), 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 subparagraph (A) 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 2.02 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 subparagraph (A) above.

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*. 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, in each case after the occurrence of an event specified in Section 2.06(a), 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, a certificate to the effect set forth in Exhibit B 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 in accordance with Rule 903 or Rule 904, a certificate to the effect set forth in Exhibit B 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, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such beneficial interest is being transferred to an Institutional Accredited Investor 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 hereto, including the certifications, certificates and Opinion of Counsel required by item (3)(c) thereof, if applicable; or

(F) 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 hereto, including the certifications in item (3)(b) thereof,

the Trustee shall cause the aggregate principal amount of the applicable Restricted Global Note to be reduced accordingly pursuant to Section 2.06(g) hereof, and the Company shall execute and the Trustee, upon receipt of an Authentication Order, shall authenticate and deliver to the Person designated in the instructions a Restricted Definitive Note in the appropriate principal amount. Any Restricted Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c) 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 Restricted Definitive Notes to the Persons in whose names such Notes are so registered. Any Restricted Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(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.* 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, in each case after the occurrence of an event specified in Section 2.06(a), only if:

(A) the Registrar receives the following:

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

(ii) 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 an Unrestricted Definitive Note, a certificate from such holder in the form of Exhibit B hereto, including the applicable certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), 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.

(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 an Unrestricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note, in each case after the occurrence of an event specified in Section 2.06(a), then, upon satisfaction of the conditions set forth in Section 2.06(b)(2) hereof, the Trustee will cause the aggregate principal amount of the applicable Unrestricted Global Note to be reduced accordingly pursuant to Section 2.06(g) hereof, and the Company will execute and the Trustee, upon receipt of an Authentication Order, will authenticate and deliver to the Person designated in the instructions an Unrestricted Definitive Note in the appropriate principal amount. Any Unrestricted Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(3) will be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest requests through instructions to the Registrar from or through the Depositary and the Participant or Indirect Participant. The Trustee will deliver such Unrestricted Definitive Notes to the Persons in whose names such Notes are so registered. Any Unrestricted Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(3) will not bear the Private Placement Legend.

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

(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, a certificate to the effect set forth in Exhibit B 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 in accordance with Rule 903 or Rule 904, a certificate to the effect set forth in Exhibit B 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, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such Restricted Definitive Note is being transferred to an Institutional Accredited Investor 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 hereto, including the certifications, certificates and Opinion of Counsel required by item (3)(c) thereof, if applicable; or

(F) 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 hereto, including the certifications in item (3)(b) thereof,

the Trustee will 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, in the case of clause (C) above, the Regulation S Global Note, and in all other cases, the IAI 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:

(A) the Registrar receives the following:

(i) 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

(ii) 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 hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), 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 the conditions of any of the subparagraphs in this Section 2.06(d)(2), the Trustee will cancel the Restricted 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 Unrestricted 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 will cancel the applicable Unrestricted Definitive Note and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Notes.

If any such exchange or transfer from a Definitive Note to a beneficial interest is effected pursuant to subparagraphs (2)(A) or (3) above at a time when an Unrestricted Global Note has not yet been issued, the Company will issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee will 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 2.06(e), the Registrar will register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder must 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 must provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.06(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 will be made pursuant to Rule 144A, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof;

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

(C) if the transfer will 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 hereto, including the certifications, certificates and Opinion of Counsel required by item (3)(c) 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 if:

(A) the Registrar receives the following:

(i) 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

(ii) 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 hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), 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.

(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) *Legends*. The following legends will 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*.

(A) Except as permitted by subparagraph (B) 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:

"THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH BELOW. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT OR (C) IT IS AN ACCREDITED INVESTOR (AS DEFINED IN RULE 501(a)(1), (2), (3), OR (7) UNDER THE SECURITIES ACT (AN "ACCREDITED INVESTOR"), (2) AGREES THAT IT WILL NOT WITHIN ONE YEAR AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY RESELL OR OTHERWISE TRANSFER THIS SECURITY EXCEPT (A) TO THE ISSUER OR ANY SUBSIDIARY THEREOF, (B) INSIDE THE UNITED STATES TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) INSIDE THE UNITED STATES TO AN ACCREDITED INVESTOR THAT, PRIOR TO SUCH TRANSFER, FURNISHES (OR HAS FURNISHED ON ITS BEHALF BY A U.S. BROKER-DEALER) TO THE TRUSTEE A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THIS SECURITY (THE FORM OF WHICH LETTER CAN BE OBTAINED FROM THE TRUSTEE FOR THIS SECURITY), (D) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT (IF AVAILABLE), (E) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), (F) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (AND BASED UPON AN OPINION OF COUNSEL IF THE ISSUER SO REQUESTS), OR (G) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IN CONNECTION WITH ANY TRANSFER OF THIS SECURITY WITHIN ONE YEAR AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY, IF THE PROPOSED TRANSFEREE IS AN ACCREDITED INVESTOR, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE TRUSTEE AND THE ISSUER SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS EITHER OF THEM MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. AS USED HEREIN, THE TERMS "OFFSHORE TRANSACTION," "UNITED STATES" AND "U.S. PERSON" HAVE THE MEANING GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT."

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

"THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (1) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 2.06 OF THE INDENTURE, (2) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06(a) OF THE INDENTURE, (3) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.11 OF THE INDENTURE AND (4) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE COMPANY.

UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) ("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 SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN."

(g) *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 will be returned to or retained and canceled by the Trustee in accordance with Section 2.11 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who will 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 will be reduced accordingly and an endorsement will 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 will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note will be increased accordingly and an endorsement will be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

(h) *General Provisions Relating to Transfers and Exchanges*.

(1) To permit registrations of transfers and exchanges, the Company will execute and the Trustee will authenticate Global Notes and Definitive Notes upon receipt of an Authentication Order in accordance with Section 2.02 hereof or at the Registrar's request.

(2) No service charge will 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 2.10, 3.06, 4.09 and 9.04 hereof).

(3) The Registrar will not be required to register the transfer of or exchange of any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

(4) All Global Notes and Definitive Notes issued upon any registration of transfer or exchange of Global Notes or Definitive Notes will be the valid 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) Neither the Registrar nor the Company will be required:

(A) to issue, to register the transfer of or to 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 3.02 hereof and ending at the close of business on the day of selection;

(B) to register the transfer of or to exchange any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part; or

(C) to register the transfer of or to 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, upon receipt of an Authentication Order, will authenticate Global Notes and Definitive Notes in accordance with the provisions of Section 2.02 hereof.

(8) All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 2.06 to effect a registration of transfer or exchange may be submitted by facsimile.

(9) Each Holder of a Note agrees to indemnify the Company against any liability that may result from the transfer, exchange or assignment of such Holder's Note in violation of any provision of this Indenture and/or applicable United States federal or state securities laws.

(10) Neither the Trustee nor any agent of the Trustee shall have any responsibility for any actions taken or not taken by the Depositary.

(11) The Trustee shall have no responsibility or obligation to any Participant or Indirect Participant or any other Person with respect to the accuracy of the books or records, or the acts or omissions, of the Depositary or its nominee or of any participant or member thereof, with respect to any ownership interest in the Notes or with respect to the delivery to any Participant or Indirect Participant or other Person (other than the Depositary) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such Notes. All notices and communications to be given to the Holders and all payments to be made to Holders under the Notes shall be given or made only to or upon the order of the registered Holders (which shall be the Depositary or its nominee in the case of a Global Note). The rights of beneficial owners in any Global Note shall be exercised only through the Depositary subject to the customary procedures of the Depositary. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depositary with respect to its Participants or Indirect Participants.

(12) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Participants or Indirect Participants in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 2.07 *Replacement Notes*.

If any mutilated Note is surrendered to the Trustee or the Company and the Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Note, the Company will issue and the Trustee, upon receipt of an Authentication Order, will 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 may charge for its expenses in replacing a Note.

Every replacement Note is an additional obligation of the Company and will be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

Section 2.08 *Outstanding Notes*.

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 hereof, and those described in this Section 2.08 as not outstanding. Except as set forth in Section 2.09 hereof, a Note does not cease to be outstanding because the Company or an Affiliate of the Company holds the Note; however, Notes held by the Company or a Subsidiary of the Company shall not be deemed to be outstanding for purposes of Section 3.07(a) hereof.

If a Note is replaced pursuant to Section 2.07 hereof, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a protected purchaser.

If the principal amount of any Note is considered paid under Section 4.01 hereof, it ceases to be outstanding and interest on it ceases to accrue.

If the Paying Agent (other than the Company, a Subsidiary or an Affiliate of any thereof) holds, on a redemption date or maturity date, money sufficient to pay Notes payable on that date, then on and after that date such Notes will be deemed to be no longer outstanding and will cease to accrue interest.

Section 2.09 *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, will be considered as though not outstanding, except that for the purposes of determining whether the Trustee will be protected in relying on any such direction, waiver or consent, only Notes that the Trustee knows are so owned will be so disregarded.

Section 2.10 *Temporary Notes*.

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

Holders of temporary Notes will be entitled to all of the benefits of this Indenture.

Section 2.11 *Cancellation*.

The Company at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent will forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else will cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and will destroy canceled Notes (subject to the record retention requirement of the Exchange Act). Upon request of the Company, certification of the destruction of all canceled Notes will be delivered to the Company. The Company may not issue new Notes to replace Notes that it has paid or that have been delivered to the Trustee for cancellation.

Section 2.12 *Defaulted Interest*.

If the Company defaults in a payment of interest on the Notes, it will 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 a subsequent special record date, in each case at the rate provided in the Notes and in Section 4.01 hereof. The Company will 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 will fix or cause to be fixed each such special record date and payment date; *provided* that no such special record date may 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) will 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.

ARTICLE 3
REDEMPTION AND PREPAYMENT

Section 3.01 *Notices to Trustee.*

If the Company elects to redeem Notes pursuant to the optional redemption provisions of Section 3.07 hereof, it must furnish to the Trustee, at least 30 days but not more than 60 days before a redemption date, an Officer's Certificate setting forth:

(1) the clause of this Indenture pursuant to which the redemption shall occur;

(2) the redemption date;

(3) the principal amount of Notes to be redeemed; and

(4) the redemption price.

Section 3.02 *Selection of Notes to Be Redeemed or Purchased*.

If less than all of the Notes are to be redeemed or purchased in an offer to purchase at any time, the Trustee will select Notes for redemption or purchase on a *pro rata* basis to the extent practicable or by lot or such other similar method in accordance with the procedures of DTC unless otherwise required by law or applicable stock exchange requirements.

In the event of partial redemption or purchase by lot, the particular Notes to be redeemed or purchased will be selected, unless otherwise provided herein, not less than 30 nor more than 60 days prior to the redemption or purchase date by the Trustee from the outstanding Notes not previously called for redemption or purchase.

The Trustee will promptly notify the Company in writing of the Notes selected for redemption or purchase and, in the case of any Note selected for partial redemption or purchase, the principal amount thereof to be redeemed or purchased. Notes and portions of Notes selected will 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 or purchased, the entire outstanding amount of Notes held by such Holder, even if not a multiple of $1,000, shall be redeemed or purchased. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption or purchase also apply to portions of Notes called for redemption or purchase.

Section 3.03 *Notice of Redemption*.

At least 30 days but not more than 60 days before a redemption date, the Company will mail or cause to be mailed by first class mail or delivered electronically a notice of redemption to each Holder whose Notes are to be redeemed at its registered address, except that (i) redemption notices may be mailed or delivered electronically at least 10 days prior to the redemption date if the notice is issued in connection with a redemption pursuant to Section 3.07(c) hereof and (ii) redemption notices may be mailed or delivered electronically more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture pursuant to Articles 8 or 10 hereof.

The notice will identify the Notes to be redeemed and will state:

(1) the redemption date;

(2) the redemption price;

(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 will be issued upon cancellation of the 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;

(6) that, unless the Company defaults in making such redemption payment, interest 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 number, if any, listed in such notice or printed on the Notes.

At the Company's request, the Trustee will give the notice of redemption in the Company's name and at its expense; *provided*, *however*, that the Company has delivered to the Trustee, at least 45 days prior to the redemption date, an Officer's 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.

Section 3.04 *Effect of Notice of Redemption*.

Subject to the following paragraph, once notice of redemption is sent in accordance with Section 3.03 hereof, Notes called for redemption become irrevocably due and payable on the redemption date at the redemption price.

Any notice of redemption may, in the Company's discretion, be subject to the satisfaction of one or more conditions precedent. If such redemption is subject to the satisfaction of one of more conditions precedent, such notice 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 by the Company in its sole discretion), such redemption may not occur and such notice may be rescinded in the event that any or all of such conditions shall not have been satisfied (or waived by the Company in its sole discretion) by the redemption date, or by the redemption date so delayed.

Section 3.05 *Deposit of Redemption or Purchase Price*.

One Business Day prior to the redemption or purchase date, the Company will deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption or purchase price of and accrued interest on all Notes to be redeemed or purchased on that date. The Trustee or the Paying Agent will 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 or purchase price of, and accrued interest on, all Notes to be redeemed or purchased.

If the Company complies with the provisions of the preceding paragraph, on and after the redemption or purchase date, interest will cease to accrue on the Notes or the portions of Notes called for redemption or purchase. If a Note is redeemed or purchased 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 Person in whose name such Note was registered at the close of business on such record date. If any Note called for redemption or purchase is not so paid upon surrender for redemption or purchase because of the failure of the Company to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption or purchase 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 4.01 hereof.

Section 3.06 *Notes Redeemed or Purchased in Part*.

Upon surrender of a Note that is redeemed or purchased in part, the Company will issue and, upon receipt of an Authentication Order, the Trustee will authenticate for the Holder at the expense of the Company a new Note equal in principal amount to the unredeemed or unpurchased portion of the Note surrendered.

Section 3.07 *Optional Redemption*.

(a) At any time prior to February 1, 2024, the Company may on any one or more occasions redeem up to 35% of the aggregate principal amount of Notes issued under this Indenture, upon not less than 30 nor more than 60 days' notice, at a redemption price equal to 105.000% of the principal amount of the Notes redeemed, plus accrued and unpaid interest, if any, to but excluding 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 the proceeds of one or more Equity Offerings; *provided* that:

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

(2) the redemption occurs within 90 days of the date of the closing of such Equity Offering.

(b) At any time prior to February 1, 2026, the Company may on any one or more occasions redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' notice, 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 but excluding 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) At any time, in connection with any tender offer for the Notes, including a Change of Control Offer, if Holders of not less than 90% in aggregate principal amount of the outstanding Notes validly tender and do not withdraw such Notes in such tender offer and the Company, or any third party making such tender offer in lieu of the Company, purchases all of the Notes validly tendered and not withdrawn by such Holders, the Company may, upon not less than 10 nor more than 60 days' prior notice, given not more than 30 days following such purchase date, redeem all Notes that remain outstanding following such purchase at a redemption price equal to the price paid to each other Holder in such tender offer plus, to the extent not included in the tender offer payment, accrued and unpaid interest, if any, thereon, to, but not excluding, the date of such redemption (subject to the rights of Holders on the relevant record date to receive interest on the relevant interest payment date).

(d) Except pursuant to the preceding paragraphs (a), (b) and (c) of this Section 3.07, the Notes will not be redeemable at the Company's option prior to February 1, 2026. The Company is not prohibited, however, from acquiring the Notes in market transactions by means other than a redemption, whether pursuant to a tender offer or otherwise.

(e) On or after February 1, 2026, the Company may on any one or more occasions redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' notice, 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 but excluding the applicable date of redemption, if redeemed during the twelve-month period beginning on February 1 of the 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
2026	102.500%
2027	101.667%
2028	100.833%
2029 and thereafter	100.000%

Unless the Company defaults in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable redemption date.

(f) Any redemption pursuant to this Section 3.07 shall be made pursuant to the provisions of Sections 3.01 through 3.06 hereof.

Section 3.08 *Mandatory Redemption*.

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

ARTICLE 4
COVENANTS

Section 4.01 *Payment of Notes*.

The Company will 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 will be considered paid on the date due if the Paying Agent, if other than the Company or a Subsidiary thereof, holds as of 10:00 a.m. Eastern 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 then due.

Section 4.02 *Maintenance of Office or Agency*.

The Company will maintain an office or agency (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or co-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 will 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 fails to maintain any such required office or agency or fails 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.

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; provided, however, that no such designation or rescission will in any manner relieve the Company of its obligation to maintain an office or agency for such purposes. The Company will 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.

The Company hereby designates the Corporate Trust Office of the Trustee as one such office or agency of the Company in accordance with Section 2.03 hereof; *provided* that the Corporate Trust Office of the Trustee shall not be an office or agency of the Company for the purpose of service of legal process on the Company.

Section 4.03 *Reports*.

Whether or not required by the Commission's rules and regulations, so long as any Notes are outstanding, the Company will furnish to the Trustee, within 30 days after a large accelerated filer would be required to file such reports with the Commission under the Commission's then existing rules and regulations:

(1) annual reports of the Company containing substantially all of the information that would have been required to be contained in an Annual Report on Form 10-K under the Exchange Act if the Company had been a reporting company under the Exchange Act, including (A) "Management's Discussion and Analysis of Financial Condition and Results of Operations" and (B) audited financial statements prepared in accordance with GAAP as in effect from time to time;

(2) quarterly reports of the Company containing substantially all of the information that would have been required to be contained in a Quarterly Report on Form 10-Q under the Exchange Act if the Company had been a reporting company under the Exchange Act, including (A) "Management's Discussion and Analysis of Financial Condition and Results of Operations" and (B) unaudited quarterly financial statements prepared in accordance with GAAP as in effect from time to time and reviewed pursuant to Statement on Auditing Standards No. 100 (or any successor provision); and

(3) current reports containing substantially all of the information that would have been required to be contained in a Current Report on Form 8-K under the Exchange Act if the Company had been a reporting company under the Exchange Act; *provided*, *however*, that no such current report will be required to be furnished if the Company determines in its good faith judgment that such event is not material to the Holders or the business, assets, operations, financial positions or prospects of the Company and its Subsidiaries, taken as a whole.

Notwithstanding the foregoing, in no event will the Company be required by this Indenture to (A) comply with Section 302 or Section 404 of the Sarbanes-Oxley Act of 2002, or related Items 307 and 308 of Regulation S-K promulgated by the Commission, or Item 10(e) of Regulation S-K (with respect to any non-GAAP financial measures contained therein) and Regulation G, (B) include the separate financial information for guarantors or other entities contemplated by Rule 3-10 and/or 3-16 of Regulation S-X promulgated by the Commission or (C) provide any additional information in respect of Item 402 of Regulation S-K beyond information of the type included in the Offering Memorandum.

The Company's reporting obligations with respect to clauses (1) through (3) above will be satisfied in the event it timely files such reports with the Commission on EDGAR and such reports are publicly available.

So long as any Notes are outstanding, if at any time the Company is not filing with the Commission the reports required by the preceding paragraphs of this Section 4.03, the Company will also maintain a website to which Holders, prospective investors, broker-dealers and securities analysts are given access and to which all of the reports and press releases required by this Section 4.03 are posted.

In addition, if at any time the Company is not filing with the Commission the reports required by this Section 4.03, the Company shall furnish to Holders, prospective investors, broker-dealers and securities analysts, upon their request, any information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act so long as the Notes constitute "restricted securities" under Rule 144.

Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute actual or constructive knowledge or notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates with respect thereto).

Section 4.04 *Compliance Certificate*.

(a) The Company shall deliver to the Trustee, within 90 days after the end of each fiscal year, an Officer's 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 Officer with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to such Officer signing such certificate, that to the best of his or her knowledge the Company has kept, observed, performed and fulfilled each and every covenant contained in this Indenture and is not in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (or, if a Default or Event of Default has occurred, 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) and that to the best of his or her knowledge no event has occurred and remains in existence by reason of which payments on account of the principal of, premium or interest, if any, on the Notes is prohibited or if such event has occurred, a description of the event and what action the Company is taking or proposes to take with respect thereto.

(b) So long as any of the Notes are outstanding, the Company will deliver to the Trustee, forthwith upon any Officer becoming aware of any Default or Event of Default, an Officer's Certificate specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto.

Section 4.05 *Taxes*.

The Company will pay, prior to delinquency, all 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 is not adverse in any material respect to the Holders.

Section 4.06 *Stay, Extension and Usury Laws*.

The Company covenants (to the extent that it may lawfully do so) that it will 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 will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.07 *Liens*.

The Company will not, and will not permit any Covered Subsidiary to, create, incur, assume or suffer to exist any mortgage, pledge or other lien (other than Permitted Liens) upon any Principal Property to secure indebtedness for borrowed money represented by notes, bonds, debentures or other evidences of indebtedness, unless all payments due under this Indenture and the Notes issued hereunder are secured on an equal and ratable basis with the obligations so secured until such time as such obligations are no longer secured by such mortgage, pledge or other lien.

Section 4.08 *Corporate Existence*.

Subject to Article 5 hereof, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and the rights (charter and statutory), licenses and franchises of the Company; provided, however, that the Company shall not be required to preserve any such right, license or franchise, or corporate existence, if (a) the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company, and that the loss thereof is not adverse in any material respect to the Holders of the Notes.

Section 4.09 *Offer to Repurchase Upon Change of Control Triggering Event*.

(a) If a Change of Control Triggering Event occurs, each Holder will have the right to require the Company to make an offer (a "*Change of Control Offer*") to each Holder to repurchase all or any part (equal to $2,000 or an integral multiple of $1,000 in excess thereof) of that Holder's Notes at a purchase price in cash equal to 101% of the aggregate principal amount of Notes repurchased plus accrued and unpaid interest, if any, on the Notes repurchased to but excluding the date of purchase, subject to the rights of Holders on the relevant record date to receive interest due on the relevant interest payment date (the "*Change of Control Payment*"). Within 30 days following any Change of Control Triggering Event, the Company will mail (or deliver electronically) a notice to each Holder describing the transaction or transactions that constitute the Change of Control Triggering Event and stating:

(1) that the Change of Control Offer is being made pursuant to this Section 4.09 and that all Notes tendered will be accepted for payment;

(2) the purchase price and the purchase date, which shall be no earlier than 30 days and no later than 60 days from the date such notice is mailed or delivered electronically (the "*Change of Control Payment Date*");

(3) that any Note not tendered will 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 after the Change of Control Payment Date;

(5) that Holders electing to have any Notes purchased pursuant to a Change of Control Offer will be required to surrender the Notes, with the form entitled "Option of Holder to Elect Purchase" attached to the Notes completed, or transfer by book-entry transfer, to the Paying Agent 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 election if the Paying Agent receives, not later than the close of business on the second Business Day preceding the Change of Control Payment Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of Notes delivered for purchase, and a statement that such Holder is withdrawing his election to have the Notes purchased; and

(7) that Holders whose Notes are being purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered, which unpurchased portion must be equal to $2,000 in principal amount or an integral multiple of $1,000 in excess of $2,000.

The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change of Control Triggering Event. To the extent that the provisions of any securities laws or regulations conflict with this Section 4.09, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Section 4.09 by virtue of such compliance.

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

(1) accept for payment all Notes or portions of Notes properly tendered pursuant to the Change of Control Offer;

(2) deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all Notes or portions of Notes properly tendered; and

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

The Paying Agent will promptly mail (but in any case not later than five days after the Change of Control Payment Date) to each Holder of Notes properly tendered the Change of Control Payment for such Notes, and the Trustee will promptly, upon receipt of an Authentication Order, 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 new Note will be in a principal amount of $2,000 or an integral multiple of $1,000 in excess thereof. The Company will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

(c) Notwithstanding anything to the contrary in this Section 4.09, the Company will not be required to make a Change of Control Offer upon a Change of Control Triggering Event if (1) 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 Section 4.09 hereof and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer, or (2) notice of redemption has been given pursuant to Section 3.07 hereof, unless and until there is a default in payment of the applicable redemption price. A Change of Control Offer may be made in advance of a Change of Control Triggering Event, with the obligation to pay and the timing of payment conditioned upon the consummation of the Change of Control, if a definitive agreement to effect a Change of Control is in place at the time of the Change of Control Offer.

ARTICLE 5
SUCCESSORS

Section 5.01 *Merger, Consolidation, or Sale of Assets*.

(a) The Company may not, directly or indirectly: (1) consolidate or merge with or into another Person (whether or not the Company is the surviving corporation) or (2) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company and its Subsidiaries, taken as a whole, in one or more related transactions, to another Person; unless:

(1) either (A) the Company is the surviving corporation; or (B) the Person formed by or surviving any such consolidation or merger (if other than the Company) or to which such sale, assignment, transfer, conveyance or other disposition has been made is a corporation, partnership or limited liability company organized or existing under the laws of the United States, any state of the United States or the District of Columbia; provided that if the Person is a partnership or limited liability company, then a corporation wholly-owned by such Person organized or existing under the laws of the United States, any state of the United States or the District of Columbia that does not and will not have any material assets or operations shall become a co-issuer of the Notes pursuant to a supplemental indenture duly executed by the Trustee;

(2) the Person formed by or surviving any such consolidation or merger (if other than the Company) or the Person to which such sale, assignment, transfer, conveyance or other disposition has been made assumes all the obligations of the Company under the Notes and this Indenture pursuant to a supplemental indenture duly executed by the Trustee; and

(3) immediately after such transaction, no Default or Event of Default exists.

(b) In addition, the Company will not, directly or indirectly, lease all or substantially all of the properties and assets of the Company and its Subsidiaries, taken as a whole, in one or more related transactions, to any other Person.

This Section 5.01 will not apply to:

(1) a merger of the Company with an Affiliate solely for the purpose of reincorporating the Company in another jurisdiction or forming a direct holding company of the Company; and

(2) any sale, transfer, assignment, conveyance, lease or other disposition of assets between or among the Company and its Subsidiaries, including by way of merger or consolidation.

Section 5.02 *Successor Corporation Substituted*.

Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the properties or assets of the Company in a transaction that is subject to, and that complies with the provisions of, Section 5.01 hereof, the successor Person formed by such consolidation or into or with which the Company is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, assignment, transfer, lease, conveyance or other disposition, the provisions of this Indenture referring to the "Company" shall refer instead to the successor Person and not to the Company), and may exercise every right and power of the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein; provided, however, that the predecessor Company shall not be relieved from the obligation to pay the principal of and interest on the Notes except in the case of a sale of all of the Company's assets in a transaction that is subject to, and that complies with the provisions of, Section 5.01 hereof.

ARTICLE 6
DEFAULTS AND REMEDIES

Section 6.01 *Events of Default*.

Each of the following is an "*Event of Default*" with respect to the Notes:

(1) default for 30 days in the payment when due of interest on the Notes;

(2) default in payment when due of the principal of, or premium, if any, on, the Notes;

(3) failure by the Company for 60 days after notice from the Trustee or the Holders of at least 25% in aggregate principal amount of the outstanding Notes to comply with any of the other agreements in this Indenture;

(4) default under any document evidencing any indebtedness of the Company for borrowed money represented by notes, bonds, debentures or other evidences of indebtedness by the Company, whether such indebtedness now exists or is created after the date of this Indenture, if that default:

(A) is caused by a failure to pay principal when due at final (and not any interim) maturity on or prior to the expiration of any grace period provided in such indebtedness (a "*Payment Default*"); or

(B) results in the acceleration of such indebtedness prior to its express maturity (without such acceleration having been rescinded, annulled or otherwise cured),

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 (without such acceleration having been rescinded, annulled or otherwise cured), aggregates $100,000,000 or more; *provided* that this clause (4) shall not apply to (i) secured indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such indebtedness and (ii) any indebtedness that is required to be converted into Qualifying Equity Interests upon the occurrence of certain designated events so long as no payments in cash or otherwise are required to be made in accordance with such conversion); or

(5) (A) a court of competent jurisdiction (i) enters an order or decree under any Bankruptcy Law that is for relief against the Company or any of its Material Subsidiaries in an involuntary case; (ii) appoints a custodian of the Company for all or substantially all of the property of the Company or any of its Material Subsidiaries; or (iii) orders the liquidation of the Company or any of its Material Subsidiaries and, in each case of clauses (i), (ii) and (iii), the order, appointment or decree remains unstayed and in effect for 60 consecutive days; or (B) the Company or any of its Material Subsidiaries, pursuant to or within the meaning of Bankruptcy Law, (i) commences a voluntary case; (ii) consents to the entry of an order for relief against it in an involuntary case; (iii) consents to the appointment of a custodian of it or for all or substantially all of its property; or (iv) makes a general assignment for the benefit of its creditors.

Section 6.02 *Acceleration*.

In the case of an Event of Default specified in clause (5) of Section 6.01 hereof, 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 by written notice to the Company or the Holders of at least 25% in aggregate principal amount of the then outstanding Notes by written notice to the Company and the Trustee may declare all the Notes to be due and payable immediately. Upon any such declaration, the Notes shall become due and payable immediately. The Holders of a majority in aggregate principal amount of the then outstanding Notes by written notice to the Trustee may, on behalf of all of the Holders, rescind an acceleration and its consequences, if the rescission would not conflict with any judgment or decree and if all existing Events of Default (except nonpayment of principal, interest or premium that has become due solely because of the acceleration) have been cured or waived.

Section 6.03 *Other Remedies*.

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, and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

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 in exercising any right or remedy accruing upon 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 6.04 *Waiver of Past Defaults*.

Holders of not less than a majority in aggregate principal amount of the then outstanding Notes by written notice to the Trustee may on behalf of the Holders of all of the Notes waive an existing Default or Event of Default and its consequences hereunder, except a continuing Default or Event of Default in the payment of the principal of, premium, if any, or interest on, the Notes (including in connection with an offer to purchase); *provided*, *however*, that the Holders of a majority in aggregate principal amount of the then outstanding Notes may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration. 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 6.05 *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 it. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture that the Trustee determines may be unduly prejudicial to the rights of other Holders or that may involve the Trustee in personal liability.

Section 6.06 *Limitation on Suits*.

Except to enforce the right to receive payment of principal, premium (if any) or interest when due, no Holder may pursue any remedy with respect to this Indenture or the Notes unless:

(1) such Holder has previously given the Trustee written notice that an Event of Default is continuing;

(2) Holders of at least 25% in aggregate principal amount of the then outstanding Notes have requested the Trustee to pursue the remedy;

(3) such Holders have offered the Trustee security or indemnity satisfactory to the Trustee against any loss, liability or expense;

(4) the Trustee has not complied with such request within 60 days after the receipt thereof and the offer of security or indemnity; and

(5) Holders of a majority in aggregate principal amount of the outstanding Notes have not given the Trustee a direction inconsistent with such request within such 60-day period.

Section 6.07 *Rights of Holders to Receive Payment*.

Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal, premium, if any, and interest on the Note, on or after the respective due dates expressed in the 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; *provided* that a Holder shall not have the right to institute any such suit for the enforcement of payment if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver or loss of the lien of this Indenture upon any property subject to such lien.

Section 6.08 *Collection Suit by Trustee*.

If an Event of Default specified in Section 6.01(1) or (2) hereof occurs 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 principal of, premium, if any, and interest remaining unpaid on, the Notes and interest on overdue principal and, to the extent lawful, 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 6.09 *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 allowed in any judicial proceedings relative to the Company (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 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 7.06 hereof. 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 7.06 hereof 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 6.10 *Priorities*.

If the Trustee collects any money or property pursuant to this Article 6, it shall pay out the money or property in the following order:

First: to the Trustee, its agents and attorneys for amounts due under Section 7.06 hereof, including payment of all compensation, expenses and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

Second: to Holders 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.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 6.10.

Section 6.11 *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, 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 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07 hereof, or a suit by Holders of more than 10% in aggregate principal amount of the then outstanding Notes.

ARTICLE 7
TRUSTEE

Section 7.01 *Duties of Trustee*.

(a) If an Event of Default has occurred and is continuing, the Trustee will 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 will 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 will examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of calculations or other facts stated therein).

(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 7.01;

(2) the Trustee will not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved in a court of competent jurisdiction that the Trustee was negligent in ascertaining the pertinent facts; and

(3) the Trustee will 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 6.05 hereof.

(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), (c) and (e) of this Section 7.01.

(e) No provision of this Indenture will require the Trustee to expend or risk its own funds or incur any liability. The Trustee will be under no obligation to exercise any of its rights and powers under this Indenture at the request of any Holders, unless such Holder has offered to the Trustee indemnity satisfactory to it or security satisfactory to it against any loss, liability or expense.

(f) The Trustee will not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

Section 7.02 *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 Officer's Certificate or an Opinion of Counsel or both. The Trustee will not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel. The Trustee may consult with counsel and the written advice of such counsel or any Opinion of Counsel will 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 will not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee will 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 will be sufficient if signed by an Officer of the Company.

(f) The Trustee will 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 have offered to the Trustee indemnity or security satisfactory to it against the losses, liabilities and expenses that might be incurred by it in compliance with such request or direction.

(g) In no event shall the Trustee be required to take notice of any default or breach hereof or any Event of Default hereunder, except for Events of Default specified in Section 6.01(1) and/or 6.01(2) hereof (and then, only if the Trustee is also the Paying Agent), unless and until the Trustee shall have received from a Holder or from the Company express written notice of the circumstances constituting the breach, default or Event of Default and stating that said circumstances constitute an Event of Default.

(h) In no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(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 (including, without limitation, as Custodian, Registrar and Paying Agent), and each agent, custodian and other Person employed to act hereunder.

(j) The Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture.

(k) The Trustee shall have no duty to inquire as to the performance of the Company with respect to the covenants contained in Article 4.

(l) Any permissive right or authority granted to the Trustee shall not be construed as a mandatory duty.

(m) The Company shall provide prompt written notice to the Trustee of any change to its respective fiscal year.

Section 7.03 *Individual Rights of Trustee*.

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Company or any Affiliate of the Company with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the Commission for permission to continue as trustee or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Section 7.09 hereof.

Section 7.04 *Trustee's Disclaimer*.

The Trustee will not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, 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 will not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, it will not be responsible for and makes no representation as to the validity, and it will 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 7.05 *Notice of Defaults*.

If a Default or Event of Default occurs and is continuing and if it is known to the Trustee, the Trustee will mail to Holders a notice of the Default or Event of Default within 90 days after it occurs. 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.

Section 7.06 *Compensation and Indemnity*.

(a) The Company will pay to the Trustee from time to time reasonable compensation for its acceptance of this Indenture and services hereunder. The Trustee's compensation will not be limited by any law on compensation of a trustee of an express trust. The Company will reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses will include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

(b) The Company will indemnify the Trustee against any and all losses, liabilities or 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 (including this Section 7.06) and defending itself against any claim (whether asserted by the Company, 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 negligence or bad faith as determined by a court of competent jurisdiction in a final non-appealable decision. The Trustee will notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company will not relieve the Company of its obligations hereunder. The Company will defend the claim and the Trustee will cooperate in the defense. The Trustee may have separate counsel and the Company will pay the reasonable fees and expenses of such counsel. The Company need not pay for any settlement made without its consent, which consent will not be unreasonably withheld.

(c) The obligations of the Company under this Section 7.06 will survive the satisfaction and discharge of this Indenture or the earlier resignation or removal of the Trustee.

(d) To secure the Company's payment obligations in this Section 7.06, the Trustee will 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 and interest on particular Notes. Such lien will survive the satisfaction and discharge of this Indenture.

(e) When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(5) hereof 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 7.07 *Replacement of Trustee*.

(a) A resignation or removal of the Trustee and appointment of a successor Trustee will become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.07.

(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 aggregate 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 7.09 hereof;

(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 will promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in aggregate 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 60 days after the retiring Trustee resigns or is removed, the retiring Trustee (at the Company's expense), the Company, or the Holders of at least 10% in aggregate principal amount of the then outstanding Notes may petition 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 six months, fails to comply with Section 7.09 hereof, 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 will deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon, the resignation or removal of the retiring Trustee will become effective, and the successor Trustee will have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee will mail a notice of its succession to Holders. The retiring Trustee will 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 7.06 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 7.07, the Company's obligations under Section 7.06 hereof will continue for the benefit of the retiring Trustee.

Section 7.08 *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 corporation, the successor corporation without any further act will be the successor Trustee.

Section 7.09 *Eligibility; Disqualification*.

There will 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 trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least $100.0 million as set forth in its most recent published annual report of condition.

ARTICLE 8
LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 8.01 *Option to Effect Legal Defeasance or Covenant Defeasance*.

The Company may at any time, at the option of its Board of Directors evidenced by a resolution set forth in an Officer's Certificate, elect to have either Section 8.02 or 8.03 hereof be applied to all outstanding Notes upon compliance with the conditions set forth below in this Article 8.

Section 8.02 *Legal Defeasance and Discharge*.

(a) Upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.02, the Company will, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be deemed to have been discharged from its obligations with respect to all outstanding Notes on the date the conditions set forth below are satisfied (hereinafter, "*Legal Defeasance*"). For this purpose, Legal Defeasance means that the Company will be deemed to have paid and discharged the entire indebtedness represented by the outstanding Notes, which will thereafter be deemed to be "outstanding" only for the purposes of Section 8.05 hereof and the other Sections of this Indenture referred to in clauses (1) and (2) below, and to have satisfied all its other obligations under such Notes and this Indenture (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 will survive until otherwise terminated or discharged hereunder:

(1) the rights of Holders of outstanding Notes to receive payments in respect of the principal of, or interest or premium, if any, on, such Notes when such payments are due from the trust referred to in Section 8.04 hereof;

(2) the Company's obligations with respect to such Notes under Article 2 and Section 4.02 hereof;

(3) the rights, powers, trusts, duties and immunities of the Trustee hereunder and the Company's obligations in connection therewith; and

(4) this Article 8.

Subject to compliance with this Article 8, the Company may exercise its option under this Section 8.02 notwithstanding the prior exercise of its option under Section 8.03 hereof.

Section 8.03 *Covenant Defeasance*.

Upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.03, the Company will, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be released from its obligations under the covenants contained in Sections 4.03, 4.04, 4.05, 4.07 and 4.09 hereof with respect to the outstanding Notes on and after the date the conditions set forth in Section 8.04 hereof are satisfied (hereinafter, "*Covenant Defeasance*"), and the Notes will 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 will continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes will not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes, the Company may omit to comply with and will 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 will not constitute a Default or an Event of Default under Section 6.01 hereof, but, except as specified above, the remainder of this Indenture and such Notes will be unaffected thereby. In addition, upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.03, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, Sections 6.01(3) and 6.01(4) hereof will not constitute Events of Default.

Section 8.04 *Conditions to Legal or Covenant Defeasance*.

In order to exercise either Legal Defeasance or Covenant Defeasance under either Section 8.02 or 8.03 hereof:

(1) the Company must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities, or a combination thereof, in amounts as will be sufficient, in the opinion of a nationally recognized investment bank, appraisal firm or firm of independent public accountants, to pay the principal of, interest and premium, if any, on, the then outstanding Notes on the final stated maturity thereof or on the applicable redemption date, as the case may be, and the Company must specify whether such Notes are being defeased to maturity or to a particular redemption date;

(2) in the case of an election under Section 8.02 hereof, the Company must deliver to the Trustee an Opinion of Counsel confirming 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 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;

(3) in the case of an election under Section 8.03 hereof, the Company must deliver to the Trustee an Opinion of Counsel confirming that the Holders 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;

(4) no Default or Event of Default shall have occurred and be continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit);

(5) such Legal Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than this Indenture) to which the Company is a party or by which the Company is bound;

(6) the Company must deliver to the Trustee an Officer's Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders over the other creditors of the Company with the intent of defeating, hindering, delaying or defrauding any creditors of the Company or others; and

(7) the Company must deliver to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

The Legal Defeasance or Covenant Defeasance, as applicable, will be effective on the day on which the conditions in clauses (1) through (7) of this Section 8.04 have been satisfied.

Section 8.05 *Deposited Money and Government Securities to be Held in Trust; Other Miscellaneous Provisions*.

Subject to Section 8.06 hereof, all money and non-callable Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.05, the "*Trustee*") pursuant to Section 8.04 hereof in respect of the outstanding Notes will 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.

The Company will pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable Government Securities deposited pursuant to Section 8.04 hereof 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.

Notwithstanding anything in this Article 8 to the contrary, the Trustee will deliver or pay to the Company from time to time upon the request of the Company any money or non-callable Government Securities held by it as provided in Section 8.04 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.04(1) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

Section 8.06 *Repayment to 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) will be discharged from such trust; and the Holder of such Note will thereafter be permitted to 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, will thereupon cease; *provided*, *however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in the New York Times and The Wall Street Journal (national edition), notice that such money remains unclaimed and that, after a date specified therein, which will not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining will be repaid to the Company.

Section 8.07 *Reinstatement*.

If the Trustee or Paying Agent is unable to apply any U.S. dollars or non-callable Government Securities in accordance with Section 8.02 or 8.03 hereof, 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 under this Indenture and the Notes and will be revived and reinstated as though no deposit had occurred pursuant to Section 8.02 or 8.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.02 or 8.03 hereof, 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 will 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 9
AMENDMENT, SUPPLEMENT AND WAIVER

Section 9.01 *Without Consent of Holders*.

Notwithstanding Section 9.02 of this Indenture, the Company and the Trustee may amend or supplement this Indenture or the Notes, without the consent of any Holder:

(1) to cure any ambiguity, defect or inconsistency in this Indenture or the Notes in a manner that does not adversely affect the rights of any Holder;

(2) to provide for uncertificated Notes in addition to or in place of certificated Notes;

(3) to provide for the assumption of the Company's obligations to Holders in the case of a merger or consolidation or sale of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole;

(4) to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the legal rights hereunder of any Holder;

(5) to conform the text of this Indenture or the Notes to any provision of the "Description of Notes" section of the Offering Memorandum, to the extent that such provision in that "Description of Notes" was intended to be a verbatim or substantially verbatim recitation of a provision of this Indenture or the Notes;

(6) to evidence and provide for the acceptance and appointment under this Indenture of successor trustees pursuant to the requirements thereof; or

(7) to provide for the issuance of Additional Notes of the same or an additional series in accordance with the limitations set forth in this Indenture as of the date hereof.

Upon the request of the Company accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture, and upon receipt by the Trustee of the documents described in Sections 7.02 and 9.05 hereof, the Trustee will join with the Company 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 will not be obligated to enter into such amended or supplemental indenture that affects its own rights, duties or immunities under this Indenture or otherwise.

Section 9.02 *With Consent of Holders*.

Except as provided below in this Section 9.02, the Company and the Trustee may amend or supplement this Indenture and the Notes with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes (including, without limitation, Additional Notes, if any) voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes), and, subject to Sections 6.04 and 6.07 hereof, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium, if any, or interest on, the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture or the Notes may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes (including, without limitation, Additional Notes, if any) voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes).

Upon the request of the Company accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture, and upon the filing with the Trustee of evidence satisfactory to the Trustee of the consent of the Holders as aforesaid, and upon receipt by the Trustee of the documents described in Sections 7.02 and 9.05 hereof, the Trustee will join with the Company 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 will not be obligated to, enter into such amended or supplemental indenture.

It is not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed amendment, supplement or waiver, but it is sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Company will mail to the Holders affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Company to mail such notice, or any defect therein, will not, however, in any way impair or affect the validity of any such amended or supplemental indenture or waiver. Subject to Sections 6.04 and 6.07 hereof, the Holders of a majority in aggregate principal amount of the Notes then outstanding voting as a single class may waive compliance in a particular instance by the Company with any provision of this Indenture or the Notes. However, without the consent of each Holder affected, an amendment, supplement or waiver under this Section 9.02 may not (with respect to any Notes held by a non-consenting Holder):

(1) reduce the principal amount of Notes whose Holders must consent to an amendment, supplement or waiver;

(2) reduce the principal of or change the fixed maturity of any Note or alter the provisions with respect to the redemption of the Notes (other than provisions relating to Section 4.09 hereof and provisions relating to the number of days of notice to be given in the event of a redemption);

(3) reduce the rate of or change the time for payment of interest on any Note;

(4) waive a Default or Event of Default in the payment of principal of, or interest or premium, if any, on, such Notes (except a rescission of acceleration of such Notes by the Holders of at least a majority in aggregate principal amount of Notes and a waiver of the payment default that resulted from such acceleration);

(5) make any Note payable in currency other than that stated in such Note;

(6) make any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of Holders of such Notes to receive payments of principal of, or interest or premium, if any, on, the Notes;

(7) waive a redemption payment with respect to any Note (other than a payment required by Section 4.09 hereof); or

(8) make any change in the preceding amendment and waiver provisions.

Section 9.03 *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 9.04 *Notation on or Exchange of Notes*.

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.

Failure to make the appropriate notation or issue a new Note will not affect the validity and effect of such amendment, supplement or waiver.

Section 9.05 *Trustee to Sign Amendments, etc*.

The Trustee will sign any amended or supplemental indenture authorized pursuant to this Article 9 if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. The Company may not sign an amended or supplemental indenture until the Board of Directors of the Company approves it. In executing any amended or supplemental indenture, the Trustee will be entitled to receive and (subject to Section 7.01 hereof) will be fully protected in relying upon, in addition to the documents required by Section 11.02 hereof, an Officer's Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture is authorized or permitted by this Indenture and that such amended or supplemental indenture is the legal, valid and binding obligation of the Company, enforceable against them in accordance with its terms, subject to customary exceptions and complies with provisions hereof.

ARTICLE 10
SATISFACTION AND DISCHARGE

Section 10.01 *Satisfaction and Discharge*.

This Indenture will be discharged and will cease to be of further effect as to all Notes issued hereunder, when:

(1) either:

(a) all Notes that have been authenticated, except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust and thereafter repaid to the Company, have been delivered to the Trustee for cancellation; or

(b) all Notes that have not been delivered to the Trustee for cancellation have become due and payable by reason of the mailing or delivering electronically of a notice of redemption or otherwise or will become due and payable within one year and the Company has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities, or a combination thereof, in such amounts as will be sufficient, without consideration of any reinvestment of interest, to pay and discharge the entire indebtedness on the Notes not delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption;

(2) no Default or Event of Default has occurred and is continuing on the date of the deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit) and the deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which the Company is a party or by which the Company is bound;

(3) the Company has paid or caused to be paid all sums payable by it under this Indenture; and

(4) the Company has delivered irrevocable instructions to the Trustee under this Indenture to apply the deposited money toward the payment of the Notes at maturity or on the redemption date, as the case may be.

In addition, the Company must deliver an Officer's Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

Notwithstanding the satisfaction and discharge of this Indenture, if money has been deposited with the Trustee pursuant to subclause (b) of clause (1) of this Section 10.01, the provisions of Sections 10.02 and 8.06 hereof will survive. In addition, nothing in this Section 10.01 will be deemed to discharge those provisions of Section 7.06 hereof, that, by their terms, survive the satisfaction and discharge of this Indenture.

Section 10.02 *Application of Trust Money*.

Subject to the provisions of Section 8.06 hereof, all money deposited with the Trustee pursuant to Section 10.01 hereof 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.

If the Trustee or Paying Agent is unable to apply any money or Government Securities in accordance with Section 10.01 hereof by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 10.01 hereof; *provided* that if the Company has made any payment of principal of, premium, if any, or interest on, any Notes because of 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 or Government Securities held by the Trustee or Paying Agent.

ARTICLE 11
MISCELLANEOUS

Section 11.01 *Notices*.

Any notice or communication by the Company or the Trustee to the others is duly given if in writing and delivered in Person or by first class mail (registered or certified, return receipt requested), facsimile transmission or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Company:

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, Texas 77002
Facsimile No.: (832) 325-1508
Attention: General Counsel

With a copy to:

White & Case LLP
1221 Avenue of the Americas
New York, New York 10020
Facsimile No.: (212) 354-8113
Attention: Gary Kashar

If to the Trustee:

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Facsimile No.: (612) 217-5651
Attention: Calpine Corporation Administrator

With a copy to:

Shipman & Goodwin LLP
One Constitution Plaza
Hartford, Connecticut 06103
Facsimile No.: (860) 251-5212
Attention: Marie C. Pollio

The Company or the Trustee, by notice to the others, may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) will be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when receipt acknowledged, if transmitted by facsimile; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

Any notice or communication to a Holder will 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 will not affect its sufficiency with respect to other Holders.

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.

If the Company mails a notice or communication to Holders, it will mail a copy to the Trustee and each Agent at the same time.

Notwithstanding any other provision of this Indenture or any Note, where this Indenture or any Note provides for notice of any event (including any notice of redemption) to a Holder of a Global Note (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depositary for such Note (or its designee), pursuant to the customary procedures of such Depositary.

Section 11.02 *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 Officer's Certificate in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 11.03 hereof) 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 in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 11.03 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

Section 11.03 *Statements Required in Certificate or Opinion*.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture must 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 or her 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 11.04 *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 11.05 *No Personal Liability of Directors, Officers, Employees and Stockholders*.

No director, officer, employee, incorporator or stockholder of the Company, as such, will have any liability for any obligations of the Company under the Notes or this Indenture, or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under the federal securities laws.

Section 11.06 *Governing Law*.

THE INTERNAL LAW OF THE STATE OF NEW YORK WILL GOVERN AND BE USED TO CONSTRUE THIS INDENTURE AND THE NOTES WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

Section 11.07 *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 its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 11.08 *Successors*.

All agreements of the Company in this Indenture and the Notes will bind its successors. All agreements of the Trustee in this Indenture will bind its successors.

Section 11.09 *Severability*.

In case any provision in this Indenture or in the Notes is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

Section 11.10 *Counterpart Originals*.

The parties may sign any number of copies of this Indenture. Each signed copy will be an original, but all of them together represent the same agreement. Delivery of an executed counterpart of a signature page to this Indenture by telecopier, facsimile or other electronic transmission (i.e. a "pdf" or "tif") shall be effective as delivery of a manually executed counterpart thereof.

Section 11.11 *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 will in no way modify or restrict any of the terms or provisions hereof.

Section 11.12 *Force Majeure.*

In no event shall the Trustee be responsible or liable, nor shall the Company be responsible or liable to the Trustee, for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee or the Company, as the case may be, shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

[Signatures on following page]

SIGNATURES

Dated as of August 10, 2020

Calpine Corporation

By: /s/ W. Thaddeus Miller
Name: W. Thaddeus Miller
Title: Executive Vice Chairman and Chief Legal Officer

Wilmington Trust, National Association
as Trustee

By: /s/ Hallie E. Field
Name: Hallie E. Field
Title: Vice President

EXHIBIT A

[Face of Note]

[Insert the Global Note Legend, if applicable pursuant to the provisions of the Indenture]
[Insert the Private Placement Legend, if applicable pursuant to the provisions of the Indenture]

CUSIP/ISIN _____

[RULE 144A][REGULATION S][GLOBAL] NOTE

5.000% Senior Notes due 2031

No. ___ $_____

CALPINE CORPORATION

promises to pay to _____ or registered assigns,

the principal sum of _____ DOLLARS on February 1, 2031.

Interest Payment Dates: February 1 and August 1

Record Dates: January 15 and July 15

[*Signature Page Follows*]

IN WITNESS HEREOF, the Company has caused this Note to be signed manually or by facsimile by its duly authorized officer as of the date first written above.

CALPINE CORPORATION

By: _____
Name:
Title:

This is one of the Notes referred to

in the within-mentioned Indenture:

Dated: _____ , ____

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Signatory

[Back of Note]
5.000% Senior Notes due 2031

Capitalized terms used herein have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

(1) *INTEREST*. Calpine Corporation, a Delaware corporation (the "*Company*"), promises to pay interest on the principal amount of this Note at 5.000% per annum from August 10, 2020[1] until maturity. The Company will pay interest semi-annually in arrears on February 1 and August 1 of each year (each, an "*Interest Payment Date*"), or if any such day is not a Business Day, on the next succeeding Business Day. Interest on the Notes will accrue from the most recent Interest Payment Date to which interest has been paid or, if no interest has been paid, from the date of issuance; *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 February 1, 2021[2]. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

(2) *METHOD OF PAYMENT*. The Company will pay interest on the Notes (except defaulted interest) to the Persons who are registered Holders at the close of business on January 15 or July 15 next preceding the 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 2.12 of the Indenture with respect to defaulted interest. The Notes will 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; *provided* that payment by wire transfer of immediately available funds will be required with respect to principal of and interest, premium on, all Global Notes and all other Notes the Holders of which will have provided wire transfer instructions to the Company or the Paying Agent. Such payment will 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.

(3) *PAYING AGENT AND REGISTRAR*. Initially, Wilmington Trust, National Association, the Trustee under the Indenture, will 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 August 10, 2020 (as amended or supplemented from time to time, the "*Indenture*") among the Company and the Trustee. 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, the provisions of the Indenture shall govern and be controlling. The Notes are unsecured obligations of the Company. The indenture does not limit the aggregate principal amount of Notes that may be issued thereunder.

[1] *With respect to the Initial Notes.*

[2] *With respect to the Initial Notes.*

(5) *OPTIONAL REDEMPTION*.

(a) On or after February 1, 2026, the Company may on any one or more occasions redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' notice, 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 but excluding the applicable date of redemption, if redeemed during the twelve-month period beginning on February 1 of the 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
2026	102.500%
2027	101.667%
2028	100.833%
2029 and thereafter	100.000%

Unless the Company defaults in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable redemption date.

(b) At any time prior to February 1, 2024, the Company may on any one or more occasions redeem up to 35% of the aggregate principal amount of Notes issued under the Indenture, upon not less than 30 nor more than 60 days' notice, at a redemption price equal to 105.000% of the principal amount of the Notes redeemed, plus accrued and unpaid interest, if any, to but excluding 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 the proceeds of one or more Equity Offerings; *provided* that: (i) at least 65% of the aggregate principal amount of Notes originally issued under the Indenture (excluding Notes held by the Company and its Subsidiaries) remains outstanding immediately after the occurrence of such redemption; and (ii) the redemption occurs within 90 days of the date of the closing of such Equity Offering.

(c) At any time prior to February 1, 2026, the Company may on any one or more occasions redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' notice, 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 but excluding 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.

(d) At any time, in connection with any tender offer for the Notes, including a Change of Control Offer, if Holders of not less than 90% in aggregate principal amount of the outstanding Notes validly tender and do not withdraw such Notes in such tender offer and the Company, or any third party making such tender offer in lieu of the Company, purchases all of the Notes validly tendered and not withdrawn by such Holders, the Company may, upon not less than 10 nor more than 60 days' prior notice, given not more than 30 days following such purchase date, redeem all Notes that remain outstanding following such purchase at a redemption price equal to the price paid to each other Holder in such tender offer
plus, to the extent not included in the tender offer payment, accrued and unpaid interest, if any, thereon, to, but not excluding, the date of such redemption (subject to the rights of Holders on the relevant record date to receive interest on the relevant interest payment date).

(6) *MANDATORY REDEMPTION*.

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

(7) *REPURCHASE AT THE OPTION OF HOLDER*. If a Change of Control Triggering Event occurs, each Holder will have the right to require the Company to make an offer (a "*Change of Control Offer*") to each Holder to repurchase all or any part (equal to $2,000 or an integral multiple of $1,000 in excess thereof) of that Holder's Notes at a purchase price in cash equal to 101% of the aggregate principal amount of Notes repurchased plus accrued and unpaid interest, if any, on the Notes repurchased to but excluding the date of purchase, subject to the rights of Holders on the relevant record date to receive interest due on the relevant interest payment date (the "*Change of Control Payment*"). Within 30 days following any Change of Control Triggering Event, the Company will mail (or deliver electronically) a notice to each Holder describing the transaction or transactions that constitute the Change of Control Triggering Event as required by the Indenture.

(8) *NOTICE OF REDEMPTION*. Notice of redemption will be mailed or delivered electronically at least 30 days but not more than 60 days before the redemption date to each Holder whose Notes are to be redeemed at its registered address, except that (i) redemption notices may be mailed or delivered electronically at least 10 days prior to the redemption date if the notice is issued in connection with a redemption pursuant to Section 3.07(c) of the Indenture and (ii) redemption notices may be mailed or delivered electronically more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction or discharge of the Indenture. Notes in denominations larger than $2,000 may be redeemed in part but only in whole multiples of $1,000, unless all of the Notes held by a Holder are to be redeemed. Any redemption notice may, in the Company's discretion, be subject to the satisfaction of one or more conditions precedent. If such redemption is subject to the satisfaction of one of more conditions precedent, such notice 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 by the Company in its sole discretion), such redemption may not occur and such notice may be rescinded in the event that any or all of such conditions shall not have been satisfied (or waived by the Company in its sole discretion) by the redemption date, or by the redemption date so delayed.

(9) *DENOMINATIONS, TRANSFER, EXCHANGE*. The Notes are in registered form without coupons in minimum denominations of $2,000 and integral 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 and fees required by law or permitted by the Indenture. The Company need not exchange or register the transfer of any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part. Also, the Company need not exchange or register the transfer of any Notes for a period of 15 days before a selection of Notes to be redeemed or during the period between a record date and the corresponding Interest Payment Date.

(10) *PERSONS DEEMED OWNERS*. The registered Holder of a Note may be treated as its owner for all purposes.

(11) *AMENDMENT, SUPPLEMENT AND WAIVER*. Subject to certain exceptions, the Indenture or the Notes may be amended or supplemented with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes including Additional Notes, if any, voting as a single class, and any existing Default or Event or Default or compliance with any provision of the Indenture or the Notes may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes including Additional Notes, if any, voting as a single class. Without the consent of any Holder, the Indenture or the Notes, may be amended or supplemented to cure any ambiguity, defect or inconsistency in the Indenture or the Notes in a manner that does not adversely affect the rights of any Holder, to provide for uncertificated Notes in addition to or in place of certificated Notes, to provide for the assumption of the Company's obligations to Holders in case of a merger or consolidation or sale of all or substantially all of the Company's assets, to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the legal rights under the Indenture of any such Holder, to conform the text of the Indenture or the Notes to any provision of the "Description of Notes" section of the Offering Memorandum, to the extent that such provision in that "Description of Notes" was intended to be a verbatim or substantially verbatim recitation of a provision of the Indenture or this Note, to evidence and provide for the acceptance and appointment under the Indenture of successor trustees pursuant to the requirements thereof or to provide for the issuance of Additional Notes of the same or an additional series in accordance with the limitations set forth in the Indenture as of the date hereof.

(12) *DEFAULTS AND REMEDIES*. Events of Default include: (i) default for 30 days in the payment when due of interest on the Notes; (ii) default in payment when due of the principal of, or premium, if any, on, the Notes; (iii) failure by the Company for 60 days after notice from the Trustee or the Holders of at least 25% in aggregate principal amount of the outstanding Notes to comply with any of the other agreements in the Indenture; (iv) default under any document evidencing any indebtedness of the Company for borrowed money represented by notes, bonds, debentures or other evidences of indebtedness by the Company, whether such indebtedness now exists, or is created after the date of the Indenture, if that default is caused by a failure to pay principal when due at final (and not any interim) maturity (on or prior to the expiration of any applicable grace period provided in such indebtedness) (a "*Payment Default*") or results in the acceleration of such indebtedness prior to its express maturity (without such acceleration having been rescinded, annulled or otherwise cured), 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 (without such acceleration having been rescinded, annulled or otherwise cured), aggregates $100,000,000 or more; *provided* that this clause (iv) shall not apply to (a) secured indebtedness that becomes due as a result of the voluntary sale or transfer of property or assets securing such indebtedness and (b) any indebtedness that is required to be converted into Qualifying Equity Interests upon the occurrence of certain designated events so long as no payments in cash or otherwise are required to be made in accordance with such conversion; and (v) (a) a court of competent jurisdiction (x) enters an order or decree under any Bankruptcy Law that is for relief against the Company or any of its Material Subsidiaries in an involuntary case; (y) appoints a custodian for all or substantially all of the property of the Company or any of its Material Subsidiaries; or (z) orders the liquidation of the Company or any of its Material Subsidiaries and, in each of clauses (x), (y) or (z), the order, appointment or decree remains unstayed and in effect for at least 60 consecutive days; or (b) the Company or any of its Material Subsidiaries, pursuant to or within the meaning of Bankruptcy Law, (w) commences a voluntary case; (x) consents to the entry of an order for relief against it in an involuntary case; (y) consents to the appointment of a custodian of it or for all or substantially all of its property; or (z) makes a general assignment for the benefit of its creditors. In the case of an Event of Default of the type specified in clause (v) above, 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 at least 25% in aggregate principal amount of the then outstanding Notes may declare all the Notes to be due and payable immediately. Holders may not enforce the Indenture or the Notes except as provided in the Indenture. Subject to certain limitations, Holders of a majority in aggregate principal amount of the then outstanding Notes may direct the Trustee in its exercise of any trust or power. 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 or premium, if any,) if it determines that withholding notice is in their interest. The Holders of a majority in aggregate principal amount of the then outstanding Notes by notice to the Trustee may, on behalf of the Holders of all of the Notes, rescind an acceleration or waive any existing Default or Event of Default and its consequences under the Indenture except a continuing Default or Event of Default in the payment of interest or premium, if any, on, or the principal of, the Notes. The Company is required to deliver to the Trustee annually a statement regarding compliance with the Indenture, and the Company is required, upon becoming aware of any Default or Event of Default, to deliver to the Trustee a statement specifying such Default or Event of Default.

(13) *TRUSTEE DEALINGS WITH 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*. A director, officer, employee, incorporator or stockholder of the Company, as such, will not have any liability for any obligations of the Company under the Notes or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the Notes.

(15) *AUTHENTICATION*. This Note will not be valid until authenticated by the manual signature of the Trustee or an authenticating agent.

(16) *ABBREVIATIONS*. Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

(17) *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 placed only on the other identification numbers placed thereon.

(18) *GOVERNING LAW*. THE INTERNAL LAW OF THE STATE OF NEW YORK WILL GOVERN AND BE USED TO CONSTRUE THE INDENTURE AND THIS NOTE WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

The Company will furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to:

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, Texas 77002
Attention: General Counsel

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: _____

Your 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 4.09 of the Indenture, check the box below:

☐ Section 4.09

If you want to elect to have only part of the Note purchased by the Company pursuant to Section 4.09 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 of this Global Note	Amount of increase in Principal Amount of this Global Note	Principal Amount of this Global Note following such decrease (or increase)	Signature of authorized officer of Trustee or Custodian

* *This schedule should be included only if the Note is issued in global form.*

EXHIBIT B

FORM OF CERTIFICATE OF TRANSFER

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, Texas 77002
Facsimile No.: (832) 325-1508

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Facsimile No.: (612) 217-5651

Re: 5.000% Senior Notes due 2031

Reference is hereby made to the Indenture, dated as of August 10, 2020 (as amended or supplemented from time to time, the "*Indenture*"), between Calpine Corporation, as issuer (the "*Company*"), and Wilmington Trust, 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 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 Restricted Definitive Note pursuant to Rule 144A**. The Transfer is being effected pursuant to and in accordance with Rule 144A under the 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 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 Restricted 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 Restricted 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 Restricted Definitive Note and in the Indenture and the Securities Act.

3. ☐ **Check and complete if Transferee will take delivery of a beneficial interest in the IAI Global Note or a Restricted 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 to an Institutional Accredited Investor and pursuant to an exemption from the registration requirements of the Securities Act other than Rule 144A, Rule 144, Rule 903 or Rule 904, and the Transferor hereby further certifies that it has not engaged in any general solicitation within the meaning of Regulation D under the Securities Act and the Transfer complies with the transfer restrictions applicable to beneficial interests in a Restricted Global Note or Restricted Definitive Notes and the requirements of the exemption claimed, which certification is supported by (1) a certificate executed by the Transferee in the form of Exhibit D to the Indenture and (2) an Opinion of Counsel provided by the Transferor or the Transferee (a copy of which the Transferor has attached to this certification), to the effect that such Transfer is in 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 be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the IAI Global Note and/or the Restricted Definitive Notes and in the Indenture and 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 _____), or

(ii) ☐ Regulation S Global Note (CUSIP _____), or

(iii) ☐ IAI Global Note (CUSIP _____); or

(b) ☐ a Restricted Definitive Note.

2. After the Transfer the Transferee will hold:

[CHECK ONE]

(a) ☐ a beneficial interest in the:

(i) ☐ 144A Global Note (CUSIP _____), or

(ii) ☐ Regulation S Global Note (CUSIP _____), or

(iii) ☐ IAI Global Note (CUSIP _____); or

(iv) ☐ Unrestricted Global Note (CUSIP _____); or

(b) ☐ a Restricted Definitive Note; or

(c) ☐ an Unrestricted Definitive Note,

in accordance with the terms of the Indenture.

EXHIBIT C

FORM OF CERTIFICATE OF EXCHANGE

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, Texas 77002
Facsimile No.: (832) 325-1508

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Facsimile No.: (612) 217-5651

Re: 5.000% Senior Notes due 2031

(CUSIP _____)

Reference is hereby made to the Indenture, dated as of August 10, 2020 (as amended or supplemented from time to time, the "*Indenture*"), between Calpine Corporation, as issuer (the "*Company*"), and Wilmington Trust, 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 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, 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 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, 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, ☐ IAI Global Note with an equal principal amount, 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 CERTIFICATE FROM
ACQUIRING INSTITUTIONAL ACCREDITED INVESTOR

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, Texas 77002
Facsimile No.: (832) 325-1508

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Facsimile No.: (612) 217-5651

Re: 5.000% Senior Notes due 2031

Reference is hereby made to the Indenture, dated as of August 10, 2020 (as amended or supplemented from time to time, the "*Indenture*"), between Calpine Corporation, as issuer (the "*Company*"), and Wilmington Trust, National Association, as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

In connection with our proposed purchase of $_____ aggregate principal amount of:

(a) ☐ a beneficial interest in a Global Note, or

(b) ☐ a Definitive Note,

we confirm that:

1. We understand that any subsequent transfer of the Notes or any interest therein is subject to certain restrictions and conditions set forth in the Indenture and the undersigned agrees to be bound by, and not to resell, pledge or otherwise transfer the Notes or any interest therein except in compliance with, such restrictions and conditions and the Securities Act of 1933, as amended (the "*Securities Act*").

2. We understand that the offer and sale of the Notes have not been registered under the Securities Act, and that the Notes and any interest therein may not be offered or sold except as permitted in the following sentence. We agree, on our own behalf and on behalf of any accounts for which we are acting as hereinafter stated, that if we should sell the Notes or any interest therein, we will do so only (A) to the Company or any subsidiary thereof, (B) in accordance with Rule 144A under the Securities Act to a "qualified institutional buyer" (as defined therein), (C) to an institutional "accredited investor" (as defined below) that, prior to such transfer, furnishes (or has furnished on its behalf by a U.S. broker-dealer) to you and to the Company a signed letter substantially in the form of this letter and an Opinion of Counsel in form reasonably acceptable to the Company to the effect that such transfer is in compliance with the Securities Act, (D) outside the United States in accordance with Rule 904 of Regulation S under the Securities Act, (E) pursuant to the provisions of Rule 144(k) under the Securities Act or (F) pursuant to an effective registration statement under the Securities Act, and we further agree to provide to any Person purchasing the Definitive Note or beneficial interest in a Global Note from us in a transaction meeting the requirements of clauses (A) through (E) of this paragraph a notice advising such purchaser that resales thereof are restricted as stated herein.

3. We understand that, on any proposed resale of the Notes or beneficial interest therein, we will be required to furnish to you and the Company such certifications, legal opinions and other information as you and the Company may reasonably require to confirm that the proposed sale complies with the foregoing restrictions. We further understand that the Notes purchased by us will bear a legend to the foregoing effect.

4. We are an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act) and have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Notes, and we and any accounts for which we are acting are each able to bear the economic risk of our or its investment.

5. We are acquiring the Notes or beneficial interest therein purchased by us for our own account or for one or more accounts (each of which is an institutional "accredited investor") as to each of which we exercise sole investment discretion.

You and the Company are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

_____
[Insert Name of Accredited Investor]

By: _____
Name:
Title:

Dated: _____

Exhibit 4.4

Execution Version

CALPINE CORPORATION

AND EACH OF THE GUARANTORS PARTY HERETO

4.500% SENIOR SECURED NOTES DUE 2028

INDENTURE

Dated as of December 20, 2019

Wilmington Trust, National Association
as Trustee

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EXHIBITS

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Exhibit C	FORM OF CERTIFICATE OF EXCHANGE
Exhibit D	FORM OF CERTIFICATE OF ACQUIRING INSTITUTIONAL ACCREDITED INVESTOR
Exhibit E	FORM OF SUPPLEMENTAL INDENTURE

INDENTURE dated as of December 20, 2019 among Calpine Corporation, a Delaware corporation, the Guarantors (as defined below) and Wilmington Trust, National Association, as trustee.

The Company, the Guarantors 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 4.500% Senior Secured Notes due 2028 (the "*Notes*"):

ARTICLE 1
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 *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 will be issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 144A.

"*2008 Credit Agreement*" means that certain Credit Agreement, dated as of January 31, 2008 (as amended, amended and restated, supplemented or otherwise modified from time to time), by and among the Company, the guarantors party thereto, Goldman Sachs Credit Partners L.P., as collateral agent and administrative agent, and the lenders party thereto.

"*2017 Notes Issue Date*" means October 21, 2009, the date upon which the Company's 7.25% Senior Secured Notes due 2017 were issued.

"*2022 Notes*" means the Company's 6.000% Senior Secured Notes due 2022.

"*2024 Notes*" means the Company's 5.875% Senior Secured Notes due 2024.

"*2026 Notes*" means the Company's 5.250% Senior Secured Notes due 2026.

"*Act of Required Debtholders*" means, as to any matter at any time:

(1) prior to the Discharge of First Lien Obligations, a direction in writing delivered to the Collateral Agent by or with the written consent of the holders of First Lien Debt representing the Required First Lien Debtholders; and

(2) at any time after the Discharge of First Lien Obligations, a direction in writing delivered to the Collateral Agent by or with the written consent of the holders of Second Lien Debt representing the Required Second Lien Debtholders.

For purposes of this definition, (a) Secured 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 and neither the Company nor any Affiliate of the Company will be entitled to vote to direct the relevant Secured Debt Representative and (b) votes will be determined in accordance with Section 8.2 of the Collateral Agency and Intercreditor Agreement.

"*Additional Notes*" means additional Notes (other than the Initial Notes) issued under this Indenture in accordance with Section 2.02 hereof, as part of the same series as the Initial Notes.

"*Affiliate*" means as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether through the ownership of voting securities, by contract or otherwise.

"*Agent*" means any Registrar, co-registrar, Paying Agent or additional paying agent.

"*ALTA*" means American Land Title Association.

"*Applicable Premium*" means, with respect to any Note on any redemption date, as calculated by the Company, the greater of:

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

(2) the excess of: (a) the present value at such redemption date of (i) the redemption price of the Note at February 15, 2023 (such redemption price being set forth in the table appearing in Section 3.07(f) hereof) plus (ii) all required interest payments due on the Note through February 15, 2023 (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 75 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.

"*April 2019 Term Loan Agreement*" means the $950 million first lien senior secured term loan agreement, dated April 5, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time), among the Company, as borrower, Morgan Stanley Senior Funding, Inc., as administrative agent, MUFG Union Bank, N.A., as collateral agent and the lenders party thereto from time to time.

"*Bankrupt Subsidiary*" means any Subsidiary of the Company that is a debtor under the Bankruptcy Code immediately after the date of this Indenture.

"*Bankruptcy Code*" means The Bankruptcy Reform Act of 1978, as heretofore and hereafter amended, and codified as 11 U.S.C. §§ 101 et seq.

"*Bankruptcy Law*" means Title 11, U.S. Code or any similar federal or state 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. The terms "*Beneficially Owns*" and "*Beneficially Owned*" have a corresponding meaning.

"*Board of Directors*" means:

(1) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board;

(2) with respect to a partnership, the Board of Directors of the general partner of the partnership;

(3) with respect to a limited liability company, the managing member or members or any controlling committee of managing members thereof; and

(4) with respect to any other Person, the board or committee of such Person serving a similar function.

"*Business Day*" means any day other than a Legal Holiday.

"*Capital Lease Obligation*" means, at the time any determination is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet prepared in accordance with GAAP as in effect from time to time; *provided*, *however*, that if any operating lease (whether in effect on the date of this Indenture or hereafter incurred) would be recharacterized as a capital lease due to changes in the accounting treatment of such operating leases under GAAP since December 31, 2018, then solely with respect to the accounting treatment of any such lease, GAAP shall be interpreted as it was in effect on December 31, 2018; *provided further* that any lease that is treated as an operating lease for purposes of GAAP as of December 31, 2018 shall not be treated as Indebtedness or as a Capital Lease Obligation and shall continue to be treated as an operating lease (and any future lease, if it were in effect on the date of this Indenture, that would be treated as an operating lease for purposes of GAAP as of December 31, 2018, shall be treated as an operating lease), in each case for purposes of this Indenture, notwithstanding any actual or proposed change in or application of GAAP after December 31, 2018.

"*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; 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.

"*Case*" means any case pending under Chapter 11 of the Bankruptcy Code.

"*Cash Equivalents*" means:

(1) United States dollars;

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

(3) certificates of deposit and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers' acceptances with maturities not exceeding one year and overnight bank deposits, in each case, with any lender party to the Credit Agreement or with any domestic commercial bank having capital and surplus in excess of $500.0 million and a Thomson Bank Watch Rating of "B" or better;

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

(5) commercial paper having one of the two highest ratings obtainable from Moody's or S&P and, in each case, maturing within one year after the date of acquisition; and

(6) money market funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (1) through (5) of this definition.

"*Cash Management Obligations*" means, with respect to the Company or any Guarantor, any obligations of the Company or such Guarantor owed to any Qualified Cash Management Creditor in respect of treasury management arrangements, depositary or other cash management services, including in connection with any automated clearing house transfer of funds or any similar transactions.

"*Change of Control*" means the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any "person" (as that term is used in Section 13(d) of the Exchange Act, but excluding any employee benefit plan of the Company of any of its Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than one or more Designated Holders, becomes the Beneficial Owner, directly or indirectly, of more than 50% of the Voting Stock of the Company, measured by voting power rather than number of shares.

"*Change of Control Triggering Event*" means the occurrence of both a Change of Control and a Rating Event.

"*Clearstream*" means Clearstream Banking, S.A.

"*CNTA Ratio*" means, as of any date of determination, (a) the Consolidated Net Tangible Assets of the Company and the Guarantors as of the end of the most recent fiscal quarter for which an internal consolidated balance sheet of the Company and its Subsidiaries is available, divided by (b) the aggregate amount of First Lien Debt of the Company and the Guarantors (as calculated under Section 4.07 hereof) outstanding on such date.

"*Collateral*" means, in the case of each Series of Secured Debt, all properties and assets of the Company and the Guarantors now owned or hereafter acquired in which Liens have been granted to the Collateral Agent to secure the Secured Obligations in respect of such Series of Secured Debt.

"*Collateral Agency and Intercreditor Agreement*" means that certain Collateral Agency and Intercreditor Agreement, dated as of January 31, 2008, as amended as of June 4, 2008, as further amended as of August 20, 2009 (as further amended, amended and restated, supplemented or otherwise modified from time to time in compliance with the terms of this Indenture), by and among the Company, the other guarantors from time to time party thereto, the secured debt representatives and the Collateral Agent.

"*Collateral Agent*" means MUFG Union Bank, N.A., as successor to Goldman Sachs Credit Partners L.P., in its capacity as collateral agent under the Security Documents, together with its successors and assigns in such capacity.

"*Commission*" means the U.S. Securities and Exchange Commission.

"*Commodity Hedge Agreements*" means any agreement providing for swaps (including without limitation heat rate swaps), caps, collars, puts, calls, floors, futures, options, spots, forwards, power purchase, tolling or sale agreements, fuel purchase or sale agreements, emissions credit purchase or sales agreements, power transmission agreements, fuel transportation agreements, fuel storage agreements, netting agreements, or commercial or trading agreements, each with respect to, or involving the purchase, transmission, distribution, sale, lease or hedge of, any energy, generation capacity or fuel, or any other energy related commodity or service, price or price indices for any such commodities or services or any other similar derivative agreements, and any other similar agreements, entered into in the ordinary course of business in order to manage fluctuations in the price or availability of any commodity.

"*Company*" means Calpine Corporation, and any and all successors thereto.

"*Consolidated Net Tangible Assets*" as of any date of determination means the sum of (a)(i) the total assets of the Company and the Guarantors as of the end of the most recent fiscal quarter for which an internal consolidated balance sheet of the Company and its Subsidiaries is available, *minus* (ii) all current derivative assets and long term derivative assets of the Company and the Guarantors reflected on such balance sheet, *minus* (iii) total goodwill and other intangible assets of the Company and the Guarantors reflected on such balance sheet, *plus* (b) the aggregate amount of undrawn and unutilized commitments under which any Indebtedness could be drawn and/or utilized as of such date, *plus* (c) the book value, as determined by the Company's chief financial officer in good faith, of any assets (other than goodwill and other intangible assets and current derivative assets and long term derivative assets) acquired by the Company and the Guarantors since the end of such fiscal quarter that, as of such date, are held by the Company and the Guarantors, *minus* (d) all current liabilities (other than any such liabilities that (i) would be included in the aggregate amount First Lien Debt outstanding as of such date of determination pursuant to Section 4.07(b) or (ii) constitute current derivative liabilities) of the Company and the
Guarantors reflected on such balance sheet, in each case, calculated on a consolidated basis in accordance with GAAP as in effect on the 2017 Notes Issue Date.

"*Corporate Trust Office of the Trustee*" will be at the address of the Trustee specified in Section 13.01 hereof or such other address as to which the Trustee may give notice to the Company.

"*Credit Agreement*" means (a) the 2008 Credit Agreement, (b) the Existing Credit Agreement and (c) any other credit agreement, loan agreement, note agreement, promissory note, indenture or other agreement or instrument evidencing or governing the terms of any indebtedness or other financial accommodation that has been incurred to extend, increase, renew, refund, replace (whether upon or after termination or otherwise) or refinance (including by means of sales of debt securities to institutional investors) in whole or in part from time to time the indebtedness and other obligations outstanding under the Existing Credit Agreement or any other agreement or instrument referred to in this clause (c); *provided* that any agreement or instrument described above in clause (c) shall only constitute the "Credit Agreement" (or a portion thereof) if the respective agreement or instrument provides that such agreement or instrument (or indebtedness thereunder) shall constitute "First Lien Debt" for purposes of the Collateral Agency and Intercreditor Agreement (and so long as same satisfies the requirements of clause (3) of the definition of First Lien Debt) and the respective First Lien Representative shall have notified the Collateral Agent that such agreement or instrument shall constitute the Credit Agreement (or a portion thereof) and shall have executed and delivered to the Collateral Agent a joinder to the Collateral Agency and Intercreditor Agreement and the other actions specified in the Collateral Agency and Intercreditor Agreement shall have been taken with respect to the relevant Series of Secured Debt being issued or incurred. Any reference to the Credit Agreement hereunder shall be deemed a reference to any Credit Agreement then extant. Notwithstanding the foregoing, in no event shall any Permitted Notes Document (as defined in the 2008 Credit Agreement or as any substantially similar term is defined in any credit agreement that refinances in full the 2008 Credit Agreement or any previous refinancing in full thereof) be deemed to constitute the Credit Agreement.

"*Credit Facility Obligations*" means all "Obligations" (or any other defined term having a similar purpose) as defined in the Credit Agreement.

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

"*Default*" means any event that is, or with the passage of time or the giving of notice 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 2.06 hereof, 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 2.03 hereof 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 provision of this Indenture.

"*Designated Holders*" means Energy Capital Partners III, LP (together with its parallel funds), Access Industries Inc., Canadian Pension Plan Investment Board and the respective Affiliates (other than any portfolio operating companies) of each of the foregoing.

"*Designated Project Subsidiary*" means (a) any Project Subsidiary formed by the Company or any of its Subsidiaries after January 31, 2008, (b) Otay Mesa Energy Center, LLC, Calpine Greenfield (Holdings) Corporation and Calpine Russell City, LLC and (c) any other Subsidiary that was a Guarantor but has been subsequently designated by a Responsible Officer (pursuant to written notice to the Collateral Agent) not to be a Guarantor, but only if such Subsidiary does not provide a guarantee with respect to the Existing Credit Agreement (or if the Existing Credit Agreement is no longer in effect, any other First Lien Debt).

"*Discharge of First Lien Obligations*" means the occurrence of all of the following:

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

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

(3) termination, cancellation or cash collateralization of all outstanding letters of credit constituting First Lien Debt (other than such letters of credit that have theretofore been fully cash collateralized in accordance with the terms of the relevant Secured Debt Documents, fully supported by a letter of credit satisfactory to the issuer of the letter of credit supported thereby or otherwise supported in a manner satisfactory to the respective issuers thereof); and

(4) payment in full and discharge of all other First Lien Obligations that are outstanding and unpaid at the time the First Lien Debt is paid in full and discharged (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 such time).

"*Discharge of Second Lien Obligations*" means the occurrence of all of the following:

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

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

(3) termination or cash collateralization of all outstanding letters of credit constituting Second Lien Debt (other than such letters of credit that have theretofore been fully cash collateralized, fully supported by a letter of credit satisfactory to the issuer of the letter of credit supported thereby or otherwise fully supported in a manner satisfactory to the respective issuers thereof); and

(4) payment in full and discharge of all other Second Lien Obligations that are outstanding and unpaid at the time the Second Lien Obligations are paid in full and discharged (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 such time).

"*Disqualified Capital Stock*" means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder of the Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the date that is 91 days after the date on which the Notes mature (other than pursuant to a change of control or asset sale prepayment offer provision).

"*Domestic Subsidiary*" means any Subsidiary of the Company that was formed under the laws of the United States or any state of the United States or the District of Columbia or that guarantees, or pledges any property or assets to secure, any other First Lien Obligations.

"*DPME Entities*" means Deer Park Energy Center LLC and Metcalf Energy, Center LLC.

"*Eligible Commodity Hedge Agreement*" means (a) any agreement in effect on the date of this Indenture that constituted (immediately prior to the date of this Indenture) an "Eligible Commodity Hedge Agreement" as defined in the Existing Credit Agreement, and (b) any Commodity Hedge Agreement entered into (or amended) by the Company or any Guarantor with a counterparty from time to time in the ordinary course of business, consistent with Prudent Industry Practice and not for speculative purposes, it being understood that whether a Commodity Hedging Agreement satisfies the criteria in this clause (b) shall be determined at the time such agreement is entered into and/or amended. For the avoidance of doubt, the following transactions shall always be considered speculative and not be included in clause (b) hereof: (i) any fixed price purchase of fuel that does not have an associated fixed price electricity sale; (ii) any fixed price sale of electricity that does not have an associated fixed price fuel purchase or is not used to hedge the heat rate differential between the Projects and the market or used to hedge any geothermal or storage Project; and (iii) any fixed price sale of fuel, other than forward sales of fuel to hedge the heat rate differential between the Company's (and its Subsidiaries') Projects and the market or used to hedge any geothermal or storage Project.

"*Eligible Commodity Hedge Financing*" means any letter of credit and/or revolving loan facility (including a commodity collateral revolving loan facility) that is entered into by the Company or any Guarantor so long as (a) such letters of credit or the proceeds of such facility are applied solely to collateralize obligations of the Company and the Guarantors to the counterparties under the Eligible Commodity Hedge Agreements to the extent that such counterparties are not otherwise secured by the Collateral and (b) the obligations of the Company and the Guarantors under such facility are secured by the Collateral pursuant to clause (1) of the definition of Permitted Liens on a *pari passu* basis with Obligations under the Eligible Commodity Hedge Agreements and are not secured by any other assets of the Company and the Guarantors.

"*Eligible Facility*" means a gas-fired electric generation facility with a nominal capacity of 1,000 MW or less.

"*Eligible Series of First Lien Debt*" means, at any time, any Series of First Lien Debt in respect of which the aggregate amount of First Lien Obligations (determined as provided in the first sentence of the definition of Required First Lien Debtholders) outstanding at such time exceeds $100.0 million.

"*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).

"*Equity Offering*" means any public or private sale of (1) Capital Stock of the Company (other than Disqualified Capital Stock and other than to a Subsidiary of the Company) or (2) Capital Stock of a direct or indirect parent entity of the Company (other than to the Company or a Subsidiary of the Company) to the extent that the net cash proceeds therefrom are contributed to the common equity capital of the Company.

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

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended, or any successor statute or statutes thereto.

"*Excluded Subsidiary*" means (a) any Foreign Subsidiary, (b) any Bankrupt Subsidiary for so long as such Bankrupt Subsidiary is a debtor under the Bankruptcy Code, (c) any Designated Project Subsidiary, (d) any Subsidiary of the Company that is (A) a Domestic Subsidiary of the Company substantially all of the assets of which consist of the Capital Stock of one or more Foreign Subsidiaries or (B) a Domestic Subsidiary of the Company substantially all of the assets of which consist of the Capital Stock of one or more Subsidiaries described in clause (A) hereof (whether such ownership is directly held or through another one or more such Subsidiaries), (e) any Subsidiary of the Company (other than a Material Subsidiary) and any Material Project Subsidiary that is not a Guarantor (as defined in the Guarantee and Collateral Agreement) as of the date of this Indenture or is thereafter designated by a Responsible Officer (pursuant to written notice to the Collateral Agent) not to be a Guarantor, but only if such Subsidiary does not provide a guarantee with respect to the Existing Credit Agreement or if the Existing Credit Agreement is no longer in effect, any other First Lien Debt, (f) any Subsidiary of Calpine Energy Services Holdings, Inc. that are not guarantors of the 2008 Credit Agreement on the 2017 Notes Issue Date, (g) any Subsidiary which the Company requests to be an Excluded Subsidiary which is satisfactory to the administrative agent under the Credit Agreement or is approved by an Act of Required Debtholders and (h) any Material Subsidiary (other than any Geysers Entity, any Subsidiary of Calpine Energy Services Holdings, Inc., any of Calpine Calgen Holdings, Inc. and its Subsidiaries and any Material Project Subsidiary) that is not a Guarantor (as defined in the Guarantee and Collateral Agreement) as of the date of this Indenture or is thereafter designated by a Responsible Officer (pursuant to written notice to the Collateral Agent) not to be a Guarantor, but only if such Subsidiary does not provide a guarantee with respect to the Existing Credit Agreement or if the Existing Credit Agreement is no longer in effect, any other First Lien Debt.

"*Existing Credit Agreement*" means that certain Credit Agreement, dated as of December 10, 2010 (as amended, amended and restated, supplemented or otherwise modified from time to time), by and among the Company, the guarantors party thereto, MUFG Union Bank, N.A., as successor to Goldman Sachs Credit Partners L.P., as collateral agent and The Bank of Tokyo-Mitsubishi UFJ, Ltd., as successor to Goldman Sachs Bank USA, as administrative agent, and the lenders party thereto.

"*Existing Credit Facility Obligations*" means all "Obligations" (or any other defined term having a similar purpose) as defined in the Existing Credit Agreement.

"*Fair Market Value*" means the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party, determined in good faith by the chief financial officer of the Company (unless otherwise provided in this Indenture).

"*First Lien*" means a Lien granted by a Security Document to the Collateral Agent for the benefit of the holders of First Lien Debt, at any time, upon any property of the Company or any other Guarantor to secure First Lien Obligations.

"*First Lien Debt*" means:

(1) all Existing Credit Facility Obligations;

(2) all obligations under the Term Loan Agreements; and

(3) to the extent issued or outstanding, (A) Specified Cash Management Obligations and Specified Swap Obligations and (B) any other Indebtedness (including (x) obligations under Eligible Commodity Hedge Agreements not included pursuant to clause (A) of this paragraph, (y) obligations under Eligible Commodity Hedge Financings and (z) permitted refinancings of First Lien Debt, including any Credit Agreement as defined in clause (b) of the definition thereof) that, in the case of this clause (B), are secured equally and ratably with the Credit Facility Obligations by a First Lien that was expressly permitted to be incurred and so secured under each then outstanding Credit Agreement (or if no such Credit Agreement is then in effect, each other applicable Secured Debt Document); *provided* that the foregoing provisions of preceding clause (B) shall not be construed to permit general basket Indebtedness or Lien baskets to be used to provide equal and ratable security as First Lien Debt in each case unless the respective provisions in the then outstanding Credit Agreement (if any) expressly provide that equal and ratable liens on the Collateral with the Credit Facility Obligations shall be permitted; and *provided further* that in the case of any Indebtedness or other obligations referred to in this clause (3):

(a) on or before the date on which such Indebtedness is (or other obligations are) incurred by the Company or any other Guarantor (or on or about the date of the Collateral Agency and Intercreditor Agreement in respect of any such Indebtedness that is (or any such other obligations that were) incurred prior to the date of the Collateral Agency and Intercreditor Agreement and constitute(s) Secured Debt), such Indebtedness is (or other obligations are) designated by the Company, in an Officers' Certificate delivered to the Collateral Agent, as "First Lien Debt" for the purposes of the Secured Debt Documents; *provided* that no Obligation or Indebtedness may be designated as both Second Lien Debt and First Lien Debt;

(b) such Indebtedness is (or other obligations are) evidenced or governed by an indenture, credit agreement, loan agreement, note agreement, promissory note, Hedge Agreement or other agreement or instrument that includes a Lien Sharing and Priority Confirmation, or such Indebtedness is (or other obligations are) subject to a Lien Sharing and Priority Confirmation; and

(c) is designated as First Lien Debt in accordance with the requirements of the Collateral Agency and Intercreditor Agreement.

In addition to the foregoing, all obligations owing to the Collateral Agent in its capacity as such, whether pursuant to the Collateral Agency and Intercreditor Agreement or one or more of the Security Documents, First Lien Documents or Second Lien Documents, shall in each case be deemed to constitute First Lien Debt (although there shall be no separate Series of First Lien Debt as a result thereof) and First Lien Obligations (with the obligations described in this sentence being herein called "*Collateral Agent Obligations*"), which Collateral Agent Obligations shall be entitled to the priority provided in clause FIRST of Section 3.4 of the Collateral Agency and Intercreditor Agreement.

"*First Lien Documents*" means this Indenture, the Credit Agreement, the Term Loan Agreements, the indenture governing the 2022 Notes, the indenture governing the 2024 Notes, the indenture governing the 2026 Notes, each agreement or instrument relating to any Specified Cash Management and Swap Obligations and each other agreement or instrument governing, or relating to, any First Lien Debt and the First Lien Security Documents.

"*First Lien Eligible Commodity Hedge Financing Agreements*" means any Eligible Commodity Hedge Financing (and agreements and instruments governing or relating thereto) which has become First Lien Debt in accordance with clause (2) of the definition of "First Lien Debt" contained in the Collateral Agency and Intercreditor Agreement.

"*First Lien Eligible Commodity Hedge Financing Obligations*" means all obligations under First Lien Eligible Commodity Hedge Financing Agreements.

"*First Lien Hedging Obligations*" means all Specified Swap Obligations and all other obligations under any Commodity Hedge Agreement, Eligible Commodity Hedge Agreement or Swap Agreement which, in any case, constitutes First Lien Debt in accordance with clause (2) of the definition of "First Lien Debt" contained in the Collateral Agency and Intercreditor Agreement.

"*First Lien Obligations*" means any principal (including reimbursement obligations with respect to letters of credit whether or not drawn), interest (including 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 First Lien Documents, even if such interest is not enforceable, allowable or allowed as a claim in such proceeding), premium (if any), fees, indemnifications, reimbursements, expenses, damages and other liabilities payable under the First Lien Documents, including, without limitation, all outstanding Credit Facility Obligations, Guaranty Reimbursement Obligations, Specified Cash Management Obligations, First Lien Hedging Obligations, First Lien Eligible Commodity Hedge Financing Obligations and such obligations in respect of any other series of First Lien Debt issued or outstanding after the date of this Indenture. As provided in the last sentence of the definition of "First Lien Debt," all Collateral Agent Obligations shall constitute First Lien Obligations.

"*First Lien Representative*" means (1) in the case of this Indenture, the Trustee, (2) in the case of the Existing Credit Agreement, The Bank of Tokyo-Mitsubishi UFJ, Ltd., as successor to Goldman Sachs Bank USA, as administrative agent thereunder and its successors and assigns, or (3) in the case of any other Series of First Lien Debt, the respective creditor or any trustee, agent or representative thereof designated in the respective Series of First Lien Debt.

"*First Lien Security Documents*" means the Security Documents (other than any Security Documents that do not secure the First Lien Obligations).

"*Foreign Subsidiary*" means any Subsidiary of the Company organized under the laws of any jurisdiction outside the United States.

"*GAAP*" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession.

"*Generating Plant Easement*" shall mean the real property easement upon which any generating plant of the Company or any of its Subsidiaries is located.

"*Geysers Entities*" means the collective reference to the following Subsidiaries of the Company: Anderson Springs Energy Company, Thermal Power Company, Geysers Power I Company, Geysers Power Company, LLC and Calpine Calistoga Holdings, LLC.

"*Global Note Legend*" means the legend set forth in Section 2.06(f)(2) hereof, which is required to be placed on all Global Notes issued under this Indenture.

"*Global Notes*" means, individually and collectively, each of the Restricted Global Notes and the Unrestricted Global Notes deposited with or on behalf of and 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 Section 2.01, 2.06(b)(3), 2.06(b)(4) or 2.06(d)(2) hereof.

"*Government Securities*" means direct obligations of, or obligations guaranteed by, the United States of America (including any agency or instrumentality thereof) for the payment of which obligations or guarantees the full faith and credit of the United States of America is pledged and which are not callable or redeemable at the issuer's option.

"*Grantors*" means any Person that pledges any Collateral under the Security Documents to secure any Secured Obligation.

"*Guarantee*" means a guarantee other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner including, without limitation, by way of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Indebtedness (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take or pay or to maintain financial statement conditions or otherwise).

"*Guarantee and Collateral Agreement*" means that certain Amended and Restated Guarantee and Collateral Agreement, dated as of January 31, 2008 and amended and restated as of December 10, 2010 (as amended, amended and restated, supplemented or otherwise modified from time to time), by and among the Company, the other guarantors and Grantors from time to time party thereto and the Collateral Agent.

"*Guarantors*" means any Subsidiary of the Company that is a party to the Guarantee and Collateral Agreement, and its successors and assigns, in each case, until the Note Guarantee of such Person has been released in accordance with the provisions of this Indenture and the Collateral Agency and Intercreditor Agreement.

"*Guaranty Reimbursement Obligations*" means all Obligations of the Company and the Guarantors under Section 2 of the Guarantee and Collateral Agreement.

"*Hedge Agreement*" means any agreement or instrument governing or relating to any First Lien Hedging Obligations.

"*Hedge Outstanding Amount*" means, for any Hedge Agreement on any date of determination, an amount determined in good faith by the applicable First Lien Representative equal to: (a) in the case of a Hedge Agreement documented pursuant to a Master Agreement, the amount, if any, that would be or is payable by the applicable obligor to its counterparty to such Hedge Agreement, as if (i) such Hedge Agreement were being terminated early on such date of determination due to a "Termination Event," "Event of Default," "Additional Event of Default," or "Additional Termination Event," (ii) the obligor party thereto were the sole "Affected Party," and (iii) the applicable First Lien Representative were the sole party determining such payment amount (with the applicable First Lien Representative making such determination reasonably in accordance with the provisions of the above-described Master Agreement); (b) in the case of a Hedge Agreement traded on a national exchange, the mark-to-market value of such Hedge Agreement, which will be the unrealized loss on such Hedge Agreement to the obligor party to such Hedge Agreement reasonably determined by the applicable First Lien Representative based on the settlement price of such Hedge Agreement on such date of determination; or (c) in all other cases, the mark-to-market value of such Hedge Agreement, which will be the unrealized loss on such Hedge Agreement to the obligor party to such Hedge Agreement reasonably determined by the applicable First Lien Representative as the amount, if any, by which (i) the present value of the future cash flows to be paid by the applicable obligor exceeds (ii) the present value of the future cash flows to be received by such obligor pursuant to such Hedge Agreement.

"*Holder*" means a Person in whose name a Note is registered.

"*IAI 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 will be issued in a denomination equal to the outstanding principal amount of the Notes sold to Institutional Accredited Investors.

"*Indebtedness*" means of any Person at any date, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services (other than current trade payables incurred in the ordinary course of such Person's business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all Capital Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party or applicant under or in respect of acceptances, letters of credit, surety bonds or similar arrangements, (g) the liquidation value of all preferred Capital Stock of such Person, (h) all guarantees of such Person in respect of obligations of the kind referred to in clauses (a) through (g) above, (i) all obligations of the kind referred to in clauses (a) through (h) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on property (including accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation, and (j) all obligations of such Person in respect of Swap Agreements. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor. For purposes hereof, preferred Capital Stock issued by the Company shall not constitute Indebtedness hereunder unless it constitutes Disqualified Capital Stock.

"*Indenture*" means this Indenture, as amended or supplemented from time to time.

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

"*Initial Notes*" means the $1,250,000,000 aggregate principal amount of Notes issued under this Indenture on the date hereof.

"*Initial Purchasers*" means Credit Suisse Securities (USA) LLC, BofA Securities, Inc., Barclays Capital Inc., BNP Paribas Securities Corp., Citigroup Global Markets Inc., Credit Agricole Securities (USA) Inc., Deutsche Bank Securities Inc., Goldman Sachs & Co. LLC, J.P. Morgan Securities LLC, Morgan Stanley & Co. LLC, MUFG Securities Americas Inc., Natixis Securities Americas LLC, RBC Capital Markets, LLC, SMBC Nikko Securities America, Inc., and ING Financial Markets LLC.

"*Insolvency or Liquidation Proceeding*" means:

(1) any case commenced by or against the Company or any Guarantor under Title 11, U.S. Code or any similar federal or state law for the relief of debtors, any other proceeding for the reorganization, recapitalization or adjustment or marshalling of the assets or liabilities of the Company or any Guarantor, any receivership or assignment for the benefit of creditors relating to the Company or any Guarantor or any similar case or proceeding relative to the Company or any 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 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 Guarantor are determined and any payment or distribution is or may be made on account of such claims.

"*Institutional Accredited Investor*" means an institution that is an "accredited investor" as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act, who are not also QIBs.

"*Junior Lien Indebtedness*" Indebtedness of the Company and/or any Subsidiary that is secured by Liens junior to the Liens securing the Obligations of the Company and the Guarantors under this Indenture; *provided* that the priority of such Liens and the ability of the lenders or holders of such Indebtedness to exercise rights and enforce remedies in respect of such Liens are subject to the Collateral Agency and Intercreditor Agreement or any other intercreditor agreement that provides for the subordination (including related intercreditors' rights) of such Junior Lien Indebtedness at least to the same extent that the Second Lien Debt is subordinated to the First Lien Debt pursuant to the Collateral Agency and Intercreditor Agreement, as determined by the Company in good faith.

"*Legal Holiday*" means a Saturday, a Sunday or a day on which banking institutions in the City of New York or at a place of payment are authorized by law, regulation or executive order to remain closed. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue on such payment for the intervening period.

"*Lien*" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest 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 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.

"*Lien Sharing and Priority Confirmation*" means:

(1) as to any Series of First Lien Debt, the written agreement of the holders of such Series of First Lien Debt, or their applicable First Lien Representative on their behalf, in each case as set forth in the indenture, credit agreement, loan agreement, note agreement, promissory note, Hedge Agreement or other agreement or instrument evidencing or governing such Series of First Lien Debt (or in a separate writing binding upon holders of such Series of First Lien Debt), for the enforceable benefit of all holders of each existing and future Series of First Lien Debt, each existing and future First Lien Representative, all holders of each existing and future Series of Second Lien Debt and each existing and future Second Lien Representative:

(a) that all First Lien Obligations will be and are secured equally and ratably by all First Liens at any time granted by the Company or any other Grantor to secure any Obligations in respect of such Series of First Lien Debt, whether or not upon property otherwise constituting collateral for such Series of First Lien Debt, and that all such First Liens will be enforceable by the Collateral Agent for the benefit of all holders of First Lien Obligations equally and ratably;

(b) that the holders of Obligations in respect of such Series of First Lien Debt are bound by the provisions of the Collateral Agency and Intercreditor Agreement, including without limitation (x) the provisions relating to the ranking of First Liens and the order of application of proceeds from enforcement of First Liens and (y) Section 8.22 thereof; and

(c) consenting to and directing the Collateral Agent to perform its obligations under the Collateral Agency and Intercreditor Agreement and the other Security Documents; and

(2) as to any Series of Second Lien Debt, the written agreement of the holders of such Series of Second Lien Debt, or their applicable Second Lien Representative on their behalf, in each case as set forth in the indenture, credit agreement, loan agreement, note agreement, promissory note, Hedge Agreement or other agreement or instrument evidencing or governing such Series of Second Lien Debt, for the enforceable benefit of all holders of each existing and future Series of Second Lien Debt, each existing and future Second Lien Representative, all holders of each existing and future Series of Second Lien Debt and each existing and future Second Lien Representative:

(a) that all Second Lien Obligations will be and are secured equally and ratably by all Second Liens at any time granted by the Company 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 Collateral Agent for the benefit of all holders of Second Lien Obligations equally and ratably;

(b) that the holders of Obligations in respect of such Series of Second Lien Debt are bound by the provisions of the Collateral Agency and Intercreditor Agreement, including without limitation (x) the provisions relating to the ranking of Second Liens and the order of application of proceeds from the enforcement of Second Liens and (y) Section 8.22 thereof; and

(c) consenting to and directing the Collateral Agent to perform its obligations under the Collateral Agency and Intercreditor Agreement and the other Security Documents.

"*Limited Recourse Debt*" means Indebtedness of a Project Subsidiary or Project Subsidiaries (or a Subsidiary or Subsidiaries directly or indirectly holding the Capital Stock of one or more of such Project Subsidiaries) that is incurred to finance the improvement, installment, design, engineering, construction, acquisition, development, completion, maintenance or operation of, or otherwise affects any such act in respect of, all or any portion of the applicable Project or Projects, or to refinance existing such Indebtedness, with respect to which the recourse of the holder or obligee of such Indebtedness is limited to (i) assets (and revenues and proceeds from such assets) associated with or ancillary to such Project or Projects (which in any event shall not include assets held by any Subsidiary other than a Subsidiary, if any, whose sole business is the ownership and/or operation of such Project or Projects (or the direct or indirect ownership of one or more of the relevant Project Subsidiaries) and substantially all of whose assets are associated with or ancillary to such Project or Projects) in respect of which such Indebtedness was incurred and/or (ii) such Subsidiary or Subsidiaries, and/or such Project Subsidiary or Project Subsidiaries and/or the Capital Stock in one or more of such entity or entities, but in the case of clause (ii) only if such Subsidiary's or Project Subsidiary's sole business is the ownership and/or operation of such Project or Projects (or the direct or indirect ownership of one or more of the relevant Project Subsidiaries) and substantially all of such Subsidiary's or Project Subsidiary's assets are associated with or ancillary to such Project or Projects. For purposes of the Collateral Agency and Intercreditor Agreement and the Guarantee and Collateral Agreement, Indebtedness of a Subsidiary of the Company shall not fail to be Limited Recourse Debt by reason of the holders of such Limited Recourse Debt having recourse to the Company or another Subsidiary of the Company pursuant to a performance guarantee, so long as such performance guarantee is permitted under the Credit Agreement.

"*May 2015 Term Loan Agreement*" means the $1.6 billion first lien senior secured term loan agreement, dated as of May 28, 2015 (as amended, amended and restated, supplemented or otherwise modified from time to time), among the Company, as borrower, and the lenders party thereto, and Morgan Stanley Senior Funding, Inc., as administrative agent, and MUFG Union Bank, N.A., as successor to Goldman Sachs Credit Partners L.P., as collateral agent.

"*Master Agreement*" means any Master Agreement published by the International Swap and Derivatives Associations, Inc.

"*Material Project Subsidiaries*" means the collective reference to the following Subsidiaries of the Company: Calpine Steamboat Holdings, LLC and Metcalf Holdings, LLC, and all of their respective direct and indirect Subsidiaries.

"*Material Subsidiaries*" means the collective reference to the following Subsidiaries of the Company: the Geysers Entities, Calpine Energy Services Holdings, Inc., Calpine Calgen Holdings, Inc., Calpine CCFC Holdings, Inc., CPN Energy Services GP, Inc., CPN Energy Services LP, Inc., Calpine Riverside Holdings, LLC, New Development Holdings LLC and its subsidiaries, the DPME Entities and the Material Project Subsidiaries and all of their respective direct and indirect Subsidiaries (excluding, for the avoidance of doubt, California Peaker Holdings, LLC and its Subsidiaries and South Point Holdings, LLC and its Subsidiaries), and each of the Calpine Power Company, Calpine Operations Management Company, Inc., Calpine Administrative Services Company, Inc. and Calpine Fuels Operation; it being understood that any Subsidiary into which any Material Subsidiary merged or otherwise consolidated or any Subsidiary to which all or substantially all of the assets of any Material Subsidiary are transferred or otherwise disposed shall constitute a Material Subsidiary for all purposes under this Indenture.

"*Moody's*" means Moody's Investors Services, Inc., or any successor thereto.

"*Mortgage*" means each of the mortgages and deeds of trust made by the Company or any Guarantor in favor of, or for the benefit of, the Collateral Agent for the benefit of the Secured Parties referred to therein, as each may be amended, restated, supplemented or otherwise modified from time to time.

"*Mortgaged Property*" means the real properties of the Company or any Guarantor, as to which the Collateral Agent for the benefit of the Secured Parties shall be granted a Lien pursuant to the Mortgages.

"*Non-Recourse Debt*" means Indebtedness:

(1) as to which neither the Company nor any of its Restricted Subsidiaries (a) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness) or (b) is directly or indirectly liable as a guarantor or otherwise, other than pursuant to any performance guarantee; and

(2) no default with respect to which (including any rights that the holders of the Indebtedness 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 of its Restricted Subsidiaries to declare a default on such other Indebtedness or cause the payment of the Indebtedness to be accelerated or payable prior to its final stated maturity.

"*Non-U.S. Person*" means a Person who is not a U.S. Person.

"*Note Guarantee*" means the Guarantee by each Guarantor of the Company's obligations under this Indenture and the Notes, pursuant to the Guarantee and Collateral Agreement.

"*Notes*" has the meaning assigned to it in the preamble to this Indenture. The Initial Notes and the Additional Notes shall be treated as a single class for all purposes under this Indenture, and unless the context otherwise requires, all references to the Notes shall include the Initial Notes and any Additional Notes.

"*Obligations*" means any principal, interest, penalties, fees, expenses, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.

"*Offering Memorandum*" the Company's Offering Memorandum dated December 10, 2019, relating to the initial offering of the Notes.

"*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 Chief Legal Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Vice-President of such Person.

"*Officers' Certificate*" means a certificate signed on behalf of the Company by two Officers of the Company, one of whom must be the principal executive officer, the principal financial officer, the chief legal officer, the treasurer or the principal accounting officer of the Company, that meets the requirements of Section 13.03 hereof.

"*Opinion of Counsel*" means an opinion from legal counsel who is reasonably acceptable to the Trustee, that meets the requirements of Section 13.03 hereof. The counsel may be an employee of or counsel to the Company, any Subsidiary of the Company or the Trustee.

"*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 Liens*" means:

(1) Liens securing (a) First Lien Debt and (b) all other First Lien Obligations;

(2) Liens securing (a) Second Lien Debt and (b) all other Second Lien Obligations, which Liens are made junior to the First Lien Obligations pursuant to the Collateral Agency and Intercreditor Agreement;

(3) Liens securing Junior Lien Indebtedness and all Obligations with respect thereto;

(4) Liens on the property or assets of (a) the Company or any Subsidiary of the Company in favor of the Company or any Guarantor or (b) any Restricted Subsidiary that is not a Guarantor in favor of any other Restricted Subsidiary that is not a Guarantor;

(5) Liens on property (including Capital Stock) existing at the time of acquisition of the property (including Capital Stock) by the Company or any Subsidiary of the Company; *provided* that such Liens were in existence prior to such acquisition and not incurred in contemplation of, such acquisition;

(6) Liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, government contracts, performance and return-of-money bonds and other similar obligations incurred in the ordinary course of business (exclusive of obligations in respect of the payment for borrowed money);

(7) Liens to secure the performance of bids, trading contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds, and other obligations of a like nature incurred in the ordinary course of business; *provided* that, for the avoidance of doubt, Liens (including without limitation rights of set-off) on (i) deposits and (ii) revenues under trading contracts, in each case in favor of counterparties under such trading contracts and other obligations incurred in the ordinary course of business (including trading counterparties, brokerages, clearing houses, utilities, systems operators and similar entities) shall be permitted and shall be permitted to be first priority Liens on such collateral;

(8) Liens existing on the date of this Indenture and Liens on assets of the Company or any of its Subsidiaries securing obligations incurred to refinance, replace, refund, renew or extend obligations (and obligations refinancing such obligations) secured by Liens existing on the date of this Indenture; *provided* that the Liens securing such obligations shall attach only to the assets that were subject to Liens securing the obligations so refinanced, replaced, refunded, renewed or extended;

(9) licenses, leases or subleases granted to third parties not interfering in any material respect with the business of the Company and any of its Restricted Subsidiaries;

(10) Liens for taxes, assessments or charges not yet due or that are being contested in good faith and by appropriate proceedings if adequate reserves with respect thereto are maintained on the books of the Company or the affected Restricted Subsidiary, as the case may be, in accordance with GAAP as in effect from time to time;

(11) carriers', warehousemen's, mechanics', materialmen's, repairmen's, landlords' or other similar Liens arising in the ordinary course of business which in the aggregate do not materially detract from the value of the property or assets or materially impair the use thereof in the operation of the business of the Company and its Subsidiaries and are not overdue for a period of more than 90 days or which are being contested in good faith by appropriate proceedings and for which adequate reserves with respect thereto are maintained on the books of the Company or the affected Restricted Subsidiary, as the case may be, in accordance with GAAP as in effect from time to time;

(12) easements, rights-of-way, restrictions, zoning ordinances and other similar encumbrances incurred in the ordinary course of business which, are not substantial in amount and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the Company and any of its Restricted Subsidiaries;

(13) any interest or title of a licensor, lessor or sublessor under any lease;

(14) Liens created for the benefit of (or to secure) the Notes or the Note Guarantees;

(15) Liens arising in the ordinary course of business to secure liability (in an amount not in excess of the premium for such insurance) for premiums to insurance carriers;

(16) filing of Uniform Commercial Code financing statements as a precautionary measure in connection with operating leases or capital leases;

(17) bankers' Liens and similar Liens (including rights of set-off) in respect of bank deposits;

(18) Liens on cash, Cash Equivalents or other property arising in connection with the defeasance, discharge or redemption of Indebtedness;

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

(20) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into in the ordinary course of business;

(21) good faith deposits made in connection with (a) any acquisition (whether pursuant to an acquisition of Capital Stock, assets or otherwise) by the Company or any of its Subsidiaries from any Person of all or substantially all of the assets of a Person or a line of business of a Person or (b) any advance, loan, extension of credit (by way of guarantee or otherwise) or capital contribution, or purchase of any stock, bonds, notes, debentures or other securities of or any assets constituting a business unit of, or any other investment;

(22) Liens on assets of any Subsidiary of the Company or Project Subsidiary and/or on the Capital Stock of such Subsidiary or Project Subsidiary, in each case to the extent such Liens secure Limited Recourse Debt;

(23) any Lien existing on any property or asset prior to the acquisition thereof (or the acquisition of, or merger or consolidation with, the Person owning such property or asset) by the Company or any of its Subsidiaries, and any Lien securing obligations incurred to refinance, replace, refund, renew or extend the obligations secured by such Liens; *provided* that in each case (i) such Lien is not created in contemplation or in connection with such acquisition, (ii) such Lien does not apply to any other property or assets of the Company or any of its Subsidiaries (other than fixtures and improvements on any such real property), and (iii) the principal amount of any Indebtedness secured by such Liens shall not be increased (except by the amount of premiums, penalties, accrued and unpaid interest, fees and expenses associated with such refinancing, replacement, refunding, renewal or extension of such Indebtedness);

(24) utility and similar deposits made by the Company or its Subsidiaries in the ordinary course of business;

(25) Permitted PPA Counterparty Liens, subject to a PPA Intercreditor Agreement;

(26) Liens securing (a) Capital Lease Obligations and (b) other Indebtedness of the Company or any of its Subsidiaries incurred to finance all or any part of the acquisition, lease, construction, installation or improvement of any assets, and any refinancing, replacement, refunding, renewal or extension of any such Indebtedness without any increase thereof, in an aggregate amount, together with all other Capital Lease Obligations and Indebtedness secured by Liens pursuant to this clause (26) not to exceed $150.0 million at any one time outstanding, so long as (i) such Liens are initially created or arise prior to or within the 90 days after the completion of such acquisition, lease, construction, installation or improvement and (ii) such Liens do not attach to assets of the Company or any Subsidiary other than the relevant assets acquired, leased, constructed, installed or improved;

(27) Liens of sellers of goods, gas or oil to the Company or any of its Subsidiaries arising under Article 2 of the Uniform Commercial Code or under other state statutes in the ordinary course of business, covering only the goods, gas or oil sold and covering only the unpaid purchase price for such goods, gas or oil and related expenses;

(28) [Reserved]

(29) [Reserved]

(30) Liens on all or substantially all of the assets of any Subsidiary of the Company that was a debtor under the Bankruptcy Code immediately after the closing date of the 2008 Credit Agreement, which Subsidiary has not emerged from its Case to the extent such Liens secure the obligations of such bankrupt Subsidiaries under loans made to them and permitted under the 2008 Credit Agreement; *provided* that such Liens shall be terminated and released as of the date that such Subsidiary emerges from its Case;

(31) any Lien created in favor of a partner, co-joint venturor or co-owner in connection with any partnership agreement, joint venture agreement or other joint ownership agreement or arrangement with such party related to the interests or shares in, assets of, distributions from, product derived from, sales proceeds payable in respect of, revenues from and tariffs payable in respect of such partnership, joint venture or other joint ownership agreement or arrangement, including, without limitation, any rights of first offer, first refusal or first negotiation, any rights of purchase and any similar rights and encumbrances and restrictions on transfer granted with respect to such interests, shares, assets, distributions, products, sales proceeds, revenues and tariffs;

(32) Liens securing Indebtedness or other Obligations in an aggregate amount, together with all other Indebtedness and other Obligations secured by Liens pursuant to this clause (32), not to exceed $100.0 million at any one time outstanding; and

(33) with respect to any Mortgaged Property that is leased, subleased, held by or benefitting from, an easement agreement, or subject to a Generating Plant Easement, (i) the lease, sublease or easement agreement, as applicable, and the interest or title of the lessor, sublessor or grantor thereunder and (ii) any Liens encumbering the title of such lessor, sublessor or grantor, as applicable, in the Mortgaged Property arising after the date hereof and subordinate in all respects to the Lien granted and evidenced by the Mortgages.

"*Permitted PPA Counterparty Lien*" means a Lien granted by the Company or any of its Subsidiaries in favor of a PPA Counterparty under a PPA; *provided* that all of the following conditions are satisfied:

(1) the PPA Counterparty shall not be an Affiliate of the Company or any of its Subsidiaries;

(2) the Lien shall not secure any Indebtedness and (a) shall have been granted solely to secure the performance obligations of the applicable Project Subsidiary under the PPA and/or any obligations of such Project Subsidiary to make a termination payment under the PPA, or (b) shall create rights designed to enable the PPA Counterparty to assume operational control of the relevant Eligible Facility or Eligible Facilities (e.g., step-in rights) or otherwise continue performance of the Project Subsidiary's obligations under the PPA;

(3) the PPA Counterparty shall be permitted to exercise its rights and remedies solely with respect to the assets subject to such Lien only:

(a) for so long as the PPA Counterparty remains current with respect to all of its payment obligations under the PPA and shall not otherwise be in a continuing default under the PPA;

(b) if the PPA Counterparty continues to acknowledge the existence of the Liens securing the Obligations (unless and until the Liens securing the Obligations are eliminated in connection with a foreclosure of the Lien as contemplated by clause (4) of this definition); and

(c) if either (i) the Project Subsidiary has terminated, rejected or repudiated the PPA (including, without limitation, any rejection or similar act by or on behalf of such Project Subsidiary in connection with any case under the Bankruptcy Code) or (ii) the Project Subsidiary (A) provides or delivers capacity or energy to a third party if such Project Subsidiary is required under the PPA to provide or deliver such capacity or energy to the PPA Counterparty, (B) fails to operate or attempt to operate one or more of the relevant Eligible Facilities at a time when the Project Subsidiary was required under the PPA to operate or attempt to operate such Eligible Facility or Eligible Facilities and such operation is not prevented by force majeure, forced outage or other events or circumstances outside the reasonable control of the Person responsible therefor, (C) fails to comply with any provisions of the PPA designed to enable the PPA Counterparty to assume operational control of the relevant Eligible Facility or Eligible Facilities (e.g., step-in rights) or otherwise take actions necessary to continue performance of Project Subsidiary's obligations under the PPA, in each case to the extent the Project Subsidiary is then capable of complying with such provisions, (D) fails to pay to the PPA Counterparty any amount due and payable in accordance with the terms and conditions of the PPA, or (E) otherwise intentionally breaches its obligations under the PPA;

(4) the PPA Counterparty's exercise of its rights with respect to the Lien shall be limited to (a) the taking of actions pursuant to any provisions of the PPA designed to enable the PPA Counterparty to assume operational control of the relevant Eligible Facility or Eligible Facilities (e.g., step-in rights) or otherwise necessary to continue performance of Project Subsidiary's obligations under the PPA or (b) the recovery of any termination payment due under the PPA; and

(5) the PPA Counterparty shall have executed and delivered a PPA Intercreditor Agreement.

"*Permitted Refinancing Indebtedness*" means any Indebtedness that constitutes First Lien Debt issued in exchange for, or the net proceeds of which are used to renew, refund, refinance, replace, defease or discharge other Indebtedness that constitutes First Lien Debt; *provided* that the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness renewed, refunded, refinanced, replaced, defeased or discharged (plus all accrued interest on such Indebtedness and the amount of all fees and expenses, including premiums, incurred in connection therewith).

"*Permitted Replacement Commitment*" means any letters of credit, similar obligations and/or commitment to lend or provide Indebtedness that replaces any then-existing letters of credit, similar obligations or undrawn and unutilized commitment to lend or provide Indebtedness, in each case, that would constitute First Lien Debt; *provided* that the maximum
principal amount of the replacement letters of credit, similar obligations and commitments may not exceed the maximum principal amount of the then-existing letters of credit, similar obligations and commitments.

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

"*PPA*" means an agreement (including a tolling agreement, fuel conversion services agreement or other similar agreement) entered into by a Subsidiary for the sale of capacity or energy (and services ancillary or related thereto) from one or more of the Projects.

"*PPA Counterparty*" means a counterparty to a PPA.

"*PPA Intercreditor Agreement*" means an intercreditor agreement that provides for the following: (a) notice by the Company to the relevant PPA Counterparty of defaults, events of default and any exercise of remedies by the lenders under the Credit Agreement or an Act of Required Debtholders in connection therewith, (b) the right of the PPA Counterparty to exercise step-in rights, (c) notice to the Collateral Agent and the trustee of any defaults under the relevant PPA, (d) standstill provisions relating to the exercise of remedies by the PPA Counterparty, (e) the right of the lenders under the Credit Agreement or an Act of Required Debtholders to cure defaults under the relevant PPA without assuming the PPA or taking possession of the Project, (f) the right of the lenders under the Credit Agreement or an Act of Required Debtholders to cure defaults under the relevant PPA by stepping in, assuming the contract and curing "curable" defaults, (g) the right of the applicable Secured Parties to provide alternative collateral (e.g., letter of credit) in lieu of Permitted PPA Counterparty Liens, (h) the establishment of a payment waterfall absent special actions by the PPA Counterparty and the lenders under the Credit Agreement or an Act of Required Debtholders, and (i) is otherwise in form and substance reasonably satisfactory to Collateral Agent and the Company.

"*Private Placement Legend*" means the legend set forth in Section 2.06(f)(1) hereof to be placed on all Notes issued under this Indenture except where otherwise permitted by the provisions of this Indenture.

"*Project*" means any (a) electrical generation plant, (b) cogeneration plant, (c) facility for the exploration or drilling for fuel or other resources, or for the development, storage, transport or transmission of, electricity, steam, fuel, syngas or other resources for the generation of electricity or (d) facility engaged in another line of business in which the Company and its Subsidiaries are permitted to be engaged hereunder, in each case for which a Subsidiary or Subsidiaries of the Company was, is or will be (as the case may be) an owner, lessee, operator, manager, developer or builder, and shall also mean any two or more of such plants or facilities in which an interest has been acquired in a single transaction; *provided* that a Project shall cease to be a Project of the Company and its Subsidiaries at such time that the Company or any of its Subsidiaries ceases to have any existing or future rights or obligations (whether direct or indirect, contingent or matured) associated therewith.

"*Project Subsidiary*" means any Subsidiary of the Company whose sole business is the ownership and/ or operation of a Project or Projects and substantially all of the assets of which are associated with or acquired or utilized in such Project.

"*Prudent Industry Practice*" means those practices or methods as are commonly used or adopted by Persons in power generation industry in the United States, in connection with the conduct of such industry, in each case as such practices or methods may evolve from time to time, consistent with all applicable requirements of law.

"*QIB*" means a "qualified institutional buyer" as defined in Rule 144A.

"*Qualified Cash Management Creditors*" means any Person to whom Cash Management Obligations are owed, in each case so long as such Person was a lender under the Credit Agreement or an Affiliate of a lender under the Credit Agreement, at the time the respective services or extensions of credit giving rise to such Cash Management Obligations were provided or incurred.

"*Qualifying Equity Interests*" means Equity Interests of the Company other than Disqualified Capital Stock.

"*Rating Agencies*" means (1) each of Moody's and S&P and (2) if any of Moody's or S&P ceases to rate the Notes or fails to make a rating of the Notes publicly available for reasons outside of our control, a "nationally recognized statistical rating organization" within the meaning of Section 3(a)(62) of the Exchange Act selected by us as a replacement agency for Moody's or S&P, or both of them, as the case may be.

"*Rating Event*" means the rating on the Notes is lowered by both of the Rating Agencies on any day within the 60-day period (which 60-day period will be extended so long as the rating of the Notes is under publicly announced consideration for a possible downgrade by either of the Rating Agencies) after the earlier of (1) the occurrence of a Change of Control and (2) public disclosure by the Company of the occurrence of a Change of Control or the Company's intention to effect a Change of Control; *provided*, *however*, that a Rating Event otherwise arising by virtue of a particular reduction in rating will not be deemed to have occurred in respect of a particular Change of Control (and thus will not be deemed a Rating Event for purposes of the definition of Change of Control Triggering Event) if the Rating Agencies making the reduction in rating to which this definition would otherwise apply do not announce or publicly confirm or inform the trustee in writing at the Company's or the Trustee's request that the reduction was the result, in whole or in part, of any event or
circumstance comprised of or arising as a result of, or in respect of, the applicable Change of Control (whether or not the applicable Change of Control has occurred at the time of the Rating Event).

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

"*Regulation S 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, issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 903 of Regulation S.

"*Required First Lien Debtholders*" means, at any time, the holders of more than 50% of the sum of (1) the aggregate outstanding principal amount of First Lien Debt (including outstanding letters of credit (unless fully cash collateralized in accordance with the terms of the relevant Secured Debt Documents, fully supported by a letter of credit satisfactory to the issuer of the letter of credit supported thereby or otherwise supported in a manner satisfactory to the respective issuers thereof) whether or not then available or drawn but excluding obligations under Hedge Agreements); (2) the aggregate Hedge Outstanding Amount under Hedge Agreements; and (3) other than in connection with the exercise of remedies, the aggregate unfunded commitments to extend credit which, when funded, would constitute First Lien Debt. For purposes of this definition, (a) First 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 and neither the Company nor any Affiliate of the Company will be entitled to vote to direct the relevant First Lien Debt Representative, and (b) votes will be determined in accordance with Section 8.2 of the Collateral Agency and Intercreditor Agreement. Notwithstanding the foregoing and except as provided in the immediately succeeding sentence, at all times when (x) the sum of (1) the outstanding Credit Facility Obligations and (2) the aggregate unutilized commitments under the Credit Agreement, exceeds (y) $500,000,000, the only First Lien Obligations included in determining the Required First Lien Debtholders in accordance with the preceding sentence shall be the Credit Facility Obligations, Specified Swap Obligations, Specified Cash Management Obligations, First Lien Hedging Obligations and First Lien Eligible Commodity Hedge Financing Obligations outstanding from time to time and (without duplication) any Guaranty Reimbursement Obligations with respect thereto. The immediately preceding sentence shall not be given effect with respect to amendments or other modifications of the Collateral Agency and Intercreditor Agreement pursuant to Section 8.1 of the Collateral Agency and Intercreditor Agreement, but shall apply with respect to amendments or other modifications of other Security Documents pursuant to said section so long as such amendment or modification is not by its express terms disproportionately adverse in any material respect to the holders of any Series of First Lien Debt (with releases of Collateral being deemed to be not disproportionately adverse).

"*Required Second Lien Debtholders*" means, at any time, the holders of more than 50% of the sum of (1) the aggregate outstanding principal amount of Second Lien Debt (including outstanding letters of credit (unless fully cash collateralized in accordance with the terms of the relevant Secured Debt Documents, fully supported by a letter of credit satisfactory to the issuer of the letter of credit supported thereby or otherwise supported in a manner satisfactory to the respective issuers thereof) whether or not then available or drawn), and (2) other than in connection with the exercise of remedies, the aggregate unfunded commitments to extend credit which, when funded, would constitute Second Lien Debt. For purposes of this definition, (i) Second 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 and neither the Company nor any Affiliate of the Company will be entitled to vote to direct the relevant Second Lien Debt Representative, and (ii) votes will be determined in accordance with Section 8.2 of the Collateral Agency and Intercreditor Agreement.

"*Responsible Officer*" means the chief executive officer, president, any executive vice president or financial officer of the Company, but in any event, with respect to financial matters, a financial officer of the Company.

"*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 Period*" means the 40-day distribution compliance period as defined in Regulation S.

"*Restricted Subsidiary*" of a Person means any Subsidiary of the referent Person that is not 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 or any successor thereto.

"*Second Lien*" means a Lien granted by a Security Document to the Collateral Agent for the benefit of the Second Lien Secured Parties, at any time, upon any property of the Company or any other Grantor to secure Second Lien Obligations.

"*Second Lien Debt*" means to the extent issued or outstanding, any Indebtedness constituting Junior Lien Indebtedness; *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 Restricted Subsidiary (as defined in the Existing Credit Agreement), such Indebtedness is designated by the Company, in an Officers' Certificate delivered to the Collateral Agent, as "Second Lien Debt" for the purposes of the Secured Debt Documents; *provided* that no Obligation or Indebtedness may be designated as both Second Lien Debt and First Lien Debt;

(2) such Indebtedness is evidenced or governed by an indenture, credit agreement, loan agreement, note agreement, promissory note or other agreement or instrument that includes a Lien Sharing and Priority Confirmation;

(3) is designated as Second Lien Debt in accordance with the requirements of the Collateral Agency and Intercreditor Agreement; and

(4) at the time of the incurrence thereof, the respective Second Lien Debt may be incurred (and secured as contemplated herein) without violating the terms of any Credit Agreement then outstanding (or if no such Credit Agreement is then in effect, each other applicable Secured Debt Document).

"*Second Lien Documents*" means, collectively, the indenture, credit agreement or other agreement or instrument evidencing or governing or securing each Series of Second Lien Debt and the Second Lien Security Documents.

"*Second Lien Obligations*" means any principal (including reimbursement obligations with respect to letters of credit whether or not drawn), interest (including 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 Second Lien Documents, even if such interest is not enforceable, allowable or allowed as a claim in such proceeding), premium (if any), fees, indemnifications, reimbursements, expenses, damages and other liabilities payable under the documentation governing any Second Lien Debt.

"*Second Lien Representative*" means, in the case of any Series of Second Lien Debt, the trustee, agent or representative of the holders of such Series of Second Lien Debt who maintains the transfer register for such Series of Second Lien Debt and is appointed as a Second Lien Representative (for purposes related to the administration of the Security Documents) pursuant to the indenture, credit agreement, loan agreement, note agreement, promissory note or other agreement or instrument evidencing or governing such Series of Second Lien Debt, together with its successors in such capacity; *provided* that in each case such Person shall have executed a joinder to the Collateral Agency and Intercreditor Agreement.

"*Second Lien Security Documents*" means the Security Documents (other than any Security Documents that do not secure the Second Lien Obligations).

"*Secured Debt*" means First Lien Debt and Second Lien Debt.

"*Secured Debt Default*" means, with respect to any Series of Secured Debt, any event or condition which, under the terms of any credit agreement, indenture, loan agreement, note agreement, promissory note, Hedge Agreement or other agreement or instrument evidencing or governing such Series of Secured Debt, causes, or permits holders of Secured Debt outstanding thereunder to cause, the Secured Debt outstanding thereunder to become immediately due and payable. For the avoidance of doubt, an "Event of Default" (or any other defined term having a similar purpose) (as defined in the Credit Agreement) shall constitute a Secured Debt Default with respect to the Series of Secured Debt evidenced by the Credit Agreement.

"*Secured Debt Documents*" means the First Lien Documents and the Second Lien Documents.

"*Secured Debt Representative*" means each First Lien Representative and each Second Lien Representative.

"*Secured Obligations*" means First Lien Obligations and Second Lien Obligations.

"*Secured Parties*" means the holders of First Lien Debt (including their Secured Debt Representatives) and the holders of Second Lien Debt (including their Secured Debt Representatives).

"*Securities Act*" means the Securities Act of 1933, as amended, or any successor statute or statutes thereto.

"*Security Documents*" means the Collateral Agency and Intercreditor Agreement, the Guarantee and Collateral Agreement, each Lien Sharing and Priority Confirmation, and all security agreements, pledge agreements, collateral assignments, mortgages, collateral agency agreements, control agreements, deeds of trust or other grants or transfers for
security executed and delivered by the Company or any other Guarantor creating (or purporting to create) a Lien upon Collateral in favor of the Collateral Agent, for the benefit of the 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 8.1 of the Collateral Agency and Intercreditor Agreement.

"*Series of First Lien Debt*" means, severally, (1) the Indebtedness under the Existing Credit Agreement, (2) all Specified Cash Management and Swap Obligations (with each separate such item constituting a separate series of First Lien Debt, except that agreements between one or more of the same Loan Parties, on the one hand, and one or more of the same counterparties, on the other hand, shall constitute a single series of First Lien Debt, so long as such agreements represent confirmations or transactions under a single common agreement among such parties) and (3) each separate issue of Indebtedness which constitutes First Lien Debt in accordance with clauses (2) or (3) of the definition thereof contained herein (with agreements between one or more of the same Loan Parties, on the one hand, and one or more of the same counterparties, on the other hand, constituting a single issue and a single series of First Lien Debt, so long as such agreements represent confirmations or transactions under a single common agreement among such parties).

"*Series of Second Lien Debt*" means, severally, each issue or series of Second Lien Debt.

"*Series of Secured Debt*" means, severally, each Series of First Lien Debt and each Series of Second Lien Debt.

"*Significant Subsidiary*" means any Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act as such Regulation is in effect on the date of this Indenture; *provided* that clause (3) of such definition will be disregarded.

"*Specified Cash Management and Swap Obligations*" means a collective reference to all Specified Cash Management Obligations and all Specified Swap Obligations.

"*Specified Cash Management Obligations*" means all Cash Management Obligations that are owed to one or more Qualified Cash Management Creditors.

"*Specified Swap Obligations*" means all Obligations under any Swap Agreement in respect of interest rates or currency exchange rates existing on the date of this Indenture (to the extent it constitutes a "Specified Swap Agreement" as defined in the Collateral Agency and Intercreditor Agreement on such date) or thereafter entered into by the Company or any Guarantor and any Person that is a lender under a Credit Agreement or an Affiliate of a lender under a Credit Agreement at the time such Swap Agreement is entered into.

"*Subsidiary*" means, with respect to any specified Person:

(1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, 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).

"*Swap Agreements*" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; *provided* that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Company or any of its Subsidiaries shall be a "Swap Agreement."

"*Term Loan Agreements*" means the collective reference to the May 2015 Term Loan Agreement and the April 2019 Term Loan Agreement.

"*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 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 February 15, 2023; *provided*, *however*, that if the period from the redemption date to February 15, 2023, is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

"*Triggering Event*" means (1) until the Discharge of First Lien Obligations, a Secured Debt Default under (a) any Credit Agreement or (b) at such time as the Credit Agreement is no longer effective, any then effective First Lien Document; and (2) after the Discharge of First Lien Obligations until the Discharge of Second Lien Obligations, a Secured Debt Default under any Second Lien Document.

"*Trustee*" means Wilmington Trust, National Association until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

"*Uniform Commercial Code*" means the Uniform Commercial Code as in effect from time to time in any applicable jurisdiction.

"*Unrestricted Definitive Note*" means a Definitive Note that does not bear and is not required to bear the Private Placement Legend.

"*Unrestricted Global Note*" means a Global Note that does not bear and is not required to bear the Private Placement Legend.

"*Unrestricted Subsidiary*" means any Subsidiary of the Company that is designated by the Board of Directors of the Company as an Unrestricted Subsidiary pursuant to a resolution of the Board of Directors, but only to the extent that such Subsidiary:

(1) has no Indebtedness other than Non-Recourse Debt;

(2) is a Person with respect to which neither the Company nor any of the Guarantors has any direct or indirect obligation, other than pursuant to a performance guarantee, (a) to subscribe for additional Equity Interests or (b) to maintain or preserve such Person's financial condition or to cause such Person to achieve any specified levels of operating results, in each case other than in the ordinary course of business on terms not materially less favorable to the Company or the relevant Guarantor than those that would have been obtained in a comparable transaction with an unrelated Person; and

(3) has not guaranteed or otherwise directly or indirectly provided credit support for any Indebtedness of the Company or any of the Guarantors, in each case other than in the ordinary course of business on terms not materially less favorable to the Company or the relevant Guarantor than those that would have been obtained in a comparable transaction with an unrelated Person.

"*U.S. Person*" means a U.S. Person as defined in Rule 902(k) promulgated under the Securities Act.

"*Voting Stock*" of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

Section 1.02 *Other Definitions*.

Term	Defined in Section
"Authentication Order"	2.02
"Change of Control Offer"	4.11
"Change of Control Payment"	4.11
"Change of Control Payment Date"	4.11
"Covenant Defeasance"	8.03
"DTC"	2.03
"Event of Default"	6.01
"Legal Defeasance"	8.02
"Paying Agent"	2.03
"Payment Default"	6.01
"Registrar"	2.03
"Title Datedown Product"	4.07
"Trustee"	8.05

Section 1.03 *Rules of Construction*.

(a) Unless the context otherwise requires:

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

(2) unless otherwise specified herein, an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP as in effect from time to time;

(3) "or" is not exclusive;

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

(5) "will" shall be interpreted to express a command;

(6) provisions apply to successive events and transactions; and

(7) references to sections of or rules under the Securities Act will be deemed to include substitute, replacement of successor sections or rules adopted by the Commission from time to time.

(b) Any reference herein to a merger, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, limited partnership or trust, or an allocation of assets to a series of a limited liability company, limited partnership or trust (or the unwinding of such a division or allocation), as if it were a merger, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company, limited partnership or trust shall constitute a separate Person hereunder (and each division of any limited liability company, limited partnership or trust that is a Subsidiary, Restricted Subsidiary, Unrestricted Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

ARTICLE 2
THE NOTES

Section 2.01 *Form and Dating*.

(a) *General*. The Notes and the Trustee's certificate of authentication will 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 will be dated the date of its authentication. The Notes 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 will constitute, and are hereby expressly made, a part of this Indenture and the Company, the 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 will 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 will 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 will represent such of the outstanding Notes as will be specified therein and each shall provide that it represents 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 will be made by the Trustee or the Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.06 hereof.

(c) *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 will be applicable to transfers of beneficial interests in the Regulation S Global Note that are held by Participants through Euroclear or Clearstream.

Section 2.02 *Execution and Authentication*.

At least one Officer must sign the Notes for the Company by manual or facsimile signature.

If an Officer whose signature is on a Note no longer holds that office at the time a Note is authenticated, the Note will nevertheless be valid.

A Note will not be valid until authenticated by the manual signature of the Trustee. The signature will be conclusive evidence that the Note has been authenticated under this Indenture.

The Trustee will, upon receipt of a written order of the Company signed by two Officers (an "*Authentication Order*"), authenticate Notes for original issue that may be validly issued under this Indenture, including any Additional Notes. The aggregate principal amount of Notes outstanding at any time may not exceed the aggregate principal amount of Notes authorized for issuance by the Company pursuant to one or more Authentication Orders, except as provided in Section 2.07 hereof.

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 2.03 *Registrar and Paying Agent*.

The Company will maintain an office or agency where Notes may be presented for registration of transfer or for exchange ("*Registrar*") and an office or agency where Notes may be presented for payment ("*Paying Agent*"). The Registrar will 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 notice to any Holder. The Company will 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.

The Company initially appoints The Depository Trust Company ("*DTC*") to act as Depositary with respect to the Global Notes.

The Company initially appoints the Trustee to act as the Registrar and Paying Agent and to act as Custodian with respect to the Global Notes.

Section 2.04 *Paying Agent to Hold Money in Trust*.

The Company will require each Paying Agent other than the Trustee to agree in writing that the Paying Agent will hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal, premium, if any, or interest on the Notes, and will 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 a Subsidiary) will have no further liability for the money. If the Company or a Subsidiary acts as Paying Agent, it will 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 will serve as Paying Agent for the Notes.

Section 2.05 *Holder Lists*.

The Trustee will 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 will furnish to the Trustee at least seven 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.

Section 2.06 *Transfer and Exchange*.

(a) *Transfer and Exchange of Global Notes*. A Global Note may not be transferred except as a whole 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. Global Notes may only be exchanged for Definitive Notes if:

(1) the Company delivers to the Trustee notice from the Depositary that it 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 120 days after the date of such notice from the Depositary;

(2) the Company in its sole discretion determines that the Global Notes (in whole but not in part) should be exchanged for Definitive Notes and delivers a written notice to such effect to the Trustee; or

(3) there has occurred and is continuing a Default or Event of Default with respect to the Notes.

Upon the occurrence of any of the preceding events in (1), (2) or (3) 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 2.07 and 2.10 hereof. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 2.06 or Section 2.07 or 2.10 hereof, 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 2.06(a), however, beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.06(b) or (c) hereof.

(b) *Transfer and Exchange of Beneficial Interests in the Global Notes*. The transfer and exchange of beneficial interests in the Global Notes will be effected through the Depositary, in accordance with the provisions of this Indenture and the Applicable Procedures. Beneficial interests in the Restricted Global Notes will 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 will require compliance with either subparagraph (1) or (2) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(1) *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; *provided*, *however*, that prior to the expiration of the Restricted Period, transfers of beneficial interests in the Regulation S Global Note may not be made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). 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. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.06(b)(1).

(2) *All Other Transfers and Exchanges of Beneficial Interests in Global Notes*. In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.06(b)(1) above, the transferor of such beneficial interest must deliver to the Registrar either:

(A) both:

(i) 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

(ii) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase; or

(B) both:

(i) 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

(ii) 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 (i) 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 of the relevant Global Note(s) pursuant to Section 2.06(g) 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 2.06(b)(2) above and the Registrar receives the following:

(A) if the transferee will 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 hereto, including the certifications in item (1) thereof;

(B) if the transferee will take delivery in the form of a beneficial interest in the Regulation S Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; and

(C) if the transferee will take delivery in the form of a beneficial interest in the IAI Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) (c) thereof, if applicable.

(4) *Transfer and Exchange of Beneficial Interests in a Restricted Global Note for Beneficial Interests in an 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 2.06(b)(2) above and:

(A) the Registrar receives the following:

(i) 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

(ii) 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 hereto, including the applicable certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), 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 subparagraph (A) 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 2.02 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 subparagraph (A) above.

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*. 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, in each case after the occurrence of an event specified in Section 2.06(a), 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, a certificate to the effect set forth in Exhibit B 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 in accordance with Rule 903 or Rule 904, a certificate to the effect set forth in Exhibit B 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, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such beneficial interest is being transferred to an Institutional Accredited Investor 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 hereto, including the certifications, certificates and Opinion of Counsel required by item (3)(c) thereof, if applicable; or

(F) 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 hereto, including the certifications in item (3)(b) thereof,

the Trustee shall cause the aggregate principal amount of the applicable Restricted Global Note to be reduced accordingly pursuant to Section 2.06(g) hereof, and the Company shall execute and the Trustee, upon receipt of an Authentication Order, shall authenticate and deliver to the Person designated in the instructions a Restricted Definitive Note in the appropriate principal amount. Any Restricted Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c) 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 Restricted Definitive Notes to the Persons in whose names such Notes are so registered. Any Restricted Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(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.* 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, in each case after the occurrence of an event specified in Section 2.06(a), only if:

(A) the Registrar receives the following:

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

(ii) 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 an Unrestricted Definitive Note, a certificate from such holder in the form of Exhibit B hereto, including the applicable certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), 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.

(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 an Unrestricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note, in each case after the occurrence of an event specified in Section 2.06(a), then, upon satisfaction of the conditions set forth in Section 2.06(b)(2) hereof, the Trustee will cause the aggregate principal amount of the applicable Unrestricted Global Note to be reduced accordingly pursuant to Section 2.06(g) hereof, and the Company will execute and the Trustee, upon receipt of an Authentication Order, will authenticate and deliver to the Person designated in the instructions an Unrestricted Definitive Note in the appropriate principal amount. Any Unrestricted Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(3) will be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest requests through instructions to the Registrar from or through the Depositary and the Participant or Indirect Participant. The Trustee will deliver such Unrestricted Definitive Notes to the Persons in whose names such Notes are so registered. Any Unrestricted Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(3) will not bear the Private Placement Legend.

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

(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, a certificate to the effect set forth in Exhibit B 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 in accordance with Rule 903 or Rule 904, a certificate to the effect set forth in Exhibit B 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, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such Restricted Definitive Note is being transferred to an Institutional Accredited Investor 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 hereto, including the certifications, certificates and Opinion of Counsel required by item (3)(c) thereof, if applicable; or

(F) 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 hereto, including the certifications in item (3)(b) thereof,

the Trustee will 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, in the case of clause (C) above, the Regulation S Global Note, and in all other cases, the IAI 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:

(A) the Registrar receives the following:

(i) 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

(ii) 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 hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), 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 the conditions of any of the subparagraphs in this Section 2.06(d)(2), the Trustee will cancel the Restricted 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 Unrestricted 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 will cancel the applicable Unrestricted Definitive Note and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Notes.

If any such exchange or transfer from a Definitive Note to a beneficial interest is effected pursuant to subparagraphs (2)(A) or (3) above at a time when an Unrestricted Global Note has not yet been issued, the Company will issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee will 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 2.06(e), the Registrar will register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder must 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 must provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.06(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 will be made pursuant to Rule 144A, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof;

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

(C) if the transfer will 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 hereto, including the certifications, certificates and Opinion of Counsel required by item (3)(c) 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 if:

(A) the Registrar receives the following:

(i) 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

(ii) 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 hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), 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.

(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) *Legends*. The following legends will 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*.

(A) Except as permitted by subparagraph (B) 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:

"THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH BELOW. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT OR (C) IT IS AN ACCREDITED INVESTOR (AS DEFINED IN RULE 501(a)(1), (2), (3), OR (7) UNDER THE SECURITIES ACT (AN "ACCREDITED INVESTOR"), (2) AGREES THAT IT WILL NOT WITHIN ONE YEAR AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY RESELL OR OTHERWISE TRANSFER THIS SECURITY EXCEPT (A) TO THE ISSUER OR ANY SUBSIDIARY THEREOF, (B) INSIDE THE UNITED STATES TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) INSIDE THE UNITED STATES TO AN ACCREDITED INVESTOR THAT, PRIOR TO SUCH TRANSFER, FURNISHES (OR HAS FURNISHED ON ITS BEHALF BY A U.S. BROKER-DEALER) TO THE TRUSTEE A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THIS SECURITY (THE FORM OF WHICH LETTER CAN BE OBTAINED FROM THE TRUSTEE FOR THIS SECURITY), (D) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT (IF AVAILABLE), (E) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), (F) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (AND BASED UPON AN OPINION OF COUNSEL IF THE ISSUER SO REQUESTS), OR (G) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IN CONNECTION WITH ANY TRANSFER OF THIS SECURITY WITHIN ONE YEAR AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY, IF THE PROPOSED TRANSFEREE IS AN ACCREDITED INVESTOR, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE TRUSTEE AND THE ISSUER SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS EITHER OF THEM MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. AS USED HEREIN, THE TERMS "OFFSHORE TRANSACTION," "UNITED STATES" AND "U.S. PERSON" HAVE THE MEANING GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT."

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

"THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (1) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 2.06 OF THE INDENTURE, (2) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06(a) OF THE INDENTURE, (3) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.11 OF THE INDENTURE AND (4) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE COMPANY.

UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) ("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 SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN."

(g) *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 will be returned to or retained and canceled by the Trustee in accordance with Section 2.11 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who will 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 will be reduced accordingly and an endorsement will 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 will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note will be increased accordingly and an endorsement will be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

(h) *General Provisions Relating to Transfers and Exchanges*.

(1) To permit registrations of transfers and exchanges, the Company will execute and the Trustee will authenticate Global Notes and Definitive Notes upon receipt of an Authentication Order in accordance with Section 2.02 hereof or at the Registrar's request.

(2) No service charge will 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 2.10, 3.06, 4.11 and 9.04 hereof).

(3) The Registrar will not be required to register the transfer of or exchange of any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

(4) All Global Notes and Definitive Notes issued upon any registration of transfer or exchange of Global Notes or Definitive Notes will be the valid 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) Neither the Registrar nor the Company will be required:

(A) to issue, to register the transfer of or to 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 3.02 hereof and ending at the close of business on the day of selection;

(B) to register the transfer of or to exchange any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part; or

(C) to register the transfer of or to 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, upon receipt of an Authentication Order, will authenticate Global Notes and Definitive Notes in accordance with the provisions of Section 2.02 hereof.

(8) All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 2.06 to effect a registration of transfer or exchange may be submitted by facsimile.

(9) Each Holder of a Note agrees to indemnify the Company against any liability that may result from the transfer, exchange or assignment of such Holder's Note in violation of any provision of this Indenture and/or applicable United States federal or state securities laws.

(10) Neither the Trustee nor any agent of the Trustee shall have any responsibility for any actions taken or not taken by the Depositary.

(11) The Trustee shall have no responsibility or obligation to any Participant or Indirect Participant or any other Person with respect to the accuracy of the books or records, or the acts or omissions, of the Depositary or its nominee or of any participant or member thereof, with respect to any ownership interest in the Notes or with respect to the delivery to any Participant or Indirect Participant or other Person (other than the Depositary) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such Notes. All notices and communications to be given to the Holders and all payments to be made to Holders under the Notes shall be given or made only to or upon the order of the registered Holders (which shall be the Depositary or its nominee in the case of a Global Note). The rights of beneficial owners in any Global Note shall be exercised only through the Depositary subject to the customary procedures of the Depositary. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depositary with respect to its Participants or Indirect Participants.

(12) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Participants or Indirect Participants in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 2.07 *Replacement Notes*.

If any mutilated Note is surrendered to the Trustee or the Company and the Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Note, the Company will issue and the Trustee, upon receipt of an Authentication Order, will 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 may charge for its expenses in replacing a Note.

Every replacement Note is an additional obligation of the Company and will be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

Section 2.08 *Outstanding Notes*.

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 hereof, and those described in this Section 2.08 as not outstanding. Except as set forth in Section 2.09 hereof, a Note does not cease to be outstanding because the Company or an Affiliate of the Company holds the Note; however, Notes held by the Company or a Subsidiary of the Company shall not be deemed to be outstanding for purposes of Section 3.07(a) hereof.

If a Note is replaced pursuant to Section 2.07 hereof, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a protected purchaser.

If the principal amount of any Note is considered paid under Section 4.01 hereof, it ceases to be outstanding and interest on it ceases to accrue.

If the Paying Agent (other than the Company, a Subsidiary or an Affiliate of any thereof) holds, on a redemption date or maturity date, money sufficient to pay Notes payable on that date, then on and after that date such Notes will be deemed to be no longer outstanding and will cease to accrue interest.

Section 2.09 *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 any Guarantor, or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any Guarantor, will be considered as though not outstanding, except that for the purposes of determining whether the Trustee will be protected in relying on any such direction, waiver or consent, only Notes that the Trustee knows are so owned will be so disregarded.

Section 2.10 *Temporary Notes*.

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

Holders of temporary Notes will be entitled to all of the benefits of this Indenture.

Section 2.11 *Cancellation*.

The Company at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent will forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else will cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and will destroy canceled Notes (subject to the record retention requirement of the Exchange Act). Upon request of the Company, certification of the destruction of all canceled Notes will be delivered to the Company. The Company may not issue new Notes to replace Notes that it has paid or that have been delivered to the Trustee for cancellation.

Section 2.12 *Defaulted Interest*.

If the Company defaults in a payment of interest on the Notes, it will 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 a subsequent special record date, in each case at the rate provided in the Notes and in Section 4.01 hereof. The Company will 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 will fix or cause to be fixed each such special record date and payment date; *provided* that no such special record date may 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) will 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.

ARTICLE 3
REDEMPTION AND PREPAYMENT

Section 3.01 *Notices to Trustee.*

If the Company elects to redeem Notes pursuant to the optional redemption provisions of Section 3.07 hereof, it must furnish to the Trustee, at least 30 days but not more than 60 days before a redemption date, an Officers' Certificate setting forth:

(1) the clause of this Indenture pursuant to which the redemption shall occur;

(2) the redemption date;

(3) the principal amount of Notes to be redeemed; and

(4) the redemption price.

Section 3.02 *Selection of Notes to Be Redeemed or Purchased*.

If less than all of the Notes are to be redeemed or purchased in an offer to purchase at any time, the Trustee will select Notes for redemption or purchase on a *pro rata* basis to the extent practicable or by lot or such other similar method in accordance with the procedures of DTC unless otherwise required by law or applicable stock exchange requirements.

In the event of partial redemption or purchase by lot, the particular Notes to be redeemed or purchased will be selected, unless otherwise provided herein, not less than 30 nor more than 60 days prior to the redemption or purchase date by the Trustee from the outstanding Notes not previously called for redemption or purchase.

The Trustee will promptly notify the Company in writing of the Notes selected for redemption or purchase and, in the case of any Note selected for partial redemption or purchase, the principal amount thereof to be redeemed or purchased. Notes and portions of Notes selected will 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 or purchased, the entire outstanding amount of Notes held by such Holder, even if not a multiple of $1,000, shall be redeemed or purchased. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption or purchase also apply to portions of Notes called for redemption or purchase.

Section 3.03 *Notice of Redemption*.

At least 30 days but not more than 60 days before a redemption date, the Company will mail or cause to be mailed by first class mail or delivered electronically a notice of redemption to each Holder whose Notes are to be redeemed at its registered address, except that (i) redemption notices may be mailed or delivered electronically at least 10 days prior to the redemption date if the notice is issued in connection with a redemption pursuant to Section 3.07(c) hereof and (ii) redemption notices may be mailed or delivered electronically more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture pursuant to Articles 8 or 12 hereof.

The notice will identify the Notes to be redeemed and will state:

(1) the redemption date;

(2) the redemption price;

(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 will be issued upon cancellation of the 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;

(6) that, unless the Company defaults in making such redemption payment, interest 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 number, if any, listed in such notice or printed on the Notes.

At the Company's request, the Trustee will give the notice of redemption in the Company's name and at its expense; *provided*, *however*, that the Company has delivered to the Trustee, at least 45 days prior to the redemption date, 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.

Section 3.04 *Effect of Notice of Redemption*.

Subject to the following paragraph, once notice of redemption is sent in accordance with Section 3.03 hereof, Notes called for redemption become irrevocably due and payable on the redemption date at the redemption price.

Any notice of redemption may, in the Company's discretion, be subject to the satisfaction of one or more conditions precedent. If such redemption is subject to the satisfaction of one of more conditions precedent, such notice 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 by the Company in its sole discretion), such redemption may not occur and such notice may be rescinded in the event that any or all of such conditions shall not have been satisfied (or waived by the Company in its sole discretion) by the redemption date, or by the redemption date so delayed.

Section 3.05 *Deposit of Redemption or Purchase Price*.

One Business Day prior to the redemption or purchase date, the Company will deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption or purchase price of and accrued interest on all Notes to be redeemed or purchased on that date. The Trustee or the Paying Agent will 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 or purchase price of, and accrued interest on, all Notes to be redeemed or purchased.

If the Company complies with the provisions of the preceding paragraph, on and after the redemption or purchase date, interest will cease to accrue on the Notes or the portions of Notes called for redemption or purchase. If a Note is redeemed or purchased 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 Person in whose name such Note was registered at the close of business on such record date. If any Note called for redemption or purchase is not so paid upon surrender for redemption or purchase because of the failure of the Company to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption or purchase 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 4.01 hereof.

Section 3.06 *Notes Redeemed or Purchased in Part*.

Upon surrender of a Note that is redeemed or purchased in part, the Company will issue and, upon receipt of an Authentication Order, the Trustee will authenticate for the Holder at the expense of the Company a new Note equal in principal amount to the unredeemed or unpurchased portion of the Note surrendered.

Section 3.07 *Optional Redemption*.

(a) At any time prior to February 15, 2023, the Company may on any one or more occasions redeem up to 35% of the aggregate principal amount of Notes issued under this Indenture, upon not less than 30 nor more than 60 days' notice, at a redemption price equal to 104.500% of the principal amount of the Notes redeemed, plus accrued and unpaid interest, if any, to but excluding 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 the proceeds of one or more Equity Offerings; *provided* that:

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

(2) the redemption occurs within 90 days of the date of the closing of such Equity Offering.

(b) At any time prior to February 15, 2023, the Company may on any one or more occasions redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' notice, 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 but excluding 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) The Company may redeem up to 10% of the aggregate principal amount of Notes issued under this Indenture during each 12-month period following February 15, 2020, that occurs prior to February 15, 2023, at a redemption price of 103% of the principal amount of Notes redeemed, plus accrued and unpaid interest, if any, to but excluding the redemption date (subject to the rights of Holders on the relevant record date to receive interest due on the relevant interest payment date).

(d) At any time, in connection with any tender offer for the Notes, including a Change of Control Offer, if Holders of not less than 90% in aggregate principal amount of the outstanding Notes validly tender and do not withdraw such Notes in such tender offer and the Company, or any third party making such tender offer in lieu of the Company, purchases all of the Notes validly tendered and not withdrawn by such Holders, the Company may, upon not less than 10 nor more than 60 days' prior notice, given not more than 30 days following such purchase date, redeem all Notes that remain outstanding following such purchase at a redemption price equal to the price paid to each other Holder in such tender offer plus, to the extent not included in the tender offer payment, accrued and unpaid interest, if any, thereon, to, but not excluding, the date of such redemption (subject to the rights of Holders on the relevant record date to receive interest on the relevant interest payment date).

(e) Except pursuant to the preceding paragraphs (a), (b), (c) and (d) of this Section 3.07, the Notes will not be redeemable at the Company's option prior to February 15, 2023. The Company is not prohibited, however, from acquiring the Notes in market transactions by means other than a redemption, whether pursuant to a tender offer or otherwise.

(f) On or after February 15, 2023, the Company may on any one or more occasions redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' notice, 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 but excluding the applicable date of redemption, if redeemed during the twelve-month period beginning on February 15 of the 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
2023	102.250%
2024	101.500%
2025	100.750%
2026 and thereafter	100.000%

Unless the Company defaults in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable redemption date.

(g) Any redemption pursuant to this Section 3.07 shall be made pursuant to the provisions of Sections 3.01 through 3.06 hereof.

Section 3.08 *Mandatory Redemption*.

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

ARTICLE 4
COVENANTS

Section 4.01 *Payment of Notes*.

The Company will 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 will be considered paid on the date due if the Paying Agent, if other than the Company or a Subsidiary thereof, holds as of 10:00 a.m. Eastern 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 then due.

Section 4.02 *Maintenance of Office or Agency*.

The Company will maintain an office or agency (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or co-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 will 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 fails to maintain any such required office or agency or fails 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.

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; *provided*, *however*, that no such designation or rescission will in any manner relieve the Company of its obligation to maintain an office or agency for such purposes. The Company will 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.

The Company hereby designates the Corporate Trust Office of the Trustee as one such office or agency of the Company in accordance with Section 2.03 hereof; *provided* that the Corporate Trust Office of the Trustee shall not be an office or agency of the Company for the purpose of service of legal process on the Company.

Section 4.03 *Reports*.

Whether or not required by the Commission's rules and regulations, so long as any Notes are outstanding, the Company will furnish to the Trustee, within 30 days after a large accelerated filer would be required to file such reports with the Commission under the Commission's then existing rules and regulations:

(1) annual reports of the Company containing substantially all of the information that would have been required to be contained in an Annual Report on Form 10-K under the Exchange Act if the Company had been a reporting company under the Exchange Act, including (A) "Management's Discussion and Analysis of Financial Condition and Results of Operations" and (B) audited financial statements prepared in accordance with GAAP as in effect from time to time;

(2) quarterly reports of the Company containing substantially all of the information that would have been required to be contained in a Quarterly Report on Form 10-Q under the Exchange Act if the Company had been a reporting company under the Exchange Act, including (A) "Management's Discussion and Analysis of Financial Condition and Results of Operations" and (B) unaudited quarterly financial statements prepared in accordance with GAAP as in effect from time to time and reviewed pursuant to Statement on Auditing Standards No. 100 (or any successor provision); and

(3) current reports containing substantially all of the information that would have been required to be contained in a Current Report on Form 8-K under the Exchange Act if the Company had been a reporting company under the Exchange Act; *provided*, *however*, that no such current report will be required to be furnished if the Company determines in its good faith judgment that such event is not material to the Holders or the business, assets, operations, financial positions or prospects of the Company and its Restricted Subsidiaries, taken as a whole.

Notwithstanding the foregoing, in no event will the Company be required by this Indenture to (A) comply with Section 302 or Section 404 of the Sarbanes-Oxley Act of 2002, or related Items 307 and 308 of Regulation S-K promulgated by the Commission, or Item 10(e) of Regulation S-K (with respect to any non-GAAP financial measures contained therein) and Regulation G, (B) include the separate financial information for Guarantors or other entities contemplated by Rule 3-10 and/or 3-16 of Regulation S-X promulgated by the Commission or (C) provide any additional information in respect of Item 402 of Regulation S-K beyond information of the type included in the Offering Memorandum.

The Company's reporting obligations with respect to clauses (1) through (3) above will be satisfied in the event it timely files such reports with the Commission on EDGAR and such reports are publicly available.

So long as any Notes are outstanding, if at any time the Company is not filing with the Commission the reports required by the preceding paragraphs of this Section 4.03, the Company will also maintain a website to which Holders, prospective investors, broker-dealers and securities analysts are given access and to which all of the reports and press releases required by this Section 4.03 are posted.

In addition, if at any time the Company is not filing with the Commission the reports required by this Section 4.03, the Company shall furnish to Holders, prospective investors, broker-dealers and securities analysts, upon their request, any information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act so long as the Notes constitute "restricted securities" under Rule 144.

Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute actual or constructive knowledge or notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates with respect thereto).

Section 4.04 *Compliance Certificate*.

(a) The Company shall deliver to the Trustee, within 90 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 each and every covenant contained in this Indenture and is not in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (or, if a Default or Event of Default has occurred, 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) and that to the best of his or her knowledge no event has occurred and remains in existence by reason of which payments on account of the principal of or interest, if any, on the Notes is prohibited or if such event has occurred, a description of the event and what action the Company is taking or proposes to take with respect thereto.

(b) So long as any of the Notes are outstanding, the Company will deliver to the Trustee, forthwith upon any Officer becoming aware of any Default or Event of Default, an Officers' Certificate specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto.

Section 4.05 *Taxes*.

The Company will pay, and will cause each of the Guarantors to pay, prior to delinquency, all 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 is not adverse in any material respect to the Holders.

Section 4.06 *Stay, Extension and Usury Laws*.

The Company and each of the Guarantors covenants (to the extent that it may lawfully do so) that it will 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 and each of the Guarantors (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.07 *Incurrence of Indebtedness*.

(a) The Company will not, and will not permit any of the Guarantors to, directly or indirectly, incur Indebtedness that will constitute First Lien Debt, unless the CNTA Ratio (after giving pro forma effect to any such incurrence and the application of the net proceeds thereof) is equal to or greater than 1.66 to 1.00.

(b) For purposes of this Section 4.07, the aggregate amount of First Lien Debt outstanding as of any date of determination will be calculated as the sum of, without duplication:

(1) the aggregate outstanding principal amount of all Indebtedness (or, if such Indebtedness is issued with original issue discount, the then accreted value thereof) for borrowed money that constitutes First Lien Debt, *plus*

(2) the aggregate face amount of any letters of credit or similar instruments issued but not yet drawn that, when drawn, would constitute First Lien Debt, and the aggregate amount of reimbursement obligations in respect of drawn letters of credit or similar instruments that constitute First Lien Debt, *plus*

(3) the aggregate amount of undrawn and unutilized commitments under which any First Lien Debt could be drawn and/or utilized as of such date, *plus*

(4) the aggregate outstanding principal amount of any First Lien Debt (or, if such Indebtedness is issued with original issue discount, the then accreted value thereof) outstanding consisting of notes, bonds, debentures, credit agreements (including any Eligible Commodity Hedge Financing) or similar instruments or agreements.

(c) Section 4.07(a) hereof will not apply to:

(1) any Specified Cash Management and Swap Obligations, other Cash Management Obligations that would constitute First Lien Debt and any First Lien Hedging Obligations;

(2) (A) Indebtedness under the Credit Agreement and Term Loan Agreements outstanding on the date of this Indenture, plus (B) the 2022 Notes, plus (C) the 2024 Notes, plus (D) the 2026 Notes, plus (E) up to $2.0 billion in additional Indebtedness incurred to repay or redeem secured debt, secured lease obligations or preferred securities of any Project Subsidiary;

(3) the Notes issued hereby on the date of this Indenture;

(4) any accretion of original issue discount or the payment of interest on any Indebtedness in the form of Indebtedness with the same terms (it being understood that each will be taken into account in determining the aggregate amount of First Lien Debt outstanding as specified in Section 4.07(b)(1) hereof);

(5) any incurrence of Indebtedness that constitutes First Lien Debt (A) resulting from the drawing of, or reimbursement obligations under, any letters of credit or similar instruments or (B) resulting from borrowings under any undrawn and unutilized commitments to lend such Indebtedness, in each case, that were (i) in existence as of the 2017 Notes Issue Date (including without limitation under the Credit Agreement, as in effect on the 2017 Notes Issue Date) or (ii) included in any calculation of the amount of First Lien Debt outstanding pursuant to Section 4.07(b) hereof in connection with an incurrence of First Lien Debt pursuant to Section 4.07(a) hereof; and, in either case, any Permitted Replacement Commitments that replaced such letters of credit, similar obligations and commitments;

(6) any Permitted Refinancing Indebtedness incurred to renew, refund, refinance, replace, defease or discharge any Indebtedness that was permitted to be incurred pursuant to this Section 4.07; and

(7) any Eligible Commodity Hedge Financings, so long as the lenders thereunder (or their representatives on their behalf) become a party to, or consent or agree to be bound by the terms and conditions, of the Collateral Agency and Intercreditor Agreement.

(d) Notwithstanding the foregoing, the Company or any of the Guarantors may not incur (1) additional Indebtedness (other than Specified Cash Management and Swap Obligations, other Cash Management Obligations that would constitute First Lien Debt, any First Lien Hedging Obligations and any extension, renewal or refinancing of the Eligible Commodity Hedge Financings existing on the 2017 Notes Issue Date) pursuant to Section 4.07(a) hereof, (2) any
Permitted Refinancing Indebtedness with respect to Indebtedness incurred under clauses (2), (3), (4) or (5) of Section 4.07(c) hereof or (3) any Permitted Refinancing Indebtedness with respect to any of the foregoing, in each case that will constitute First Lien Debt unless, within 60 days of the incurrence of such Indebtedness:

(1) The Company and the Guarantors shall enter into, and deliver to the Collateral Agent, in the sole discretion of the Collateral Agent, a mortgage modification or new mortgage with regard to each Mortgaged Property, in proper form for recording in all applicable jurisdictions, in a form reasonably satisfactory to the Collateral Agent;

(2) The Company or the applicable Guarantor will cause to be delivered a local counsel opinion with respect to each Mortgaged Property in form and substance, and issued by law firms, in each case, reasonably satisfactory to the Collateral Agent;

(3) The Company or the applicable Guarantor will cause a title company approved by the Collateral Agent to have delivered to the Collateral Agent an endorsement to each title insurance policy then in effect for the benefit of the Secured Parties, date down(s) or other evidence reasonably satisfactory to the Collateral Agent (which may include a title search or a new title insurance policy) (each such delivery, a "*Title Datedown Product*"), in each case ensuring that (i) the priority of the Lien of the applicable mortgage(s) as security for the Notes has not changed, (ii) since the date of the Title Datedown Product delivered most recently prior to (and not in connection with) such additional Indebtedness, 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 Permitted Liens; and

(4) The Company or the applicable Guarantor will, upon the request of the Collateral Agent, deliver to the approved title company, the Collateral Agent and/or all other relevant third parties all other items reasonably necessary to maintain the continuing priority of the Lien of the mortgages as security for the Notes.

Section 4.08 *Limitation on Secured Commodity Hedging*.

The Company will not, and will not permit any of the Guarantors to, directly or indirectly enter into any Commodity Hedge Agreement that will constitute First Lien Debt, other than Eligible Commodity Hedge Agreements.

Section 4.09 *Liens*.

The Company will not, and will not permit any of the Guarantors to, directly or indirectly create, incur, assume or suffer to exist any Lien upon any asset now owned or hereafter acquired, except Permitted Liens.

Section 4.10 *Corporate Existence*.

Subject to Article 5 hereof, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect:

(1) its corporate existence, and the corporate, partnership or other existence of each of the Guarantors, in accordance with the respective organizational documents (as the same may be amended from time to time) of the Company or any such Guarantor; and

(2) the rights (charter and statutory), licenses and franchises of the Company and the Guarantors; *provided*, *however*, that the Company shall not be required to preserve any such right, license or franchise, or the corporate, partnership or other existence of any of the Guarantors, if (a) the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and the Guarantors, taken as a whole, and that the loss thereof is not adverse in any material respect to the Holders and (b) if a Guarantor is to be dissolved, such Guarantor has no assets.

Section 4.11 *Offer to Repurchase Upon Change of Control Triggering Event*.

(a) If a Change of Control Triggering Event occurs, each Holder will have the right to require the Company to make an offer (a "*Change of Control Offer*") to each Holder to repurchase all or any part (equal to $2,000 or an integral multiple of $1,000 in excess thereof) of that Holder's Notes at a purchase price in cash equal to 101% of the aggregate principal amount of Notes repurchased plus accrued and unpaid interest, if any, on the Notes repurchased to but excluding the date of purchase, subject to the rights of Holders on the relevant record date to receive interest due on the relevant interest payment date (the "*Change of Control Payment*"). Within 30 days following any Change of Control Triggering Event, the Company will mail (or deliver electronically) a notice to each Holder describing the transaction or transactions that constitute the Change of Control Triggering Event and stating:

(1) that the Change of Control Offer is being made pursuant to this Section 4.11 and that all Notes tendered will be accepted for payment;

(2) the purchase price and the purchase date, which shall be no earlier than 30 days and no later than 60 days from the date such notice is mailed or delivered electronically (the "*Change of Control Payment Date*");

(3) that any Note not tendered will 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 after the Change of Control Payment Date;

(5) that Holders electing to have any Notes purchased pursuant to a Change of Control Offer will be required to surrender the Notes, with the form entitled "Option of Holder to Elect Purchase" attached to the Notes completed, or transfer by book-entry transfer, to the Paying Agent 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 election if the Paying Agent receives, not later than the close of business on the second Business Day preceding the Change of Control Payment Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of Notes delivered for purchase, and a statement that such Holder is withdrawing his election to have the Notes purchased; and

(7) that Holders whose Notes are being purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered, which unpurchased portion must be equal to $2,000 in principal amount or an integral multiple of $1,000 in excess of $2,000.

The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change of Control Triggering Event. To the extent that the provisions of any securities laws or regulations conflict with this Section 4.11, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Section 4.11 by virtue of such compliance.

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

(1) accept for payment all Notes or portions of Notes properly tendered pursuant to the Change of Control Offer;

(2) deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all Notes or portions of Notes properly tendered; and

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

The Paying Agent will promptly mail (but in any case not later than five days after the Change of Control Payment Date) to each Holder of Notes properly tendered the Change of Control Payment for such Notes, and the Trustee will promptly, upon receipt of an Authentication Order, 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 new Note will be in a principal amount of $2,000 or an integral multiple of $1,000 in excess thereof. The Company will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

(c) Notwithstanding anything to the contrary in this Section 4.11, the Company will not be required to make a Change of Control Offer upon a Change of Control Triggering Event if (1) 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 Section 4.11 hereof and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer, or (2) notice of redemption has been given pursuant to Section 3.07 hereof, unless and until there is a default in payment of the applicable redemption price. A Change of Control Offer may be made in advance of a Change of Control Triggering Event, with the obligation to pay and the timing of payment conditioned upon the consummation of the Change of Control, if a definitive agreement to effect a Change of Control is in place at the time of the Change of Control Offer.

Section 4.12 *Limitation on Sale and Leaseback Transactions*.

The Company will not, and will not permit any of the Guarantors to, enter into any sale and leaseback transaction; *provided* that the Company or any Guarantor may enter into a sale and leaseback transaction if:

(1) the Company or that Guarantor, as applicable, could have incurred a Lien (other than a Lien created under the Security Documents) to secure Indebtedness pursuant to Section 4.09 hereof; and

(2) the gross cash proceeds of that sale and leaseback transaction are at least equal to the Fair Market Value, as determined in good faith by the Board of Directors of the Company and set forth in an Officers' Certificate delivered to the Trustee, of the property that is the subject of that sale and leaseback transaction.

Section 4.13 *Additional Note Guarantees*.

If (1) the Company acquires or creates another Subsidiary after the date of this Indenture (that does not constitute an Excluded Subsidiary), (2) any Subsidiary of the Company ceases to constitute an Excluded Subsidiary or (3) any Excluded Subsidiary guarantees, or pledges any property or assets to secure, any First Lien Debt, then such Subsidiary will become a Guarantor under the Guarantee and Collateral Agreement and execute a supplemental indenture substantially in the form of Exhibit E hereto and deliver an Opinion of Counsel within 60 days thereof.

Section 4.14 *Further Assurances; Insurance*.

(a) The Company and each of the Grantors will do or cause to be done all acts and things that may be required, or that the Collateral Agent from time to time may reasonably request, to assure and confirm that the Collateral Agent holds, for the benefit of the Holders, duly created and enforceable and perfected Liens upon the Collateral (including with respect to any property or assets that are acquired or otherwise become Collateral after the Notes are issued), in each case, as contemplated by, and with the Lien priority required under, this Indenture and the Security Documents.

(b) Upon the reasonable request of the Collateral Agent at any time and from time to time, the Company and each of the Grantors will promptly execute, acknowledge and deliver such security documents, instruments, certificates, notices and other documents, and take such other actions the Collateral Agent may reasonably request, to create, perfect, protect, assure or enforce the Liens and benefits intended to be conferred, in each case as contemplated by this Indenture for the benefit of the Holders and as otherwise consistent with the Security Documents.

(c) The Company and the Grantors will maintain insurance policies (or self-insurance) on all its property in at least such amounts and against at least such risks as are usually insured against by companies of a similar size engaged in the same or a similar business and will name the Collateral Agent as an additional insured and loss payee as its interests may appear, to the extent required by the Security Documents. Upon the request of the Collateral Agent, the Company and the Grantors will furnish to the Collateral Agent full information as to their property and liability insurance carriers.

Section 4.15 *After-Acquired Collateral*.

(a) Unless otherwise directed by an Act of Required Debtholders pursuant to the Guarantee and Collateral Agreement, with respect to any property acquired after the date of this Indenture by the Company or any Grantor (other than any property described in clauses (b)-(d) of this Section 4.15) as to which the Collateral Agent, for the benefit of the Secured Parties, does not have a perfected Lien, the Company and each applicable Grantor shall promptly:

(1) execute and deliver to the Collateral Agent such amendments to the Guarantee and Collateral Agreement or such other documents as the Collateral Agent deems necessary or advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a security interest in such property; and

(2) take all actions necessary or advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected first priority security interest in such property, including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be reasonably requested by the Collateral Agent.

(b) With respect to any fee interest in any real property having a value (together with improvements thereof) of at least $5,000,000 acquired after the date of this Indenture by the Company or any Guarantor (other than any such real property subject to a Permitted Lien which precludes the granting of a Mortgage thereon), within 60 days after the creation or acquisition thereof, unless otherwise directed by an Act of Required Debtholders, the Company and each applicable Guarantor shall:

(1) execute and deliver a first priority Mortgage or where appropriate under the circumstances, an amendment to an existing Mortgage, in each case in favor of the Collateral Agent, for the benefit of the Secured Parties, covering such real property,

(2) if requested by the Collateral Agent, provide the Secured Parties with (A) either (i) title insurance covering such real property in an amount at least equal to the purchase price of such real property (or such other amount as shall be reasonably specified by the Collateral Agent) in form and substance reasonably satisfactory to the Collateral Agent, as well as a current ALTA survey thereof, together with a surveyor's certificate (only with respect to any power plant or any other real property for which an ALTA survey was obtained when such property was acquired) or (ii) where an amendment to an existing Mortgage has been delivered pursuant to clause (1) instead of a Mortgage, an endorsement to the existing title policy adding such property as an insured parcel, and (B) any consents or estoppels reasonably deemed necessary or advisable by the Collateral Agent in connection with such Mortgage or Mortgage amendment (to the extent obtainable using commercially reasonable efforts), each of the foregoing in form and substance reasonably satisfactory to the Collateral Agent; and

(3) if requested by the Collateral Agent, deliver to the Collateral Agent legal opinions relating to the matters described in clauses (1) and (2) above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Collateral Agent.

(c) With respect to any new Subsidiary (other than an Excluded Subsidiary) created or acquired after the date of this Indenture by the Company or any Guarantor (which, for the purposes of this paragraph (c), shall include any existing Subsidiary that ceases to be an Excluded Subsidiary), unless otherwise directed by an Act of Required Debtholders, within 60 days of the creation or acquisition thereof the Company and each applicable Guarantor shall:

(1) execute and deliver to the Collateral Agent such amendments to the Guarantee and Collateral Agreement as the Collateral Agent deems necessary or advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected first priority security interest in the Capital Stock of such new Subsidiary that is owned by the Company or any Guarantor,

(2) deliver to the Collateral Agent the certificates representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the Company or the relevant Guarantor,

(3) cause such new Subsidiary (A) to become a party to the Guarantee and Collateral Agreement, (B) to take such actions necessary or advisable to grant to the Collateral Agent for the benefit of the Secured Parties a perfected first priority security interest in the Collateral described in the Guarantee and Collateral Agreement with respect to such new Subsidiary, including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be requested by the Collateral Agent and (C) to deliver to the Collateral Agent a customary closing certificate of such Subsidiary, in form and substance reasonably satisfactory to the Collateral Agent, with appropriate insertions and attachments, and

(4) if requested by the Collateral Agent, deliver to the Collateral Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Collateral Agent.

(d) With respect to any new Foreign Subsidiary (or Domestic Subsidiary of the type described in clause (d) of the definition of Excluded Subsidiary) created or acquired after the date of this Indenture by the Company or any Guarantor, unless otherwise directed by an Act or Required Debtholders, the Company and each applicable Guarantor shall promptly:

(1) execute and deliver to the Collateral Agent such amendments to the Guarantee and Collateral Agreement as the Collateral Agent deems necessary or advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected first priority security interest in the Capital Stock of such new Subsidiary that is owned by the Company or such Guarantor (*provided* that in no event shall more than 65% of the total outstanding voting Capital Stock of any such new Subsidiary be required to be so pledged),

(2) if commercially reasonable, deliver to the Collateral Agent the certificates representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the Company or the relevant Guarantor, and take such other action as may be necessary or, in the opinion of the Collateral Agent, desirable to perfect the Collateral Agent's security interest therein, and

(3) if requested by the Collateral Agent, deliver to the Collateral Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Collateral Agent.

ARTICLE 5
SUCCESSORS

Section 5.01 *Merger, Consolidation, or Sale of Assets*.

(a) The Company may not, directly or indirectly: (1) consolidate or merge with or into another Person (whether or not the Company is the surviving corporation); or (2) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company and its Restricted Subsidiaries taken as a whole, in one or more related transactions, to another Person; unless:

(1) either:

(A) the Company is the surviving corporation; or

(B) the Person formed by or surviving any such consolidation or merger (if other than the Company) or to which such sale, assignment, transfer, conveyance or other disposition has been made is a corporation, partnership or limited liability company organized or existing under the laws of the United States, any state of the United States or the District of Columbia; *provided* that if the Person is a partnership or limited liability company, then a corporation wholly-owned by such Person organized or existing under the laws of the United States, any state of the United States or the District of Columbia that does not and will not have any material assets or operations shall become a co-issuer of the Notes pursuant to supplemental indentures duly executed by the Trustee;

(2) the Person formed by or surviving any such consolidation or merger (if other than the Company) or the Person to which such sale, assignment, transfer, conveyance or other disposition has been made assumes all the obligations of the Company under the Notes, this Indenture and the Security Documents pursuant to supplemental indentures or other documents and agreements reasonably satisfactory to the Trustee; and

(3) immediately after such transaction, no Default or Event of Default exists.

(b) In addition, the Company will not, directly or indirectly, lease all or substantially all of the properties or assets of the Company and its Restricted Subsidiaries, taken as a whole, in one or more related transactions, to any other Person.

This Section 5.01 will not apply to:

(1) a merger of the Company with an Affiliate solely for the purpose of reincorporating the Company in another jurisdiction or forming a direct holding company of the Company; or

(2) any consolidation or merger of (a) the Company into a Guarantor, (b) a Guarantor into the Company or another Guarantor or (c) a Restricted Subsidiary of the Company into the Company or another Restricted Subsidiary of the Company; or

(3) any sale, assignment, transfer, conveyance, lease or other disposition of assets (a) by the Company to a Guarantor, (b) a Guarantor to the Company or another Guarantor or (c) a Restricted Subsidiary of the Company to the Company or another Restricted Subsidiary of the Company.

Section 5.02 *Successor Corporation Substituted*.

Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the properties or assets of the Company in a transaction that is subject to, and that complies with the provisions of, Section 5.01 hereof, the successor Person formed by such consolidation or into or with which the Company is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, assignment, transfer, lease, conveyance or other disposition, the provisions of this Indenture referring to the "Company" shall refer instead to the successor Person and not to the Company), and may exercise every right and power of the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein; *provided*, *however*, that the predecessor Company shall not be relieved from the obligation to pay the principal of and interest on the Notes except in the case of a sale of all of the Company's assets in a transaction that is subject to, and that complies with the provisions of, Section 5.01 hereof.

ARTICLE 6
DEFAULTS AND REMEDIES

Section 6.01 *Events of Default*.

Each of the following is an "*Event of Default*":

(1) default for 30 days in the payment when due of interest on the Notes;

(2) default in payment when due (at maturity, upon redemption or otherwise) of the principal of, or premium, if any, on, the Notes;

(3) [Reserved]

(4) failure by the Company or any Guarantor for 60 days after notice from the Trustee or the Holders of at least 25% in aggregate principal amount of the outstanding Notes to comply with any of the other agreements in this Indenture or the security documents required by this Indenture;

(5) (i) default under any other mortgage, indenture, agreement or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness of the Company or any Guarantor (or the payment of which is guaranteed by the Company or any Guarantor), whether such Indebtedness or Guarantee now exists, or is created after the date of this Indenture, if that default:

(A) is caused by a failure to pay principal of such Indebtedness at its stated final maturity (after giving effect to any applicable grace period provided in such Indebtedness) (a "*Payment Default*"); or

(B) results in the acceleration of such Indebtedness prior to its express maturity,

and 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 $100,000,000 or more; *provided* that this clause (5)(i) shall not apply to Indebtedness that becomes due solely as a result of the voluntary sale or transfer of property or assets to the extent such sale or transfer is permitted by the terms of such Indebtedness; or (ii) the Company and any Guarantor shall, with respect to Limited Recourse Debt in an aggregate principal amount in excess of $300,000,000, default in the observance or performance of any agreement or condition relating to any such Limited Recourse Debt or contained in any instrument or agreement evidencing, securing or relating thereto, and such Limited Recourse Debt shall as a result thereof become due prior to its final stated maturity;

provided that this clause (5) shall not apply to any Indebtedness that is required to be converted into Qualifying Equity Interests upon the occurrence of certain designated events so long as no payments in cash or otherwise are required to be made in accordance with such conversion;

(6) any of the Security Documents shall cease, for any reason, to be in full force and effect (other than in accordance with its terms) with respect to Collateral with a book value greater than $50,000,000, or the Company or any Guarantor shall so assert, or any Lien (affecting Collateral with a book value greater than $50,000,000) created by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby (other than, in each case, pursuant to a failure of the Trustee, the Collateral Agent, any other agent appointed by the Trustee, the Collateral Agent or the Holders to take any action within the sole control of such Person) (it being understood that the release of Collateral from the Security Documents or the discharge of a Guarantor therefrom shall not be construed (x) as any of the Security Documents ceasing to be in full force and effect or (y) as any of the Liens created thereunder ceasing to be enforceable or of the same priority and effect purported to be created thereby);

(7) except as permitted by this Indenture or the Guarantee and Collateral Agreement, any Note Guarantee of a Significant Subsidiary ceases, for any reason, to be in full force and effect (other than in accordance with its terms), or any Significant Subsidiary that is a Guarantor denies or disaffirms in writing its obligations under its Note Guarantee;

(8) the Lien subordination provisions in favor of the Holders or any other provision of the Collateral Agency and Intercreditor Agreement shall cease for any reason to be valid (other than by its express terms) and, in the case of any provision of the Collateral Agency and Intercreditor Agreement other than the Lien subordination provisions in favor of the Holders, the result thereof is that the interests of the Holders are materially and adversely affected, or the Company or any Guarantor shall assert in writing that the Lien subordination provisions in favor of the Holders or any such other provision of the Collateral Agency and Intercreditor Agreement shall not for any reason be valid (other than by its express terms);

(9) the Company or any Guarantor that is a Significant Subsidiary or any group of Guarantors that, taken together, would constitute a Significant Subsidiary, pursuant to or within the meaning of Bankruptcy Law:

(A) commences a voluntary case,

(B) consents to the entry of an order for relief against it in an involuntary case,

(C) consents to the appointment of a custodian of it or for all or substantially all of its property,

(D) makes a general assignment for the benefit of its creditors, or

(E) generally is not paying its debts as they become due; or

(10) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against the Company or any Guarantor that is a Significant Subsidiary or any group of Guarantors that, taken together, would constitute a Significant Subsidiary, in an involuntary case;

(B) appoints a custodian of the Company or any Guarantor that is a Significant Subsidiary or any group of Guarantors of the Company that, taken together, would constitute a Significant Subsidiary,
or for all or substantially all of the property of the Company or any Guarantor that is a Significant Subsidiary or any group of Guarantors that, taken together, would constitute a Significant Subsidiary; or

(C) orders the liquidation of the Company or any Guarantor that is a Significant Subsidiary or any group of Guarantors that, taken together, would constitute a Significant Subsidiary;

and the order or decree remains unstayed and in effect for 60 consecutive days.

Section 6.02 *Acceleration*.

In the case of an Event of Default specified in clause (9) or (10) of Section 6.01 hereof, with respect to the Company, 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 by written notice to the Company or the Holders of at least 25% in aggregate principal amount of the then outstanding Notes by written notice to the Company and the Trustee may declare all the Notes to be due and payable immediately. Upon any such declaration, the Notes shall become due and payable immediately. The Holders of a majority in aggregate principal amount of the then outstanding Notes by written notice to the Trustee may, on behalf of all of the Holders, rescind an acceleration and its consequences, if the rescission would not conflict with any judgment or decree and if all existing Events of Default (except nonpayment of principal, interest or premium that has become due solely because of the acceleration) have been cured or waived.

Section 6.03 *Other Remedies*.

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, and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

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 in exercising any right or remedy accruing upon 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 6.04 *Waiver of Past Defaults*.

Holders of not less than a majority in aggregate principal amount of the then outstanding Notes by written notice to the Trustee may on behalf of the Holders of all of the Notes waive an existing Default or Event of Default and its consequences hereunder, except a continuing Default or Event of Default in the payment of the principal of, premium, if any, or interest on, the Notes (including in connection with an offer to purchase); *provided*, *however*, that the Holders of a majority in aggregate principal amount of the then outstanding Notes may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration. 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 6.05 *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 it. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture that the Trustee determines may be unduly prejudicial to the rights of other Holders or that may involve the Trustee in personal liability.

Section 6.06 *Limitation on Suits*.

Except to enforce the right to receive payment of principal, premium (if any) or interest when due, no Holder may pursue any remedy with respect to this Indenture or the Notes unless:

(1) such Holder has previously given the Trustee written notice that an Event of Default is continuing;

(2) Holders of at least 25% in aggregate principal amount of the then outstanding Notes have requested the Trustee to pursue the remedy;

(3) such Holders have offered the Trustee security or indemnity satisfactory to the Trustee against any loss, liability or expense;

(4) the Trustee has not complied with such request within 60 days after the receipt thereof and the offer of security or indemnity; and

(5) Holders of a majority in aggregate principal amount of the outstanding Notes have not given the Trustee a direction inconsistent with such request within such 60-day period.

Section 6.07 *Rights of Holders to Receive Payment*.

Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal, premium, if any, and interest on the Note, on or after the respective due dates expressed in the 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; *provided* that a Holder shall not have the right to institute any such suit for the enforcement of payment if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver or loss of the Lien of this Indenture upon any property subject to such Lien.

Section 6.08 *Collection Suit by Trustee*.

If an Event of Default specified in Section 6.01(1) or (2) hereof occurs 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 principal of, premium, if any, and interest remaining unpaid on, the Notes and interest on overdue principal and, to the extent lawful, 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 6.09 *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 allowed in any judicial proceedings relative to the Company (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 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 7.06 hereof. 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 7.06 hereof 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 6.10 *Priorities*.

If the Trustee collects any money or property pursuant to this Article 6, it shall pay out the money or property in the following order:

First: to the Trustee, its agents and attorneys for amounts due under Section 7.06 hereof, including payment of all compensation, expenses and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

Second: to Holders 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.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 6.10.

Section 6.11 *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, 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 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07 hereof, or a suit by Holders of more than 10% in aggregate principal amount of the then outstanding Notes.

ARTICLE 7
TRUSTEE

Section 7.01 *Duties of Trustee*.

(a) If an Event of Default has occurred and is continuing, the Trustee will 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 will 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 will examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of calculations or other facts stated therein).

(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 7.01;

(2) the Trustee will not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved in a court of competent jurisdiction that the Trustee was negligent in ascertaining the pertinent facts; and

(3) the Trustee will 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 6.05 hereof.

(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), (c) and (e) of this Section 7.01.

(e) No provision of this Indenture will require the Trustee to expend or risk its own funds or incur any liability. The Trustee will be under no obligation to exercise any of its rights and powers under this Indenture at the request of any Holders, unless such Holder has offered to the Trustee indemnity satisfactory to it or security satisfactory to it against any loss, liability or expense.

(f) The Trustee will not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

Section 7.02 *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 will 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 written advice of such counsel or any Opinion of Counsel will 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 will not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee will 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 will be sufficient if signed by an Officer of the Company.

(f) The Trustee will 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 have offered to the Trustee indemnity or security satisfactory to it against the losses, liabilities and expenses that might be incurred by it in compliance with such request or direction.

(g) In no event shall the Trustee be required to take notice of any default or breach hereof or any Event of Default hereunder, except for Events of Default specified in Section 6.01(1) and/or 6.01(2) hereof (and then, only if the Trustee is also the Paying Agent), unless and until the Trustee shall have received from a Holder or from the Company express written notice of the circumstances constituting the breach, default or Event of Default and stating that said circumstances constitute an Event of Default.

(h) In no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(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 (including, without limitation, as Custodian, Registrar and Paying Agent), and each agent, custodian and other Person employed to act hereunder.

(j) The Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture.

(k) The Trustee shall have no duty to inquire as to the performance of the Company with respect to the covenants contained in Article 4.

(l) Any permissive right or authority granted to the Trustee shall not be construed as a mandatory duty.

(m) Each of the Company and Guarantors shall provide prompt written notice to the Trustee of any change to its respective fiscal year.

Section 7.03 *Individual Rights of Trustee*.

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Company or any Affiliate of the Company with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the Commission for permission to continue as trustee or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Section 7.09 hereof.

Section 7.04 *Trustee's Disclaimer*.

The Trustee will not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes or the Security Documents, 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 will not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, it will not be responsible for and makes no representation as to the validity, sufficiency, priority or perfection of the Collateral and the Collateral Agent's security interest therein, and it will 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 7.05 *Notice of Defaults*.

If a Default or Event of Default occurs and is continuing and if it is known to the Trustee, the Trustee will mail to Holders a notice of the Default or Event of Default within 90 days after it occurs. 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.

Section 7.06 *Compensation and Indemnity*.

(a) The Company will pay to the Trustee from time to time reasonable compensation for its acceptance of this Indenture and services hereunder. The Trustee's compensation will not be limited by any law on compensation of a trustee of an express trust. The Company will reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses will include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

(b) The Company and the Guarantors, jointly and severally, will indemnify the Trustee against any and all losses, liabilities or 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 and the Guarantors (including this Section 7.06) and defending itself against any claim (whether asserted by the Company, the Guarantors, 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 negligence or bad faith as determined by a court of competent jurisdiction in a final non-appealable decision. The Trustee will notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company will not relieve the Company or any of the Guarantors of their obligations hereunder. The Company or such Guarantor will defend the claim and the Trustee will cooperate in the defense. The Trustee may have separate counsel and the Company will pay the reasonable fees and expenses of such counsel. Neither the Company nor any Guarantor need pay for any settlement made without its consent, which consent will not be unreasonably withheld.

(c) The obligations of the Company and the Guarantors under this Section 7.06 will survive the satisfaction and discharge of this Indenture or the earlier resignation or removal of the Trustee.

(d) To secure the Company's and the Guarantors' payment obligations in this Section 7.06, the Trustee will 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 and interest on particular Notes. Such Lien will survive the satisfaction and discharge of this Indenture.

(e) When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(9) or (10) hereof 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 7.07 *Replacement of Trustee*.

(a) A resignation or removal of the Trustee and appointment of a successor Trustee will become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.07.

(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 aggregate 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 7.09 hereof;

(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 will promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in aggregate 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 60 days after the retiring Trustee resigns or is removed, the retiring Trustee (at the Company's expense), the Company, or the Holders of at least 10% in aggregate principal amount of the then outstanding Notes may petition 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 six months, fails to comply with Section 7.09 hereof, 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 will deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon, the resignation or removal of the retiring Trustee will become effective, and the successor Trustee will have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee will mail a notice of its succession to Holders. The retiring Trustee will 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 7.06 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 7.07, the Company's obligations under Section 7.06 hereof will continue for the benefit of the retiring Trustee.

Section 7.08 *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 corporation, the successor corporation without any further act will be the successor Trustee.

Section 7.09 *Eligibility; Disqualification*.

There will 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 trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least $100.0 million as set forth in its most recent published annual report of condition.

ARTICLE 8
LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 8.01 *Option to Effect Legal Defeasance or Covenant Defeasance*.

The Company may at any time, at the option of its Board of Directors evidenced by a resolution set forth in an Officers' Certificate, elect to have either Section 8.02 or 8.03 hereof be applied to all outstanding Notes upon compliance with the conditions set forth below in this Article 8.

Section 8.02 *Legal Defeasance and Discharge*.

(a) Upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.02, the Company and each of the Guarantors will, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be deemed to have been discharged from their obligations with respect to all outstanding Notes (including the Note 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 Guarantors will be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes (including the Note Guarantees), which will thereafter be deemed to be "outstanding" only for the purposes of Section 8.05 hereof and the other Sections of this Indenture referred to in clauses (1) and (2) below, and to have satisfied all their other obligations under such Notes, the Note Guarantees and this Indenture (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 will survive until otherwise terminated or discharged hereunder:

(1) the rights of Holders of outstanding Notes to receive payments in respect of the principal of, or interest or premium, if any, on, such Notes when such payments are due from the trust referred to in Section 8.04 hereof;

(2) the Company's obligations with respect to such Notes under Article 2 and Section 4.02 hereof;

(3) the rights, powers, trusts, duties and immunities of the Trustee hereunder and the Company's and the Guarantors' obligations in connection therewith; and

(4) this Article 8.

Subject to compliance with this Article 8, the Company may exercise its option under this Section 8.02 notwithstanding the prior exercise of its option under Section 8.03 hereof.

(b) Upon Legal Defeasance or Covenant Defeasance in accordance with this Article 8, the Trustee will advise the Collateral Agent that the Notes cease to constitute First Lien Debt under the Collateral Agency and Intercreditor Agreement.

(c) The Liens securing the Notes will be released as provided under Section 10.03 hereof upon Legal Defeasance or Covenant Defeasance in accordance with this Article 8.

Section 8.03 *Covenant Defeasance*.

Upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.03, the Company and each of the Guarantors will, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be released from each of their obligations under the covenants contained in Sections 4.03, 4.04, 4.05, 4.07, 4.08, 4.09, 4.11, 4.12, 4.13, 4.14 and 4.15 hereof with respect to the outstanding Notes on and after the date the conditions set forth in Section 8.04 hereof are satisfied (hereinafter, "*Covenant Defeasance*"), and the Notes will 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 will continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes will not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes and Note Guarantees, the Company and the Guarantors may omit to comply with and will 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 will not constitute a Default or an Event of Default under Section 6.01 hereof, but, except as specified above, the remainder of this Indenture and such Notes and Note Guarantees will be unaffected thereby. In addition, upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.03, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, Sections 6.01(4) through 6.01(8) hereof will not constitute Events of Default.

Section 8.04 *Conditions to Legal or Covenant Defeasance*.

In order to exercise either Legal Defeasance or Covenant Defeasance under either Section 8.02 or 8.03 hereof:

(1) the Company must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities, or a combination thereof, in amounts as will be sufficient, in the opinion of a nationally recognized investment bank, appraisal firm or firm of independent public accountants, to pay the principal of, interest and premium, if any, on, the then outstanding Notes on the final stated maturity thereof or on the applicable redemption date, as the case may be, and the Company must specify whether such Notes are being defeased to maturity or to a particular redemption date;

(2) in the case of an election under Section 8.02 hereof, the Company must deliver to the Trustee an Opinion of Counsel confirming 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 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;

(3) in the case of an election under Section 8.03 hereof, the Company must deliver to the Trustee an Opinion of Counsel confirming that the Holders 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;

(4) no Default or Event of Default shall have occurred and be continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit);

(5) such Legal Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than this Indenture) to which the Company or any of the Guarantors is a party or by which the Company or any of the Guarantors is bound;

(6) the Company must deliver to the Trustee an Officers' Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders over the other creditors of the Company with the intent of defeating, hindering, delaying or defrauding any creditors of the Company or others; and

(7) the Company must deliver to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

The Legal Defeasance or Covenant Defeasance, as applicable, will be effective on the day on which the conditions in clauses (1)-(7) of this Section 8.04 have been satisfied.

Section 8.05 *Deposited Money and Government Securities to be Held in Trust; Other Miscellaneous Provisions*.

Subject to Section 8.06 hereof, all money and non-callable Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.05, the "*Trustee*") pursuant to Section 8.04 hereof in respect of the outstanding Notes will 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.

The Company will pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable Government Securities deposited pursuant to Section 8.04 hereof 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.

Notwithstanding anything in this Article 8 to the contrary, the Trustee will deliver or pay to the Company from time to time upon the request of the Company any money or non-callable Government Securities held by it as provided in Section 8.04 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.04(1) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

Section 8.06 *Repayment to 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) will be discharged from such trust; and the Holder of such Note will thereafter be permitted to 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, will thereupon cease; *provided*, *however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in the New York Times and The Wall Street Journal (national edition), notice that such money remains unclaimed and that, after a date specified therein, which will not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining will be repaid to the Company.

Section 8.07 *Reinstatement*.

If the Trustee or Paying Agent is unable to apply any U.S. dollars or non-callable Government Securities in accordance with Section 8.02 or 8.03 hereof, 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 and the Guarantors' obligations under this Indenture and the Notes and the Note Guarantees will be revived and reinstated as though no deposit had occurred pursuant to Section 8.02 or 8.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.02 or 8.03 hereof, 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 will 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 9
AMENDMENT, SUPPLEMENT AND WAIVER

Section 9.01 *Without Consent of Holders*.

Notwithstanding Section 9.02 of this Indenture, the Company, the Guarantors and the Trustee may amend or supplement this Indenture or the Notes or the Note Guarantees, and the Company and the Guarantors, together with the Collateral Agent, may amend or supplement the Security Documents, without the consent of any Holder:

(1) to cure any ambiguity, defect or inconsistency in this Indenture, the Notes or the Security Documents in a manner that does not adversely affect the rights of any Holder;

(2) to provide for uncertificated Notes in addition to or in place of certificated Notes;

(3) to provide for the assumption of the Company's or a Guarantor's obligations to the Holders in the case of a merger or consolidation or sale of all or substantially all of the Company's or such Guarantor's assets, as applicable;

(4) to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the legal rights hereunder of any Holder;

(5) to conform the text of this Indenture or the Notes to any provision of the "Description of Notes" section of the Offering Memorandum, to the extent that such provision in that "Description of Notes" was intended to be a verbatim or substantially verbatim recitation of a provision of this Indenture or the Notes;

(6) to enter into additional or supplemental Security Documents or provide for additional Collateral;

(7) to make, complete or confirm any grant of Collateral permitted or required by this Indenture or any of the Security Documents or to release Collateral in accordance with the terms of this Indenture and the Security Documents;

(8) to evidence and provide for the acceptance and appointment under this Indenture of successor trustees pursuant to the requirements thereof;

(9) to allow any Guarantor to execute a supplemental indenture substantially in the form of Exhibit E hereto and/or a joinder to the Guarantee and Collateral Agreement; or

(10) to provide for the issuance of Additional Notes of the same or an additional series in accordance with the limitations set forth in this Indenture as of the date hereof.

Upon the request of the Company accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture, and upon receipt by the Trustee of the documents described in Sections 7.02 and 9.05 hereof, the Trustee will join with the Company and the Guarantors 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 will not be obligated to enter into such amended or supplemental indenture that affects its own rights, duties or immunities under this Indenture or otherwise.

In addition, any release of, or any amendment to, or waiver of, the provisions of this Indenture or any Security Document that has the effect of releasing all or substantially all of the Collateral from the Liens securing the Notes will require the consent of Holders as and only to the extent provided under Section 10.05 hereof.

Section 9.02 *With Consent of Holders*.

Except as provided below in this Section 9.02, the Company and the Trustee may amend or supplement this Indenture, the Notes and the Note Guarantees with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes (including, without limitation, Additional Notes, if any) voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes), and, subject to Sections 6.04 and 6.07 hereof, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium, if any, or interest on, the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture, the Notes or the Note Guarantees may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes (including, without limitation, Additional Notes, if any) voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes).

Upon the request of the Company accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture, and upon the filing with the Trustee of evidence satisfactory to the Trustee of the consent of the Holders as aforesaid, and upon receipt by the Trustee of the documents described in Sections 7.02 and 9.05 hereof, the Trustee will join with the Company and the Guarantors 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 will not be obligated to, enter into such amended or supplemental indenture.

It is not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed amendment, supplement or waiver, but it is sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Company will mail to the Holders affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Company to mail such notice, or any defect therein, will not, however, in any way impair or affect the validity of any such amended or supplemental indenture or waiver. Subject to Sections 6.04 and 6.07 hereof, the Holders of a majority in aggregate principal amount of the Notes then outstanding voting as a single class may waive compliance in a particular instance by the Company with any provision of this Indenture, the Notes or the Note Guarantees. However, without the consent of each Holder affected, an amendment, supplement or waiver under this Section 9.02 may not (with respect to any Notes held by a non-consenting Holder):

(1) reduce the principal amount of Notes whose Holders must consent to an amendment, supplement or waiver;

(2) reduce the principal of or change the fixed maturity of any Note or alter the provisions with respect to the redemption of the Notes (other than provisions relating to Section 4.11 hereof and provisions relating to the number of days of notice to be given in the event of a redemption);

(3) reduce the rate of or change the time for payment of interest on any Note;

(4) waive a Default or Event of Default in the payment of principal of, or interest or premium, if any, on, such Notes (except a rescission of acceleration of such Notes by the Holders of at least a majority in aggregate principal amount of Notes and a waiver of the payment default that resulted from such acceleration);

(5) make any Note payable in currency other than that stated in such Note;

(6) make any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of Holders of such Notes to receive payments of principal of, or interest or premium, if any, on, the Notes;

(7) waive a redemption payment with respect to any Note (other than a payment required by Section 4.11 hereof); or

(8) make any change in the preceding amendment and waiver provisions.

Section 9.03 *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 9.04 *Notation on or Exchange of Notes*.

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.

Failure to make the appropriate notation or issue a new Note will not affect the validity and effect of such amendment, supplement or waiver.

Section 9.05 *Trustee to Sign Amendments, etc*.

The Trustee will sign any amended or supplemental indenture authorized pursuant to this Article 9 if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. The Company may not sign an amended or supplemental indenture until the Board of Directors of the Company approves it. In executing any amended or supplemental indenture, the Trustee will be entitled to receive and (subject to Section 7.01 hereof) will be fully protected in relying upon, in addition to the documents required by Section 13.02 hereof, an Officers' Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture is authorized or permitted by this Indenture and that such amended or supplemental indenture is the legal, valid and binding obligation of the Company and any Guarantor party thereto, enforceable against them in accordance with its terms, subject to customary exceptions and complies with provisions hereof.

ARTICLE 10
COLLATERAL AND SECURITY

Section 10.01 *Security Interest*.

The due and punctual payment of the principal of and interest, if any, on the Notes 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 and interest (to the extent permitted by law), if any, on the Notes and performance of all other obligations of the Company to the Holders or the Trustee under this Indenture and the Notes, according to the terms hereunder or thereunder, are secured as provided in the Security Documents. Each Holder, by its acceptance thereof, consents and agrees to the terms of the Security Documents (including, without limitation, the provisions providing for foreclosure and release of the Collateral) as the same may be in effect or may be amended from time to time in accordance with its terms and authorizes and directs the Collateral Agent and the Trustee, as applicable, to enter into the Security Documents and to perform its obligations and exercise its rights thereunder in accordance therewith. Upon the request of the Trustee, the Company will deliver to the Trustee copies of all documents delivered to the Collateral Agent pursuant to the Security Documents, and will do or cause to be done all such acts and things as may be necessary or proper, or as may be required by the provisions of the Security Documents, to assure and confirm to the Trustee and the Collateral Agent the security interest in the Collateral contemplated hereby, by the Security Documents or any part thereof, as from time to time constituted, so as to render the same available for the security and benefit of this Indenture and of the Notes secured hereby, according to the intent and purposes herein expressed. The Company will take, and will cause its Subsidiaries to take, upon request of the Trustee, any and all actions reasonably required to cause the Security Documents to create and maintain, as security for the Obligations of the Company hereunder, a valid and enforceable perfected first priority Lien in and on all the Collateral, in favor of the Collateral Agent for the benefit of the Holders, superior to and prior to the rights of all third Persons, except for Permitted Liens.

Section 10.02 *Lien Sharing and Priority Confirmation*.

Each Holder, by accepting a Note, and the Trustee hereby agrees that:

(a) all First Lien Obligations will be and are secured equally and ratably by all First Liens at any time granted by the Company or any other Grantor to secure any Obligations (as defined in the Collateral Agency and Intercreditor Agreement) in respect of this Indenture, whether or not upon property otherwise constituting collateral for such Obligations (as defined in the Collateral Agency and Intercreditor Agreement) in respect of this Indenture and that all such First Liens will be enforceable by the Collateral Agent for the benefit of all holders of First Lien Obligations equally and ratably;

(b) the Trustee and each of the Holders in respect of the Obligations (as defined in the Collateral Agency and Intercreditor Agreement) in respect of this Indenture are bound by the provisions of the Collateral Agency and Intercreditor Agreement, including without limitation (1) the provisions relating to the ranking of First Liens and the order of application of proceeds from enforcement of First Liens and (2) the provisions of Section 8.22 thereof; and

(c) that the Trustee and each of the Holders consent to and direct the Collateral Agent to perform the Collateral Agent's obligations under the Collateral Agency and Intercreditor Agreement and the other Security Documents.

The foregoing provisions of this Section 10.02 are intended for the enforceable benefit of, and will be enforceable as a third party beneficiary by, all holders of each existing and future Series of First Lien Debt, each existing and future First Lien Representative, all holders of each existing and future series of Second Lien Debt, each existing and future Second Lien Representative and the Collateral Agent.

Section 10.03 *Release of Liens in Respect of Notes*.

(a) In addition to and subject to the terms of the Collateral Agency and Intercreditor Agreement, the Collateral Agent's Liens upon the Collateral will no longer secure the Notes and the Note Guarantees or any other obligations under this Indenture, and the right of the Holders to the benefits and proceeds of the Collateral Agent's Liens on the Collateral will terminate and be discharged:

(1) upon satisfaction and discharge of this Indenture as set in Article 12 hereof;

(2) upon a Legal Defeasance or Covenant Defeasance of the Notes as set forth in Article 8 hereof;

(3) upon payment in full and discharge of all Notes outstanding under this Indenture and all Obligations that are outstanding, due and payable under this Indenture at the time the Notes are paid in full and discharged; or

(4) with respect to all or substantially all of the Collateral, with the consent of the Holders of the requisite percentage of Notes in accordance with Section 9.02 hereof and upon delivery of instructions and any other documentation, in each case as required by this Indenture, in a form satisfactory to the Collateral Agent.

If the Collateral Agent is releasing Liens in accordance with the provisions of this Indenture or any Security Document and if the Company has delivered the certificates and documents required by this Indenture and the Security Documents, then the Trustee will execute and deliver such additional documents and instruments as the Company and the Guarantors may reasonably request to evidence such release without the further consent of the Holders. All actions taken pursuant to the provisions described in the foregoing provisions of this Section 10.03 will be at the sole cost and expense of the Company and the applicable Guarantor.

Section 10.04 *Release of Note Guarantees*.

For all purposes under the Guarantee and Collateral Agreement, each Holder by accepting a Note will be deemed to have consented to the release of the Note Guarantee of a Guarantor if the Company has delivered to the Trustee an Officers' Certificate stating that:

(1) such Guarantor constitutes an Excluded Subsidiary and is not required to be a guarantor of the Notes pursuant to Section 4.13;

(2) all or substantially all of the assets of such Guarantor have been sold or otherwise disposed of (including by way of merger or consolidation) to a Person that is not the Company or a Guarantor;

(3) such Guarantor has been liquidated or dissolved; or

(4) upon Legal Defeasance or satisfaction and discharge of this Indenture as provided in Article 8 or Article 12,

provided that such Guarantor has previously been, or will concurrently be, released from its guarantee of any other First Lien Debt.

Section 10.05 *Amendment of Security Documents*.

Notwithstanding any other provision of this Indenture, if the Trustee is requested to vote or otherwise take action with respect to the Security Documents, the Trustee will vote or otherwise act as directed by the Holders of a majority in aggregate principal amount of all Notes then outstanding, except that:

(1) any amendment or supplement that has the effect solely of adding or maintaining Collateral or preserving, perfecting or establishing the priority of the Liens thereon or the rights of the Collateral Agent therein will not require a direction from the Holders of a majority in aggregate principal amount of all Notes then outstanding and will become effective when executed and delivered by the Company or any Guarantor party thereto and the Collateral Agent;

(2) any amendment or supplement that has the effect solely of curing any ambiguity, defect or inconsistency in this Indenture, the Notes or the Security Documents or making any change that would provide any additional rights or benefits to Holders or the Collateral Agent or that does not adversely affect the legal rights under this Indenture or any other Security Document of any Holder or the Collateral Agent, will not require a direction from the Holders of a majority in aggregate principal amount of all Notes then outstanding and will, in each case, become effective when executed and delivered by the Company and any Guarantor party thereto and the Collateral Agent;

(3) with respect to any amendment to, or waiver of, the provisions of this Indenture or any Security Document that has the effect of releasing all or substantially all of the Collateral from the Liens securing the Notes will require the consent of Holders of at least 66-2/3% in aggregate principal amount of Notes then outstanding;

(4) no amendment or supplement that reduces, impairs or adversely affects the right of any Holder:

(A) to vote its outstanding Notes as to any matter described as subject to direction by the Holders of a majority in aggregate principal amount of all Notes then outstanding,

(B) to share in the order of application under Section 3.4 of the Collateral Agency and Intercreditor Agreement in the proceeds of enforcement of or realization on any Collateral, or

(C) to require that Liens securing the Notes be released only as set forth in Section 10.03,

will become effective without the consent of the requisite percentage or number of Holders so affected under this Indenture and the Security Documents and such additional consents as required pursuant to the Collateral Agency and Intercreditor Agreement; and

(5) no amendment or supplement that imposes any obligation upon the Collateral Agent or adversely affects the rights of the Collateral Agent in its individual capacity as such will become effective without the consent of the Collateral Agent.

ARTICLE 11
REAFFIRMATION AND ACKNOWLEDGEMENT OF GUARANTEE

Section 11.01 *Reaffirmation and Acknowledgement*.

Each Guarantor hereby (i) affirms as of the date of this Indenture its respective guarantees, pledges and grants of security interests, as applicable, under and subject to the terms of the Guarantee and Collateral Agreement and each of the Security Documents to which it is party, (ii) affirms that the Obligations (which shall include the fees, expenses and disbursements of the Trustee's agents, counsel and professional advisors to the extent such fees, expenses and disbursements are obligations of the Company pursuant to the terms of this Indenture) in respect of the Notes are, as of the date of this Indenture, First Lien Obligations, (iii) confirms that, as of the date of this Indenture, the Guarantee and Collateral Agreement guaranties the prompt and complete payment and performance when due of all Guaranteed Obligations (as defined in the Guarantee and Collateral Agreement), which shall include the fees, expenses and disbursements of the Trustee's agents, counsel and professional advisors to the extent such fees, expenses and disbursements are obligations of the Company pursuant to the terms of this Indenture), including the First Lien Obligations in respect of the Notes, (iv) confirms that such Guarantee and Collateral Agreement and the other Security Documents to which each Guarantor that is a Grantor is a party secure the prompt and complete payment and performance when due of all First Lien Obligations, including the First Lien Obligations in respect of the Notes, and (v) agrees that, as of the date of this Indenture and notwithstanding this Indenture, such guarantees, pledges and grants of security interests, and the terms of the Guarantee and Collateral Agreement and each of the other Security Documents to which it is a party, are in full force and effect in accordance with their respective terms. Each of the Guarantors acknowledges that the Trustee and the Holders shall be deemed to be "Secured Parties" and "First Lien Secured Parties" for all purposes under the Security Documents.

ARTICLE 12
SATISFACTION AND DISCHARGE

Section 12.01 *Satisfaction and Discharge*.

This Indenture will be discharged and will cease to be of further effect as to all Notes issued hereunder, when:

(1) either:

(a) all Notes that have been authenticated, except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust and thereafter repaid to the Company, have been delivered to the Trustee for cancellation; or

(b) all Notes that have not been delivered to the Trustee for cancellation have become due and payable by reason of the mailing or delivering electronically of a notice of redemption or otherwise or will become due and payable within one year and the Company or any Guarantor has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities, or a combination thereof, in such amounts as will be sufficient, without consideration of any reinvestment of interest, to pay and discharge the entire Indebtedness on the Notes not delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption;

(2) no Default or Event of Default has occurred and is continuing on the date of the deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit) and the deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which the Company or any Guarantor is a party or by which the Company or any Guarantor is bound;

(3) the Company or any Guarantor has paid or caused to be paid all sums payable by it under this Indenture; and

(4) the Company has delivered irrevocable instructions to the Trustee under this Indenture to apply the deposited money toward the payment of the Notes at maturity or on the redemption date, as the case may be.

In addition, the Company must deliver an Officers' Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

Upon satisfaction and discharge in accordance with this Section 12.01, the Trustee will advise the Collateral Agent that it will cease to be a party to the Collateral Agency and Intercreditor Agreement on behalf of the Holders and the Notes will cease to constitute First Lien Debt thereunder.

Notwithstanding the satisfaction and discharge of this Indenture, if money has been deposited with the Trustee pursuant to subclause (b) of clause (1) of this Section 12.01, the provisions of Sections 12.02 and 8.06 hereof will survive. In addition, nothing in this Section 12.01 will be deemed to discharge those provisions of Section 7.06 hereof, that, by their terms, survive the satisfaction and discharge of this Indenture.

Section 12.02 *Application of Trust Money*.

Subject to the provisions of Section 8.06 hereof, all money deposited with the Trustee pursuant to Section 12.01 hereof 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.

If the Trustee or Paying Agent is unable to apply any money or Government Securities in accordance with Section 12.01 hereof by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's and any Guarantor's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 12.01 hereof; *provided* that if the Company has made any payment of principal of, premium, if any, or interest on, any Notes because of 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 or Government Securities held by the Trustee or Paying Agent.

ARTICLE 13
MISCELLANEOUS

Section 13.01 *Notices*.

Any notice or communication by the Company, any Guarantor or the Trustee to the others is duly given if in writing and delivered in Person or by first class mail (registered or certified, return receipt requested), facsimile transmission or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Company and/or any Guarantor:

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, Texas 77002
Facsimile No.: (832) 325-1508
Attention: General Counsel

With a copy to:

White & Case LLP
1155 Avenue of the Americas
New York, New York 10036
Facsimile No.: (212) 354-8113
Attention: Gary Kashar

If to the Trustee:

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Facsimile No.: (612) 217-5651
Attention: Calpine Corporation Administrator

With a copy to:

Shipman & Goodwin LLP
One Constitution Plaza
Hartford, Connecticut 06103
Facsimile No.: (860) 251-5212
Attention: Marie C. Pollio

The Company, any Guarantor or the Trustee, by notice to the others, may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) will be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when receipt acknowledged, if transmitted by facsimile; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

Any notice or communication to a Holder will 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 will not affect its sufficiency with respect to other Holders.

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.

If the Company mails a notice or communication to Holders, it will mail a copy to the Trustee and each Agent at the same time.

Notwithstanding any other provision of this Indenture or any Note, where this Indenture or any Note provides for notice of any event (including any notice of redemption) to a Holder of a Global Note (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depositary for such Note (or its designee), pursuant to the customary procedures of such Depositary.

Section 13.02 *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 in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 13.03 hereof) 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 in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 13.03 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

Section 13.03 *Statements Required in Certificate or Opinion*.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture must 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 or her 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 13.04 *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 13.05 *No Personal Liability of Directors, Officers, Employees and Stockholders*.

No director, officer, employee, incorporator or stockholder of the Company or any Guarantor, as such, will have any liability for any obligations of the Company or the Guarantors under the Notes, this Indenture or the Security Documents, or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under the federal securities laws.

Section 13.06 *Governing Law*.

THE INTERNAL LAW OF THE STATE OF NEW YORK WILL GOVERN AND BE USED TO CONSTRUE THIS INDENTURE, THE NOTES AND THE NOTE GUARANTEES WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

Section 13.07 *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 its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 13.08 *Successors*.

All agreements of the Company in this Indenture and the Notes will bind its successors. All agreements of the Trustee in this Indenture will bind its successors. All agreements of each Guarantor in this Indenture will bind its successors.

Section 13.09 *Severability*.

In case any provision in this Indenture or in the Notes is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

Section 13.10 *Counterpart Originals*.

The parties may sign any number of copies of this Indenture. Each signed copy will be an original, but all of them together represent the same agreement. Delivery of an executed counterpart of a signature page to this Indenture by telecopier, facsimile or other electronic transmission (i.e. a "pdf" or "tif") shall be effective as delivery of a manually executed counterpart thereof.

Section 13.11 *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 will in no way modify or restrict any of the terms or provisions hereof.

Section 13.12 *Force Majeure.*

In no event shall the Trustee be responsible or liable, nor shall the Company be responsible or liable to the Trustee, for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee or the Company, as the case may be, shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

[Signatures on following page]

SIGNATURES

Dated as of December 20, 2019

Calpine Corporation

By: /s/ W. Thaddeus Miller
Name: W. Thaddeus Miller
Title: Executive Vice President, Chief Legal Officer and Secretary of Calpine Corporation

By: /s/ W. Thaddeus Miller
Name: W. Thaddeus Miller
Title: Chief Legal Officer of each of the Guarantors listed on Annex-A-1 hereto

By: /s/ Diana Woodman Hammett
Name: Diana Woodman Hammett
Title: Vice President of each of the Guarantors listed on Annex A-2 hereto

Wilmington Trust, National Association
as Trustee

By: /s/ Hallie E. Field
Name: Hallie E. Field
Title: Vice President

ANNEX A-1

Name of Guarantor	Type of Organization	Jurisdiction of Organization/ Formation	Organizational Identification Number
Anacapa Land Company, LLC	LLC	Delaware	3143771
Anderson Springs Energy Company, LLC	LLC	California	201927710078
Aviation Funding Corp.	Corporation	Delaware	2295371
Baytown Energy Center, LLC	LLC	Delaware	3282586
CalGen Expansion Company, LLC	LLC	Delaware	3290780
CalGen Project Equipment Finance Company Three, LLC	LLC	Delaware	3483024
Calpine Administrative Services Company, Inc.	Corporation	Delaware	3301977
Calpine Auburndale Holdings, LLC	LLC	Delaware	3250122
Calpine Bethlehem, LLC	LLC	Delaware	3420842
Calpine c*Power, Inc.	Corporation	Delaware	3205614
Calpine CalGen Holdings, LLC	LLC	Delaware	3282580
Calpine Calistoga Holdings, LLC	LLC	Delaware	3104238
Calpine Central Texas GP, Inc.	Corporation	Delaware	3471267
Calpine Central, Inc.	Corporation	Delaware	2962637
Calpine Central-Texas, Inc.	Corporation	Delaware	2962631

Calpine Cogeneration Corporation	Corporation	Delaware	2022577
Calpine Eastern Corporation	Corporation	Delaware	2785981
Calpine Edinburg, Inc.	Corporation	Delaware	2896957
Calpine Energy Services GP, LLC	LLC	Delaware	5175176
Calpine Energy Services LP, LLC	LLC	Delaware	5175218
Calpine Energy Services, L.P.	LP	Delaware	3119940
Calpine Fuels Corporation	Corporation	California	C1931167
Calpine Generating Company, LLC	LLC	Delaware	3282581
Calpine Geysers Company, LLC	LLC	Delaware	2226549
Calpine Gilroy 1, LLC	LLC	Delaware	2637221
Calpine Global Services Company, Inc.	Corporation	Delaware	3099148
Calpine Hidalgo Energy Center, L.P.	LP	Delaware	4943417
Calpine Hidalgo Holdings, Inc.	Corporation	Delaware	3090982
Calpine Hidalgo, Inc.	Corporation	Delaware	2896958
Calpine Kennedy Operators, Inc.	Corporation	New York	N/A
Calpine KIA, Inc.	Corporation	New York	1600470
Calpine King City, Inc.	Corporation	Delaware	2521979
Calpine Leasing Inc.	Corporation	Delaware	3131087
Calpine Long Island, Inc.	Corporation	Delaware	2847318

Calpine Magic Valley Pipeline, LLC	LLC	Delaware	3017981
Calpine Mid-Atlantic Energy, LLC	LLC	Delaware	3151093
Calpine Mid-Atlantic Generation, LLC	LLC	Delaware	2870616
Calpine Mid-Atlantic Marketing, LLC	LLC	Delaware	4816303
Calpine MVP, LLC	LLC	Delaware	3017985
Calpine Newark, LLC	LLC	Delaware	2098264
Calpine New Jersey Generation, LLC	LLC	Delaware	3156567
Calpine Northbrook Holdings Corporation	Corporation	Delaware	2276287
Calpine Northbrook Investors, LLC	LLC	Delaware	2880194
Calpine Northbrook Project Holdings, LLC	LLC	Delaware	3041878
Calpine Operations Management Company, Inc.	Corporation	Delaware	3316272
Calpine Power Company	Corporation	California	C1606036
Calpine Power Management, LLC	LLC	Delaware	4943560
Calpine Power, Inc.	Corporation	Virginia	0391591-5
Calpine PowerAmerica, LLC	LLC	Delaware	4943410
Calpine PowerAmerica - CA, LLC	LLC	Delaware	3591072
Calpine PowerAmerica - ME, LLC	LLC	Delaware	3674239
Calpine Project Holdings, Inc.	Corporation	Delaware	3305373

Calpine Solar, LLC	LLC	Delaware	4648640
Calpine Stony Brook, Inc.	Corporation	New York	N/A
Calpine Stony Brook Operators, Inc.	Corporation	New York	N/A
Calpine TCCL Holdings, Inc.	Corporation	Delaware	2521982
Calpine Texas Pipeline GP, LLC	LLC	Delaware	3266570
Calpine Texas Pipeline LP, LLC	LLC	Delaware	3266838
Calpine Texas Pipeline, L.P.	LP	Delaware	3266572
Calpine University Power, Inc.	Corporation	Delaware	2847323
Calpine Vineland Solar, LLC	LLC	Delaware	4647887
Channel Energy Center, LLC	LLC	Delaware	3282589
Corpus Christi Cogeneration, LLC	LLC	Delaware	3104710
CPN 3rd Turbine, Inc.	Corporation	Delaware	3305375
CPN Acadia, Inc.	Corporation	Delaware	3178991
CPN Cascade, Inc.	Corporation	Delaware	2309616
CPN Clear Lake, Inc.	Corporation	Delaware	2026320
CPN Pipeline Company	Corporation	Delaware	2914695
CPN Pryor Funding Corporation	Corporation	Delaware	2665999
CPN Telephone Flat, Inc.	Corporation	Delaware	2309618
Deer Park Energy Center LLC	LLC	Delaware	3873999
Deer Park Holdings, LLC	LLC	Delaware	4743510

Delta Energy Center, LLC	LLC	Delaware	3125841
Freestone Power Generation, LLC	LLC	Delaware	4943382
GEC Bethpage Inc.	Corporation	Delaware	2133956
Geysers Power Company, LLC	LLC	Delaware	2993183
Geysers Power I Company, LLC	LLC	Delaware	2993221
Idlewild Fuel Management Corp.	Corporation	Delaware	2243800
JMC Bethpage, Inc.	Corporation	Delaware	2131426
Los Medanos Energy Center LLC	LLC	Delaware	2891593
Magic Valley Pipeline, L.P.	LP	Delaware	3018164
Metcalf Energy Center, LLC	LLC	Delaware	3833574
Metcalf Holdings, LLC	LLC	Delaware	3961602
Modoc Power, Inc.	Corporation	California	C1911009
New Development Holdings, LLC	LLC	Delaware	4707009
Pastoria Energy Center, LLC	LLC	Delaware	3438844
Pastoria Energy Facility L.L.C.	LLC	Delaware	3037068
Pine Bluff Energy, LLC	LLC	Delaware	2717293
South Point Energy Center, LLC	LLC	Delaware	3422743
South Point Holdings, LLC	LLC	Delaware	3686515
Stony Brook Cogeneration Inc.	Corporation	Delaware	2230301

Stony Brook Fuel Management Corp.	Corporation	Delaware	2263579
Sutter Dryers, Inc.	Corporation	California	C1957212
Texas Cogeneration Five, Inc.	Corporation	Delaware	2829630
Thermal Power Company, LLC	LLC	California	201927610458
Zion Energy LLC	LLC	Delaware	3133710

ANNEX A-2

Name of Guarantor	**Type of Organization**	**Jurisdiction of Organization/Formation**	**Organizational Identification Number**
Calpine Construction Management Company, Inc.	Corporation	Delaware	3295147
Calpine Mid-Atlantic Operating, LLC	LLC	Delaware	3604753
Calpine Operating Services Company, Inc.	Corporation	Delaware	2521992

EXHIBIT A

[Face of Note]

[Insert the Global Note Legend, if applicable pursuant to the provisions of the Indenture]
[Insert the Private Placement Legend, if applicable pursuant to the provisions of the Indenture]

CUSIP/ISIN _____

[RULE 144A][REGULATION S][GLOBAL] NOTE

4.500% Senior Secured Notes due 2028

No. ___ $_____

CALPINE CORPORATION

promises to pay to _____ or registered assigns,

the principal sum of _____ DOLLARS on February 15, 2028.

Interest Payment Dates: February 15 and August 15

Record Dates: February 1 and August 1

[*Signature Page Follows*]

IN WITNESS HEREOF, the Company has caused this Note to be signed manually or by facsimile by its duly authorized officer as of the date first written above.

CALPINE CORPORATION

By: _____
Name:
Title:

This is one of the Notes referred to
in the within-mentioned Indenture:

Dated: December 20, 2019

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Signatory

Capitalized terms used herein have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

(1) *INTEREST*. Calpine Corporation, a Delaware corporation (the "*Company*"), promises to pay interest on the principal amount of this Note at 4.500% per annum from December 20, 2019 until maturity. The Company will pay interest semi-annually in arrears on February 15 and August 15 of each year (each, an "*Interest Payment Date*"), or if any such day is not a Business Day, on the next succeeding Business Day. Interest on the Notes will accrue from the most recent Interest Payment Date to which interest has been paid or, if no interest has been paid, from the date of issuance; *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 August 15, 2020. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

(2) *METHOD OF PAYMENT*. The Company will pay interest on the Notes (except defaulted interest) to the Persons who are registered Holders at the close of business on February 1 or August 1 next preceding the 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 2.12 of the Indenture with respect to defaulted interest. The Notes will 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; *provided* that payment by wire transfer of immediately available funds will be required with respect to principal
of and interest, premium on, all Global Notes and all other Notes the Holders of which will have provided wire transfer instructions to the Company or the Paying Agent. Such payment will 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.

(3) *PAYING AGENT AND REGISTRAR*. Initially, Wilmington Trust, National Association, the Trustee under the Indenture, will 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 December 20, 2019 (as amended or supplemented from time to time, the "*Indenture*") among the Company, the Guarantors and the Trustee. 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, the provisions of the Indenture shall govern and be controlling. The Notes are secured obligations of the Company. The Notes are secured by a pledge of Collateral pursuant to the Security Documents referred to in the Indenture. The Indenture does not limit the aggregate principal amount of Notes that may be issued thereunder.

(5) *OPTIONAL REDEMPTION*.

(a) On or after February 15, 2023, the Company may on any one or more occasions redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' notice, 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 but excluding the applicable date of redemption, if redeemed during the twelve-month period beginning on February 15 of the 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
2023	102.250%
2024	101.500%
2025	100.750%
2026 and thereafter	100.000%

Unless the Company defaults in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable redemption date.

(b) At any time prior to February 15, 2023, the Company may on any one or more occasions redeem up to 35% of the aggregate principal amount of Notes issued under the Indenture, upon not less than 30 nor more than 60 days' notice, at a redemption price equal to 104.500% of the principal amount of the Notes redeemed, plus accrued and unpaid interest, if any, to but excluding 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 the proceeds of one or more Equity Offerings; *provided* that: (i) at least 65% of the aggregate principal amount of Notes originally issued under the Indenture (excluding Notes held by the Company and its Subsidiaries) remains outstanding immediately after the occurrence of such redemption; and (ii) the redemption occurs within 90 days of the date of the closing of such Equity Offering.

(c) At any time prior to February 15, 2023, the Company may on any one or more occasions redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' notice, 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 but excluding 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.

(d) The Company may redeem up to 10% of the aggregate principal amount of Notes issued under the Indenture during each 12-month period following February 15, 2020, that occurs prior to February 15, 2023, at a redemption price of 103% of the principal amount of Notes redeemed, plus accrued and unpaid interest, if any, to but excluding the redemption date (subject to the rights of Holders on the relevant record date to receive interest due on the relevant interest payment date).

(e) At any time, in connection with any tender offer for the Notes, including a Change of Control Offer, if Holders of not less than 90% in aggregate principal amount of the outstanding Notes validly tender and do not withdraw such Notes in such tender offer and the Company, or any third party making such tender offer in lieu of the Company, purchases all of the Notes validly tendered and not withdrawn by such Holders, the Company may, upon not less than 10 nor more than 60 days' prior notice, given not more than 30 days following such purchase date, redeem all Notes that remain outstanding following such purchase at a redemption price equal to the price paid to each other Holder in such tender offer plus, to the extent not included in the tender offer payment, accrued and unpaid interest, if any, thereon, to, but not excluding, the date of such redemption (subject to the rights of Holders on the relevant record date to receive interest on the relevant interest payment date).

(6) *MANDATORY REDEMPTION*.

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

(7) *REPURCHASE AT THE OPTION OF HOLDER*. If a Change of Control Triggering Event occurs, each Holder will have the right to require the Company to make an offer (a "*Change of Control Offer*") to each Holder to repurchase all or any part (equal to $2,000 or an integral multiple of $1,000 in excess thereof) of that Holder's Notes at a purchase price in cash equal to 101% of the aggregate principal amount of Notes repurchased plus accrued and unpaid interest, if any, on the Notes repurchased to but excluding the date of purchase, subject to the rights of Holders on the relevant record date to receive interest due on the relevant interest payment date (the "*Change of Control Payment*"). Within 30 days following any Change of Control Triggering Event, the Company will mail (or deliver electronically) a notice to each Holder describing the transaction or transactions that constitute the Change of Control Triggering Event as required by the Indenture.

(8) *NOTICE OF REDEMPTION*. Notice of redemption will be mailed or delivered electronically at least 30 days but not more than 60 days before the redemption date to each Holder whose Notes are to be redeemed at its registered address, except that (i) redemption notices may be mailed or delivered electronically at least 10 days prior to the redemption date if the notice is issued in connection with a redemption pursuant to Section 3.07(c) of the Indenture and (ii) redemption notices may be mailed or delivered electronically more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction or discharge of the Indenture. Notes in denominations larger than $2,000 may be redeemed in part but only in whole multiples of $1,000, unless all of the Notes held by a Holder are to be redeemed. Any redemption notice may, in the Company's discretion, be subject to the satisfaction of one or more conditions precedent. If such redemption is subject to the satisfaction of one of more conditions precedent, such notice 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 by the Company in its sole discretion), such redemption may not occur and such notice may be rescinded in the event that any or all of such conditions shall not have been satisfied (or waived by the Company in its sole discretion) by the redemption date, or by the redemption date so delayed.

(9) *DENOMINATIONS, TRANSFER, EXCHANGE*. The Notes are in registered form without coupons in minimum denominations of $2,000 and integral 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 and fees required by law or permitted by the Indenture. The Company need not exchange or register the transfer of any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part. Also, the Company need not exchange or register the transfer of any Notes for a period of 15 days before a selection of Notes to be redeemed or during the period between a record date and the corresponding Interest Payment Date.

(10) *PERSONS DEEMED OWNERS*. The registered Holder of a Note may be treated as its owner for all purposes.

(11) *AMENDMENT, SUPPLEMENT AND WAIVER*. Subject to certain exceptions, the Indenture or the Notes or the Note Guarantees may be amended or supplemented with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes including Additional Notes, if any, voting as a single class, and any existing Default or Event or Default or compliance with any provision of the Indenture or the Notes or the Note Guarantees may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes including Additional Notes, if any, voting as a single class. Without the consent of any Holder, the Indenture, the Notes, the Note Guarantees or the Security Documents may be amended or supplemented to cure any ambiguity, defect or inconsistency in the Indenture, the Notes or the Security Documents in a manner that does not adversely affect the rights of any Holder, to provide for uncertificated Notes in addition to or in place of certificated Notes, to provide for the assumption of the Company's or a Guarantor's obligations to Holders in case of a merger or consolidation or sale of all or substantially all of the Company's or such Guarantor's assets, as applicable, to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the legal rights under the Indenture of any such Holder, to conform the text of the Indenture or the Notes to any provision of the "Description of Notes" section of the Offering Memorandum, to the extent that such provision in that "Description of Notes" was intended to be a verbatim or substantially verbatim recitation of a provision of the Indenture, the to enter into additional or supplemental Security Documents or provide for additional Collateral, to make, complete or confirm any grant of Collateral permitted or required by the Indenture or any of the Security Documents or to release Collateral in accordance with the terms of the Indenture and the Security Documents, to evidence and provide for the acceptance and appointment under the Indenture of successor trustees pursuant to the requirements thereof, to allow any Guarantor to execute a supplemental indenture substantially in the form of Exhibit E to the Indenture and/or a joinder to the Guarantee and Collateral Agreement or to provide for the issuance of Additional Notes of the same or an additional series in accordance with the limitations set forth in the Indenture as of the date hereof.

(12) *DEFAULTS AND REMEDIES*. Events of Default include: (i) default for 30 days in the payment when due of interest on the Notes; (ii) default in payment when due (at maturity, upon redemption or otherwise) of the principal of, or premium, if any, on, the Notes, (iii) failure by the Company to comply with the provisions of Sections 4.11 or 5.01 of the Indenture; (iv) failure by the Company or any Guarantor for 60 days after notice from the Trustee or the Holders of at least 25% in aggregate principal amount of the outstanding Notes to comply with any of the other agreements in the Indenture or the security documents required by the Indenture; (v)(a) default under any other mortgage, indenture, agreement or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness of the Company or any Guarantor (or the payment of which is guaranteed by the Company or any Guarantor), whether such Indebtedness or Guarantee now exists, or is created after the date of the Indenture, if that default is caused by a failure to pay principal of such Indebtedness at its stated final maturity (after giving effect to any applicable grace period provided in such Indebtedness) (a "*Payment Default*") or results in the acceleration of such Indebtedness prior to its express maturity, and 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 $100,000,000 or more; *provided* that this clause (v)(a) shall not apply to Indebtedness that becomes due solely as a result of the voluntary sale or transfer of property or assets to the extent such sale or transfer is permitted by the terms of such Indebtedness; or (b) the Company and any Guarantor shall, with respect to Limited Recourse Debt in an aggregate principal amount in excess of $300,000,000, default in the observance or performance of any agreement or condition relating to any such Limited Recourse Debt or contained in any instrument or agreement evidencing, securing or relating thereto, and such Limited Recourse Debt shall as a result thereof become due prior to its final stated maturity; *provided* that this clause (v) shall not apply to any Indebtedness that is required to be converted into Qualifying Equity Interests upon the occurrence of certain designated events so long as no payments in cash or otherwise are required to be made in accordance with such conversion; (vi) any of the Security Documents shall cease, for any reason, to be in full force and effect (other than in accordance with its terms) with respect to Collateral with a book value greater than $50,000,000, or the Company or any Guarantor shall so assert, or any Lien (affecting Collateral with a book value greater than $50,000,000) created by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby (other than, in each case, pursuant to a failure of the Trustee, the Collateral Agent, any other agent appointed by the Trustee, the Collateral Agent or the Holders to take any action within the sole control of such Person) (it being understood that the release of Collateral from the Security Documents or the discharge of a Guarantor therefrom shall not be construed (x) as any of the Security Documents ceasing to be in full force and effect or (y) as any of the Liens created thereunder ceasing to be enforceable or of the same priority and effect purported to be created thereby); (vii) except as permitted by the Indenture or the Guarantee and Collateral Agreement, any Note Guarantee of a Significant Subsidiary ceases, for any reason, to be in full force and effect (other than in accordance with its terms), or any Significant Subsidiary that is a Guarantor denies or disaffirms in writing its obligations under its Note Guarantee; (viii) the Lien subordination provisions in favor of the Holders or any other provision of the Collateral Agency and Intercreditor Agreement shall cease for any reason to be valid (other than by its express terms) and, in the case of any provision of the Collateral Agency and Intercreditor Agreement other than the Lien subordination provisions in favor of the Holders, the result thereof is that the interests of the Holders are materially and adversely affected, or the Company or any Guarantor shall assert in writing that the Lien subordination provisions in favor of the Holders or any such other provision of the Collateral Agency and Intercreditor Agreement shall not for any reason be valid (other than by its express terms); and (ix) certain events of bankruptcy or insolvency described in the Indenture with respect to the Company or any Guarantor that is a Significant Subsidiary or any group of Guarantors that, taken together, would constitute a Significant Subsidiary. If any Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of the then outstanding Notes may declare all the Notes to be due and payable immediately. Notwithstanding the foregoing, in the case of an Event of Default arising from certain events of bankruptcy or insolvency, all outstanding Notes will become due and payable immediately without further action or notice. Holders may not enforce the Indenture or the Notes except as provided in the Indenture. Subject to certain limitations, Holders of a majority in aggregate principal amount of the then outstanding Notes may direct the Trustee in its exercise of any trust or power. 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 or premium, if any,) if it determines that withholding notice is in their interest. The Holders of a majority in aggregate principal amount of the then outstanding Notes by notice to the Trustee may, on behalf of the Holders of all of the Notes, rescind an acceleration or waive any existing Default or Event of Default and its consequences under the Indenture except a continuing Default or Event of Default in the payment of interest or premium, if any, on, or the principal of, the Notes. The Company is required to deliver to the Trustee annually a statement regarding compliance with the Indenture, and the Company is required, upon becoming aware of any Default or Event of Default, to deliver to the Trustee a statement specifying such Default or Event of Default.

(13) *TRUSTEE DEALINGS WITH 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*. A director, officer, employee, incorporator or stockholder of the Company or any of the Guarantors, as such, will not have any liability for any obligations of the Company or the Guarantors under the Notes, the Note Guarantees or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the Notes.

(15) *AUTHENTICATION*. This Note will not be valid until authenticated by the manual signature of the Trustee or an authenticating agent.

(16) *ABBREVIATIONS*. Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

(17) *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 placed only on the other identification numbers placed thereon.

(18) *GOVERNING LAW*. THE INTERNAL LAW OF THE STATE OF NEW YORK WILL GOVERN AND BE USED TO CONSTRUE THE INDENTURE, THIS NOTE AND THE NOTE GUARANTEES WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

The Company will furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to:

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, Texas 77002
Attention: General Counsel

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: _____

Your 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 4.11 of the Indenture, check the appropriate box below:

☐ Section 4.11

If you want to elect to have only part of the Note purchased by the Company pursuant to Section 4.11 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 of this Global Note	Amount of increase in Principal Amount of this Global Note	Principal Amount of this Global Note following such decrease (or increase)	Signature of authorized officer of Trustee or Custodian

* *This schedule should be included only if the Note is issued in global form.*

EXHIBIT B

FORM OF CERTIFICATE OF TRANSFER

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, Texas 77002
Facsimile No.: (832) 325-1508

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Facsimile No.: (612) 217-5651

Re: 4.500% Senior Secured Notes due 2028

Reference is hereby made to the Indenture, dated as of December 20, 2019 (as amended or supplemented from time to time, the "*Indenture*"), among Calpine Corporation, as issuer (the "*Company*"), the Guarantors party thereto and Wilmington Trust, 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 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 Restricted Definitive Note pursuant to Rule 144A**. The Transfer is being effected pursuant to and in accordance with Rule 144A under the 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 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 Restricted 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 Restricted 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 Restricted Definitive Note and in the Indenture and the Securities Act.

3. ☐ **Check and complete if Transferee will take delivery of a beneficial interest in the IAI Global Note or a Restricted 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 to an Institutional Accredited Investor and pursuant to an exemption from the registration requirements of the Securities Act other than Rule 144A, Rule 144, Rule 903 or Rule 904, and the Transferor hereby further certifies that it has not engaged in any general solicitation within the meaning of Regulation D under the Securities Act and the Transfer complies with the transfer restrictions applicable to beneficial interests in a Restricted Global Note or Restricted Definitive Notes and the requirements of the exemption claimed, which certification is supported by (1) a certificate executed by the Transferee in the form of Exhibit D to the Indenture and (2) an Opinion of Counsel provided by the Transferor or the Transferee (a copy of which the Transferor has attached to this certification), to the effect that such Transfer is in 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 be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the IAI Global Note and/or the Restricted Definitive Notes and in the Indenture and 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 _____), or

(ii) ☐ Regulation S Global Note (CUSIP _____), or

(iii) ☐ IAI Global Note (CUSIP _____); or

(b) ☐ a Restricted Definitive Note.

2. After the Transfer the Transferee will hold:

[CHECK ONE]

(a) ☐ a beneficial interest in the:

(i) ☐ 144A Global Note (CUSIP _____), or

(ii) ☐ Regulation S Global Note (CUSIP _____), or

(iii) ☐ IAI Global Note (CUSIP _____); or

(iv) ☐ Unrestricted Global Note (CUSIP _____); or

(b) ☐ a Restricted Definitive Note; or

(c) ☐ an Unrestricted Definitive Note,

in accordance with the terms of the Indenture.

EXHIBIT C

FORM OF CERTIFICATE OF EXCHANGE

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, Texas 77002
Facsimile No.: (832) 325-1508

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Facsimile No.: (612) 217-5651

Re: 4.500% Senior Secured Notes due 2028

(CUSIP _____)

Reference is hereby made to the Indenture, dated as of December 20, 2019 (as amended or supplemented from time to time, the "*Indenture*"), among Calpine Corporation, as issuer (the "*Company*"), the Guarantors party thereto and Wilmington Trust, 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 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, 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 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, 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, ☐ IAI Global Note with an equal principal amount, 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 CERTIFICATE FROM
ACQUIRING INSTITUTIONAL ACCREDITED INVESTOR

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, Texas 77002
Facsimile No.: (832) 325-1508

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Facsimile No.: (612) 217-5651

Re: 4.500% Senior Secured Notes due 2028

Reference is hereby made to the Indenture, dated as of December 20, 2019 (as amended or supplemented from time to time, the "*Indenture*"), among Calpine Corporation, as issuer (the "*Company*"), the Guarantors party thereto and Wilmington Trust, National Association, as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

In connection with our proposed purchase of $_____ aggregate principal amount of:

(a) ☐ a beneficial interest in a Global Note, or

(b) ☐ a Definitive Note,

we confirm that:

1. We understand that any subsequent transfer of the Notes or any interest therein is subject to certain restrictions and conditions set forth in the Indenture and the undersigned agrees to be bound by, and not to resell, pledge or otherwise transfer the Notes or any interest therein except in compliance with, such restrictions and conditions and the Securities Act of 1933, as amended (the "*Securities Act*").

2. We understand that the offer and sale of the Notes have not been registered under the Securities Act, and that the Notes and any interest therein may not be offered or sold except as permitted in the following sentence. We agree, on our own behalf and on behalf of any accounts for which we are acting as hereinafter stated, that if we should sell the Notes or any interest therein, we will do so only (A) to the Company or any subsidiary thereof, (B) in accordance with Rule 144A under the Securities Act to a "qualified institutional buyer" (as defined therein), (C) to an institutional "accredited investor" (as defined below) that, prior to such transfer, furnishes (or has furnished on its behalf by a U.S. broker-dealer) to you and to the Company a signed letter substantially in the form of this letter and an Opinion of Counsel in form reasonably acceptable to the Company to the effect that such transfer is in compliance with the Securities Act, (D) outside the United States in accordance with Rule 904 of Regulation S under the Securities Act, (E) pursuant to the provisions of Rule 144(k) under the Securities Act or (F) pursuant to an effective registration statement under the Securities Act, and we further agree to provide to any Person purchasing the Definitive Note or beneficial interest in a Global Note from us in a transaction meeting the requirements of clauses (A) through (E) of this paragraph a notice advising such purchaser that resales thereof are restricted as stated herein.

3. We understand that, on any proposed resale of the Notes or beneficial interest therein, we will be required to furnish to you and the Company such certifications, legal opinions and other information as you and the Company may reasonably require to confirm that the proposed sale complies with the foregoing restrictions. We further understand that the Notes purchased by us will bear a legend to the foregoing effect.

4. We are an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act) and have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Notes, and we and any accounts for which we are acting are each able to bear the economic risk of our or its investment.

5. We are acquiring the Notes or beneficial interest therein purchased by us for our own account or for one or more accounts (each of which is an institutional "accredited investor") as to each of which we exercise sole investment discretion.

You and the Company are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

_____
[Insert Name of Accredited Investor]

By: _____
Name:
Title:

Dated: _____

EXHIBIT E

FORM OF SUPPLEMENTAL INDENTURE
TO BE DELIVERED BY SUBSEQUENT GUARANTORS

SUPPLEMENTAL INDENTURE (this "*Supplemental Indenture*"), dated as of _____, 20__, among _____ (the "*Guaranteeing Subsidiary*"), a subsidiary of Calpine Corporation (or its permitted successor), a Delaware corporation (the "*Company*"), the Company and Wilmington Trust, National Association, as trustee under the Indenture referred to below (the "*Trustee*").

W I T N E S S E T H

WHEREAS, the Company has heretofore executed and delivered to the Trustee an indenture (as amended or supplemented from time to time, the "*Indenture*"), dated as of December 20, 2019 providing for the issuance of 4.500% Senior Secured Notes due 2028 (the "*Notes*");

WHEREAS, the Indenture provides that under certain circumstances the Guaranteeing Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which the Guaranteeing Subsidiary shall agree to guarantee all of the Company's Obligations under the Notes and the Indenture on the terms and conditions set forth herein (the "*Note Guarantee*"); and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Guaranteeing Subsidiary and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

1. CAPITALIZED TERMS. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

2. AGREEMENT TO GUARANTEE. The Guaranteeing Subsidiary hereby agrees to become subject to the Guarantee and Collateral Agreement pursuant to Section 4.13 of the Indenture.

3. NO RECOURSE AGAINST OTHERS. No past, present or future director, officer, employee, incorporator, stockholder or agent of the Guaranteeing Subsidiary, as such, shall have any liability for any obligations of the Company or any Guaranteeing Subsidiary under the Notes, any Note Guarantees, the Indenture or this Supplemental Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. Such waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the Commission that such a waiver is against public policy.

4. NEW YORK LAW TO GOVERN. THE INTERNAL LAW OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS SUPPLEMENTAL INDENTURE WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

5. COUNTERPARTS. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. Delivery of an executed counterpart of a signature page to this Supplemental Indenture by telecopier, facsimile or other electronic transmission (i.e. a "pdf" or "tif") shall be effective as delivery of a manually executed counterpart thereof.

6. EFFECT OF HEADINGS. The Section headings herein are for convenience only and shall not affect the construction hereof.

7. THE TRUSTEE. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guaranteeing Subsidiary and the Company.

IN WITNESS HEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed and attested, all as of the date first above written.

Dated: _____, 20___

[GUARANTEEING SUBSIDIARY]

By: _____
Name:
Title:

CALPINE CORPORATION

By: _____
Name:
Title:

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Signatory

Exhibit 4.5

FIRST SUPPLEMENTAL INDENTURE

FIRST SUPPLEMENTAL INDENTURE, dated as of August 20, 2025 (this "*Supplemental Indenture*"), to the Indenture, dated as of December 20, 2019, among Calpine Corporation, a Delaware corporation ("*Calpine*" or the "*Company*"), each of the guarantors party to the Indenture (as defined below) (the "*Guarantors*") and Wilmington Trust, National Association, as Trustee (the "*Trustee*") (as amended, supplemented, waived or otherwise modified prior to the date hereof, the "*Indenture*").

WHEREAS, Calpine, the Guarantors and the Trustee are parties to the Indenture, pursuant to which Calpine issued its 4.500% Senior Secured Notes due 2028 (the "*Notes*");

WHEREAS, Section 9.01(1) of the Indenture provides that Calpine, the Guarantors and the Trustee, without the consent of any Holder, may amend or supplement the Indenture to cure any ambiguity, defect or inconsistency in the Indenture in a manner that does not adversely affect the rights of any Holder; and

WHEREAS, all conditions necessary to authorize the execution and delivery of this Supplemental Indenture and to make this Supplemental Indenture valid and binding have been complied with or performed.

NOW, THEREFORE, for and in consideration of the foregoing premises, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Notes, as follows:

ARTICLE 1
DEFINITIONS

Section 1.01. *Defined Terms; References*. Unless otherwise specifically defined herein, each term used herein that is defined in the Indenture has the meaning assigned to such term in the Indenture. Each reference to "hereof", "hereunder", "herein" and "hereby" and each other similar reference and each reference to "this Indenture" and each other similar reference contained in the Indenture shall, after this Supplemental Indenture becomes effective, refer to the Indenture as amended hereby.

ARTICLE 2
AMENDMENTS

Section 2.01. *Amendments*.

(a) Section 4.10 of the Indenture is hereby amended by adding the inserted text (indicated in the same manner as the following example: inserted text) as set forth below:

Section 4.10 *Corporate Existence*

Subject to Article 5 hereof, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect:

(1) its corporate, partnership or other existence, and the corporate, partnership or other existence of each of the Guarantors, in accordance with the respective organizational documents (as the same may be amended from time to time) of the Company or any such Guarantor; and

(2) the rights (charter and statutory), licenses and franchises of the Company and the Guarantors; *provided*, *however*, that the Company shall not be required to preserve any such right, license or franchise, or the corporate, partnership or other existence of any of the Guarantors, if (a) the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and the Guarantors, taken as a whole, and that the loss thereof is not adverse in any material respect to the Holders and (b) if a Guarantor is to be dissolved, such Guarantor has no assets.

ARTICLE 3
EFFECT; EFFECTIVENESS; RATIFICATION

Section 3.01. *Effect of Supplemental Indenture*. Except as amended hereby, all of the terms of the Indenture shall remain and continue in full force and effect and are hereby confirmed in all respects. From and after the date of this Supplemental Indenture, all references to the Indenture (whether in the Indenture or in any other agreements, documents or instruments) shall be deemed to be references to the Indenture as amended and supplemented by this Supplemental Indenture.

Section 3.02. *Effectiveness*. The provisions of this Supplemental Indenture shall be effective upon execution and delivery of this instrument by the parties hereto.

Section 3.03. *Ratification of Indenture; Supplemental Indenture Part of Indenture*. Except as expressly amended hereby, the Indenture and the Notes are in all respects ratified and confirmed, and all of the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture is executed as, and shall constitute an indenture supplemental to the Indenture and shall be construed in connection with and form a part of the Indenture for all purposes, and every Holder of Notes heretofore or hereafter authenticated and delivered shall be bound hereby.

ARTICLE 4
MISCELLANEOUS PROVISIONS

Section 4.01. *Concerning the Trustee*. The Trustee makes no representations as to the validity or sufficiency of this Supplemental Indenture. The recitals and statements herein are deemed to be those of Calpine and the Guarantors, and not of the Trustee.

Section 4.02. *Governing Law*. This Supplemental Indenture shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to applicable principles of conflicts of law to the extent that the application of the laws of another jurisdiction would be required thereby.

Section 4.03. *Separability*. In case any provision in this Supplemental Indenture 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 4.04. *Counterparts*. . This Supplemental Indenture may be executed in any number of counterparts, each of which will be deemed to be an original, but all such counterparts together will constitute one and the same instrument. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original Supplemental 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. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to this Supplemental Indenture or any document to be signed in connection with this Supplemental Indenture shall be deemed to include electronic signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code; provided that notwithstanding anything herein to the contrary, the Trustee is not under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Trustee pursuant to reasonable procedures approved by the Trustee.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed as of the day and year first above written.

CALPINE CORPORATION

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Senior Vice President, Finance and Treasurer

GUARANTORS

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President of each of the Guarantors listed on Annex A-I hereto

By: /s/ Diana Woodman Hammett
Name: Diana Woodman Hammett
Title: Vice President of each of the Guarantors listed on Annex A-II hereto

WILMINGTON TRUST, NATIONAL ASSOCIATION
as Trustee

By: /s/ Karleen R. Bratland
Name: Karleen R. Bratland
Title: Assistant Vice President

Signature Page to First Supplemental Indenture (4.500% Senior Secured Notes due 2028)

Guarantor

Anacapa Land Company, LLC
Anderson Springs Energy Company, LLC
Aviation Funding Corp.
CalGen Expansion Company, LLC
CalGen Project Equipment Finance Company Three, LLC
Calpine Administrative Services Company, Inc.
Calpine Auburndale Holdings, LLC
Calpine Bethlehem, LLC
Calpine c*Power, Inc.
Calpine CalGen Holdings, LLC
Calpine Central Texas GP, Inc.
Calpine Central, Inc.
Calpine Central-Texas, Inc.
Calpine Cogeneration Corporation
Calpine Eastern Corporation
Calpine Edinburg, Inc.
Calpine Energy Services GP, LLC
Calpine Energy Services LP, LLC
Calpine Energy Services, L.P.
Calpine Fuels Corporation
Calpine Generating Company, LLC
Calpine Gilroy 1, LLC
Calpine Global Services Company, Inc.
Calpine Hidalgo Energy Center, L.P.
Calpine Hidalgo Holdings, Inc.
Calpine Hidalgo, Inc.
Calpine Kennedy Operators, Inc.
Calpine KIA, Inc.
Calpine King City, Inc.
Calpine Leasing Inc.
Calpine Long Island, Inc.
Calpine Magic Valley Pipeline, LLC
CPN Clear Lake, Inc.
Calpine Mid-Atlantic Energy, LLC
Calpine Mid-Atlantic Generation, LLC
Calpine Mid-Atlantic Marketing, LLC
Calpine MVP, LLC
Calpine New Jersey Generation, LLC
Calpine Northbrook Holdings Corporation
Calpine Northbrook Investors, LLC
Calpine Northbrook Project Holdings, LLC
Calpine Operations Management Company, Inc.
Calpine Power Company
Calpine Power Management, LLC
Calpine Power, Inc.
Calpine PowerAmerica, LLC
Calpine PowerAmerica - CA, LLC
Calpine PowerAmerica - ME, LLC
Calpine Project Holdings, Inc.
Calpine Solar, LLC
Calpine Stony Brook, Inc.
Calpine Stony Brook Operators, Inc.
Calpine TCCL Holdings, Inc.
Calpine Texas Pipeline GP, LLC
Calpine Texas Pipeline LP, LLC
Calpine Texas Pipeline, L.P.
Calpine University Power, Inc.
Calpine Vineland Solar, LLC
Channel Energy Center, LLC
Corpus Christi Cogeneration, LLC
CPN 3rd Turbine, Inc.
CPN Acadia, Inc.
CPN Cascade, Inc.
CPN Pipeline Company
CPN Pryor Funding Corporation
CPN Telephone Flat, Inc.

Deer Park Energy Center LLC
Deer Park Holdings, LLC
Delta Energy Center, LLC
Freestone Power Generation, LLC
GEC Bethpage Inc.
Geysers Power I Company, LLC
Idlewild Fuel Management Corp.
JMC Bethpage, Inc.
Los Medanos Energy Center LLC
Magic Valley Pipeline, L.P.
Metcalf Energy Center, LLC
Metcalf Holdings, LLC
Modoc Power, Inc.
New Development Holdings, LLC
Pastoria Energy Center, LLC
Pastoria Energy Facility L.L.C.
Pine Bluff Energy, LLC
Stony Brook Cogeneration Inc.
Stony Brook Fuel Management Corp.
Sutter Dryers, Inc.
Texas Cogeneration Five, Inc.
Thermal Power Company, LLC
Zion Energy LLC

Guarantor

Calpine Construction Management Company, Inc.
Calpine Mid-Atlantic Operating, LLC
Calpine Operating Services Company, Inc.

Exhibit 4.6

Execution Version

CALPINE CORPORATION

AND EACH OF THE GUARANTORS PARTY HERETO

3.750% SENIOR SECURED NOTES DUE 2031

INDENTURE

Dated as of December 16, 2020

Wilmington Trust, National Association,
as Trustee

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Exhibit E	FORM OF SUPPLEMENTAL INDENTURE
Exhibit F	FORM OF CERTIFICATE OF BENEFICIAL OWNERSHIP

INDENTURE dated as of December 16, 2020 among Calpine Corporation, a Delaware corporation, the Guarantors (as defined below) and Wilmington Trust, National Association, as trustee.

The Company, the Guarantors 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 3.750% Senior Secured Notes due 2031 (the "*Notes*"):

ARTICLE 1
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 *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 will be issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 144A.

"*2008 Credit Agreement*" means that certain Credit Agreement, dated as of January 31, 2008 (as amended, amended and restated, supplemented or otherwise modified from time to time), by and among the Company, the guarantors party thereto, Goldman Sachs Credit Partners L.P., as collateral agent and administrative agent, and the lenders party thereto.

"*2017 Notes Issue Date*" means October 21, 2009, the date upon which the Company's 7.25% Senior Secured Notes due 2017 were issued.

"*2024 First Lien Term Loan Agreement*" means the $1.6 billion first lien senior secured term loan agreement, dated as of May 28, 2015 (as amended, amended and restated, supplemented or otherwise modified from time to time), among the Company, as borrower, and the lenders party thereto, and Morgan Stanley Senior Funding, Inc., as administrative agent, and MUFG Union Bank, N.A., as successor to Goldman Sachs Credit Partners L.P., as collateral agent.

"*2026 First Lien Term Loan Agreement*" means the $950 million first lien senior secured term loan agreement, dated April 5, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time), among the Company, as borrower, Morgan Stanley Senior Funding, Inc., as administrative agent, MUFG Union Bank, N.A., as collateral agent and the lenders party thereto from time to time.

"*2026 Notes*" means the Company's 5.250% Senior Secured Notes due 2026.

"*2028 Notes*" means the Company's 4.500% Senior Secured Notes due 2028.

"*Act of Required Debtholders*" means, as to any matter at any time:

(1) prior to the Discharge of First Lien Obligations, a direction in writing delivered to the Collateral Agent by or with the written consent of the holders of First Lien Debt representing the Required First Lien Debtholders; and

(2) at any time after the Discharge of First Lien Obligations, a direction in writing delivered to the Collateral Agent by or with the written consent of the holders of Second Lien Debt representing the Required Second Lien Debtholders.

For purposes of this definition, (a) Secured 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 and neither the Company nor any Affiliate of the Company will be entitled to vote to direct the relevant Secured Debt Representative and (b) votes will be determined in accordance with Section 8.2 of the Collateral Agency and Intercreditor Agreement.

"*Additional Notes*" means additional Notes (other than the Initial Notes) issued under this Indenture in accordance with Section 2.02 hereof, as part of the same series as the Initial Notes.

"*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. For purposes of this definition, the terms "*controlling*," "*controlled by*" and "*under common control with*" have correlative meanings.

"*Agent*" means any Registrar, co-registrar, Paying Agent or additional paying agent.

"*ALTA*" means American Land Title Association.

"*Applicable Premium*" means, with respect to any Note on any redemption date, as calculated by the Company, the greater of:

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

(2) the excess of: (a) the present value at such redemption date of (i) the redemption price of the Note at March 1, 2026 (such redemption price being set forth in the table appearing in Section 3.07(f) hereof) plus (ii) all required interest payments due on the Note through March 1, 2026 (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 75 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.

"*Bankrupt Subsidiary*" means any Subsidiary of the Company that is a debtor under the Bankruptcy Law immediately after the date of this Indenture.

"*Bankruptcy Law*" means Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq., as amended from time to time, or any similar federal or state or other 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. The terms "*Beneficially Owns*," "*Beneficially Owned*" and "*Beneficial Ownership*" have a corresponding meaning.

"*Board of Directors*" means:

(1) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board;

(2) with respect to a partnership, the board of directors of the general partner of the partnership;

(3) with respect to a limited liability company, the managing member or members or any controlling committee of managing members thereof; and

(4) with respect to any other Person, the board or committee of such Person serving a similar function.

"*Business Day*" means any day other than a Legal Holiday.

"*Capital Lease Obligation*" means, at the time any determination is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet prepared in accordance with GAAP as in effect from time to time; *provided*, *however*, that if any operating lease (whether in effect on the date of this Indenture or hereafter incurred) would be recharacterized as a capital lease due to changes in the accounting treatment of such operating leases under GAAP since December 31, 2018, then solely with respect to the accounting treatment of any such lease, GAAP shall be interpreted as it was in effect on December 31, 2018; *provided*, *further*, that any lease that is treated as an operating lease for purposes of GAAP as of December 31, 2018 shall not be treated as Indebtedness or as a Capital Lease Obligation and shall continue to be treated as an operating lease (and any future lease, if it were in effect on the date of this Indenture, that would be treated as an operating lease for purposes of GAAP as of December 31, 2018, shall be treated as an operating lease), in each case for purposes of this Indenture, notwithstanding any actual or proposed change in or application of GAAP after December 31, 2018.

"*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; 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.

"*Case*" means any case pending under Chapter 11 of the Bankruptcy Law.

"*Cash Equivalents*" means:

(1) United States dollars;

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

(3) certificates of deposit and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers' acceptances with maturities not exceeding one year and overnight bank deposits, in each case, with any lender party to the Credit Agreement or with any domestic commercial bank having capital and surplus in excess of $500.0 million and a Thomson Bank Watch Rating of "B" or better;

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

(5) commercial paper having one of the two highest ratings obtainable from Moody's or S&P and, in each case, maturing within one year after the date of acquisition; and

(6) money market funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (1) through (5) of this definition.

"*Cash Management Obligations*" means, with respect to the Company or any Guarantor, any obligations of the Company or such Guarantor owed to any Qualified Cash Management Creditor in respect of treasury management arrangements, depositary or other cash management services, including in connection with any automated clearing house transfer of funds or any similar transactions.

"*Change of Control*" means the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any "person" (as that term is used in Section 13(d) of the Exchange Act, but excluding any employee benefit plan of the Company of any of its Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than one or more Designated Holders, becomes the Beneficial Owner, directly or indirectly, of more than 50% of the Voting Stock of the Company, measured by voting power rather than number of shares.

"*Change of Control Triggering Event*" means the occurrence of both a Change of Control and a Rating Event.

"*Clearstream*" means Clearstream Banking, S.A.

"*CNTA Ratio*" means, as of any date of determination, (a) the Consolidated Net Tangible Assets of the Company and the Guarantors as of the end of the most recent fiscal quarter for which an internal consolidated balance sheet of the Company and its Subsidiaries is available, divided by (b) the aggregate amount of First Lien Debt of the Company and the Guarantors (as calculated under Section 4.07 hereof) outstanding on such date.

"*Collateral*" means, in the case of each Series of Secured Debt, all properties and assets of the Company and the Guarantors now owned or hereafter acquired in which Liens have been granted to the Collateral Agent to secure the Secured Obligations in respect of such Series of Secured Debt.

"*Collateral Agency and Intercreditor Agreement*" means that certain Collateral Agency and Intercreditor Agreement, dated as of January 31, 2008, as amended as of June 4, 2008, as further amended as of August 20, 2009 (as further amended, amended and restated, supplemented or otherwise modified from time to time in compliance with the terms of this Indenture), by and among the Company, the other guarantors from time to time party thereto, the secured debt representatives and the Collateral Agent.

"*Collateral Agent*" means MUFG Union Bank, N.A., as successor to Goldman Sachs Credit Partners L.P., in its capacity as collateral agent under the Security Documents, together with its successors and assigns in such capacity.

"*Collateral Agent Obligations*" has the meaning assigned to it in the definition of "First Lien Debt."

"*Commission*" means the U.S. Securities and Exchange Commission.

"*Commodity Hedge Agreements*" means any agreement providing for swaps (including without limitation heat rate swaps), caps, collars, puts, calls, floors, futures, options, spots, forwards, power purchase, tolling or sale agreements, fuel purchase or sale agreements, emissions credit purchase or sales agreements, power transmission agreements, fuel transportation agreements, fuel storage agreements, netting agreements, or commercial or trading agreements, each with respect to, or involving the purchase, transmission, distribution, sale, lease or hedge of, any energy, generation capacity or fuel, or any other energy related commodity or service, price or price indices for any such commodities or services or any other similar derivative agreements, and any other similar agreements, entered into in the ordinary course of business in order to manage fluctuations in the price or availability of any commodity.

"*Company*" means Calpine Corporation, and any and all successors thereto.

"*Consolidated Net Tangible Assets*" as of any date of determination means the sum of (a)(i) the total assets of the Company and the Guarantors as of the end of the most recent fiscal quarter for which an internal consolidated balance sheet of the Company and its Subsidiaries is available, *minus* (ii) all current derivative assets and long term derivative assets of the Company and the Guarantors reflected on such balance sheet, *minus* (iii) total goodwill and other intangible assets of the Company and the Guarantors reflected on such balance sheet, *plus* (b) the aggregate amount of undrawn and unutilized commitments under which any Indebtedness could be drawn and/or utilized as of such date, *plus* (c) the book value, as determined by the Company's chief financial officer in good faith, of any assets (other than goodwill and other intangible assets and current derivative assets and long term derivative assets) acquired by the Company and the Guarantors since the end of such fiscal quarter that, as of such date, are held by the Company and the Guarantors, *minus* (d) all current liabilities (other than any such liabilities that (i) would be included in the aggregate amount First Lien Debt outstanding as of such date of determination pursuant to Section 4.07(b) or (ii) constitute current derivative liabilities) of the Company and the Guarantors reflected on such balance sheet, in each case, calculated on a consolidated basis in accordance with GAAP as in effect on the 2017 Notes Issue Date.

"*Corporate Trust Office of the Trustee*" will be at the address of the Trustee specified in Section 13.01 hereof or such other address as to which the Trustee may give notice to the Company.

"*Credit Agreement*" means (a) the 2008 Credit Agreement, (b) the Existing Credit Agreement and (c) any other credit agreement, loan agreement, note agreement, promissory note, indenture or other agreement or instrument evidencing or governing the terms of any indebtedness or other financial accommodation that has been incurred to extend, increase, renew, refund, replace (whether upon or after termination or otherwise) or refinance (including by means of sales of debt securities to institutional investors) in whole or in part from time to time the indebtedness and other obligations outstanding under the Existing Credit Agreement or any other agreement or instrument referred to in this clause (c); *provided* that any agreement or instrument described above in clause (c) shall only constitute the "Credit Agreement" (or a portion thereof) if the respective agreement or instrument provides that such agreement or instrument (or indebtedness thereunder) shall constitute "First Lien Debt" for purposes of the Collateral Agency and Intercreditor Agreement (and so long as same satisfies the requirements of clause (3) of the definition of "First Lien Debt") and the respective First Lien Representative shall have notified the Collateral Agent that such agreement or instrument shall constitute the Credit Agreement (or a portion thereof) and shall have executed and delivered to the Collateral Agent a joinder to the Collateral Agency and Intercreditor Agreement and the other actions specified in the Collateral Agency and Intercreditor Agreement shall have been taken with respect to the relevant Series of Secured Debt being issued or incurred. Any reference to the Credit Agreement hereunder shall be deemed a reference to any Credit Agreement then extant. Notwithstanding the foregoing, in no event shall any Permitted Notes Document (as defined in the 2008 Credit Agreement or as any substantially similar term is defined in any credit agreement that refinances in full the 2008 Credit Agreement or any previous refinancing in full thereof) be deemed to constitute the Credit Agreement.

"*Credit Facility Obligations*" means all "Obligations" (or any other defined term having a similar purpose) as defined in the Credit Agreement.

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

"*Default*" means any event, act or condition which with notice or lapse of time, or both, would (without cure or waiver hereunder) constitute an Event of Default.

"*Definitive Note*" means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 2.06 hereof, 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 2.03 hereof 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 provision of this Indenture.

"*Designated Holders*" means Energy Capital Partners III, LP (together with its parallel funds), Access Industries Inc., Canadian Pension Plan Investment Board and the respective Affiliates (other than any portfolio operating companies) of each of the foregoing.

"*Designated Project Subsidiary*" means (a) any Project Subsidiary formed by the Company or any of its Subsidiaries after January 31, 2008, (b) Otay Mesa Energy Center, LLC, Calpine Greenfield (Holdings) Corporation and Calpine Russell City, LLC and (c) any other Subsidiary that was a Guarantor but has been subsequently designated by a Responsible Officer (pursuant to written notice to the Collateral Agent) not to be a Guarantor, but only if such Subsidiary does not provide a guarantee with respect to the Existing Credit Agreement (or if the Existing Credit Agreement is no longer in effect, any other First Lien Debt).

"*Discharge of First Lien Obligations*" means the occurrence of all of the following:

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

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

(3) termination, cancellation or cash collateralization of all outstanding letters of credit constituting First Lien Debt (other than such letters of credit that have theretofore been fully cash collateralized in accordance with the terms of the relevant Secured Debt Documents, fully supported by a letter of credit satisfactory to the issuer of the letter of credit supported thereby or otherwise supported in a manner satisfactory to the respective issuers thereof); and

(4) payment in full and discharge of all other First Lien Obligations that are outstanding and unpaid at the time the First Lien Debt is paid in full and discharged (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 such time).

"*Discharge of Second Lien Obligations*" means the occurrence of all of the following:

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

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

(3) termination or cash collateralization of all outstanding letters of credit constituting Second Lien Debt (other than such letters of credit that have theretofore been fully cash collateralized, fully supported by a letter of credit satisfactory to the issuer of the letter of credit supported thereby or otherwise fully supported in a manner satisfactory to the respective issuers thereof); and

(4) payment in full and discharge of all other Second Lien Obligations that are outstanding and unpaid at the time the Second Lien Obligations are paid in full and discharged (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 such time).

"*Disqualified Capital Stock*" means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder of the Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the date that is 91 days after the date on which the Notes mature (other than pursuant to a change of control or asset sale prepayment offer provision).

"*Domestic Subsidiary*" means any Subsidiary of the Company that was formed under the laws of the United States or any state of the United States or the District of Columbia or that guarantees, or pledges any property or assets to secure, any other First Lien Obligations.

"*DPME Entities*" means Deer Park Energy Center LLC and Metcalf Energy, Center LLC.

"*Eligible Commodity Hedge Agreement*" means (a) any agreement in effect on the date of this Indenture that constituted (immediately prior to the date of this Indenture) an "Eligible Commodity Hedge Agreement" as defined in the Existing Credit Agreement, and (b) any Commodity Hedge Agreement entered into (or amended) by the Company or any Guarantor with a counterparty from time to time in the ordinary course of business, consistent with Prudent Industry Practice and not for speculative purposes, it being understood that whether a Commodity Hedging Agreement satisfies the criteria in this clause (b) shall be determined at the time such agreement is entered into and/or amended. For the avoidance of doubt, the following transactions shall always be considered speculative and not be included in clause (b) hereof: (i) any fixed price purchase of fuel that does not have an associated fixed price electricity sale; (ii) any fixed price sale of electricity that does not have an associated fixed price fuel purchase or is not used to hedge the heat rate differential between the Projects and the market or used to hedge any geothermal or storage Project; and (iii) any fixed price sale of fuel, other than forward sales of fuel to hedge the heat rate differential between the Company's (and its Subsidiaries') Projects and the market or used to hedge any geothermal or storage Project.

"*Eligible Commodity Hedge Financing*" means any letter of credit and/or revolving loan facility (including a commodity collateral revolving loan facility) that is entered into by the Company or any Guarantor so long as (a) such letters of credit or the proceeds of such facility are applied solely to collateralize obligations of the Company and the Guarantors to the counterparties under the Eligible Commodity Hedge Agreements to the extent that such counterparties are not otherwise secured by the Collateral and (b) the obligations of the Company and the Guarantors under such facility are secured by the Collateral pursuant to clause (1) of the definition of "Permitted Liens" on a *pari passu* basis with Obligations under the Eligible Commodity Hedge Agreements and are not secured by any other assets of the Company and the Guarantors.

"*Eligible Facility*" means a gas-fired electric generation facility with a nominal capacity of 1,000 MW or less.

"*Eligible Series of First Lien Debt*" means, at any time, any Series of First Lien Debt in respect of which the aggregate amount of First Lien Obligations (determined as provided in the first sentence of the definition of "Required First Lien Debtholders") outstanding at such time exceeds $100.0 million.

"*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).

"*Equity Offering*" means any public or private sale of (1) Capital Stock of the Company (other than Disqualified Capital Stock and other than to a Subsidiary of the Company) or (2) Capital Stock of a direct or indirect parent entity of the Company (other than to the Company or a Subsidiary of the Company) to the extent that the net cash proceeds therefrom are contributed to the common equity capital of the Company.

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

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended, or any successor statute or statutes thereto.

"*Excluded Subsidiary*" means (a) any Foreign Subsidiary, (b) any Bankrupt Subsidiary for so long as such Bankrupt Subsidiary is a debtor under the Bankruptcy Law, (c) any Designated Project Subsidiary, (d) any Subsidiary of the Company that is (A) a Domestic Subsidiary of the Company substantially all of the assets of which consist of the Capital Stock of one or more Foreign Subsidiaries or (B) a Domestic Subsidiary of the Company substantially all of the assets of which consist of the Capital Stock of one or more Subsidiaries described in clause (A) hereof (whether such ownership is directly held or through another one or more such Subsidiaries), (e) any Subsidiary of the Company (other than a Material Subsidiary) and any Material Project Subsidiary that is not a Guarantor (as defined in the Guarantee and Collateral Agreement) as of the date of this Indenture or is thereafter designated by a Responsible Officer (pursuant to written notice to the Collateral Agent) not to be a Guarantor, but only if such Subsidiary does not provide a guarantee with respect to the Existing Credit Agreement or if the Existing Credit Agreement is no longer in effect, any other First Lien Debt, (f) any Subsidiary of Calpine Energy Services Holdings, Inc. that are not guarantors of the 2008 Credit Agreement on the 2017 Notes Issue Date, (g) any Subsidiary which the Company requests to be an Excluded Subsidiary which is satisfactory to the administrative agent under the Credit Agreement or is approved by an Act of Required Debtholders and (h) any Material Subsidiary (other than any of Anderson Springs Energy Company, LLC, Thermal Power Company, LLC and Geysers Power I Company, LLC, any Subsidiary of Calpine Energy Services Holdings, Inc., any of Calpine Calgen Holdings, Inc. and its Subsidiaries and any Material Project Subsidiary) that is not a Guarantor (as defined in the Guarantee and Collateral Agreement) as of the date of this Indenture or is thereafter designated by a Responsible Officer (pursuant to written notice to the Collateral Agent) not to be a Guarantor, but only if such Subsidiary does not provide a guarantee with respect to the Existing Credit Agreement or if the Existing Credit Agreement is no longer in effect, any other First Lien Debt.

"*Existing Credit Agreement*" means that certain Credit Agreement, dated as of December 10, 2010 (as amended, amended and restated, supplemented or otherwise modified from time to time), by and among the Company, the guarantors party thereto, MUFG Union Bank, N.A., as successor to Goldman Sachs Credit Partners L.P., as collateral agent and The Bank of Tokyo-Mitsubishi UFJ, Ltd., as successor to Goldman Sachs Bank USA, as administrative agent, and the lenders party thereto.

"*Existing Credit Facility Obligations*" means all "Obligations" (or any other defined term having a similar purpose) as defined in the Existing Credit Agreement.

"*Fair Market Value*" means the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party, determined in good faith by the chief financial officer of the Company (unless otherwise provided in this Indenture).

"*First Lien*" means a Lien granted by a Security Document to the Collateral Agent for the benefit of the holders of First Lien Debt, at any time, upon any property of the Company or any other Guarantor to secure First Lien Obligations.

"*First Lien Debt*" means:

(1) all Existing Credit Facility Obligations;

(2) all obligations under the Term Loan Agreements; and

(3) to the extent issued or outstanding, (A) Specified Cash Management Obligations and Specified Swap Obligations and (B) any other Indebtedness (including (x) obligations under Eligible Commodity Hedge Agreements not included pursuant to clause (A) of this paragraph, (y) obligations under Eligible Commodity Hedge Financings and (z) permitted refinancings of First Lien Debt, including any Credit Agreement as defined in clause (b) of the definition thereof) that, in the case of this clause (B), are secured equally and ratably with the Credit Facility Obligations by a First Lien that was expressly permitted to be incurred and so secured under each then outstanding Credit Agreement (or if no such Credit Agreement is then in effect, each other applicable Secured Debt Document); *provided* that the foregoing provisions of the preceding clause (B) shall not be construed to permit general basket Indebtedness or Lien baskets to be used to provide equal and ratable security as First Lien Debt in each case unless the respective provisions in the then outstanding Credit Agreement (if any) expressly provide that equal and ratable liens on the Collateral with the Credit Facility Obligations shall be permitted; and *provided*, *further*, that in the case of any Indebtedness or other obligations referred to in this clause (3):

(a) on or before the date on which such Indebtedness is (or other obligations are) incurred by the Company or any other Guarantor (or on or about the date of the Collateral Agency and Intercreditor Agreement in respect of any such Indebtedness that is (or any such other obligations that were) incurred prior to the date of the Collateral Agency and Intercreditor Agreement and constitute(s) Secured Debt), such Indebtedness is (or other obligations are) designated by the Company, in an Officer's Certificate delivered to the Collateral Agent, as "First Lien Debt" for the purposes of the Secured Debt Documents; *provided* that no Obligation or Indebtedness may be designated as both Second Lien Debt and First Lien Debt;

(b) such Indebtedness is (or other obligations are) evidenced or governed by an indenture, credit agreement, loan agreement, note agreement, promissory note, Hedge Agreement or other agreement or instrument that includes a Lien Sharing and Priority Confirmation, or such Indebtedness is (or other obligations are) subject to a Lien Sharing and Priority Confirmation; and

(c) is designated as First Lien Debt in accordance with the requirements of the Collateral Agency and Intercreditor Agreement.

In addition to the foregoing, all obligations owing to the Collateral Agent in its capacity as such, whether pursuant to the Collateral Agency and Intercreditor Agreement or one or more of the Security Documents, First Lien Documents or Second Lien Documents, shall in each case be deemed to constitute First Lien Debt (although there shall be no separate Series of First Lien Debt as a result thereof) and First Lien Obligations (with the obligations described in this sentence being herein called "*Collateral Agent Obligations*"), which Collateral Agent Obligations shall be entitled to the priority provided in clause FIRST of Section 3.4 of the Collateral Agency and Intercreditor Agreement.

"*First Lien Documents*" means this Indenture, the Credit Agreement, the Term Loan Agreements, the indenture governing the 2026 Notes, the indenture governing the 2028 Notes, each agreement or instrument relating to any Specified Cash Management and Swap Obligations and each other agreement or instrument governing, or relating to, any First Lien Debt and the First Lien Security Documents.

"*First Lien Eligible Commodity Hedge Financing Agreements*" means any Eligible Commodity Hedge Financing (and agreements and instruments governing or relating thereto) which has become First Lien Debt in accordance with clause (2) of the definition of "First Lien Debt" contained in the Collateral Agency and Intercreditor Agreement.

"*First Lien Eligible Commodity Hedge Financing Obligations*" means all obligations under First Lien Eligible Commodity Hedge Financing Agreements.

"*First Lien Hedging Obligations*" means all Specified Swap Obligations and all other obligations under any Commodity Hedge Agreement, Eligible Commodity Hedge Agreement or Swap Agreement which, in any case, constitutes First Lien Debt in accordance with clause (2) of the definition of "First Lien Debt" contained in the Collateral Agency and Intercreditor Agreement.

"*First Lien Obligations*" means any principal (including reimbursement obligations with respect to letters of credit whether or not drawn), interest (including 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 First Lien Documents, even if such interest is not enforceable, allowable or allowed as a claim in such proceeding), premium (if any), fees, indemnifications, reimbursements, expenses, damages and other liabilities payable under the First Lien Documents, including, without limitation, all outstanding Credit Facility Obligations, Guaranty Reimbursement Obligations, Specified Cash Management Obligations, First Lien Hedging Obligations, First Lien Eligible Commodity Hedge Financing Obligations and such obligations in respect of any other series of First Lien Debt issued or outstanding after the date of this Indenture. As provided in the last sentence of the definition of "First Lien Debt," all Collateral Agent Obligations shall constitute First Lien Obligations.

"*First Lien Representative*" means (1) in the case of this Indenture, the Trustee, (2) in the case of the Existing Credit Agreement, The Bank of Tokyo-Mitsubishi UFJ, Ltd., as successor to Goldman Sachs Bank USA, as administrative agent thereunder and its successors and assigns, or (3) in the case of any other Series of First Lien Debt, the respective creditor or any trustee, agent or representative thereof designated in the respective Series of First Lien Debt.

"*First Lien Security Documents*" means the Security Documents (other than any Security Documents that do not secure the First Lien Obligations).

"*Foreign Subsidiary*" means any Subsidiary of the Company organized under the laws of any jurisdiction outside the United States.

"*GAAP*" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession.

"*Generating Plant Easement*" shall mean the real property easement upon which any generating plant of the Company or any of its Subsidiaries is located.

"*Geysers Entities*" means the collective reference to the following Subsidiaries of the Company: Anderson Springs Energy Company LLC, Thermal Power Company LLC, Geysers Power I Company LLC, Geysers Power Company, LLC and Calistoga Holdings, LLC.

"*Global Note Legend*" means the legend set forth in Section 2.06(f)(2) hereof, which is required to be placed on all Global Notes issued under this Indenture.

"*Global Notes*" means, individually and collectively, each of the Restricted Global Notes and the Unrestricted Global Notes deposited with or on behalf of and 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 Section 2.01, 2.06(b)(3), 2.06(b)(4) or 2.06(d)(2) hereof.

"*Government Securities*" means direct obligations of, or obligations guaranteed by, the United States of America (including any agency or instrumentality thereof) for the payment of which obligations or guarantees the full faith and credit of the United States of America is pledged and which are not callable or redeemable at the issuer's option.

"*Grantors*" means any Person that pledges any Collateral under the Security Documents to secure any Secured Obligation.

"*Guarantee*" means a guarantee other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner including, without limitation, by way of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Indebtedness (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take or pay or to maintain financial statement conditions or otherwise).

"*Guarantee and Collateral Agreement*" means that certain Amended and Restated Guarantee and Collateral Agreement, dated as of January 31, 2008 and amended and restated as of December 10, 2010 (as amended, amended and restated, supplemented or otherwise modified from time to time), by and among the Company, the other guarantors and Grantors from time to time party thereto and the Collateral Agent.

"*Guarantors*" means any Subsidiary of the Company that is a party to the Guarantee and Collateral Agreement, and its successors and assigns, in each case, until the Note Guarantee of such Person has been released in accordance with the provisions of this Indenture and the Collateral Agency and Intercreditor Agreement.

"*Guaranty Reimbursement Obligations*" means all Obligations of the Company and the Guarantors under Section 2 of the Guarantee and Collateral Agreement.

"*Hedge Agreement*" means any agreement or instrument governing or relating to any First Lien Hedging Obligations.

"*Hedge Outstanding Amount*" means, for any Hedge Agreement on any date of determination, an amount determined in good faith by the applicable First Lien Representative equal to: (a) in the case of a Hedge Agreement documented pursuant to a Master Agreement, the amount, if any, that would be or is payable by the applicable obligor to its counterparty to such Hedge Agreement, as if (i) such Hedge Agreement were being terminated early on such date of determination due to a "Termination Event," "Event of Default," "Additional Event of Default," or "Additional Termination Event," (ii) the obligor party thereto were the sole "Affected Party," and (iii) the applicable First Lien Representative were the sole party determining such payment amount (with the applicable First Lien Representative making such determination reasonably in accordance with the provisions of the above-described Master Agreement); (b) in the case of a Hedge Agreement traded on a national exchange, the mark-to-market value of such Hedge Agreement, which will be the unrealized loss on such Hedge Agreement to the obligor party to such Hedge Agreement reasonably determined by the applicable First Lien Representative based on the settlement price of such Hedge Agreement on such date of determination; or (c) in all other cases, the mark-to-market value of such Hedge Agreement, which will be the unrealized loss on such Hedge Agreement to the obligor party to such Hedge Agreement reasonably determined by the applicable First Lien Representative as the amount, if any, by which (i) the present value of the future cash flows to be paid by the applicable obligor exceeds (ii) the present value of the future cash flows to be received by such obligor pursuant to such Hedge Agreement.

"*Holder*" means a Person in whose name a Note is registered.

"*IAI 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 will be issued in a denomination equal to the outstanding principal amount of the Notes sold to Institutional Accredited Investors.

"*Indebtedness*" means of any Person at any date, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services (other than current trade payables incurred in the ordinary course of such Person's business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all Capital Lease Obligations of such Person, (f) all obligations of such Person, contingent or otherwise, as an account party or applicant under or in respect of acceptances, letters of credit, surety bonds or similar arrangements, (g) the liquidation value of all preferred Capital Stock of such Person, (h) all guarantees of such Person in respect of obligations of the kind referred to in clauses (a) through (g) above, (i) all obligations of the kind referred to in clauses (a) through (h) above secured by (or for which the holder of such obligation has an existing right, contingent or otherwise, to be secured by) any Lien on property (including accounts and contract rights) owned by such Person, whether or not such Person has assumed or become liable for the payment of such obligation, and (j) all obligations of such Person in respect of Swap Agreements. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor. For purposes hereof, preferred Capital Stock issued by the Company shall not constitute Indebtedness hereunder unless it constitutes Disqualified Capital Stock.

"*Indenture*" means this Indenture, as amended or supplemented from time to time.

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

"*Initial Notes*" means the $900,000,000 aggregate principal amount of Notes issued under this Indenture on the date hereof.

"*Initial Purchasers*" means J.P. Morgan Securities LLC, Credit Suisse Securities (USA) LLC, Barclays Capital Inc., BNP Paribas Securities Corp., BofA Securities, Inc., Citigroup Global Markets Inc., Credit Agricole Securities (USA) Inc., Deutsche Bank Securities Inc., Goldman Sachs & Co. LLC, Morgan Stanley & Co. LLC, MUFG Securities Americas Inc., Natixis Securities Americas LLC, RBC Capital Markets, LLC, SMBC Nikko Securities America, Inc. and Mizuho Securities USA LLC.

"*Insolvency or Liquidation Proceeding*" means:

(1) any case commenced by or against the Company or any Guarantor under any Bankruptcy Law, any other proceeding for the reorganization, recapitalization or adjustment or marshalling of the assets or liabilities of the Company or any Guarantor, any receivership or assignment for the benefit of creditors relating to the Company or any Guarantor or any similar case or proceeding relative to the Company or any 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 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 Guarantor are determined and any payment or distribution is or may be made on account of such claims.

"*Institutional Accredited Investor*" means an institution that is an "accredited investor" as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act, who are not also QIBs.

"*Junior Lien Indebtedness*" Indebtedness of the Company and/or any Subsidiary that is secured by Liens junior to the Liens securing the Obligations of the Company and the Guarantors under this Indenture; *provided* that the priority of such Liens and the ability of the lenders or holders of such Indebtedness to exercise rights and enforce remedies in respect of such Liens are subject to the Collateral Agency and Intercreditor Agreement or any other intercreditor agreement that provides for the subordination (including related intercreditors' rights) of such Junior Lien Indebtedness at least to the same extent that the Second Lien Debt is subordinated to the First Lien Debt pursuant to the Collateral Agency and Intercreditor Agreement, as determined by the Company in good faith.

"*Legal Holiday*" means a Saturday, a Sunday or a day on which banking institutions in the City of New York or at a place of payment are authorized by law, regulation or executive order to remain closed. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue on such payment for the intervening period.

"*Lien*" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest 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 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.

"*Lien Sharing and Priority Confirmation*" means:

(1) as to any Series of First Lien Debt, the written agreement of the holders of such Series of First Lien Debt, or their applicable First Lien Representative on their behalf, in each case as set forth in the indenture, credit agreement, loan agreement, note agreement, promissory note, Hedge Agreement or other agreement or instrument evidencing or governing such Series of First Lien Debt (or in a separate writing binding upon holders of such Series of First Lien Debt), for the enforceable benefit of all holders of each existing and future Series of First Lien Debt, each existing and future First Lien Representative, all holders of each existing and future Series of Second Lien Debt and each existing and future Second Lien Representative:

(a) that all First Lien Obligations will be and are secured equally and ratably by all First Liens at any time granted by the Company or any other Grantor to secure any Obligations in respect of such Series of First Lien Debt, whether or not upon property otherwise constituting collateral for such Series of First Lien Debt, and that all such First Liens will be enforceable by the Collateral Agent for the benefit of all holders of First Lien Obligations equally and ratably;

(b) that the holders of Obligations in respect of such Series of First Lien Debt are bound by the provisions of the Collateral Agency and Intercreditor Agreement, including without limitation (x) the provisions relating to the ranking of First Liens and the order of application of proceeds from enforcement of First Liens and (y) Section 8.22 thereof; and

(c) consenting to and directing the Collateral Agent to perform its obligations under the Collateral Agency and Intercreditor Agreement and the other Security Documents; and

(2) as to any Series of Second Lien Debt, the written agreement of the holders of such Series of Second Lien Debt, or their applicable Second Lien Representative on their behalf, in each case as set forth in the indenture, credit agreement, loan agreement, note agreement, promissory note, Hedge Agreement or other agreement or instrument evidencing or governing such Series of Second Lien Debt, for the enforceable benefit of all holders of each existing and future Series of Second Lien Debt, each existing and future Second Lien Representative, all holders of each existing and future Series of Second Lien Debt and each existing and future Second Lien Representative:

(a) that all Second Lien Obligations will be and are secured equally and ratably by all Second Liens at any time granted by the Company 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 Collateral Agent for the benefit of all holders of Second Lien Obligations equally and ratably;

(b) that the holders of Obligations in respect of such Series of Second Lien Debt are bound by the provisions of the Collateral Agency and Intercreditor Agreement, including without limitation (x) the provisions relating to the ranking of Second Liens and the order of application of proceeds from the enforcement of Second Liens and (y) Section 8.22 thereof; and

(c) consenting to and directing the Collateral Agent to perform its obligations under the Collateral Agency and Intercreditor Agreement and the other Security Documents.

"*Limited Recourse Debt*" means Indebtedness of a Project Subsidiary or Project Subsidiaries (or a Subsidiary or Subsidiaries directly or indirectly holding the Capital Stock of one or more of such Project Subsidiaries) that is incurred to finance the improvement, installment, design, engineering, construction, acquisition, development, completion, maintenance or operation of, or otherwise affects any such act in respect of, all or any portion of the applicable Project or Projects, or to refinance existing such Indebtedness, with respect to which the recourse of the holder or obligee of such Indebtedness is limited to (i) assets (and revenues and proceeds from such assets) associated with or ancillary to such Project or Projects (which in any event shall not include assets held by any Subsidiary other than a Subsidiary, if any, whose sole business is the ownership and/or operation of such Project or Projects (or the direct or indirect ownership of one or more of the relevant Project Subsidiaries) and substantially all of whose assets are associated with or ancillary to such Project or Projects) in respect of which such Indebtedness was incurred and/or (ii) such Subsidiary or Subsidiaries, and/or such Project Subsidiary or Project Subsidiaries and/or the Capital Stock in one or more of such entity or entities, but in the case of clause (ii) only if such Subsidiary's or Project Subsidiary's sole business is the ownership and/or operation of such Project or Projects (or the direct or indirect ownership of one or more of the relevant Project Subsidiaries) and substantially all of such Subsidiary's or Project Subsidiary's assets are associated with or ancillary to such Project or Projects. For purposes of the Collateral Agency and Intercreditor Agreement and the Guarantee and Collateral Agreement, Indebtedness of a Subsidiary of the Company shall not fail to be Limited Recourse Debt by reason of the holders of such Limited Recourse Debt having recourse to the Company or another Subsidiary of the Company pursuant to a performance guarantee, so long as such performance guarantee is permitted under the Credit Agreement.

"*Master Agreement*" means any Master Agreement published by the International Swap and Derivatives Associations, Inc.

"*Material Project Subsidiaries*" means the collective reference to the following Subsidiaries of the Company: Calpine Steamboat Holdings, LLC and Metcalf Holdings, LLC, and all of their respective direct and indirect Subsidiaries.

"*Material Subsidiaries*" means the collective reference to the following Subsidiaries of the Company: the Geysers Entities, Calpine Energy Services Holdings, Inc., Calpine Calgen Holdings, Inc., Calpine CCFC Holdings, Inc., CPN Energy Services GP, Inc., CPN Energy Services LP, Inc., Calpine Riverside Holdings, LLC, New Development Holdings LLC and its subsidiaries, the DPME Entities and the Material Project Subsidiaries and all of their respective direct and indirect Subsidiaries (excluding, for the avoidance of doubt, California Peaker Holdings, LLC and its Subsidiaries and South Point Holdings, LLC and its Subsidiaries), and each of the Calpine Power Company, Calpine Operations Management Company, Inc., Calpine Administrative Services Company, Inc. and Calpine Fuels Operation; it being understood that any Subsidiary into which any Material Subsidiary merged or otherwise consolidated or any Subsidiary to which all or substantially all of the assets of any Material Subsidiary are transferred or otherwise disposed shall constitute a Material Subsidiary for all purposes under this Indenture.

"*Moody's*" means Moody's Investors Service, Inc., or any successor thereto.

"*Mortgage*" means each of the mortgages and deeds of trust made by the Company or any Guarantor in favor of, or for the benefit of, the Collateral Agent for the benefit of the Secured Parties referred to therein, as each may be amended, restated, supplemented or otherwise modified from time to time.

"*Mortgaged Property*" means the real properties of the Company or any Guarantor, as to which the Collateral Agent for the benefit of the Secured Parties shall be granted a Lien pursuant to the Mortgages.

"*New 2026 First Lien Term Loan Agreement*" means the $750 million first lien senior secured term loan agreement, dated August 12, 2019 (as amended, amended and restated, supplemented or otherwise modified from time to time), among the Company, as borrower, Credit Suisse AG, Cayman Islands Branch, as administrative agent, MUFG Union Bank, N.A., as collateral agent and the lenders party thereto from time to time.

"*Non-Recourse Debt*" means Indebtedness:

(1) as to which neither the Company nor any of its Restricted Subsidiaries (a) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness) or (b) is directly or indirectly liable as a guarantor or otherwise, other than pursuant to any performance guarantee; and

(2) no default with respect to which (including any rights that the holders of the Indebtedness 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 of its Restricted Subsidiaries to declare a default on such other Indebtedness or cause the payment of the Indebtedness to be accelerated or payable prior to its final stated maturity.

"*Non-U.S. Person*" means a Person who is not a U.S. Person.

"*Note Guarantee*" means the Guarantee by each Guarantor of the Company's obligations under this Indenture and the Notes, pursuant to the Guarantee and Collateral Agreement.

"*Notes*" has the meaning assigned to it in the preamble to this Indenture. The Initial Notes and the Additional Notes shall be treated as a single class for all purposes under this Indenture, and unless the context otherwise requires, all references to the Notes shall include the Initial Notes and any Additional Notes.

"*Obligations*" means any principal, interest, penalties, fees, expenses, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.

"*Offering Memorandum*" the Company's Offering Memorandum dated December 2, 2020, relating to the initial offering of the Notes.

"*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 Chief Legal Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Vice-President of such Person.

"*Officer's Certificate*" means a certificate signed on behalf of the Company by the principal executive officer, the principal financial officer, the chief legal officer, the treasurer or the principal accounting officer of the Company that meets the requirements of Section 13.03 hereof.

"*Opinion of Counsel*" means an opinion from legal counsel who is reasonably acceptable to the Trustee, that meets the requirements of Section 13.03 hereof. The counsel may be an employee of or counsel to the Company, any Subsidiary of the Company or the Trustee.

"*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 Liens*" means:

(1) Liens securing (a) First Lien Debt and (b) all other First Lien Obligations;

(2) Liens securing (a) Second Lien Debt and (b) all other Second Lien Obligations, which Liens are made junior to the First Lien Obligations pursuant to the Collateral Agency and Intercreditor Agreement;

(3) Liens securing Junior Lien Indebtedness and all Obligations with respect thereto;

(4) Liens on the property or assets of (a) the Company or any Subsidiary of the Company in favor of the Company or any Guarantor or (b) any Restricted Subsidiary that is not a Guarantor in favor of any other Restricted Subsidiary that is not a Guarantor;

(5) Liens on property (including Capital Stock) existing at the time of acquisition of the property (including Capital Stock) by the Company or any Subsidiary of the Company; *provided* that such Liens were in existence prior to such acquisition and not incurred in contemplation of, such acquisition;

(6) Liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, government contracts, performance and return-of-money bonds and other similar obligations incurred in the ordinary course of business (exclusive of obligations in respect of the payment for borrowed money);

(7) Liens to secure the performance of bids, trading contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds, and other obligations of a like nature incurred in the ordinary course of business; *provided* that, for the avoidance of doubt, Liens (including without limitation rights of set-off) on (i) deposits and (ii) revenues under trading contracts, in each case in favor of counterparties under such trading contracts and other obligations incurred in the ordinary course of business (including trading counterparties, brokerages, clearing houses, utilities, systems operators and similar entities) shall be permitted and shall be permitted to be first priority Liens on such collateral;

(8) Liens existing on the date of this Indenture and Liens on assets of the Company or any of its Subsidiaries securing obligations incurred to refinance, replace, refund, renew or extend obligations (and obligations refinancing such obligations) secured by Liens existing on the date of this Indenture; *provided* that the Liens securing such obligations shall attach only to the assets that were subject to Liens securing the obligations so refinanced, replaced, refunded, renewed or extended;

(9) licenses, leases or subleases granted to third parties not interfering in any material respect with the business of the Company and any of its Restricted Subsidiaries;

(10) Liens for taxes, assessments or charges not yet due or that are being contested in good faith and by appropriate proceedings if adequate reserves with respect thereto are maintained on the books of the Company or the affected Restricted Subsidiary, as the case may be, in accordance with GAAP as in effect from time to time;

(11) carriers', warehousemen's, mechanics', materialmen's, repairmen's, landlords' or other similar Liens arising in the ordinary course of business which in the aggregate do not materially detract from the value of the property or assets or materially impair the use thereof in the operation of the business of the Company and its Subsidiaries and are not overdue for a period of more than 90 days or which are being contested in good faith by appropriate proceedings and for which adequate reserves with respect thereto are maintained on the books of the Company or the affected Restricted Subsidiary, as the case may be, in accordance with GAAP as in effect from time to time;

(12) easements, rights-of-way, restrictions, zoning ordinances and other similar encumbrances incurred in the ordinary course of business which, are not substantial in amount and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the Company and any of its Restricted Subsidiaries;

(13) any interest or title of a licensor, lessor or sublessor under any lease;

(14) Liens created for the benefit of (or to secure) the Notes or the Note Guarantees;

(15) Liens arising in the ordinary course of business to secure liability (in an amount not in excess of the premium for such insurance) for premiums to insurance carriers;

(16) filing of Uniform Commercial Code financing statements as a precautionary measure in connection with operating leases or capital leases;

(17) bankers' Liens and similar Liens (including rights of setoff) in respect of bank deposits;

(18) Liens on cash, Cash Equivalents or other property arising in connection with the defeasance, discharge or redemption of Indebtedness;

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

(20) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into in the ordinary course of business;

(21) good faith deposits made in connection with (a) any acquisition (whether pursuant to an acquisition of Capital Stock, assets or otherwise) by the Company or any of its Subsidiaries from any Person of all or substantially all of the assets of a Person or a line of business of a Person or (b) any advance, loan, extension of credit (by way of guarantee or otherwise) or capital contribution, or purchase of any stock, bonds, notes, debentures or other securities of or any assets constituting a business unit of, or any other investment;

(22) Liens on assets of any Subsidiary of the Company or Project Subsidiary and/or on the Capital Stock of such Subsidiary or Project Subsidiary, in each case to the extent such Liens secure Limited Recourse Debt;

(23) any Lien existing on any property or asset prior to the acquisition thereof (or the acquisition of, or merger or consolidation with, the Person owning such property or asset) by the Company or any of its Subsidiaries, and any Lien securing obligations incurred to refinance, replace, refund, renew or extend the obligations secured by such Liens; *provided* that in each case (i) such Lien is not created in contemplation or in connection with such acquisition, (ii) such Lien does not apply to any other property or assets of the Company or any of its Subsidiaries (other than fixtures and improvements on any such real property), and (iii) the principal amount of any Indebtedness secured by such Liens shall not be increased (except by the amount of premiums, penalties, accrued and unpaid interest, fees and expenses associated with such refinancing, replacement, refunding, renewal or extension of such Indebtedness);

(24) utility and similar deposits made by the Company or its Subsidiaries in the ordinary course of business;

(25) Permitted PPA Counterparty Liens, subject to a PPA Intercreditor Agreement;

(26) Liens securing (a) Capital Lease Obligations and (b) other Indebtedness of the Company or any of its Subsidiaries incurred to finance all or any part of the acquisition, lease, construction, installation or improvement of any assets, and any refinancing, replacement, refunding, renewal or extension of any such Indebtedness without any increase thereof, in an aggregate amount, together with all other Capital Lease Obligations and Indebtedness secured by Liens pursuant to this clause (26) not to exceed $150.0 million at any one time outstanding, so long as (i) such Liens are initially created or arise prior to or within the 90 days after the completion of such acquisition, lease, construction, installation or improvement and (ii) such Liens do not attach to assets of the Company or any Subsidiary other than the relevant assets acquired, leased, constructed, installed or improved;

(27) Liens of sellers of goods, gas or oil to the Company or any of its Subsidiaries arising under Article 2 of the Uniform Commercial Code or under other state statutes in the ordinary course of business, covering only the goods, gas or oil sold and covering only the unpaid purchase price for such goods, gas or oil and related expenses;

(28) [Reserved];

(29) [Reserved];

(30) Liens on all or substantially all of the assets of any Subsidiary of the Company that was a debtor under any Bankruptcy Law immediately after the closing date of the 2008 Credit Agreement, which Subsidiary has not emerged from its Case to the extent such Liens secure the obligations of such bankrupt Subsidiaries under loans made to them and permitted under the 2008 Credit Agreement; *provided* that such Liens shall be terminated and released as of the date that such Subsidiary emerges from its Case;

(31) any Lien created in favor of a partner, co-joint venturor or co-owner in connection with any partnership agreement, joint venture agreement or other joint ownership agreement or arrangement with such party related to the interests or shares in, assets of, distributions from, product derived from, sales proceeds payable in respect of, revenues from and tariffs payable in respect of such partnership, joint venture or other joint ownership agreement or arrangement, including, without limitation, any rights of first offer, first refusal or first negotiation, any rights of purchase and any similar rights and encumbrances and restrictions on transfer granted with respect to such interests, shares, assets, distributions, products, sales proceeds, revenues and tariffs;

(32) Liens securing Indebtedness or other Obligations in an aggregate amount, together with all other Indebtedness and other Obligations secured by Liens pursuant to this clause (32), not to exceed $100.0 million at any one time outstanding; and

(33) with respect to any Mortgaged Property that is leased, subleased, held by or benefitting from, an easement agreement, or subject to a Generating Plant Easement, (i) the lease, sublease or easement agreement, as applicable, and the interest or title of the lessor, sublessor or grantor thereunder and (ii) any Liens encumbering the title of such lessor, sublessor or grantor, as applicable, in the Mortgaged Property arising after the date hereof and subordinate in all respects to the Lien granted and evidenced by the Mortgages.

"*Permitted PPA Counterparty Lien*" means a Lien granted by the Company or any of its Subsidiaries in favor of a PPA Counterparty under a PPA; *provided* that all of the following conditions are satisfied:

(1) the PPA Counterparty shall not be an Affiliate of the Company or any of its Subsidiaries;

(2) the Lien shall not secure any Indebtedness and (a) shall have been granted solely to secure the performance obligations of the applicable Project Subsidiary under the PPA and/or any obligations of such Project Subsidiary to make a termination payment under the PPA, or (b) shall create rights designed to enable the PPA Counterparty to assume operational control of the relevant Eligible Facility or Eligible Facilities (e.g., step-in rights) or otherwise continue performance of the Project Subsidiary's obligations under the PPA;

(3) the PPA Counterparty shall be permitted to exercise its rights and remedies solely with respect to the assets subject to such Lien only:

(a) for so long as the PPA Counterparty remains current with respect to all of its payment obligations under the PPA and shall not otherwise be in a continuing default under the PPA;

(b) if the PPA Counterparty continues to acknowledge the existence of the Liens securing the Obligations (unless and until the Liens securing the Obligations are eliminated in connection with a foreclosure of the Lien as contemplated by clause (4) of this definition); and

(c) if either (i) the Project Subsidiary has terminated, rejected or repudiated the PPA (including, without limitation, any rejection or similar act by or on behalf of such Project Subsidiary in connection with any case under the Bankruptcy Law) or (ii) the Project Subsidiary (A) provides or delivers capacity or energy to a third party if such Project Subsidiary is required under the PPA to provide or deliver such capacity or energy to the PPA Counterparty, (B) fails to operate or attempt to operate one or more of the relevant Eligible Facilities at a time when the Project Subsidiary was required under the PPA to operate or attempt to operate such Eligible Facility or Eligible Facilities and such operation is not prevented by force majeure, forced outage or other events or circumstances outside the reasonable control of the Person responsible therefor, (C) fails to comply with any provisions of the PPA designed to enable the PPA Counterparty to assume operational control of the relevant Eligible Facility or Eligible Facilities (e.g., step-in rights) or otherwise take actions necessary to continue performance of Project Subsidiary's obligations under the PPA, in each case to the extent the Project Subsidiary is then capable of complying with such provisions, (D) fails to pay to the PPA Counterparty any amount due and payable in accordance with the terms and conditions of the PPA, or (E) otherwise intentionally breaches its obligations under the PPA;

(4) the PPA Counterparty's exercise of its rights with respect to the Lien shall be limited to (a) the taking of actions pursuant to any provisions of the PPA designed to enable the PPA Counterparty to assume operational control of the relevant Eligible Facility or Eligible Facilities (e.g., step-in rights) or otherwise necessary to continue performance of Project Subsidiary's obligations under the PPA or (b) the recovery of any termination payment due under the PPA; and

(5) the PPA Counterparty shall have executed and delivered a PPA Intercreditor Agreement.

"*Permitted Refinancing Indebtedness*" means any Indebtedness that constitutes First Lien Debt issued in exchange for, or the net proceeds of which are used to renew, refund, refinance, replace, defease or discharge other Indebtedness that constitutes First Lien Debt; *provided* that the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness renewed, refunded, refinanced, replaced, defeased or discharged (plus all accrued interest on such Indebtedness and the amount of all fees and expenses, including premiums, incurred in connection therewith).

"*Permitted Replacement Commitment*" means any letters of credit, similar obligations and/or commitment to lend or provide Indebtedness that replaces any then-existing letters of credit, similar obligations or undrawn and unutilized commitment to lend or provide Indebtedness, in each case, that would constitute First Lien Debt; *provided* that the maximum principal amount of the replacement letters of credit, similar obligations and commitments may not exceed the maximum principal amount of the then-existing letters of credit, similar obligations and commitments.

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

"*PPA*" means an agreement (including a tolling agreement, fuel conversion services agreement or other similar agreement) entered into by a Subsidiary for the sale of capacity or energy (and services ancillary or related thereto) from one or more of the Projects.

"*PPA Counterparty*" means a counterparty to a PPA.

"*PPA Intercreditor Agreement*" means an intercreditor agreement that provides for the following: (a) notice by the Company to the relevant PPA Counterparty of defaults, events of default and any exercise of remedies by the lenders under the Credit Agreement or an Act of Required Debtholders in connection therewith, (b) the right of the PPA Counterparty to exercise step-in rights, (c) notice to the Collateral Agent and the trustee of any defaults under the relevant PPA, (d) standstill provisions relating to the exercise of remedies by the PPA Counterparty, (e) the right of the lenders under the Credit Agreement or an Act of Required Debtholders to cure defaults under the relevant PPA without assuming the PPA or taking possession of the Project, (f) the right of the lenders under the Credit Agreement or an Act of Required Debtholders to cure defaults under the relevant PPA by stepping in, assuming the contract and curing "curable" defaults, (g) the right of the applicable Secured Parties to provide alternative collateral (e.g., letter of credit) in lieu of Permitted PPA Counterparty Liens, (h) the establishment of a payment waterfall absent special actions by the PPA Counterparty and the lenders under the Credit Agreement or an Act of Required Debtholders, and (i) is otherwise in form and substance reasonably satisfactory to Collateral Agent and the Company.

"*Private Placement Legend*" means the legend set forth in Section 2.06(f)(1) hereof to be placed on all Notes issued under this Indenture except where otherwise permitted by the provisions of this Indenture.

"*Project*" means any (a) electrical generation plant, (b) cogeneration plant, (c) facility for the exploration or drilling for fuel or other resources, or for the development, storage, transport or transmission of, electricity, steam, fuel, syngas or other resources for the generation of electricity or (d) facility engaged in another line of business in which the Company and its Subsidiaries are permitted to be engaged hereunder, in each case for which a Subsidiary or Subsidiaries of the Company was, is or will be (as the case may be) an owner, lessee, operator, manager, developer or builder, and shall also mean any two or more of such plants or facilities in which an interest has been acquired in a single transaction; *provided* that a Project shall cease to be a Project of the Company and its Subsidiaries at such time that the Company or any of its Subsidiaries ceases to have any existing or future rights or obligations (whether direct or indirect, contingent or matured) associated therewith.

"*Project Subsidiary*" means any Subsidiary of the Company whose sole business is the ownership and/ or operation of a Project or Projects and substantially all of the assets of which are associated with or acquired or utilized in such Project.

"*Prudent Industry Practice*" means those practices or methods as are commonly used or adopted by Persons in power generation industry in the United States, in connection with the conduct of such industry, in each case as such practices or methods may evolve from time to time, consistent with all applicable requirements of law.

"*QIB*" means a "qualified institutional buyer" as defined in Rule 144A.

"*Qualified Cash Management Creditors*" means any Person to whom Cash Management Obligations are owed, in each case so long as such Person was a lender under the Credit Agreement or an Affiliate of a lender under the Credit Agreement, at the time the respective services or extensions of credit giving rise to such Cash Management Obligations were provided or incurred.

"*Qualifying Equity Interests*" means Equity Interests of the Company other than Disqualified Capital Stock.

"*Rating Agencies*" means (1) each of Moody's and S&P and (2) if any of Moody's or S&P ceases to rate the Notes or fails to make a rating of the Notes publicly available for reasons outside of the Company's control, a "nationally recognized statistical rating organization" as defined in Section 3(a)(62) of the Exchange Act selected by the Company as a replacement agency for Moody's or S&P, or both of them, as the case may be.

"*Rating Event*" means the rating on the Notes is lowered by both of the Rating Agencies on any day within the 60-day period (which 60-day period will be extended so long as the rating of the Notes is under publicly announced consideration for a possible downgrade by either of the Rating Agencies) after the earlier of (1) the occurrence of a Change of Control and (2) public disclosure by the Company of the occurrence of a Change of Control or the Company's intention to effect a Change of Control; *provided*, *however*, that a Rating Event otherwise arising by virtue of a particular reduction in rating will not be deemed to have occurred in respect of a particular Change of Control (and thus will not be deemed a Rating Event for purposes of the definition of Change of Control Triggering Event) if the Rating Agencies making the reduction in rating to which this definition would otherwise apply do not announce or publicly confirm or inform the Trustee in writing at the Company's or the Trustee's request that the reduction was the result, in whole or in part, of any event or circumstance comprised of or arising as a result of, or in respect of, the applicable Change of Control (whether or not the applicable Change of Control has occurred at the time of the Rating Event).

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

"*Regulation S Global Note*" means a Regulation S Temporary Global Note or Regulation S Permanent Global Note, as appropriate.

"*Regulation S Permanent 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, issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 903 of Regulation S.

"*Regulation S Temporary Global Note*" means a temporary Global Note substantially in the form of Exhibit A hereto bearing the Global Note Legend, Private Placement Legend, and Regulation S Temporary Global Legend 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.

"*Regulation S Temporary Global Note Legend*" means the legend set forth in Section 2.06(f)(3) hereof to be placed on all Regulation S Temporary Global Notes.

"*Required First Lien Debtholders*" means, at any time, the holders of more than 50% of the sum of (1) the aggregate outstanding principal amount of First Lien Debt (including outstanding letters of credit (unless fully cash collateralized in accordance with the terms of the relevant Secured Debt Documents, fully supported by a letter of credit satisfactory to the issuer of the letter of credit supported thereby or otherwise supported in a manner satisfactory to the respective issuers thereof) whether or not then available or drawn but excluding obligations under Hedge Agreements); (2) the aggregate Hedge Outstanding Amount under Hedge Agreements; and (3) other than in connection with the exercise of remedies, the aggregate unfunded commitments to extend credit which, when funded, would constitute First Lien Debt. For purposes of this definition, (a) First 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 and neither the Company nor any Affiliate of the Company will be entitled to vote to direct the relevant First Lien Representative, and (b) votes will be determined in accordance with Section 8.2 of the Collateral Agency and Intercreditor Agreement. Notwithstanding the foregoing and except as provided in the immediately succeeding sentence, at all times when (x) the sum of (1) the outstanding Credit Facility Obligations and (2) the aggregate unutilized commitments under the Credit Agreement, exceeds (y) $500,000,000, the only First Lien Obligations included in determining the Required First Lien Debtholders in accordance with the preceding sentence shall be the Credit Facility Obligations, Specified Swap Obligations, Specified Cash Management Obligations, First Lien Hedging Obligations and First Lien Eligible Commodity Hedge Financing Obligations outstanding from time to time and (without duplication) any Guaranty Reimbursement Obligations with respect thereto. The immediately preceding sentence shall not be given effect with respect to amendments or other modifications of the Collateral Agency and Intercreditor Agreement pursuant to Section 8.1 of the Collateral Agency and Intercreditor Agreement, but shall apply with respect to amendments or other modifications of other Security Documents pursuant to said section so long as such amendment or modification is not by its express terms disproportionately adverse in any material respect to the holders of any Series of First Lien Debt (with releases of Collateral being deemed to be not disproportionately adverse).

"*Required Second Lien Debtholders*" means, at any time, the holders of more than 50% of the sum of (1) the aggregate outstanding principal amount of Second Lien Debt (including outstanding letters of credit (unless fully cash collateralized in accordance with the terms of the relevant Secured Debt Documents, fully supported by a letter of credit satisfactory to the issuer of the letter of credit supported thereby or otherwise supported in a manner satisfactory to the respective issuers thereof) whether or not then available or drawn), and (2) other than in connection with the exercise of remedies, the aggregate unfunded commitments to extend credit which, when funded, would constitute Second Lien Debt. For purposes of this definition, (i) Second 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 and neither the Company nor any Affiliate of the Company will be entitled to vote to direct the relevant Second Lien Representative, and (ii) votes will be determined in accordance with Section 8.2 of the Collateral Agency and Intercreditor Agreement.

"*Responsible Officer*" means the chief executive officer, president, any executive vice president or financial officer of the Company, but in any event, with respect to financial matters, a financial officer of the Company.

"*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 Period*" means the 40-day distribution compliance period as defined in Regulation S.

"*Restricted Subsidiary*" of a Person means any Subsidiary of the referent Person that is not 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 thereto.

"*Second Lien*" means a Lien granted by a Security Document to the Collateral Agent for the benefit of the Second Lien Secured Parties, at any time, upon any property of the Company or any other Grantor to secure Second Lien Obligations.

"*Second Lien Debt*" means to the extent issued or outstanding, any Indebtedness constituting Junior Lien Indebtedness; *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 Restricted Subsidiary (as defined in the Existing Credit Agreement), such Indebtedness is designated by the Company, in an Officer's Certificate delivered to the Collateral Agent, as "Second Lien Debt" for the purposes of the Secured Debt Documents; *provided* that no Obligation or Indebtedness may be designated as both Second Lien Debt and First Lien Debt;

(2) such Indebtedness is evidenced or governed by an indenture, credit agreement, loan agreement, note agreement, promissory note or other agreement or instrument that includes a Lien Sharing and Priority Confirmation;

(3) is designated as Second Lien Debt in accordance with the requirements of the Collateral Agency and Intercreditor Agreement; and

(4) at the time of the incurrence thereof, the respective Second Lien Debt may be incurred (and secured as contemplated herein) without violating the terms of any Credit Agreement then outstanding (or if no such Credit Agreement is then in effect, each other applicable Secured Debt Document).

"*Second Lien Documents*" means, collectively, the indenture, credit agreement or other agreement or instrument evidencing or governing or securing each Series of Second Lien Debt and the Second Lien Security Documents.

"*Second Lien Obligations*" means any principal (including reimbursement obligations with respect to letters of credit whether or not drawn), interest (including 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 Second Lien Documents, even if such interest is not enforceable, allowable or allowed as a claim in such proceeding), premium (if any), fees, indemnifications, reimbursements, expenses, damages and other liabilities payable under the documentation governing any Second Lien Debt.

"*Second Lien Representative*" means, in the case of any Series of Second Lien Debt, the trustee, agent or representative of the holders of such Series of Second Lien Debt who maintains the transfer register for such Series of Second Lien Debt and is appointed as a Second Lien Representative (for purposes related to the administration of the Security Documents) pursuant to the indenture, credit agreement, loan agreement, note agreement, promissory note or other agreement or instrument evidencing or governing such Series of Second Lien Debt, together with its successors in such capacity; *provided* that in each case such Person shall have executed a joinder to the Collateral Agency and Intercreditor Agreement.

"*Second Lien Security Documents*" means the Security Documents (other than any Security Documents that do not secure the Second Lien Obligations).

"*Secured Debt*" means First Lien Debt and Second Lien Debt.

"*Secured Debt Default*" means, with respect to any Series of Secured Debt, any event or condition which, under the terms of any credit agreement, indenture, loan agreement, note agreement, promissory note, Hedge Agreement or other agreement or instrument evidencing or governing such Series of Secured Debt, causes, or permits holders of Secured Debt outstanding thereunder to cause, the Secured Debt outstanding thereunder to become immediately due and payable. For the avoidance of doubt, an "Event of Default" (or any other defined term having a similar purpose) (as defined in the Credit Agreement) shall constitute a Secured Debt Default with respect to the Series of Secured Debt evidenced by the Credit Agreement.

"*Secured Debt Documents*" means the First Lien Documents and the Second Lien Documents.

"*Secured Debt Representative*" means each First Lien Representative and each Second Lien Representative.

"*Secured Obligations*" means First Lien Obligations and Second Lien Obligations.

"*Secured Parties*" means the holders of First Lien Debt (including their Secured Debt Representatives) and the holders of Second Lien Debt (including their Secured Debt Representatives).

"*Securities Act*" means the Securities Act of 1933, as amended, or any successor statute or statutes thereto.

"*Security Documents*" means the Collateral Agency and Intercreditor Agreement, the Guarantee and Collateral Agreement, each Lien Sharing and Priority Confirmation, and all security agreements, pledge agreements, collateral assignments, mortgages, collateral agency agreements, control agreements, deeds of trust or other grants or transfers for security executed and delivered by the Company or any other Guarantor creating (or purporting to create) a Lien upon Collateral in favor of the Collateral Agent, for the benefit of the 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 8.1 of the Collateral Agency and Intercreditor Agreement.

"*Series of First Lien Debt*" means, severally, (1) the Indebtedness under the Existing Credit Agreement, (2) all Specified Cash Management and Swap Obligations (with each separate such item constituting a separate series of First Lien Debt, except that agreements between one or more of the same loan parties, on the one hand, and one or more of the same counterparties, on the other hand, shall constitute a single series of First Lien Debt, so long as such agreements represent confirmations or transactions under a single common agreement among such parties) and (3) each separate issue of Indebtedness which constitutes First Lien Debt in accordance with clauses (2) or (3) of the definition thereof contained herein (with agreements between one or more of the same loan parties, on the one hand, and one or more of the same counterparties, on the other hand, constituting a single issue and a single series of First Lien Debt, so long as such agreements represent confirmations or transactions under a single common agreement among such parties).

"*Series of Second Lien Debt*" means, severally, each issue or series of Second Lien Debt.

"*Series of Secured Debt*" means, severally, each Series of First Lien Debt and each Series of Second Lien Debt.

"*Significant Subsidiary*" means any Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act as such Regulation is in effect on the date of this Indenture; *provided* that clause (3) of such definition will be disregarded.

"*Specified Cash Management and Swap Obligations*" means a collective reference to all Specified Cash Management Obligations and all Specified Swap Obligations.

"*Specified Cash Management Obligations*" means all Cash Management Obligations that are owed to one or more Qualified Cash Management Creditors.

"*Specified Swap Obligations*" means all Obligations under any Swap Agreement in respect of interest rates or currency exchange rates existing on the date of this Indenture (to the extent it constitutes a "Specified Swap Agreement" as defined in the Collateral Agency and Intercreditor Agreement on such date) or thereafter entered into by the Company or any Guarantor and any Person that is a lender under a Credit Agreement or an Affiliate of a lender under a Credit Agreement at the time such Swap Agreement is entered into.

"*Subsidiary*" means, with respect to any specified Person:

(1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, 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).

"*Swap Agreements*" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; *provided* that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Company or any of its Subsidiaries shall be a "Swap Agreement."

"*Term Loan Agreements*" means the collective reference to the 2024 First Lien Term Loan Agreement, the 2026 First Lien Term Loan Agreement and the New 2026 First Lien Term Loan Agreement.

"*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 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 March 1, 2026; *provided*, *however*, that if the period from the redemption date to March 1, 2026, is less than one year, the weekly average yield on actively traded United States Treasury securities adjusted to a constant maturity of one year will be used.

"*Triggering Event*" means (1) until the Discharge of First Lien Obligations, a Secured Debt Default under (a) any Credit Agreement or (b) at such time as the Credit Agreement is no longer effective, any then effective First Lien Document; and (2) after the Discharge of First Lien Obligations until the Discharge of Second Lien Obligations, a Secured Debt Default under any Second Lien Document.

"*Trustee*" means Wilmington Trust, National Association until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

"*Uniform Commercial Code*" means the Uniform Commercial Code as in effect from time to time in any applicable jurisdiction.

"*Unrestricted Definitive Note*" means a Definitive Note that does not bear and is not required to bear the Private Placement Legend.

"*Unrestricted Global Note*" means a Global Note that does not bear and is not required to bear the Private Placement Legend.

"*Unrestricted Subsidiary*" means any Subsidiary of the Company that is designated by the Board of Directors of the Company as an Unrestricted Subsidiary pursuant to a resolution of the Board of Directors, but only to the extent that such Subsidiary:

(1) has no Indebtedness other than Non-Recourse Debt;

(2) is a Person with respect to which neither the Company nor any of the Guarantors has any direct or indirect obligation, other than pursuant to a performance guarantee, (a) to subscribe for additional Equity Interests or (b) to maintain or preserve such Person's financial condition or to cause such Person to achieve any specified levels of operating results, in each case other than in the ordinary course of business on terms not materially less favorable to the Company or the relevant Guarantor than those that would have been obtained in a comparable transaction with an unrelated Person; and

(3) has not guaranteed or otherwise directly or indirectly provided credit support for any Indebtedness of the Company or any of the Guarantors, in each case other than in the ordinary course of business on terms not materially less favorable to the Company or the relevant Guarantor than those that would have been obtained in a comparable transaction with an unrelated Person.

"*U.S. Person*" means a U.S. Person as defined in Rule 902(k) promulgated under the Securities Act.

"*Voting Stock*" of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

Section 1.02 *Other Definitions*.

Term	Defined in Section
"*Authentication Order"*	2.02
"Change of Control Offer"	4.11
"Change of Control Payment"	4.11
"Change of Control Payment Date"	4.11
"Covenant Defeasance"	8.03
"DTC"	2.03
"Event of Default"	6.01
"Legal Defeasance"	8.02
"Paying Agent"	2.03
"Payment Default"	6.01
"Registrar"	2.03
"*Title Datedown Product"*	4.07
"*Trustee"*	8.05

Section 1.03 *Rules of Construction*.

(a) Unless the context otherwise requires:

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

(2) unless otherwise specified herein, an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP as in effect from time to time;

(3) "or" is not exclusive;

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

(5) "will" shall be interpreted to express a command;

(6) provisions apply to successive events and transactions; and

(7) references to sections of or rules under the Securities Act will be deemed to include substitute, replacement of successor sections or rules adopted by the Commission from time to time.

(b) Any reference herein to a merger, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, limited partnership or trust, or an allocation of assets to a series of a limited liability company, limited partnership or trust (or the unwinding of such a division or allocation), as if it were a merger, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company, limited partnership or trust shall constitute a separate Person hereunder (and each division of any limited liability company, limited partnership or trust that is a Subsidiary, Restricted Subsidiary, Unrestricted Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

ARTICLE 2
THE NOTES

Section 2.01 *Form and Dating*.

(a) *General*. The Notes and the Trustee's certificate of authentication will 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 will be dated the date of its authentication. The Notes 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 will constitute, and are hereby expressly made, a part of this Indenture and the Company, the 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 will 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 will 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 will represent such of the outstanding Notes as will be specified therein and each shall provide that it represents 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 will be made by the Trustee or the Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.06 hereof.

(c) *Temporary Global Notes*. Notes offered and sold in reliance on Regulation S will be issued initially in the form of the Regulation S Temporary Global Note, which will be deposited on behalf of the purchasers of the Notes represented thereby with the Trustee, as custodian for the Depositary, and registered in the name of the Depositary or the nominee of the Depositary for the accounts of designated agents holding on behalf of Euroclear or Clearstream, duly executed by the Company and authenticated by the Trustee as hereinafter provided. After the expiration of the Restricted Period and upon the receipt by the Trustee of:

(i) certificates from Euroclear and Clearstream, substantially in the form of Exhibit F hereto, certifying that they have received certification of non-U.S. Beneficial Ownership of 100% of the aggregate principal amount of the Regulation S Temporary Global Note (except to the extent of any Beneficial Owners thereof who acquired an interest therein during the Restricted Period pursuant to another exemption from registration under the Securities Act and who will take delivery of a Beneficial Ownership interest in a 144A Global Note bearing a Private Placement Legend, all as contemplated by Section 2.06(b) hereof); and

(ii) an Officer's Certificate from the Company,

the Company may deliver to the Trustee an Authentication Order and a Regulation S Permanent Global Note for authentication and instruct, which instructions shall be in writing and comply with Rule 9.03(b)(3)(ii)(B) of Regulation S, the Trustee to, and upon such instructions, the Trustee shall, exchange beneficial interests in the Regulation S Temporary Global Note for beneficial interests in the Regulation S Permanent Global Note pursuant to the Applicable Procedures. Simultaneously with such exchange of the Regulation S Permanent Global Note, the Trustee will cancel the Regulation S Temporary Global Note and authenticate the Regulation S Permanent Global Note. The aggregate principal amount of the Regulation S Temporary Global Note and the Regulation S Permanent Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depositary or its nominee, as the case may be, in connection with transfers of interests 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 will be applicable to transfers of beneficial interests in the Regulation S Temporary Global Note and the Regulation S Permanent Global Note that are held by Participants through Euroclear or Clearstream.

Section 2.02 *Execution and Authentication*.

At least one Officer must sign the Notes for the Company by manual or facsimile signature.

If an Officer whose signature is on a Note no longer holds that office at the time a Note is authenticated, the Note will nevertheless be valid.

A Note will not be valid until authenticated by the manual signature of the Trustee. The signature will be conclusive evidence that the Note has been authenticated under this Indenture.

The Trustee will, upon receipt of a written order of the Company signed by two Officers (an "*Authentication Order*"), authenticate Notes for original issue that may be validly issued under this Indenture, including any Additional Notes. The aggregate principal amount of Notes outstanding at any time may not exceed the aggregate principal amount of Notes authorized for issuance by the Company pursuant to one or more Authentication Orders, except as provided in Section 2.07 hereof.

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 2.03 *Registrar and Paying Agent*.

The Company will maintain an office or agency where Notes may be presented for registration of transfer or for exchange ("*Registrar*") and an office or agency where Notes may be presented for payment ("*Paying Agent*"). The Registrar will 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 notice to any Holder. The Company will 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.

The Company initially appoints The Depository Trust Company ("*DTC*") to act as Depositary with respect to the Global Notes.

The Company initially appoints the Trustee to act as the Registrar and Paying Agent and to act as Custodian with respect to the Global Notes.

Section 2.04 *Paying Agent to Hold Money in Trust*.

The Company will require each Paying Agent other than the Trustee to agree in writing that the Paying Agent will hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal, premium, if any, or interest on the Notes, and will 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 a Subsidiary) will have no further liability for the money. If the Company or a Subsidiary acts as Paying Agent, it will 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 will serve as Paying Agent for the Notes.

Section 2.05 *Holder Lists*.

The Trustee will 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 will furnish to the Trustee at least seven 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.

Section 2.06 *Transfer and Exchange*.

(a) *Transfer and Exchange of Global Notes*. A Global Note may not be transferred except as a whole 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. Global Notes may only be exchanged for Definitive Notes if:

(1) the Company delivers to the Trustee notice from the Depositary that it 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 120 days after the date of such notice from the Depositary;

(2) the Company in its sole discretion determines that the Global Notes (in whole but not in part) should be exchanged for Definitive Notes and delivers a written notice to such effect to the Trustee; *provided* that in no event shall the Regulation S Temporary Global Note be exchanged by the Company for Definitive Notes prior to (A) the expiration of the Restricted Period and (B) the receipt by the Trustee of the certificates required pursuant to Section 2.01(c) hereof; or

(3) there has occurred and is continuing a Default or Event of Default with respect to the Notes.

Upon the occurrence of any of the preceding events in clause (1), (2) or (3) 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 2.07 and 2.10 hereof. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 2.06 or Section 2.07 or 2.10 hereof, 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 2.06(a), however, beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.06(b) or (c) hereof.

(b) *Transfer and Exchange of Beneficial Interests in the Global Notes*. The transfer and exchange of beneficial interests in the Global Notes will be effected through the Depositary, in accordance with the provisions of this Indenture and the Applicable Procedures. Beneficial interests in the Restricted Global Notes will 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 will require compliance with either subparagraph (1) or (2) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(1) *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; *provided*, *however*, that prior to the expiration of the Restricted Period, transfers of beneficial interests in the Regulation S Temporary Global Note may not be made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). 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. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.06(b)(1).

(2) *All Other Transfers and Exchanges of Beneficial Interests in Global Notes*. In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.06(b)(1) above, the transferor of such beneficial interest must deliver to the Registrar either:

(A) both:

(i) 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

(ii) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase; or

(B) both:

(i) 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

(ii) 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 clause (i) above;

provided that in no event shall Definitive Notes be issued upon the transfer or exchange of beneficial interests in the Regulation S Temporary Global Note prior to (A) the expiration of the Restricted Period and (B) the receipt by the Trustee of the certificates required by Section 2.01(c) hereof.

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 of the relevant Global Note(s) pursuant to Section 2.06(g) 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 2.06(b)(2) above and the Registrar receives the following:

(A) if the transferee will 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 hereto, including the certifications in item (1) thereof;

(B) if the transferee will take delivery in the form of a beneficial interest in the Regulation S Temporary Global Note or the Regulation S Permanent Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; and

(C) if the transferee will take delivery in the form of a beneficial interest in the IAI Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3)(c) thereof, if applicable.

(4) *Transfer and Exchange of Beneficial Interests in a Restricted Global Note for Beneficial Interests in an 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 2.06(b)(2) above and:

(A) the Registrar receives the following:

(i) 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

(ii) 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 hereto, including the applicable certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), 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 subparagraph (A) 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 2.02
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 subparagraph (A) above.

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*. 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, in each case after the occurrence of an event specified in Section 2.06(a), 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, a certificate to the effect set forth in Exhibit B 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 in accordance with Rule 903 or Rule 904, a certificate to the effect set forth in Exhibit B 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, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such beneficial interest is being transferred to an Institutional Accredited Investor 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 hereto, including the certifications, certificates and Opinion of Counsel required by item (3)(c) thereof, if applicable; or

(F) 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 hereto, including the certifications in item (3)(b) thereof,

the Trustee shall cause the aggregate principal amount of the applicable Restricted Global Note to be reduced accordingly pursuant to Section 2.06(g) hereof, and the Company shall execute and the Trustee, upon receipt of an Authentication Order, shall authenticate and deliver to the Person designated in the instructions a Restricted Definitive Note in the appropriate principal amount. Any Restricted Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c) 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 Restricted Definitive Notes to the Persons in whose names such Notes are so registered. Any Restricted Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c)(1) shall bear the Private Placement Legend and the Regulation S Temporary Global Note Legend, as applicable, and shall be subject to all restrictions on transfer contained therein.

(2) *Beneficial Interests in Restricted Global Notes to Unrestricted Definitive Notes.* 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, in each case after the occurrence of an event specified in Section 2.06(a), only if:

(A) the Registrar receives the following:

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

(ii) 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 an Unrestricted Definitive Note, a certificate from such holder in the form of Exhibit B hereto, including the applicable certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), 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.

(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 an Unrestricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note, in each case after the occurrence of an event specified in Section 2.06(a), then, upon satisfaction of the conditions set forth in Section 2.06(b)(2) hereof, the Trustee will cause the aggregate principal amount of the applicable Unrestricted Global Note to be reduced accordingly pursuant to Section 2.06(g) hereof, and the Company will execute and the Trustee, upon receipt of an Authentication Order, will authenticate and deliver to the Person designated in the instructions an Unrestricted Definitive Note in the appropriate principal amount. Any Unrestricted Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(3) will be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest requests through instructions to the Registrar from or through the Depositary and the Participant or Indirect Participant. The Trustee will deliver such Unrestricted Definitive Notes to the Persons in whose names such Notes are so registered. Any Unrestricted Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(3) will not bear the Private Placement Legend.

(4) *Beneficial Interests in Regulation S Temporary Global Note to Definitive Notes*. Notwithstanding Sections 2.06(c)(1)(A) and (C) hereof, a beneficial interest in the Regulation S Temporary Global Note may not be exchanged for a Definitive Note or transferred to a Person who takes delivery thereof in the form of a Definitive Note prior to (A) the expiration of the Restricted Period and (B) the receipt by the Trustee of the certificates required pursuant to Section 2.01(c) hereof, except in the case of a transfer pursuant to an exemption from the registration requirements of the Securities Act other than Rule 903 or Rule 904.

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

(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, a certificate to the effect set forth in Exhibit B 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 in accordance with Rule 903 or Rule 904, a certificate to the effect set forth in Exhibit B 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, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such Restricted Definitive Note is being transferred to an Institutional Accredited Investor 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 hereto, including the certifications, certificates and Opinion of Counsel required by item (3)(c) thereof, if applicable; or

(F) 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 hereto, including the certifications in item (3)(b) thereof,

the Trustee will 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, in the case of clause (C) above, the Regulation S Global Note, and in all other cases, the IAI 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:

(A) the Registrar receives the following:

(i) 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

(ii) 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 hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), 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 the conditions of any of the subparagraphs in this Section 2.06(d)(2), the Trustee will cancel the Restricted 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 Unrestricted 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 will cancel the applicable Unrestricted Definitive Note and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Notes.

If any such exchange or transfer from a Definitive Note to a beneficial interest is effected pursuant to subparagraphs (2)(A) or (3) above at a time when an Unrestricted Global Note has not yet been issued, the Company will issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee will 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 2.06(e), the Registrar will register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder must 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 must provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.06(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 will be made pursuant to Rule 144A, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof;

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

(C) if the transfer will 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 hereto, including the certifications, certificates and Opinion of Counsel required by item (3)(c) 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 if:

(A) the Registrar receives the following:

(i) 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

(ii) 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 hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), 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.

(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) *Legends*. The following legends will 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*.

(A) Except as permitted by subparagraph (B) 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:

"THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH BELOW. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT OR (C) IT IS AN ACCREDITED INVESTOR (AS DEFINED IN RULE 501(a)(1), (2), (3), OR (7) UNDER THE SECURITIES ACT (AN "ACCREDITED INVESTOR"), (2) AGREES THAT IT WILL NOT WITHIN ONE YEAR AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY RESELL OR OTHERWISE TRANSFER THIS SECURITY EXCEPT (A) TO THE ISSUER OR ANY SUBSIDIARY THEREOF, (B) INSIDE THE UNITED STATES TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) INSIDE THE UNITED STATES TO AN ACCREDITED INVESTOR THAT, PRIOR TO SUCH TRANSFER, FURNISHES (OR HAS FURNISHED ON ITS BEHALF BY A U.S. BROKER-DEALER) TO THE TRUSTEE A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS RELATING TO THE RESTRICTIONS ON TRANSFER OF THIS SECURITY (THE FORM OF WHICH LETTER CAN BE OBTAINED FROM THE TRUSTEE FOR THIS SECURITY), (D) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 904 UNDER THE SECURITIES ACT (IF AVAILABLE), (E) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), (F) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (AND BASED UPON AN OPINION OF COUNSEL IF THE ISSUER SO REQUESTS), OR (G) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. IN CONNECTION WITH ANY TRANSFER OF THIS SECURITY WITHIN ONE YEAR AFTER THE ORIGINAL ISSUANCE OF THIS SECURITY, IF THE PROPOSED TRANSFEREE IS AN ACCREDITED INVESTOR, THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE TRUSTEE AND THE ISSUER SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS EITHER OF THEM MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. AS USED HEREIN, THE TERMS "OFFSHORE TRANSACTION," "UNITED STATES" AND "U.S. PERSON" HAVE THE MEANING GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT."

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

"THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (1) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 2.06 OF THE INDENTURE, (2) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06(a) OF THE INDENTURE, (3) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.11 OF THE INDENTURE AND (4) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE COMPANY.

UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) ("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 SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN."

(3) Regulation S Temporary Global Note Legend. In addition to the Private Placement Legend, the Regulation S Temporary Global Note will bear a legend in substantially the following form:

"THE RIGHTS ATTACHING TO THIS REGULATION S TEMPORARY GLOBAL NOTE, AND THE CONDITIONS AND PROCEDURES GOVERNING ITS EXCHANGE FOR DEFINITIVE NOTES, ARE AS SPECIFIED IN THE INDENTURE (AS DEFINED HEREIN). NEITHER THE HOLDER NOR THE BENEFICIAL OWNERS OF THIS REGULATION S TEMPORARY GLOBAL NOTE SHALL BE ENTITLED TO RECEIVE PAYMENT OF INTEREST HEREON."

(g) *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 will be returned to or retained and canceled by the Trustee in accordance with Section 2.11 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who will 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 will be reduced accordingly and an endorsement will 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 will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note will be increased accordingly and an endorsement will be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

(h) *General Provisions Relating to Transfers and Exchanges*.

(1) To permit registrations of transfers and exchanges, the Company will execute and the Trustee will authenticate Global Notes and Definitive Notes upon receipt of an Authentication Order in accordance with Section 2.02 hereof or at the Registrar's request.

(2) No service charge will 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 2.10, 3.06, 4.11 and 9.04 hereof).

(3) The Registrar will not be required to register the transfer of or exchange of any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

(4) All Global Notes and Definitive Notes issued upon any registration of transfer or exchange of Global Notes or Definitive Notes will be the valid 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) Neither the Registrar nor the Company will be required:

(A) to issue, to register the transfer of or to 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 3.02 hereof and ending at the close of business on the day of selection;

(B) to register the transfer of or to exchange any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part; or

(C) to register the transfer of or to 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, upon receipt of an Authentication Order, will authenticate Global Notes and Definitive Notes in accordance with the provisions of Section 2.02 hereof.

(8) All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 2.06 to effect a registration of transfer or exchange may be submitted by facsimile.

(9) Each Holder of a Note agrees to indemnify the Company against any liability that may result from the transfer, exchange or assignment of such Holder's Note in violation of any provision of this Indenture and/or applicable United States federal or state securities laws.

(10) Neither the Trustee nor any agent of the Trustee shall have any responsibility for any actions taken or not taken by the Depositary.

(11) The Trustee shall have no responsibility or obligation to any Participant or Indirect Participant or any other Person with respect to the accuracy of the books or records, or the acts or omissions, of the Depositary or its nominee or of any participant or member thereof, with respect to any ownership interest in the Notes or with respect to the delivery to any Participant or Indirect Participant or other Person (other than the Depositary) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such Notes. All notices and communications to be given to the Holders and all payments to be made to Holders under the Notes shall be given or made only to or upon the order of the registered Holders (which shall be the Depositary or its nominee in the case of a Global Note). The rights of Beneficial Owners in any Global Note shall be exercised only through the Depositary subject to the customary procedures of the Depositary. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depositary with respect to its Participants or Indirect Participants.

(12) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Participants or Indirect Participants in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 2.07 *Replacement Notes*.

If any mutilated Note is surrendered to the Trustee or the Company and the Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Note, the Company will issue and the Trustee, upon receipt of an Authentication Order, will 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 may charge for its expenses in replacing a Note.

Every replacement Note is an additional obligation of the Company and will be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

Section 2.08 *Outstanding Notes*.

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 hereof, and those described in this Section 2.08 as not outstanding. Except as set forth in Section 2.09 hereof, a Note does not cease to be outstanding because the Company or an Affiliate of the Company holds the Note; however, Notes held by the Company or a Subsidiary of the Company shall not be deemed to be outstanding for purposes of Section 3.07(a) hereof.

If a Note is replaced pursuant to Section 2.07 hereof, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a protected purchaser.

If the principal amount of any Note is considered paid under Section 4.01 hereof, it ceases to be outstanding and interest on it ceases to accrue.

If the Paying Agent (other than the Company, a Subsidiary or an Affiliate of any thereof) holds, on a redemption date or maturity date, money sufficient to pay Notes payable on that date, then on and after that date such Notes will be deemed to be no longer outstanding and will cease to accrue interest.

Section 2.09 *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 any Guarantor, or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any Guarantor, will be considered as though not outstanding, except that for the purposes of determining whether the Trustee will be protected in relying on any such direction, waiver or consent, only Notes that the Trustee knows are so owned will be so disregarded.

Section 2.10 *Temporary Notes*.

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

Holders of temporary Notes will be entitled to all of the benefits of this Indenture.

Section 2.11 *Cancellation*.

The Company at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent will forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else will cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and will destroy canceled Notes (subject to the record retention requirement of the Exchange Act). Upon request of the Company, certification of the destruction of all canceled Notes will be delivered to the Company. The Company may not issue new Notes to replace Notes that it has paid or that have been delivered to the Trustee for cancellation.

Section 2.12 *Defaulted Interest*.

If the Company defaults in a payment of interest on the Notes, it will 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 a subsequent special record date, in each case at the rate provided in the Notes and in Section 4.01 hereof. The Company will 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 will fix or cause to be fixed each such special record date and payment date; *provided* that no such special record date may 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) will 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.

ARTICLE 3
REDEMPTION AND PREPAYMENT

Section 3.01 *Notices to Trustee*.

If the Company elects to redeem Notes pursuant to the optional redemption provisions of Section 3.07 hereof, it must furnish to the Trustee, at least 30 days but not more than 60 days before a redemption date, an Officer's Certificate setting forth:

(1) the clause of this Indenture pursuant to which the redemption shall occur;

(2) the redemption date;

(3) the principal amount of Notes to be redeemed; and

(4) the redemption price.

Section 3.02 *Selection of Notes to Be Redeemed or Purchased*.

If less than all of the Notes are to be redeemed or purchased in an offer to purchase at any time, the Trustee will select Notes for redemption or purchase on a *pro rata* basis to the extent practicable or by lot or such other similar method in accordance with the procedures of DTC unless otherwise required by law or applicable stock exchange requirements.

In the event of partial redemption or purchase by lot, the particular Notes to be redeemed or purchased will be selected, unless otherwise provided herein, not less than 30 nor more than 60 days prior to the redemption or purchase date by the Trustee from the outstanding Notes not previously called for redemption or purchase.

The Trustee will promptly notify the Company in writing of the Notes selected for redemption or purchase and, in the case of any Note selected for partial redemption or purchase, the principal amount thereof to be redeemed or purchased. Notes and portions of Notes selected will 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 or purchased, the entire outstanding amount of Notes held by such Holder, even if not a multiple of $1,000, shall be redeemed or purchased. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption or purchase also apply to portions of Notes called for redemption or purchase.

Section 3.03 *Notice of Redemption*.

At least 30 days but not more than 60 days before a redemption date, the Company will mail or cause to be mailed by first class mail or delivered electronically a notice of redemption to each Holder whose Notes are to be redeemed at its registered address, except that (i) redemption notices may be mailed or delivered electronically at least 10 days prior to the redemption date if the notice is issued in connection with a redemption pursuant to Section 3.07(c) hereof and (ii) redemption notices may be mailed or delivered electronically more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture pursuant to Articles 8 or 12 hereof.

The notice will identify the Notes to be redeemed and will state:

(1) the redemption date;

(2) the redemption price;

(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 will be issued upon cancellation of the 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;

(6) that, unless the Company defaults in making such redemption payment, interest 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 number, if any, listed in such notice or printed on the Notes.

At the Company's request, the Trustee will give the notice of redemption in the Company's name and at its expense; *provided*, *however*, that the Company has delivered to the Trustee, at least 45 days prior to the redemption date, an Officer's 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.

Section 3.04 *Effect of Notice of Redemption*.

Subject to the following paragraph, once notice of redemption is sent in accordance with Section 3.03 hereof, Notes called for redemption become irrevocably due and payable on the redemption date at the redemption price.

Any notice of redemption may, in the Company's discretion, be subject to the satisfaction of one or more conditions precedent. If such redemption is subject to the satisfaction of one of more conditions precedent, such notice 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 by the Company in its sole discretion), such redemption may not occur and such notice may be rescinded in the event that any or all of such conditions shall not have been satisfied (or waived by the Company in its sole discretion) by the redemption date, or by the redemption date so delayed.

Section 3.05 *Deposit of Redemption or Purchase Price*.

One Business Day prior to the redemption or purchase date, the Company will deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption or purchase price of and accrued interest on all Notes to be redeemed or purchased on that date. The Trustee or the Paying Agent will 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 or purchase price of, and accrued interest on, all Notes to be redeemed or purchased.

If the Company complies with the provisions of the preceding paragraph, on and after the redemption or purchase date, interest will cease to accrue on the Notes or the portions of Notes called for redemption or purchase. If a Note is redeemed or purchased 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 Person in whose name such Note was registered at the close of business on such record date. If any Note called for redemption or purchase is not so paid upon surrender for redemption or purchase because of the failure of the Company to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption or purchase 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 4.01 hereof.

Section 3.06 *Notes Redeemed or Purchased in Part*.

Upon surrender of a Note that is redeemed or purchased in part, the Company will issue and, upon receipt of an Authentication Order, the Trustee will authenticate for the Holder at the expense of the Company a new Note equal in principal amount to the unredeemed or unpurchased portion of the Note surrendered.

Section 3.07 *Optional Redemption*.

(a) At any time prior to March 1, 2024, the Company may on any one or more occasions redeem up to 40% of the aggregate principal amount of Notes issued under this Indenture, upon not less than 30 nor more than 60 days' notice, at a redemption price equal to 103.750% of the principal amount of the Notes redeemed, plus accrued and unpaid interest, if any, to but excluding 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 the proceeds of one or more Equity Offerings; *provided* that:

(1) at least 50% of the aggregate principal amount of Notes originally issued under this Indenture (excluding Notes held by the Company and its Subsidiaries) remains outstanding immediately after the occurrence of such redemption; and

(2) the redemption occurs within 90 days of the date of the closing of such Equity Offering.

(b) At any time prior to March 1, 2026, the Company may on any one or more occasions redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' notice, 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 but excluding 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) The Company may redeem up to 10% of the aggregate principal amount of Notes issued under this Indenture during each 12-month period following March 1, 2021, that occurs prior to March 1, 2026, at a redemption price of 103% of the principal amount of Notes redeemed, plus accrued and unpaid interest, if any, to but excluding the redemption date (subject to the rights of Holders on the relevant record date to receive interest due on the relevant interest payment date).

(d) At any time, in connection with any tender offer for the Notes, including a Change of Control Offer, if Holders of not less than 90% in aggregate principal amount of the outstanding Notes validly tender and do not withdraw such Notes in such tender offer and the Company, or any third party making such tender offer in lieu of the Company, purchases all of the Notes validly tendered and not withdrawn by such Holders, the Company may, upon not less than 10 nor more than 60 days' prior notice, given not more than 30 days following such purchase date, redeem all Notes that remain outstanding following such purchase at a redemption price equal to the price paid to each other Holder in such tender offer plus, to the extent not included in the tender offer payment, accrued and unpaid interest, if any, thereon, to, but not excluding, the date of such redemption (subject to the rights of Holders on the relevant record date to receive interest on the relevant interest payment date).

(e) Except pursuant to the preceding paragraphs (a), (b), (c) and (d) of this Section 3.07, the Notes will not be redeemable at the Company's option prior to March 1, 2026. The Company is not prohibited, however, from acquiring the Notes in market transactions by means other than a redemption, whether pursuant to a tender offer or otherwise.

(f) On or after March 1, 2026, the Company may on any one or more occasions redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' notice, 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 but excluding the applicable date of redemption, if redeemed during the twelve-month period beginning on March 1 of the 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
2026	101.875%
2027	101.250%
2028	100.625%
2029 and thereafter	100.000%

Unless the Company defaults in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable redemption date.

(g) Any redemption pursuant to this Section 3.07 shall be made pursuant to the provisions of Sections 3.01 through 3.06 hereof.

Section 3.08 *Mandatory Redemption*.

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

ARTICLE 4
COVENANTS

Section 4.01 *Payment of Notes*.

The Company will 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 will be considered paid on the date due if the Paying Agent, if other than the Company or a Subsidiary thereof, holds as of 10:00 a.m. Eastern 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 then due.

Section 4.02 *Maintenance of Office or Agency*.

The Company will maintain an office or agency (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or co-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 will 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 fails to maintain any such required office or agency or fails 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.

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; *provided*, *however*, that no such designation or rescission will in any manner relieve the Company of its obligation to maintain an office or agency for such purposes. The Company will 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.

The Company hereby designates the Corporate Trust Office of the Trustee as one such office or agency of the Company in accordance with Section 2.03 hereof; *provided* that the Corporate Trust Office of the Trustee shall not be an office or agency of the Company for the purpose of service of legal process on the Company.

Section 4.03 *Reports*.

Whether or not required by the Commission's rules and regulations, so long as any Notes are outstanding, the Company will furnish to the Trustee, within 30 days after a large accelerated filer would be required to file such information with the Commission under the Commission's then existing rules and regulations:

(1) annual consolidated financial statements of the Company materially consistent with the form that would be required to be contained in a filing with the Commission on Form 10-K, in accordance with the requirements of such Form 10-K as of the date of this Indenture, if the Company were required to file such form, together with a report thereon by the Company's independent registered public accounting firm provided under the American Institute of Certified Public Accountants' guidelines and a "Management's Discussion and Analysis of Financial Condition and Results of Operations";

(2) all consolidated quarterly financial statements of the Company materially consistent with the form that would be required to be contained in a filing with the Commission on Form 10-Q, in accordance with the requirements of such Form 10-Q as of the date of this Indenture, if the Company were required to file such form, together with a "Management's Discussion and Analysis of Financial Condition and Results of Operations; and

(3) after the occurrence of an event required to be therein reported, a notice containing substantially the same information that would be required to be contained in a filing with the Commission on Form 8-K, in accordance with the requirements of such Form 8-K as of the date of this Indenture, under Items 1.01, 1.02, 1.03, 2.01, 2.04(a), 4.01, 4.02, 5.01, 5.02(b) (with respect to executive officers) and 5.02(c)(1) of Form 8-K (and in any event excluding, for the avoidance of doubt, the financial statements, pro forma financial information and exhibits, if any, that would be required by Item 9.01 of Form 8-K) if the Company were required to file such form; *provided*, *however*, that no such notice will be required to be furnished if the Company determines in its good faith judgment that such event is not material to the business, assets, operations or financial position of the Company and its Restricted Subsidiaries, taken as a whole.

Notwithstanding the foregoing, in no event will the Company be required by this Indenture to (A) comply with Section 302, Section 404 or Section 906 of the Sarbanes-Oxley Act of 2002, or related Items 307 and 308 of Regulation S-K promulgated by the Commission, or Item 10(e) of Regulation S-K (with respect to any non-GAAP financial measures contained therein) or Regulation G, (B) comply with Rule 3-05 or Rule 3-09 of Regulation S-X promulgated by the Commission or include the separate financial information for guarantors or other entities contemplated by Rule 3-10 and/or 3-16 of Regulation S-X or (C) provide any additional information in respect of Item 402 of Regulation S-K beyond information of the type included in the Offering Memorandum. In addition, in no event will the information referred to in clauses (1) through (3) above be required to be presented in compliance with the requirements of the Public Company Accounting Oversight Board.

The Company's reporting obligations with respect to clauses (1) through (3) above will be satisfied in the event it timely files such information with the Commission on EDGAR or such information is made available to the extent not filed with the Commission.

If at any time the Company is not filing reports with the Commission under the Exchange Act, the Company will maintain a website to which Holders, prospective investors, broker-dealers and securities analysts are given access and to which all of the information required by this Section 4.03 are posted.

In addition, if at any time the Company is not filing reports with the Commission under the Exchange Act, the Company shall furnish to Holders of the Notes, prospective investors, broker-dealers and securities analysts, upon their request, any information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act so long as the Notes constitute "restricted securities" under Rule 144.

Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute actual or constructive knowledge or notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates with respect thereto).

Section 4.04 *Compliance Certificate*.

(a) The Company shall deliver to the Trustee, within 90 days after the end of each fiscal year, an Officer's 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 each and every covenant contained in this Indenture and is not in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (or, if a Default or Event of Default has occurred, 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) and that to the best of his or her knowledge no event has occurred and remains in existence by reason of which payments on account of the principal of or interest, if any, on the Notes is prohibited or if such event has occurred, a description of the event and what action the Company is taking or proposes to take with respect thereto.

(b) So long as any of the Notes are outstanding, the Company will deliver to the Trustee, forthwith upon any Officer becoming aware of any Default or Event of Default, an Officer's Certificate specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto.

Section 4.05 *Taxes*.

The Company will pay, and will cause each of the Guarantors to pay, prior to delinquency, all 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 is not adverse in any material respect to the Holders.

Section 4.06 *Stay, Extension and Usury Laws*.

The Company and each of the Guarantors covenants (to the extent that it may lawfully do so) that it will 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 and each of the Guarantors (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.07 *Incurrence of Indebtedness*.

(a) The Company will not, and will not permit any of the Guarantors to, directly or indirectly, incur Indebtedness that will constitute First Lien Debt, unless the CNTA Ratio (after giving pro forma effect to any such incurrence and the application of the net proceeds thereof) is equal to or greater than 1.66 to 1.00.

(b) For purposes of this Section 4.07, the aggregate amount of First Lien Debt outstanding as of any date of determination will be calculated as the sum of, without duplication:

(1) the aggregate outstanding principal amount of all Indebtedness (or, if such Indebtedness is issued with original issue discount, the then accreted value thereof) for borrowed money that constitutes First Lien Debt; *plus*

(2) the aggregate face amount of any letters of credit or similar instruments issued but not yet drawn that, when drawn, would constitute First Lien Debt, and the aggregate amount of reimbursement obligations in respect of drawn letters of credit or similar instruments that constitute First Lien Debt; *plus*

(3) the aggregate amount of undrawn and unutilized commitments under which any First Lien Debt could be drawn and/or utilized as of such date; *plus*

(4) the aggregate outstanding principal amount of any First Lien Debt (or, if such Indebtedness is issued with original issue discount, the then accreted value thereof) outstanding consisting of notes, bonds, debentures, credit agreements (including any Eligible Commodity Hedge Financing) or similar instruments or agreements.

(c) Section 4.07(a) hereof will not apply to:

(1) any Specified Cash Management and Swap Obligations, other Cash Management Obligations that would constitute First Lien Debt and any First Lien Hedging Obligations;

(2) (A) Indebtedness under the Credit Agreement and Term Loan Agreements outstanding on the date of this Indenture, plus (B) the 2026 Notes, plus (C) the 2028 Notes, plus (D) up to $2.0 billion in additional Indebtedness incurred to repay or redeem secured debt, secured lease obligations or preferred securities of any Project Subsidiary;

(3) the Notes issued hereby on the date of this Indenture;

(4) any accretion of original issue discount or the payment of interest on any Indebtedness in the form of Indebtedness with the same terms (it being understood that each will be taken into account in determining the aggregate amount of First Lien Debt outstanding as specified in Section 4.07(b)(1) hereof);

(5) any incurrence of Indebtedness that constitutes First Lien Debt (A) resulting from the drawing of, or reimbursement obligations under, any letters of credit or similar instruments or (B) resulting from borrowings under any undrawn and unutilized commitments to lend such Indebtedness, in each case, that were (i) in existence as of the 2017 Notes Issue Date (including without limitation under the Credit Agreement, as in effect on the 2017 Notes Issue Date) or (ii) included in any calculation of the amount of First Lien Debt outstanding pursuant to Section 4.07(b) hereof in connection with an incurrence of First Lien Debt pursuant to Section 4.07(a) hereof; and, in either case, any Permitted Replacement Commitments that replaced such letters of credit, similar obligations and commitments;

(6) any Permitted Refinancing Indebtedness incurred to renew, refund, refinance, replace, defease or discharge any Indebtedness that was permitted to be incurred pursuant to this Section 4.07; and

(7) any Eligible Commodity Hedge Financings, so long as the lenders thereunder (or their representatives on their behalf) become a party to, or consent or agree to be bound by the terms and conditions, of the Collateral Agency and Intercreditor Agreement.

(d) Notwithstanding the foregoing, the Company or any of the Guarantors may not incur (1) additional Indebtedness (other than Specified Cash Management and Swap Obligations, other Cash Management Obligations that would constitute First Lien Debt, any First Lien Hedging Obligations and any extension, renewal or refinancing of the Eligible Commodity Hedge Financings existing on the 2017 Notes Issue Date) pursuant to Section 4.07(a) hereof, (2) any Permitted Refinancing Indebtedness with respect to Indebtedness incurred under clauses (2), (3), (4) or (5) of Section 4.07(c) hereof or (3) any Permitted Refinancing Indebtedness with respect to any of the foregoing, in each case that will constitute First Lien Debt unless, within 60 days of the incurrence of such Indebtedness:

(1) The Company and the Guarantors shall enter into, and deliver to the Collateral Agent, in the sole discretion of the Collateral Agent, a mortgage modification or new mortgage with regard to each Mortgaged Property, in proper form for recording in all applicable jurisdictions, in a form reasonably satisfactory to the Collateral Agent;

(2) The Company or the applicable Guarantor will cause to be delivered a local counsel opinion with respect to each Mortgaged Property in form and substance, and issued by law firms, in each case, reasonably satisfactory to the Collateral Agent;

(3) The Company or the applicable Guarantor will cause a title company approved by the Collateral Agent to have delivered to the Collateral Agent an endorsement to each title insurance policy then in effect for the benefit of the Secured Parties, date down(s) or other evidence reasonably satisfactory to the Collateral Agent (which may include a title search or a new title insurance policy) (each such delivery, a "*Title Datedown Product*"), in each case ensuring that (i) the priority of the Lien of the applicable mortgage(s) as security for the Notes has not changed, (ii) since the date of the Title Datedown Product delivered most recently prior to (and not in connection with) such additional Indebtedness, 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 Permitted Liens; and

(4) The Company or the applicable Guarantor will, upon the request of the Collateral Agent, deliver to the approved title company, the Collateral Agent and/or all other relevant third parties all other items reasonably necessary to maintain the continuing priority of the Lien of the mortgages as security for the Notes.

Section 4.08 *Limitation on Secured Commodity Hedging*.

The Company will not, and will not permit any of the Guarantors to, directly or indirectly enter into any Commodity Hedge Agreement that will constitute First Lien Debt, other than Eligible Commodity Hedge Agreements.

Section 4.09 *Liens*.

The Company will not, and will not permit any of the Guarantors to, directly or indirectly create, incur, assume or suffer to exist any Lien upon any asset now owned or hereafter acquired, except Permitted Liens.

Section 4.10 *Corporate Existence*.

Subject to Article 5 hereof, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect:

(1) its corporate existence, and the corporate, partnership or other existence of each of the Guarantors, in accordance with the respective organizational documents (as the same may be amended from time to time) of the Company or any such Guarantor; and

(2) the rights (charter and statutory), licenses and franchises of the Company and the Guarantors; *provided*, *however*, that the Company shall not be required to preserve any such right, license or franchise, or the corporate, partnership or other existence of any of the Guarantors, if (a) the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and the Guarantors, taken as a whole, and that the loss thereof is not adverse in any material respect to the Holders and (b) if a Guarantor is to be dissolved, such Guarantor has no assets.

Section 4.11 *Offer to Repurchase Upon Change of Control Triggering Event*.

(a) If a Change of Control Triggering Event occurs, each Holder will have the right to require the Company to make an offer (a "*Change of Control Offer*") to each Holder to repurchase all or any part (equal to $2,000 or an integral multiple of $1,000 in excess thereof) of that Holder's Notes at a purchase price in cash equal to 101% of the aggregate principal amount of Notes repurchased plus accrued and unpaid interest, if any, on the Notes repurchased to but excluding the date of purchase, subject to the rights of Holders on the relevant record date to receive interest due on the relevant interest payment date (the "*Change of Control Payment*"). Within 30 days following any Change of Control Triggering Event, the Company will mail (or deliver electronically) a notice to each Holder describing the transaction or transactions that constitute the Change of Control Triggering Event and stating:

(1) that the Change of Control Offer is being made pursuant to this Section 4.11 and that all Notes tendered will be accepted for payment;

(2) the purchase price and the purchase date, which shall be no earlier than 30 days and no later than 60 days from the date such notice is mailed or delivered electronically (the "*Change of Control Payment Date*");

(3) that any Note not tendered will 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 after the Change of Control Payment Date;

(5) that Holders electing to have any Notes purchased pursuant to a Change of Control Offer will be required to surrender the Notes, with the form entitled "Option of Holder to Elect Purchase" attached to the Notes completed, or transfer by book-entry transfer, to the Paying Agent 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 election if the Paying Agent receives, not later than the close of business on the second Business Day preceding the Change of Control Payment Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of Notes delivered for purchase, and a statement that such Holder is withdrawing his election to have the Notes purchased; and

(7) that Holders whose Notes are being purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered, which unpurchased portion must be equal to $2,000 in principal amount or an integral multiple of $1,000 in excess of $2,000.

The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change of Control Triggering Event. To the extent that the provisions of any securities laws or regulations conflict with this Section 4.11, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Section 4.11 by virtue of such compliance.

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

(1) accept for payment all Notes or portions of Notes properly tendered pursuant to the Change of Control Offer;

(2) deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all Notes or portions of Notes properly tendered; and

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

The Paying Agent will promptly mail (but in any case not later than five days after the Change of Control Payment Date) to each Holder of Notes properly tendered the Change of Control Payment for such Notes, and the Trustee will promptly, upon receipt of an Authentication Order, 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 new Note will be in a principal amount of $2,000 or an integral multiple of $1,000 in excess thereof. The Company will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

(c) Notwithstanding anything to the contrary in this Section 4.11, the Company will not be required to make a Change of Control Offer upon a Change of Control Triggering Event if (1) 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 Section 4.11 hereof and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer, or (2) notice of redemption has been given pursuant to Section 3.07 hereof, unless and until there is a default in payment of the applicable redemption price. A Change of Control Offer may be made in advance of a Change of Control Triggering Event, with the obligation to pay and the timing of payment conditioned upon the consummation of the Change of Control, if a definitive agreement to effect a Change of Control is in place at the time of the Change of Control Offer.

Section 4.12 *Limitation on Sale and Leaseback Transactions*.

The Company will not, and will not permit any of the Guarantors to, enter into any sale and leaseback transaction; *provided* that the Company or any Guarantor may enter into a sale and leaseback transaction if:

(1) the Company or that Guarantor, as applicable, could have incurred a Lien (other than a Lien created under the Security Documents) to secure Indebtedness pursuant to Section 4.09 hereof; and

(2) the gross cash proceeds of that sale and leaseback transaction are at least equal to the Fair Market Value, as determined in good faith by the Board of Directors of the Company and set forth in an Officer's Certificate delivered to the Trustee, of the property that is the subject of that sale and leaseback transaction.

Section 4.13 *Additional Note Guarantees*.

If (1) the Company acquires or creates another Subsidiary after the date of this Indenture (that does not constitute an Excluded Subsidiary), (2) any Subsidiary of the Company ceases to constitute an Excluded Subsidiary or (3) any Excluded Subsidiary guarantees, or pledges any property or assets to secure, any First Lien Debt, then such Subsidiary will become a Guarantor under the Guarantee and Collateral Agreement and execute a supplemental indenture substantially in the form of Exhibit E hereto and deliver an Opinion of Counsel within 60 days thereof.

Section 4.14 *Further Assurances; Insurance*.

(a) The Company and each of the other Grantors will do or cause to be done all acts and things that may be required, or that the Collateral Agent from time to time may reasonably request, to assure and confirm that the Collateral Agent holds, for the benefit of the Holders, duly created and enforceable and perfected Liens upon the Collateral (including with respect to any property or assets that are acquired or otherwise become Collateral after the Notes are issued), in each case, as contemplated by, and with the Lien priority required under, this Indenture and the Security Documents.

(b) Upon the reasonable request of the Collateral Agent at any time and from time to time, the Company and each of the other Grantors will promptly execute, acknowledge and deliver such security documents, instruments, certificates, notices and other documents, and take such other actions the Collateral Agent may reasonably request, to create, perfect, protect, assure or enforce the Liens and benefits intended to be conferred, in each case as contemplated by this Indenture for the benefit of the Holders and as otherwise consistent with the Security Documents.

(c) The Company and the other Grantors will maintain insurance policies (or self-insurance) on all its property in at least such amounts and against at least such risks as are usually insured against by companies of a similar size engaged in the same or a similar business and will name the Collateral Agent as an additional insured and loss payee as its interests may appear, to the extent required by the Security Documents. Upon the request of the Collateral Agent, the Company and the other Grantors will furnish to the Collateral Agent full information as to their property and liability insurance carriers.

Section 4.15 *After-Acquired Collateral*.

(a) Unless otherwise directed by an Act of Required Debtholders pursuant to the Guarantee and Collateral Agreement, with respect to any property acquired after the date of this Indenture by the Company or any other Grantor (other than any property described in clauses (b)-(d) of this Section 4.15) as to which the Collateral Agent, for the benefit of the Secured Parties, does not have a perfected Lien, the Company and each applicable Grantor shall promptly:

(1) execute and deliver to the Collateral Agent such amendments to the Guarantee and Collateral Agreement or such other documents as the Collateral Agent deems necessary or advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a security interest in such property; and

(2) take all actions necessary or advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected first priority security interest in such property, including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be reasonably requested by the Collateral Agent.

(b) With respect to any fee interest in any real property having a value (together with improvements thereof) of at least $5,000,000 acquired after the date of this Indenture by the Company or any Guarantor (other than any such real property subject to a Permitted Lien which precludes the granting of a Mortgage thereon), within 60 days after the creation or acquisition thereof, unless otherwise directed by an Act of Required Debtholders, the Company and each applicable Guarantor shall:

(1) execute and deliver a first priority Mortgage or where appropriate under the circumstances, an amendment to an existing Mortgage, in each case in favor of the Collateral Agent, for the benefit of the Secured Parties, covering such real property,

(2) if requested by the Collateral Agent, provide the Secured Parties with (A) either (i) title insurance covering such real property in an amount at least equal to the purchase price of such real property (or such other amount as shall be reasonably specified by the Collateral Agent) in form and substance reasonably satisfactory to the Collateral Agent, as well as a current ALTA survey thereof, together with a surveyor's certificate (only with respect to any power plant or any other real property for which an ALTA survey was obtained when such property was acquired) or (ii) where an amendment to an existing Mortgage has been delivered pursuant to clause (1) above instead of a Mortgage, an endorsement to the existing title policy adding such property as an insured parcel, and (B) any consents or estoppels reasonably deemed necessary or advisable by the Collateral Agent in connection with such Mortgage or Mortgage amendment (to the extent obtainable using commercially reasonable efforts), each of the foregoing in form and substance reasonably satisfactory to the Collateral Agent; and

(3) if requested by the Collateral Agent, deliver to the Collateral Agent legal opinions relating to the matters described in clauses (1) and (2) above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Collateral Agent.

(c) With respect to any new Subsidiary (other than an Excluded Subsidiary) created or acquired after the date of this Indenture by the Company or any Guarantor (which, for the purposes of this paragraph (c), shall include any existing Subsidiary that ceases to be an Excluded Subsidiary), unless otherwise directed by an Act of Required Debtholders, within 60 days of the creation or acquisition thereof the Company and each applicable Guarantor shall:

(1) execute and deliver to the Collateral Agent such amendments to the Guarantee and Collateral Agreement as the Collateral Agent deems necessary or advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected first priority security interest in the Capital Stock of such new Subsidiary that is owned by the Company or any Guarantor,

(2) deliver to the Collateral Agent the certificates representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the Company or the relevant Guarantor,

(3) cause such new Subsidiary (A) to become a party to the Guarantee and Collateral Agreement, (B) to take such actions necessary or advisable to grant to the Collateral Agent for the benefit of the Secured Parties a perfected first priority security interest in the Collateral described in the Guarantee and Collateral Agreement with respect to such new Subsidiary, including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be requested by the Collateral Agent and (C) to deliver to the Collateral Agent a customary closing certificate of such Subsidiary, in form and substance reasonably satisfactory to the Collateral Agent, with appropriate insertions and attachments, and

(4) if requested by the Collateral Agent, deliver to the Collateral Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Collateral Agent.

(d) With respect to any new Foreign Subsidiary (or Domestic Subsidiary of the type described in clause (d) of the definition of "Excluded Subsidiary") created or acquired after the date of this Indenture by the Company or any Guarantor, unless otherwise directed by an Act of Required Debtholders, the Company and each applicable Guarantor shall promptly:

(1) execute and deliver to the Collateral Agent such amendments to the Guarantee and Collateral Agreement as the Collateral Agent deems necessary or advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected first priority security interest in the Capital Stock of such new Subsidiary that is owned by the Company or such Guarantor (*provided* that in no event shall more than 65% of the total outstanding voting Capital Stock of any such new Subsidiary be required to be so pledged),

(2) if commercially reasonable, deliver to the Collateral Agent the certificates representing such Capital Stock, together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the Company or the relevant Guarantor, and take such other action as may be necessary or, in the opinion of the Collateral Agent, desirable to perfect the Collateral Agent's security interest therein, and

(3) if requested by the Collateral Agent, deliver to the Collateral Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Collateral Agent.

ARTICLE 5
SUCCESSORS

Section 5.01 *Merger, Consolidation, or Sale of Assets*.

(a) The Company may not, directly or indirectly: (1) consolidate or merge with or into another Person (whether or not the Company is the surviving corporation); or (2) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company and its Restricted Subsidiaries taken as a whole, in one or more related transactions, to another Person; unless:

(1) either:

(A) the Company is the surviving corporation; or

(B) the Person formed by or surviving any such consolidation or merger (if other than the Company) or to which such sale, assignment, transfer, conveyance or other disposition has been made is a corporation, partnership or limited liability company organized or existing under the laws of the United States, any state of the United States or the District of Columbia; *provided* that if the Person is a partnership or limited liability company, then a corporation wholly-owned by such Person organized or existing under the laws of the United States, any state of the United States or the District of Columbia that does not and will not have any material assets or operations shall become a co-issuer of the Notes pursuant to a supplemental indenture duly executed by the Trustee;

(2) the Person formed by or surviving any such consolidation or merger (if other than the Company) or the Person to which such sale, assignment, transfer, conveyance or other disposition has been made assumes all the obligations of the Company under the Notes, this Indenture and the Security Documents pursuant to a supplemental indenture duly executed by, or other documents and agreements reasonably satisfactory to, the Trustee; and

(3) immediately after such transaction, no Default or Event of Default exists.

(b) In addition, the Company will not, directly or indirectly, lease all or substantially all of the properties or assets of the Company and its Restricted Subsidiaries, taken as a whole, in one or more related transactions, to any other Person.

This Section 5.01 will not apply to:

(1) a merger of the Company with an Affiliate solely for the purpose of reincorporating the Company in another jurisdiction or forming a direct holding company of the Company; or

(2) any consolidation or merger of (a) the Company into a Guarantor, (b) a Guarantor into the Company or another Guarantor or (c) a Restricted Subsidiary of the Company into the Company or another Restricted Subsidiary of the Company; or

(3) any sale, assignment, transfer, conveyance, lease or other disposition of assets (a) by the Company to a Guarantor, (b) a Guarantor to the Company or another Guarantor or (c) a Restricted Subsidiary of the Company to the Company or another Restricted Subsidiary of the Company.

Section 5.02 *Successor Corporation Substituted*.

Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the properties or assets of the Company in a transaction that is subject to, and that complies with the provisions of, Section 5.01 hereof, the successor Person formed by such consolidation or into or with which the Company is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, assignment, transfer, lease, conveyance or other disposition, the provisions of this Indenture referring to the "Company" shall refer instead to the successor Person and not to the Company), and may exercise every right and power of the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein; *provided*, *however*, that the predecessor Company shall not be relieved from the obligation to pay the principal of and interest on the Notes except in the case of a sale of all of the Company's assets in a transaction that is subject to, and that complies with the provisions of, Section 5.01 hereof.

ARTICLE 6
DEFAULTS AND REMEDIES

Section 6.01 *Events of Default*.

Each of the following is an "*Event of Default*" with respect to the Notes:

(1) default for 30 days in the payment when due of interest on the Notes;

(2) default in payment when due (at maturity, upon redemption or otherwise) of the principal of, or premium, if any, on, the Notes;

(3) [Reserved];

(4) failure by the Company or any Guarantor for 60 days after notice from the Trustee or the Holders of at least 25% in aggregate principal amount of the outstanding Notes to comply with any of the other agreements in this Indenture or the security documents required by this Indenture;

(5) (i) default under any other mortgage, indenture, agreement or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness of the Company or any Guarantor (or the payment of which is guaranteed by the Company or any Guarantor), whether such Indebtedness or Guarantee now exists, or is created after the date of this Indenture, if that default:

(A) is caused by a failure to pay principal of such Indebtedness at its stated final maturity (after giving effect to any applicable grace period provided in such Indebtedness) (a "*Payment Default*"); or

(B) results in the acceleration of such Indebtedness prior to its express 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 (without such acceleration having been rescinded, annulled or otherwise cured), aggregates $100,000,000 or more; *provided* that this clause (5)(i) shall not apply to Indebtedness that becomes due solely as a result of the voluntary sale or transfer of property or assets to the extent such sale or transfer is permitted by the terms of such Indebtedness; or (ii) the Company and any Guarantor shall, with respect to Limited Recourse Debt in an aggregate principal amount in excess of $300,000,000, default in the observance or performance of any agreement or condition relating to any such Limited Recourse Debt or contained in any instrument or agreement evidencing, securing or relating thereto, and such Limited Recourse Debt shall as a result thereof become due prior to its final stated maturity;

provided that this clause (5) shall not apply to any Indebtedness that is required to be converted into Qualifying Equity Interests upon the occurrence of certain designated events so long as no payments in cash or otherwise are required to be made in accordance with such conversion;

(6) any of the Security Documents shall cease, for any reason, to be in full force and effect (other than in accordance with its terms) with respect to Collateral with a book value greater than $50,000,000, or the Company or any Guarantor shall so assert, or any Lien (affecting Collateral with a book value greater than $50,000,000) created by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby (other than, in each case, pursuant to a failure of the Trustee, the Collateral Agent, any other agent appointed by the Trustee, the Collateral Agent or the Holders to take any action within the sole control of such Person) (it being understood that the release of Collateral from the Security Documents or the discharge of a Guarantor therefrom shall not be construed (x) as any of the Security Documents ceasing to be in full force and effect or (y) as any of the Liens created thereunder ceasing to be enforceable or of the same priority and effect purported to be created thereby);

(7) except as permitted by this Indenture or the Guarantee and Collateral Agreement, any Note Guarantee of a Significant Subsidiary ceases, for any reason, to be in full force and effect (other than in accordance with its terms), or any Significant Subsidiary that is a Guarantor denies or disaffirms in writing its obligations under its Note Guarantee;

(8) the Lien subordination provisions in favor of the Holders or any other provision of the Collateral Agency and Intercreditor Agreement shall cease for any reason to be valid (other than by its express terms) and, in the case of any provision of the Collateral Agency and Intercreditor Agreement other than the Lien subordination provisions in favor of the Holders, the result thereof is that the interests of the Holders are materially and adversely affected, or the Company or any Guarantor shall assert in writing that the Lien subordination provisions in favor of the Holders or any such other provision of the Collateral Agency and Intercreditor Agreement shall not for any reason be valid (other than by its express terms);

(9) the Company or any Guarantor that is a Significant Subsidiary or any group of Guarantors that, taken together, would constitute a Significant Subsidiary, pursuant to or within the meaning of Bankruptcy Law:

(A) commences a voluntary case,

(B) consents to the entry of an order for relief against it in an involuntary case,

(C) consents to the appointment of a custodian of it or for all or substantially all of its property,

(D) makes a general assignment for the benefit of its creditors, or

(E) generally is not paying its debts as they become due; or

(10) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against the Company or any Guarantor that is a Significant Subsidiary or any group of Guarantors that, taken together, would constitute a Significant Subsidiary, in an involuntary case;

(B) appoints a custodian of the Company or any Guarantor that is a Significant Subsidiary or any group of Guarantors of the Company that, taken together, would constitute a Significant Subsidiary, or for all or substantially all of the property of the Company or any Guarantor that is a Significant Subsidiary or any group of Guarantors that, taken together, would constitute a Significant Subsidiary; or

(C) orders the liquidation of the Company or any Guarantor that is a Significant Subsidiary or any group of Guarantors that, taken together, would constitute a Significant Subsidiary;

and the order or decree remains unstayed and in effect for 60 consecutive days.

Section 6.02 *Acceleration*.

In the case of an Event of Default specified in clause (9) or (10) of Section 6.01 hereof, with respect to the Company, 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 by written notice to the Company or the Holders of at least 25% in aggregate principal amount of the then outstanding Notes by written notice to the Company and the Trustee may declare all the Notes to be due and payable immediately. Upon any such declaration, the Notes shall become due and payable immediately. The Holders of a majority in aggregate principal amount of the Notes that are then outstanding, by written notice to the Trustee may, on behalf of the Holders, rescind an acceleration and its consequences, if the rescission would not conflict with any judgment or decree and if all existing Events of Default (except nonpayment of principal, interest or premium that has become due solely because of the acceleration) have been cured or waived.

Section 6.03 *Other Remedies*.

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, and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

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 in exercising any right or remedy accruing upon 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 6.04 *Waiver of Past Defaults*.

Holders of not less than a majority in aggregate principal amount of the Notes that are then outstanding, by written notice to the Trustee may, on behalf of the Holders of the Notes, waive an existing Default or Event of Default and its consequences hereunder, except a continuing Default or Event of Default in the payment of the principal of, premium, if any, or interest on, the Notes (including in connection with an offer to purchase); *provided*, *however*, that the Holders of a majority in aggregate principal amount of the Notes that are then outstanding may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration. 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 6.05 *Control by Majority*.

Holders of a majority in aggregate principal amount of the Notes that are then outstanding 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 it. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture that the Trustee determines may be unduly prejudicial to the rights of other Holders or that may involve the Trustee in personal liability.

Section 6.06 *Limitation on Suits*.

Except to enforce the right to receive payment of principal, premium (if any) or interest when due, no Holder may pursue any remedy with respect to this Indenture or the Notes unless:

(1) such Holder has previously given the Trustee written notice that an Event of Default is continuing;

(2) Holders of at least 25% in aggregate principal amount of the Notes that are then outstanding have requested the Trustee to pursue the remedy;

(3) such Holders have offered the Trustee security or indemnity satisfactory to the Trustee against any loss, liability or expense;

(4) the Trustee has not complied with such request within 60 days after the receipt thereof and the offer of security or indemnity; and

(5) Holders of a majority in aggregate principal amount of the Notes that are then outstanding have not given the Trustee a direction inconsistent with such request within such 60-day period.

Section 6.07 *Rights of Holders to Receive Payment*.

Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal, premium, if any, and interest on the Note, on or after the respective due dates expressed in the 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; *provided* that a Holder shall not have the right to institute any such suit for the enforcement of payment if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver or loss of the Lien of this Indenture upon any property subject to such Lien.

Section 6.08 *Collection Suit by Trustee*.

If an Event of Default specified in Section 6.01(1) or (2) hereof occurs 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 principal of, premium, if any, and interest remaining unpaid on, the Notes and interest on overdue principal and, to the extent lawful, 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 6.09 *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 allowed in any judicial proceedings relative to the Company (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 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 7.06 hereof. 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 7.06 hereof 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 6.10 *Priorities*.

If the Trustee collects any money or property pursuant to this Article 6, it shall pay out the money or property in the following order:

First: to the Trustee, its agents and attorneys for amounts due under Section 7.06 hereof, including payment of all compensation, expenses and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

Second: to Holders 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.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 6.10.

Section 6.11 *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, 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 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07 hereof, or a suit by Holders of more than 10% in aggregate principal amount of the then outstanding Notes.

ARTICLE 7
TRUSTEE

Section 7.01 *Duties of Trustee*.

(a) If an Event of Default has occurred and is continuing, the Trustee will 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 will 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 will examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of calculations or other facts stated therein).

(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 7.01;

(2) the Trustee will not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved in a court of competent jurisdiction that the Trustee was negligent in ascertaining the pertinent facts; and

(3) the Trustee will 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 6.05 hereof.

(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), (c) and (e) of this Section 7.01.

(e) No provision of this Indenture will require the Trustee to expend or risk its own funds or incur any liability. The Trustee will be under no obligation to exercise any of its rights and powers under this Indenture at the request of any Holders, unless such Holder has offered to the Trustee indemnity satisfactory to the Trustee or security satisfactory to it against any loss, liability or expense.

(f) The Trustee will not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

Section 7.02 *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 Officer's Certificate or an Opinion of Counsel or both. The Trustee will not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel. The Trustee may consult with counsel and the written advice of such counsel or any Opinion of Counsel will 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 will not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee will 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 will be sufficient if signed by an Officer of the Company.

(f) The Trustee will 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 have offered to the Trustee indemnity or security satisfactory to the Trustee against the losses, liabilities and expenses that might be incurred by it in compliance with such request or direction.

(g) In no event shall the Trustee be required to take notice of any default or breach hereof or any Event of Default hereunder, except for Events of Default specified in Section 6.01(1) and/or 6.01(2) hereof (and then, only if the Trustee is also the Paying Agent), unless and until the Trustee shall have received from a Holder or from the Company express written notice of the circumstances constituting the breach, default or Event of Default and stating that said circumstances constitute an Event of Default.

(h) In no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(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 (including, without limitation, as Custodian, Registrar and Paying Agent), and each agent, custodian and other Person employed to act hereunder.

(j) The Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture.

(k) The Trustee shall have no duty to inquire as to the performance of the Company with respect to the covenants contained in Article 4.

(l) Any permissive right or authority granted to the Trustee shall not be construed as a mandatory duty.

(m) Each of the Company and Guarantors shall provide prompt written notice to the Trustee of any change to its respective fiscal year.

Section 7.03 *Individual Rights of Trustee*.

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Company or any Affiliate of the Company with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the Commission for permission to continue as trustee or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Section 7.09 hereof.

Section 7.04 *Trustee's Disclaimer*.

The Trustee will not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes or the Security Documents, 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 will not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, it will not be responsible for and makes no representation as to the validity, sufficiency, priority or perfection of the Collateral and the Collateral Agent's security interest therein, and it will 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 7.05 *Notice of Defaults*.

If a Default or Event of Default occurs and is continuing and if it is known to the Trustee, the Trustee will mail to Holders a notice of the Default or Event of Default within 90 days after it occurs. 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.

Section 7.06 *Compensation and Indemnity*.

(a) The Company will pay to the Trustee from time to time reasonable compensation for its acceptance of this Indenture and services hereunder. The Trustee's compensation will not be limited by any law on compensation of a trustee of an express trust. The Company will reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses will include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

(b) The Company and the Guarantors, jointly and severally, will indemnify the Trustee against any and all losses, liabilities or 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 and the Guarantors (including this Section 7.06) and defending itself against any claim (whether asserted by the Company, the Guarantors, 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 negligence or bad faith as determined by a court of competent jurisdiction in a final non-appealable decision. The Trustee will notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company will not relieve the Company or any of the Guarantors of their obligations hereunder. The Company or such Guarantor will defend the claim and the Trustee will cooperate in the defense. The Trustee may have separate counsel and the Company will pay the reasonable fees and expenses of such counsel. Neither the Company nor any Guarantor need pay for any settlement made without its consent, which consent will not be unreasonably withheld.

(c) The obligations of the Company and the Guarantors under this Section 7.06 will survive the satisfaction and discharge of this Indenture or the earlier resignation or removal of the Trustee.

(d) To secure the Company's and the Guarantors' payment obligations in this Section 7.06, the Trustee will 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 and interest on particular Notes. Such Lien will survive the satisfaction and discharge of this Indenture.

(e) When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(9) or (10) hereof 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 7.07 *Replacement of Trustee*.

(a) A resignation or removal of the Trustee and appointment of a successor Trustee will become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.07.

(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 aggregate 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 7.09 hereof;

(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 will promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in aggregate 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 60 days after the retiring Trustee resigns or is removed, the retiring Trustee (at the Company's expense), the Company, or the Holders of at least 10% in aggregate principal amount of the then outstanding Notes may petition 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 six months, fails to comply with Section 7.09 hereof, 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 will deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon, the resignation or removal of the retiring Trustee will become effective, and the successor Trustee will have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee will mail a notice of its succession to Holders. The retiring Trustee will 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 7.06 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 7.07, the Company's obligations under Section 7.06 hereof will continue for the benefit of the retiring Trustee.

Section 7.08 *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 corporation, the successor corporation without any further act will be the successor Trustee.

Section 7.09 *Eligibility; Disqualification*.

There will 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 trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least $100.0 million as set forth in its most recent published annual report of condition.

ARTICLE 8
LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 8.01 *Option to Effect Legal Defeasance or Covenant Defeasance*.

The Company may at any time, at the option of its Board of Directors evidenced by a resolution set forth in an Officer's Certificate, elect to have either Section 8.02 or 8.03 hereof be applied to all outstanding Notes upon compliance with the conditions set forth below in this Article 8.

Section 8.02 *Legal Defeasance and Discharge*.

(a) Upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.02, the Company and each of the Guarantors will, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be deemed to have been discharged from their obligations with respect to all outstanding Notes (including the Note 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 Guarantors will be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes (including the Note Guarantees), which will thereafter be deemed to be "outstanding" only for the purposes of Section 8.05 hereof and the other Sections of this Indenture referred to in clauses (1) and (2) below, and to have satisfied all their other obligations under such Notes, the Note Guarantees and this Indenture (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 will survive until otherwise terminated or discharged hereunder:

(1) the rights of Holders of outstanding Notes to receive payments in respect of the principal of, or interest or premium, if any, on, such Notes when such payments are due from the trust referred to in Section 8.04 hereof;

(2) the Company's obligations with respect to such Notes under Article 2 and Section 4.02 hereof;

(3) the rights, powers, trusts, duties and immunities of the Trustee hereunder and the Company's and the Guarantors' obligations in connection therewith; and

(4) this Article 8.

Subject to compliance with this Article 8, the Company may exercise its option under this Section 8.02 notwithstanding the prior exercise of its option under Section 8.03 hereof.

(b) Upon Legal Defeasance or Covenant Defeasance in accordance with this Article 8, the Trustee will advise the Collateral Agent that the Notes cease to constitute First Lien Debt under the Collateral Agency and Intercreditor Agreement.

(c) The Liens securing the Notes will be released as provided under Section 10.03 hereof upon Legal Defeasance or Covenant Defeasance in accordance with this Article 8.

Section 8.03 *Covenant Defeasance*.

Upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.03, the Company and each of the Guarantors will, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be released from each of their obligations under the covenants contained in Sections 4.03, 4.04, 4.05, 4.07, 4.08, 4.09, 4.11, 4.12, 4.13, 4.14 and 4.15 hereof with respect to the outstanding Notes on and after the date the conditions set forth in Section 8.04 hereof are satisfied (hereinafter, "*Covenant Defeasance*"), and the Notes will 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 will continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes will not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes and Note Guarantees, the Company and the Guarantors may omit to comply with and will 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 will not constitute a Default or an Event of Default under Section 6.01 hereof, but, except as specified above, the remainder of this Indenture and such Notes and Note Guarantees will be unaffected thereby. In addition, upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.03, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, Sections 6.01(4) through 6.01(8) hereof will not constitute Events of Default.

Section 8.04 *Conditions to Legal or Covenant Defeasance*.

In order to exercise either Legal Defeasance or Covenant Defeasance under either Section 8.02 or 8.03 hereof:

(1) the Company must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities, or a combination thereof, in amounts as will be sufficient, in the opinion of a nationally recognized investment bank, appraisal firm or firm of independent public accountants, to pay the principal of, interest and premium, if any, on, the then outstanding Notes on the final stated maturity thereof or on the applicable redemption date, as the case may be, and the Company must specify whether such Notes are being defeased to maturity or to a particular redemption date;

(2) in the case of an election under Section 8.02 hereof, the Company must deliver to the Trustee an Opinion of Counsel confirming 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 of the Notes that are then outstanding 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;

(3) in the case of an election under Section 8.03 hereof, the Company must deliver to the Trustee an Opinion of Counsel confirming that the Holders of the Notes that are then outstanding 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;

(4) no Default or Event of Default with respect to the Notes shall have occurred and be continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit);

(5) such Legal Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than this Indenture) to which the Company or any of the Guarantors is a party or by which the Company or any of the Guarantors is bound;

(6) the Company must deliver to the Trustee an Officer's Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders over the other creditors of the Company with the intent of defeating, hindering, delaying or defrauding any creditors of the Company or others; and

(7) the Company must deliver to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

The Legal Defeasance or Covenant Defeasance, as applicable, will be effective on the day on which the conditions in clauses (1)-(7) of this Section 8.04 have been satisfied.

Section 8.05 *Deposited Money and Government Securities to be Held in Trust; Other Miscellaneous Provisions*.

Subject to Section 8.06 hereof, all money and non-callable Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.05, the "*Trustee*") pursuant to Section 8.04 hereof in respect of the outstanding Notes will 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.

The Company will pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable Government Securities deposited pursuant to Section 8.04 hereof 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.

Notwithstanding anything in this Article 8 to the contrary, the Trustee will deliver or pay to the Company from time to time upon the request of the Company any money or non-callable Government Securities held by it as provided in Section 8.04 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.04(1) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

Section 8.06 *Repayment to 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) will be discharged from such trust; and the Holder of such Note will thereafter be permitted to 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, will thereupon cease; *provided*, *however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in the New York Times and The Wall Street Journal (national edition), notice that such money remains unclaimed and that, after a date specified therein, which will not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining will be repaid to the Company.

Section 8.07 *Reinstatement*.

If the Trustee or Paying Agent is unable to apply any U.S. dollars or non-callable Government Securities in accordance with Section 8.02 or 8.03 hereof, 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 and the Guarantors' obligations under this Indenture and the Notes and the Note Guarantees will be revived and reinstated as though no deposit had occurred pursuant to Section 8.02 or 8.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.02 or 8.03 hereof, 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 will 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 9
AMENDMENT, SUPPLEMENT AND WAIVER

Section 9.01 *Without Consent of Holders*.

Notwithstanding Section 9.02 of this Indenture, the Company, the Guarantors and the Trustee may amend or supplement this Indenture, the Notes or the Note Guarantees, and the Company and the Guarantors, together with the Collateral Agent, may amend or supplement the Security Documents, without the consent of any Holder:

(1) to cure any ambiguity, defect or inconsistency in this Indenture, the Notes or the Security Documents in a manner that does not adversely affect the rights of any Holder;

(2) to provide for uncertificated Notes in addition to or in place of certificated Notes;

(3) to provide for the assumption of the Company's or a Guarantor's obligations to the Holders in the case of a merger or consolidation or sale of all or substantially all of the Company's or such Guarantor's assets, as applicable;

(4) to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the legal rights hereunder of any Holder;

(5) to conform the text of this Indenture or the Notes to any provision of the "Description of Notes" section of the Offering Memorandum, to the extent that such provision in that "Description of Notes" was intended to be a verbatim or substantially verbatim recitation of a provision of this Indenture or the Notes;

(6) to enter into additional or supplemental Security Documents or provide for additional Collateral;

(7) to make, complete or confirm any grant of Collateral permitted or required by this Indenture or any of the Security Documents or to release Collateral in accordance with the terms of this Indenture and the Security Documents;

(8) to evidence and provide for the acceptance and appointment under this Indenture of successor trustees pursuant to the requirements thereof;

(9) to allow any Guarantor to execute a supplemental indenture substantially in the form of Exhibit E hereto and/or a joinder to the Guarantee and Collateral Agreement; or

(10) to provide for the issuance of Additional Notes of the same or an additional series in accordance with the limitations set forth in this Indenture as of the date hereof.

Upon the request of the Company accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture, and upon receipt by the Trustee of the documents described in Sections 7.02 and 9.05 hereof, the Trustee will join with the Company and the Guarantors 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 will not be obligated to enter into such amended or supplemental indenture that affects its own rights, duties or immunities under this Indenture or otherwise.

In addition, any release of, or any amendment to, or waiver of, the provisions of this Indenture or any Security Document that has the effect of releasing all or substantially all of the Collateral from the Liens securing the Notes will require the consent of Holders as and only to the extent provided under Section 10.05 hereof.

Section 9.02 *With Consent of Holders*.

Except as provided below in this Section 9.02, the Company and the Trustee may amend or supplement this Indenture, the Notes and the Note Guarantees with the consent of the Holders of a majority in aggregate principal amount of the Notes that are then outstanding (including, without limitation, Additional Notes, if any) voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes), and, subject to Sections 6.04 and 6.07 hereof, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium, if any, or interest on, the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture, the Notes or the Note Guarantees may be waived with the consent of the Holders of a majority in aggregate principal amount of the Notes that are then outstanding (including, without limitation, Additional Notes, if any) voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes).

Upon the request of the Company accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture, and upon the filing with the Trustee of evidence satisfactory to the Trustee of the consent of the Holders as aforesaid, and upon receipt by the Trustee of the documents described in Sections 7.02 and 9.05 hereof, the Trustee will join with the Company and the Guarantors 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 will not be obligated to, enter into such amended or supplemental indenture.

It is not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed amendment, supplement or waiver, but it is sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Company will mail to the Holders affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Company to mail such notice, or any defect therein, will not, however, in any way impair or affect the validity of any such amended or supplemental indenture or waiver. Subject to Sections 6.04 and 6.07 hereof, the Holders of a majority in aggregate principal amount of the Notes then outstanding voting as a single class may waive compliance in a particular instance by the Company with any provision of this Indenture, the Notes or the Note Guarantees. However, without the consent of each Holder affected, an amendment, supplement or waiver under this Section 9.02 may not (with respect to any such Notes held by a non-consenting Holder):

(1) reduce the principal amount of Notes whose Holders must consent to an amendment, supplement or waiver;

(2) reduce the principal of or change the fixed maturity of any such Note or alter the provisions with respect to the redemption of such Notes (other than provisions relating to Section 4.11 hereof and provisions relating to the number of days of notice to be given in the event of a redemption);

(3) reduce the rate of or change the time for payment of interest on any such Note;

(4) waive a Default or Event of Default in the payment of principal of, or interest or premium, if any, on, such Notes (except a rescission of acceleration of such Notes by the Holders of at least a majority in aggregate principal amount of such Notes and a waiver of the payment default that resulted from such acceleration);

(5) make any such Note payable in currency other than that stated in such Note;

(6) make any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of Holders of such Notes to receive payments of principal of, or interest or premium, if any, on, the Notes;

(7) waive a redemption payment with respect to any such Note (other than a payment required by Section 4.11 hereof); or

(8) make any change in the preceding amendment and waiver provisions.

Section 9.03 *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 9.04 *Notation on or Exchange of Notes*.

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.

Failure to make the appropriate notation or issue a new Note will not affect the validity and effect of such amendment, supplement or waiver.

Section 9.05 *Trustee to Sign Amendments, etc*.

The Trustee will sign any amended or supplemental indenture authorized pursuant to this Article 9 if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. The Company may not sign an amended or supplemental indenture until the Board of Directors of the Company approves it. In executing any amended or supplemental indenture, the Trustee will be entitled to receive and (subject to Section 7.01 hereof) will be fully protected in relying upon, in addition to the documents required by Section 13.02 hereof, an Officer's Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture is authorized or permitted by this Indenture and that such amended or supplemental indenture is the legal, valid and binding obligation of the Company and any Guarantor party thereto, enforceable against them in accordance with its terms, subject to customary exceptions and complies with provisions hereof.

ARTICLE 10
COLLATERAL AND SECURITY

Section 10.01 *Security Interest*.

The due and punctual payment of the principal of and interest, if any, on the Notes 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 and interest (to the extent permitted by law), if any, on the Notes and performance of all other obligations of the Company to the Holders or the Trustee under this Indenture and the Notes, according to the terms hereunder or thereunder, are secured as provided in the Security Documents. Each Holder, by its acceptance thereof, consents and agrees to the terms of the Security Documents (including, without limitation, the provisions providing for foreclosure and release of the Collateral) as the same may be in effect or may be amended from time to time in accordance with its terms and authorizes and directs the Collateral Agent and the Trustee, as applicable, to enter into the Security Documents and to perform its obligations and exercise its rights thereunder in accordance therewith. Upon the request of the Trustee, the Company will deliver to the Trustee copies of all documents delivered to the Collateral Agent pursuant to the Security Documents, and will do or cause to be done all such acts and things as may be necessary or proper, or as may be required by the provisions of the Security Documents, to assure and confirm to the Trustee and the Collateral Agent the security interest in the Collateral contemplated hereby, by the Security Documents or any part thereof, as from time to time constituted, so as to render the same available for the security and benefit of this Indenture and of the Notes secured hereby, according to the intent and purposes herein expressed. The Company will take, and will cause its Subsidiaries to take, upon request of the Trustee, any and all actions reasonably required to cause the Security Documents to create and maintain, as security for the Obligations of the Company hereunder, a valid and enforceable perfected first priority Lien in and on all the Collateral, in favor of the Collateral Agent for the benefit of the Holders, superior to and prior to the rights of all third Persons, except for Permitted Liens.

Section 10.02 *Lien Sharing and Priority Confirmation*.

Each Holder, by accepting a Note, and the Trustee hereby agrees that:

(a) all First Lien Obligations will be and are secured equally and ratably by all First Liens at any time granted by the Company or any other Grantor to secure any Obligations (as defined in the Collateral Agency and Intercreditor Agreement) in respect of this Indenture, whether or not upon property otherwise constituting collateral for such Obligations (as defined in the Collateral Agency and Intercreditor Agreement) in respect of this Indenture and that all such First Liens will be enforceable by the Collateral Agent for the benefit of all holders of First Lien Obligations equally and ratably;

(b) the Trustee and each of the Holders in respect of the Obligations (as defined in the Collateral Agency and Intercreditor Agreement) in respect of this Indenture are bound by the provisions of the Collateral Agency and Intercreditor Agreement, including without limitation (1) the provisions relating to the ranking of First Liens and the order of application of proceeds from enforcement of First Liens and (2) the provisions of Section 8.22 thereof; and

(c) that the Trustee and each of the Holders consent to and direct the Collateral Agent to perform the Collateral Agent's obligations under the Collateral Agency and Intercreditor Agreement and the other Security Documents.

The foregoing provisions of this Section 10.02 are intended for the enforceable benefit of, and will be enforceable as a third party beneficiary by, all holders of each existing and future Series of First Lien Debt, each existing and future First Lien Representative, all holders of each existing and future series of Second Lien Debt, each existing and future Second Lien Representative and the Collateral Agent.

Section 10.03 *Release of Liens in Respect of Notes*.

(a) In addition to and subject to the terms of the Collateral Agency and Intercreditor Agreement, the Collateral Agent's Liens upon the Collateral will no longer secure the Notes and the Note Guarantees or any other obligations under this Indenture, and the right of the Holders to the benefits and proceeds of the Collateral Agent's Liens on the Collateral will terminate and be discharged:

(1) upon satisfaction and discharge of this Indenture as set forth in Article 12 hereof;

(2) upon a Legal Defeasance or Covenant Defeasance of the Notes as set forth in Article 8 hereof;

(3) upon payment in full and discharge of all Notes outstanding under this Indenture and all Obligations that are outstanding, due and payable under this Indenture at the time the Notes are paid in full and discharged; or

(4) with respect to all or substantially all of the Collateral, with the consent of the Holders of the requisite percentage of Notes in accordance with Section 9.02 hereof and upon delivery of instructions and any other documentation, in each case as required by this Indenture, in a form satisfactory to the Collateral Agent.

If the Collateral Agent is releasing Liens in accordance with the provisions of this Indenture or any Security Document and if the Company has delivered the certificates and documents required by this Indenture and the Security Documents, then the Trustee will execute and deliver such additional documents and instruments as the Company and the Guarantors may reasonably request to evidence such release without the further consent of the Holders. All actions taken pursuant to the provisions described in the foregoing provisions of this Section 10.03 will be at the sole cost and expense of the Company and the applicable Guarantor.

Section 10.04 *Release of Note Guarantees*.

For all purposes under the Guarantee and Collateral Agreement, each Holder by accepting a Note will be deemed to have consented to the release of the Note Guarantee of a Guarantor if the Company has delivered to the Trustee an Officer's Certificate stating that:

(1) such Guarantor constitutes an Excluded Subsidiary and is not required to be a guarantor of the Notes pursuant to Section 4.13;

(2) all or substantially all of the assets of such Guarantor have been sold or otherwise disposed of (including by way of merger or consolidation) to a Person that is not the Company or a Guarantor;

(3) such Guarantor has been liquidated or dissolved; or

(4) upon Legal Defeasance or satisfaction and discharge of this Indenture as provided in Article 8 or Article 12, *provided* that such Guarantor has previously been, or will concurrently be, released from its guarantee of any other First Lien Debt.

Section 10.05 *Amendment of Security Documents*.

Notwithstanding any other provision of this Indenture, if the Trustee is requested to vote or otherwise take action with respect to the Security Documents, the Trustee will vote or otherwise act as directed by the Holders of a majority in aggregate principal amount of all Notes then outstanding, except that:

(1) any amendment or supplement that has the effect solely of adding or maintaining Collateral or preserving, perfecting or establishing the priority of the Liens thereon or the rights of the Collateral Agent therein will not require a direction from the Holders of a majority in aggregate principal amount of all Notes then outstanding and will become effective when executed and delivered by the Company or any Guarantor party thereto and the Collateral Agent;

(2) any amendment or supplement that has the effect solely of curing any ambiguity, defect or inconsistency in this Indenture, the Notes or the Security Documents or making any change that would provide any additional rights or benefits to Holders or the Collateral Agent or that does not adversely affect the legal rights under this Indenture or any other Security Document of any Holder or the Collateral Agent, will not require a direction from the Holders of a majority in aggregate principal amount of all Notes then outstanding and will, in each case, become effective when executed and delivered by the Company and any Guarantor party thereto and the Collateral Agent;

(3) with respect to any amendment to, or waiver of, the provisions of this Indenture or any Security Document that has the effect of releasing all or substantially all of the Collateral from the Liens securing the Notes will require the consent of Holders of at least 66-2/3% in aggregate principal amount of Notes then outstanding;

(4) no amendment or supplement that reduces, impairs or adversely affects the right of any Holder:

(A) to vote its outstanding Notes as to any matter described as subject to direction by the Holders of a majority in aggregate principal amount of all Notes then outstanding,

(B) to share in the order of application under Section 3.4 of the Collateral Agency and Intercreditor Agreement in the proceeds of enforcement of or realization on any Collateral, or

(C) to require that Liens securing the Notes be released only as set forth in Section 10.03, will become effective without the consent of the requisite percentage or number of Holders so affected under this Indenture and the Security Documents and such additional consents as required pursuant to the Collateral Agency and Intercreditor Agreement; and

(5) no amendment or supplement that imposes any obligation upon the Collateral Agent or adversely affects the rights of the Collateral Agent in its individual capacity as such will become effective without the consent of the Collateral Agent.

ARTICLE 11
REAFFIRMATION AND ACKNOWLEDGEMENT
OF GUARANTEE

Section 11.01 *Reaffirmation and Acknowledgement*.

Each Guarantor hereby (i) affirms as of the date of this Indenture its respective guarantees, pledges and grants of security interests, as applicable, under and subject to the terms of the Guarantee and Collateral Agreement and each of the Security Documents to which it is party, (ii) affirms that the Obligations (which shall include the fees, expenses and disbursements of the Trustee's agents, counsel and professional advisors to the extent such fees, expenses and disbursements are obligations of the Company pursuant to the terms of this Indenture) in respect of the Notes are, as of the date of this Indenture, First Lien Obligations, (iii) confirms that, as of the date of this Indenture, the Guarantee and Collateral Agreement guaranties the prompt and complete payment and performance when due of all Guaranteed Obligations (as defined in the Guarantee and Collateral Agreement), which shall include the fees, expenses and disbursements of the Trustee's agents, counsel and professional advisors to the extent such fees, expenses and disbursements are obligations of the Company pursuant to the terms of this Indenture), including the First Lien Obligations in respect of the Notes, (iv) confirms that such Guarantee and Collateral Agreement and the other Security Documents to which each Guarantor that is a Grantor is a party secure the prompt and complete payment and performance when due of all First Lien Obligations, including the First Lien Obligations in respect of the Notes, and (v) agrees that, as of the date of this Indenture and notwithstanding this Indenture, such guarantees, pledges and grants of security interests, and the terms of the Guarantee and Collateral Agreement and each of the other Security Documents to which it is a party, are in full force and effect in accordance with their respective terms. Each of the Guarantors acknowledges that the Trustee and the Holders shall be deemed to be "Secured Parties" and "First Lien Secured Parties" for all purposes under the Security Documents.

ARTICLE 12
SATISFACTION AND DISCHARGE

Section 12.01 *Satisfaction and Discharge*.

This Indenture will be discharged and will cease to be of further effect as to all Notes issued hereunder, when:

(1) either:

(a) all Notes that have been authenticated, except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust and thereafter repaid to the Company, have been delivered to the Trustee for cancellation; or

(b) all Notes that have not been delivered to the Trustee for cancellation have become due and payable by reason of the mailing or delivering electronically of a notice of redemption or otherwise or will become due and payable within one year and the Company or any Guarantor has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities, or a combination thereof, in such amounts as will be sufficient, without consideration of any reinvestment of interest, to pay and discharge the entire Indebtedness on the Notes not delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption;

(2) no Default or Event of Default has occurred and is continuing on the date of the deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit) and the deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which the Company or any Guarantor is a party or by which the Company or any Guarantor is bound;

(3) the Company or any Guarantor has paid or caused to be paid all sums payable by it under this Indenture; and

(4) the Company has delivered irrevocable instructions to the Trustee under this Indenture to apply the deposited money toward the payment of the Notes at maturity or on the redemption date, as the case may be.

In addition, the Company must deliver an Officer's Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

Upon satisfaction and discharge in accordance with this Section 12.01, the Trustee will advise the Collateral Agent that it will cease to be a party to the Collateral Agency and Intercreditor Agreement on behalf of the Holders and the Notes will cease to constitute First Lien Debt thereunder.

Notwithstanding the satisfaction and discharge of this Indenture, if money has been deposited with the Trustee pursuant to subclause (b) of clause (1) of this Section 12.01, the provisions of Sections 12.02 and 8.06 hereof will survive. In addition, nothing in this Section 12.01 will be deemed to discharge those provisions of Section 7.06 hereof, that, by their terms, survive the satisfaction and discharge of this Indenture.

Section 12.02 *Application of Trust Money*.

Subject to the provisions of Section 8.06 hereof, all money deposited with the Trustee pursuant to Section 12.01 hereof 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.

If the Trustee or Paying Agent is unable to apply any money or Government Securities in accordance with Section 12.01 hereof by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's and any Guarantor's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 12.01 hereof; *provided* that if the Company has made any payment of principal of, premium, if any, or interest on, any Notes because of 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 or Government Securities held by the Trustee or Paying Agent.

ARTICLE 13
MISCELLANEOUS

Section 13.01 *Notices*.

Any notice or communication by the Company, any Guarantor or the Trustee to the others is duly given if in writing and delivered in Person or by first class mail (registered or certified, return receipt requested), facsimile transmission or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Company and/or any Guarantor:

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, Texas 77002
Facsimile No.: (832) 325-1508
Attention: General Counsel

With a copy to:

White & Case LLP
1221 Avenue of the Americas
New York, New York 10020
Facsimile No.: (212) 354-8113
Attention: Gary Kashar

If to the Trustee:

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Facsimile No.: (612) 217-5651
Attention: Calpine Corporation Administrator

With a copy to:

Shipman & Goodwin LLP
One Constitution Plaza
Hartford, Connecticut 06103
Facsimile No.: (860) 251-5212
Attention: Marie C. Pollio

The Company, any Guarantor or the Trustee, by notice to the others, may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) will be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when receipt acknowledged, if transmitted by facsimile; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

Any notice or communication to a Holder will 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 will not affect its sufficiency with respect to other Holders.

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.

If the Company mails a notice or communication to Holders, it will mail a copy to the Trustee and each Agent at the same time.

Notwithstanding any other provision of this Indenture or any Note, where this Indenture or any Note provides for notice of any event (including any notice of redemption) to a Holder of a Global Note (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depositary for such Note (or its designee), pursuant to the customary procedures of such Depositary.

Section 13.02 *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 Officer's Certificate in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 13.03 hereof) 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 in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 13.03 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

Section 13.03 *Statements Required in Certificate or Opinion*.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture must 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 or her 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 13.04 *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 13.05 *No Personal Liability of Directors, Officers, Employees and Stockholders*.

No director, officer, employee, incorporator or stockholder of the Company or any Guarantor, as such, will have any liability for any obligations of the Company or the Guarantors under the Notes, this Indenture or the Security Documents, or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under the federal securities laws.

Section 13.06 *Governing Law; Non-Exclusive Jurisdiction; Waiver of Jury Trial*.

THE INTERNAL LAW OF THE STATE OF NEW YORK WILL GOVERN AND BE USED TO CONSTRUE THIS INDENTURE, THE NOTES AND THE NOTE GUARANTEES WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

The parties hereby (i) irrevocably submit to the non-exclusive jurisdiction of any federal or state court sitting in the Borough of Manhattan, the City of New York, New York, over any suit, action or proceeding based on or arising out of or relating to this Indenture and the Notes, (ii) waive any objection to laying of venue in any such action or proceeding in such courts, and (iii) waive any objection that such courts are an inconvenient forum or do not have jurisdiction over any party.

Each of the parties hereto hereby waives, to the fullest extent permitted by applicable law, the right to trial by jury with respect to any litigation directly or indirectly arising out of, under or in connection with this Indenture.

Section 13.07 *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 its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 13.08 *Successors*.

All agreements of the Company in this Indenture and the Notes will bind its successors. All agreements of the Trustee in this Indenture will bind its successors. All agreements of each Guarantor in this Indenture will bind its successors.

Section 13.09 *Severability*.

In case any provision in this Indenture or in the Notes is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

Section 13.10 *Counterpart Originals*.

The parties may sign any number of copies of this Indenture. Each signed copy will be an original, but all of them together represent the same agreement. Delivery of an executed counterpart of a signature page to this Indenture by telecopier, facsimile or other electronic transmission (i.e. a "pdf" or "tif") shall be effective as delivery of a manually executed counterpart thereof.

Section 13.11 *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 will in no way modify or restrict any of the terms or provisions hereof.

Section 13.12 *Force Majeure.*

In no event shall the Trustee be responsible or liable, nor shall the Company be responsible or liable to the Trustee, for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee or the Company, as the case may be, shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

[Signatures on following page]

SIGNATURES

Dated as of December 16, 2020

Calpine Corporation

By: /s/ W. Thaddeus Miller
Name: W. Thaddeus Miller
Title: Executive Vice Chairman and Chief Legal Officer of Calpine Corporation

By: /s/ W. Thaddeus Miller
Name: W. Thaddeus Miller
Title: Chief Legal Officer of each of the Guarantors listed on Annex-A-1 hereto

By: /s/ Diana Woodman Hammett
Name: Diana Woodman Hammett
Title: Vice President of each of the Guarantors listed on Annex A-2 hereto

Wilmington Trust, National Association
as Trustee

By:/s/ Hallie E. Field
Name: Hallie E. Field
Title: Vice President

[*Signature Page to the Indenture*]

ANNEX A-1

Name of Guarantor	Type of Organization	Jurisdiction of Organization/ Formation	Organizational Identification Number
Anacapa Land Company, LLC	LLC	Delaware	3143771
Anderson Springs Energy Company, LLC	LLC	California	201927710078
Aviation Funding Corp.	Corporation	Delaware	2295371
Baytown Energy Center, LLC	LLC	Delaware	3282586
CalGen Expansion Company, LLC	LLC	Delaware	3290780
CalGen Project Equipment Finance Company Three, LLC	LLC	Delaware	3483024
Calpine Administrative Services Company, Inc.	Corporation	Delaware	3301977
Calpine Auburndale Holdings, LLC	LLC	Delaware	3250122
Calpine Bethlehem, LLC	LLC	Delaware	3420842
Calpine c*Power, Inc.	Corporation	Delaware	3205614
Calpine CalGen Holdings, LLC	LLC	Delaware	3282580
Calpine Central Texas GP, Inc.	Corporation	Delaware	3471267
Calpine Central, Inc.	Corporation	Delaware	2962637
Calpine Central-Texas, Inc.	Corporation	Delaware	2962631
Calpine Cogeneration Corporation	Corporation	Delaware	2022577
Calpine Eastern Corporation	Corporation	Delaware	2785981
Calpine Edinburg, Inc.	Corporation	Delaware	2896957
Calpine Energy Services GP, LLC	LLC	Delaware	5175176
Calpine Energy Services LP, LLC	LLC	Delaware	5175218

Calpine Energy Services, L.P.	LP	Delaware	3119940
Calpine Fuels Corporation	Corporation	California	C1931167
Calpine Generating Company, LLC	LLC	Delaware	3282581
Calpine Gilroy 1, LLC	LLC	Delaware	2637221
Calpine Global Services Company, Inc.	Corporation	Delaware	3099148
Calpine Hidalgo Energy Center, L.P.	LP	Delaware	4943417
Calpine Hidalgo Holdings, Inc.	Corporation	Delaware	3090982
Calpine Hidalgo, Inc.	Corporation	Delaware	2896958
Calpine Kennedy Operators, Inc.	Corporation	New York	1600476
Calpine KIA, Inc.	Corporation	New York	1600470
Calpine King City, Inc.	Corporation	Delaware	2521979
Calpine Leasing Inc.	Corporation	Delaware	3131087
Calpine Long Island, Inc.	Corporation	Delaware	2847318
Calpine Magic Valley Pipeline, LLC	LLC	Delaware	3017981
Calpine Mid-Atlantic Energy, LLC	LLC	Delaware	3151093
Calpine Mid-Atlantic Generation, LLC	LLC	Delaware	2870616
Calpine Mid-Atlantic Marketing, LLC	LLC	Delaware	4816303
Calpine MVP, LLC	LLC	Delaware	3017985
Calpine Newark, LLC	LLC	Delaware	2098264
Calpine New Jersey Generation, LLC	LLC	Delaware	3156567

Calpine Northbrook Holdings Corporation	Corporation	Delaware	2276287
Calpine Northbrook Investors, LLC	LLC	Delaware	2880194
Calpine Northbrook Project Holdings, LLC	LLC	Delaware	3041878
Calpine Operations Management Company, Inc.	Corporation	Delaware	3316272
Calpine Power Company	Corporation	California	C1606036
Calpine Power Management, LLC	LLC	Delaware	4943560
Calpine Power, Inc.	Corporation	Virginia	0391591-5
Calpine PowerAmerica, LLC	LLC	Delaware	4943410
Calpine PowerAmerica - CA, LLC	LLC	Delaware	3591072
Calpine PowerAmerica - ME, LLC	LLC	Delaware	3674239
Calpine Project Holdings, Inc.	Corporation	Delaware	3305373
Calpine Solar, LLC	LLC	Delaware	4648640
Calpine Stony Brook, Inc.	Corporation	New York	1600466
Calpine Stony Brook Operators, Inc.	Corporation	New York	1600473
Calpine TCCL Holdings, Inc.	Corporation	Delaware	2521982
Calpine Texas Pipeline GP, LLC	LLC	Delaware	3266570
Calpine Texas Pipeline LP, LLC	LLC	Delaware	3266838
Calpine Texas Pipeline, L.P.	LP	Delaware	3266572
Calpine University Power, Inc.	Corporation	Delaware	2847323
Calpine Vineland Solar, LLC	LLC	Delaware	4647887
Channel Energy Center, LLC	LLC	Delaware	3282589

Corpus Christi Cogeneration, LLC	LLC	Delaware	3104710
CPN 3rd Turbine, Inc.	Corporation	Delaware	3305375
CPN Acadia, Inc.	Corporation	Delaware	3178991
CPN Cascade, Inc.	Corporation	Delaware	2309616
CPN Clear Lake, Inc.	Corporation	Delaware	2026320
CPN Pipeline Company	Corporation	Delaware	2914695
CPN Pryor Funding Corporation	Corporation	Delaware	2665999
CPN Telephone Flat, Inc.	Corporation	Delaware	2309618
Deer Park Energy Center LLC	LLC	Delaware	3873999
Deer Park Holdings, LLC	LLC	Delaware	4743510
Delta Energy Center, LLC	LLC	Delaware	3125841
Freestone Power Generation, LLC	LLC	Delaware	4943382
GEC Bethpage Inc.	Corporation	Delaware	2133956
Geysers Power I Company, LLC	LLC	Delaware	2993221
Idlewild Fuel Management Corp.	Corporation	Delaware	2243800
JMC Bethpage, Inc.	Corporation	Delaware	2131426
Los Medanos Energy Center LLC	LLC	Delaware	2891593
Magic Valley Pipeline, L.P.	LP	Delaware	3018164
Metcalf Energy Center, LLC	LLC	Delaware	3833574
Metcalf Holdings, LLC	LLC	Delaware	3961602
Modoc Power, Inc.	Corporation	California	C1911009
New Development Holdings, LLC	LLC	Delaware	4707009
Pastoria Energy Center, LLC	LLC	Delaware	3438844
Pastoria Energy Facility L.L.C.	LLC	Delaware	3037068

Pine Bluff Energy, LLC	LLC	Delaware	2717293
South Point Energy Center, LLC	LLC	Delaware	3422743
South Point Holdings, LLC	LLC	Delaware	3686515
Stony Brook Cogeneration Inc.	Corporation	Delaware	2230301
Stony Brook Fuel Management Corp.	Corporation	Delaware	2263579
Sutter Dryers, Inc.	Corporation	California	C1957212
Texas Cogeneration Five, Inc.	Corporation	Delaware	2829630
Thermal Power Company, LLC	LLC	California	201927610458
Zion Energy LLC	LLC	Delaware	3133710

ANNEX A-2

Name of Guarantor	Type of Organization	Jurisdiction of Organization/Formation	Organizational Identification Number
Calpine Construction Management Company, Inc.	Corporation	Delaware	3295147
Calpine Mid-Atlantic Operating, LLC	LLC	Delaware	3604753
Calpine Operating Services Company, Inc.	Corporation	Delaware	2521992

EXHIBIT A

[Face of Note]

[Insert the Global Note Legend, if applicable pursuant to the provisions of the Indenture]
[Insert the Private Placement Legend, if applicable pursuant to the provisions of the Indenture]
[Insert the Regulation S Temporary Global Note Legend, if applicable pursuant to the provisions of the Indenture]

CUSIP/ISIN _____

[RULE 144A][REGULATION S][GLOBAL] NOTE

3.750% Senior Secured Notes due 2031

No. ___ $_____

CALPINE CORPORATION

promises to pay to _____ or registered assigns,

the principal sum of _____ DOLLARS on March 1, 2031.

Interest Payment Dates: March 1 and September 1

Record Dates: February 15 and August 15

[*Signature Page Follows*]

IN WITNESS HEREOF, the Company has caused this Note to be signed manually or by facsimile by its duly authorized officer as of the date first written above.

CALPINE CORPORATION

By: _____
Name:
Title:

This is one of the Notes referred to
in the within-mentioned Indenture:

Dated: December 16, 2020

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Signatory

Capitalized terms used herein have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

(1) *INTEREST*. Calpine Corporation, a Delaware corporation (the "*Company*"), promises to pay interest on the principal amount of this Note at 3.750% per annum from December 16, 2020 until maturity. The Company will pay interest semi-annually in arrears on March 1 and September 1 of each year (each, an "*Interest Payment Date*"), or if any such day is not a Business Day, on the next succeeding Business Day. Interest on the Notes will accrue from the most recent Interest Payment Date to which interest has been paid or, if no interest has been paid, from the date of issuance; *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 September 1, 2021. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

(2) *METHOD OF PAYMENT*. The Company will pay interest on the Notes (except defaulted interest) to the Persons who are registered Holders at the close of business on February 15 or August 15 next preceding the 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 2.12 of the Indenture with respect to defaulted interest. The Notes will 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; *provided* that payment by wire transfer of immediately available funds will be required with respect to principal of and interest, premium on, all Global Notes and all other Notes the Holders of which will have provided wire transfer instructions to the Company or the Paying Agent. Such payment will 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.

(3) *PAYING AGENT AND REGISTRAR*. Initially, Wilmington Trust, National Association, the Trustee under the Indenture, will 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 December 16, 2020 (as amended or supplemented from time to time, the "*Indenture*") among the Company, the Guarantors and the Trustee. 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, the provisions of the Indenture shall govern and be controlling. The Notes are secured obligations of the Company. The Notes are secured by a pledge of Collateral pursuant to the Security Documents referred to in the Indenture. The Indenture does not limit the aggregate principal amount of Notes that may be issued thereunder.

(5) *OPTIONAL REDEMPTION*.

(a) On or after March 1, 2026, the Company may on any one or more occasions redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' notice, 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 but excluding the applicable date of redemption, if redeemed during the twelve-month period beginning on March 1 of the 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
2026	101.875%
2027	101.250%
2028	100.625%
2029 and thereafter	100.000%

Unless the Company defaults in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable redemption date.

(b) At any time prior to March 1, 2024, the Company may on any one or more occasions redeem up to 40% of the aggregate principal amount of Notes issued under the Indenture, upon not less than 30 nor more than 60 days' notice, at a redemption price equal to 103.750% of the principal amount of the Notes redeemed, plus accrued and unpaid interest, if any, to but excluding 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 the proceeds of one or more Equity Offerings; *provided* that: (i) at least 50% of the aggregate principal amount of Notes originally issued under the Indenture (excluding Notes held by the Company and its Subsidiaries) remains outstanding immediately after the occurrence of such redemption; and (ii) the redemption occurs within 90 days of the date of the closing of such Equity Offering.

(c) At any time prior to March 1, 2026, the Company may on any one or more occasions redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' notice, 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 but excluding 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.

(d) The Company may redeem up to 10% of the aggregate principal amount of Notes issued under the Indenture during each 12-month period following March 1, 2021, that occurs prior to March 1, 2026, at a redemption price of 103% of the principal amount of Notes redeemed, plus accrued and unpaid interest, if any, to but excluding the redemption date (subject to the rights of Holders on the relevant record date to receive interest due on the relevant interest payment date).

(e) At any time, in connection with any tender offer for the Notes, including a Change of Control Offer, if Holders of not less than 90% in aggregate principal amount of the outstanding Notes validly tender and do not withdraw such Notes in such tender offer and the Company, or any third party making such tender offer in lieu of the Company, purchases all of the Notes validly tendered and not withdrawn by such Holders, the Company may, upon not less than 10 nor more than 60 days' prior notice, given not more than 30 days following such purchase date, redeem all Notes that remain outstanding following such purchase at a redemption price equal to the price paid to each other Holder in such tender offer plus, to the extent not included in the tender offer payment, accrued and unpaid interest, if any, thereon, to, but not excluding, the date of such redemption (subject to the rights of Holders on the relevant record date to receive interest on the relevant interest payment date).

(6) *MANDATORY REDEMPTION*.

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

(7) *REPURCHASE AT THE OPTION OF HOLDER*. If a Change of Control Triggering Event occurs, each Holder will have the right to require the Company to make an offer (a "*Change of Control Offer*") to each Holder to repurchase all or any part (equal to $2,000 or an integral multiple of $1,000 in excess thereof) of that Holder's Notes at a purchase price in cash equal to 101% of the aggregate principal amount of Notes repurchased plus accrued and unpaid interest, if any, on the Notes repurchased to but excluding the date of purchase, subject to the rights of Holders on the relevant record date to receive interest due on the relevant interest payment date (the "*Change of Control Payment*"). Within 30 days following any Change of Control Triggering Event, the Company will mail (or deliver electronically) a notice to each Holder describing the transaction or transactions that constitute the Change of Control Triggering Event as required by the Indenture.

(8) NOTICE OF REDEMPTION. Notice of redemption will be mailed or delivered electronically at least 30 days but not more than 60 days before the redemption date to each Holder whose Notes are to be redeemed at its registered address, except that (i) redemption notices may be mailed or delivered electronically at least 10 days prior to the redemption date if the notice is issued in connection with a redemption pursuant to Section 3.07(c) of the Indenture and (ii) redemption notices may be mailed or delivered electronically more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction or discharge of the Indenture. Notes in denominations larger than $2,000 may be redeemed in part but only in whole multiples of $1,000, unless all of the Notes held by a Holder are to be redeemed. Any redemption notice may, in the Company's discretion, be subject to the satisfaction of one or more conditions precedent. If such redemption is subject to the satisfaction of one of more conditions precedent, such notice 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 by the Company in its sole discretion), such redemption may not occur and such notice may be rescinded in the event that any or all of such conditions shall not have been satisfied (or waived by the Company in its sole discretion) by the redemption date, or by the redemption date so delayed.

(9) *DENOMINATIONS, TRANSFER, EXCHANGE*. The Notes are in registered form without coupons in minimum denominations of $2,000 and integral 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 and fees required by law or permitted by the Indenture. The Company need not exchange or register the transfer of any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part. Also, the Company need not exchange or register the transfer of any Notes for a period of 15 days before a selection of Notes to be redeemed or during the period between a record date and the corresponding Interest Payment Date.

(10) *PERSONS DEEMED OWNERS*. The registered Holder of a Note may be treated as its owner for all purposes.

(11) *AMENDMENT, SUPPLEMENT AND WAIVER*. Subject to certain exceptions, the Indenture or the Notes or the Note Guarantees may be amended or supplemented with the consent of the Holders of a majority in aggregate principal amount of the Notes that are then outstanding including Additional Notes, if any, voting as a single class, and any existing Default or Event or Default or compliance with any provision of the Indenture or the Notes or the Note Guarantees may be waived with the consent of the Holders of a majority in aggregate principal amount of the Notes that are then outstanding including Additional Notes, if any, voting as a single class. Without the consent of any Holder, the Indenture, the Notes,
the Note Guarantees or the Security Documents may be amended or supplemented to cure any ambiguity, defect or inconsistency in the Indenture, the Notes or the Security Documents in a manner that does not adversely affect the rights of any Holder, to provide for uncertificated Notes in addition to or in place of certificated Notes, to provide for the assumption of the Company's or a Guarantor's obligations to Holders in case of a merger or consolidation or sale of all or substantially all of the Company's or such Guarantor's assets, as applicable, to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the legal rights under the Indenture of any such Holder, to conform the text of the Indenture or the Notes to any provision of the "Description of Notes" section of the Offering Memorandum, to the extent that such provision in that "Description of Notes" was intended to be a verbatim or substantially verbatim recitation of a provision of the Indenture, the to enter into additional or supplemental Security Documents or provide for additional Collateral, to make, complete or confirm any grant of Collateral permitted or required by the Indenture or any of the Security Documents or to release Collateral in accordance with the terms of the Indenture and the Security Documents, to evidence and provide for the acceptance and appointment under the Indenture of successor trustees pursuant to the requirements thereof, to allow any Guarantor to execute a supplemental indenture substantially in the form of Exhibit E to the Indenture and/or a joinder to the Guarantee and Collateral Agreement or to provide for the issuance of Additional Notes of the same or an additional series in accordance with the limitations set forth in the Indenture as of the date hereof.

(12) *DEFAULTS AND REMEDIES*. Events of Default include: (i) default for 30 days in the payment when due of interest on the Notes; (ii) default in payment when due (at maturity, upon redemption or otherwise) of the principal of, or premium, if any, on, the Notes, (iii) failure by the Company to comply with the provisions of Sections 4.11 or 5.01 of the Indenture; (iv) failure by the Company or any Guarantor for 60 days after notice from the Trustee or the Holders of at least 25% in aggregate principal amount of the outstanding Notes to comply with any of the other agreements in the Indenture or the security documents required by the Indenture; (v)(a) default under any other mortgage, indenture, agreement or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness of the Company or any Guarantor (or the payment of which is guaranteed by the Company or any Guarantor), whether such Indebtedness or Guarantee now exists, or is created after the date of the Indenture, if that default is caused by a failure to pay principal of such Indebtedness at its stated final maturity (after giving effect to any applicable grace period provided in such Indebtedness) (a "*Payment Default*") or results in the acceleration of such Indebtedness prior to its express 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 (without such acceleration having been rescinded, annulled or otherwise cured), aggregates $100,000,000 or more; *provided* that this clause (v)(a) shall not apply to Indebtedness that becomes due solely as a result of the voluntary sale or transfer of property or assets to the extent such sale or transfer is permitted by the terms of such Indebtedness; or (b) the Company and any Guarantor shall, with respect to Limited Recourse Debt in an aggregate principal amount in excess of $300,000,000, default in the observance or performance of any agreement or condition relating to any such Limited Recourse Debt or contained in any instrument or agreement evidencing, securing or relating thereto, and such Limited Recourse Debt shall as a result thereof become due prior to its final stated maturity; *provided* that this clause (v) shall not apply to any Indebtedness that is required to be converted into Qualifying Equity Interests upon the occurrence of certain designated events so long as no payments in cash or otherwise are required to be made in accordance with such conversion; (vi) any of the Security Documents shall cease, for any reason, to be in full force and effect (other than in accordance with its terms) with respect to Collateral with a book value greater than $50,000,000, or the Company or any Guarantor shall so assert, or any Lien (affecting Collateral with a book value greater than $50,000,000) created by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby (other than, in each case, pursuant to a failure of the Trustee, the Collateral Agent, any other agent appointed by the Trustee, the Collateral Agent or the Holders to take any action within the sole control of such Person) (it being understood that the release of Collateral from the Security Documents or the discharge of a Guarantor therefrom shall not be construed (x) as any of the Security Documents ceasing to be in full force and effect or (y) as any of the Liens created thereunder ceasing to be enforceable or of the same priority and effect purported to be created thereby); (vii) except as permitted by the Indenture or the Guarantee and Collateral Agreement, any Note Guarantee of a Significant Subsidiary ceases, for any reason, to be in full force and effect (other than in accordance with its terms), or any Significant Subsidiary that is a Guarantor denies or disaffirms in writing its obligations under its Note Guarantee; (viii) the Lien subordination provisions in favor of the Holders or any other provision of the Collateral Agency and Intercreditor Agreement shall cease for any reason to be valid (other than by its express terms) and, in the case of any provision of the Collateral Agency and Intercreditor Agreement other than the Lien subordination provisions in favor of the Holders, the result thereof is that the interests of the Holders are materially and adversely affected, or the Company or any Guarantor shall assert in writing that the Lien subordination provisions in favor of the Holders or any such other provision of the Collateral Agency and Intercreditor Agreement shall not for any reason be valid (other than by its express terms); and (ix) certain events of bankruptcy or insolvency described in the Indenture with respect to the Company or any Guarantor that is a Significant Subsidiary or any group of Guarantors that, taken together, would constitute a Significant Subsidiary. If any Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of the outstanding Notes may declare all the Notes to be due and payable immediately. Notwithstanding the foregoing, in the case of an Event of Default arising from certain events of bankruptcy or insolvency, all outstanding Notes will become due and payable immediately without further action or notice. Holders may not enforce the Indenture or the Notes except as provided in the Indenture. Subject to certain limitations, Holders of a majority in aggregate principal amount of the outstanding Notes may direct the Trustee in its exercise of any trust or power. 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 or premium, if any,) if it determines that withholding notice is in their interest. The Holders of a majority in aggregate principal amount of the Notes that are then outstanding, by written notice to the Trustee may, on behalf of the Holders of the Notes, rescind an acceleration or waive any existing Default or Event of Default and its consequences under the Indenture except a continuing Default or Event of Default in the payment of interest or premium, if any, on, or the principal of, the Notes. The Company is required to deliver to the Trustee annually

a statement regarding compliance with the Indenture, and the Company is required, upon becoming aware of any Default or Event of Default, to deliver to the Trustee a statement specifying such Default or Event of Default.

(13) *TRUSTEE DEALINGS WITH 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*. A director, officer, employee, incorporator or stockholder of the Company or any of the Guarantors, as such, will not have any liability for any obligations of the Company or the Guarantors under the Notes, the Note Guarantees or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the Notes.

(15) *AUTHENTICATION*. This Note will not be valid until authenticated by the manual signature of the Trustee or an authenticating agent.

(16) *ABBREVIATIONS*. Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

(17) *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 placed only on the other identification numbers placed thereon.

(18) *GOVERNING LAW*. THE INTERNAL LAW OF THE STATE OF NEW YORK WILL GOVERN AND BE USED TO CONSTRUE THE INDENTURE, THIS NOTE AND THE NOTE GUARANTEES WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

The Company will furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to:

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, Texas 77002
Attention: General Counsel

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: _____

Your 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 4.11 of the Indenture, check the appropriate box below:

☐ Section 4.11

If you want to elect to have only part of the Note purchased by the Company pursuant to Section 4.11 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 of this Global Note	Amount of increase in Principal Amount of this Global Note	Principal Amount of this Global Note following such decrease (or increase)	Signature of authorized officer of Trustee or Custodian

* *This schedule should be included only if the Note is issued in global form.*

EXHIBIT B

FORM OF CERTIFICATE OF TRANSFER

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, Texas 77002
Facsimile No.: (832) 325-1508

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Facsimile No.: (612) 217-5651

Re: 3.750% Senior Secured Notes due 2031

Reference is hereby made to the Indenture, dated as of December 16, 2020 (as amended or supplemented from time to time, the "*Indenture*"), among Calpine Corporation, as issuer (the "*Company*"), the Guarantors party thereto and Wilmington Trust, 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 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 Restricted Definitive Note pursuant to Rule 144A**. The Transfer is being effected pursuant to and in accordance with Rule 144A under the 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 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 Restricted 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 Temporary Global Note, the Regulation S Permanent Global Note or a Restricted 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 Permanent Global Note, the Regulation S Temporary Global Note and/or the Restricted Definitive Note and in the Indenture and the Securities Act.

3. ☐ **Check and complete if Transferee will take delivery of a beneficial interest in the IAI Global Note or a Restricted 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 to an Institutional Accredited Investor and pursuant to an exemption from the registration requirements of the Securities Act other than Rule 144A, Rule 144, Rule 903 or Rule 904, and the Transferor hereby further certifies that it has not engaged in any general solicitation within the meaning of Regulation D under the Securities Act and the Transfer complies with the transfer restrictions applicable to beneficial interests in a Restricted Global Note or Restricted Definitive Notes and the requirements of the exemption claimed, which certification is supported by (1) a certificate executed by the Transferee in the form of Exhibit D to the Indenture and (2) an Opinion of Counsel provided by the Transferor or the Transferee (a copy of which the Transferor has attached to this certification), to the effect that such Transfer is in 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 be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the IAI Global Note and/or the Restricted Definitive Notes and in the Indenture and 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 _____), or

(ii) ☐ Regulation S Global Note (CUSIP _____), or

(iii) ☐ IAI Global Note (CUSIP _____); or

(b) ☐ a Restricted Definitive Note.

2. After the Transfer the Transferee will hold:

[CHECK ONE]

(a) ☐ a beneficial interest in the:

(i) ☐ 144A Global Note (CUSIP _____), or

(ii) ☐ Regulation S Global Note (CUSIP _____), or

(iii) ☐ IAI Global Note (CUSIP _____); or

(iv) ☐ Unrestricted Global Note (CUSIP _____); or

(b) ☐ a Restricted Definitive Note; or

(c) ☐ an Unrestricted Definitive Note,

in accordance with the terms of the Indenture.

EXHIBIT C

FORM OF CERTIFICATE OF EXCHANGE

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, Texas 77002
Facsimile No.: (832) 325-1508

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Facsimile No.: (612) 217-5651

Re: 3.750% Senior Secured Notes due 2031

(CUSIP _____)

Reference is hereby made to the Indenture, dated as of December 16, 2020 (as amended or supplemented from time to time, the "*Indenture*"), among Calpine Corporation, as issuer (the "*Company*"), the Guarantors party thereto and Wilmington Trust, 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 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, 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 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, 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, ☐ IAI Global Note with an equal principal amount, 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 CERTIFICATE FROM
ACQUIRING INSTITUTIONAL ACCREDITED INVESTOR

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, Texas 77002
Facsimile No.: (832) 325-1508

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Facsimile No.: (612) 217-5651

Re: 3.750% Senior Secured Notes due 2031

Reference is hereby made to the Indenture, dated as of December 16, 2020 (as amended or supplemented from time to time, the "*Indenture*"), among Calpine Corporation, as issuer (the "*Company*"), the Guarantors party thereto and Wilmington Trust, National Association, as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

In connection with our proposed purchase of $_____ aggregate principal amount of:

(a) ☐ a beneficial interest in a Global Note, or

(b) ☐ a Definitive Note,

we confirm that:

1. We understand that any subsequent transfer of the Notes or any interest therein is subject to certain restrictions and conditions set forth in the Indenture and the undersigned agrees to be bound by, and not to resell, pledge or otherwise transfer the Notes or any interest therein except in compliance with, such restrictions and conditions and the Securities Act of 1933, as amended (the "*Securities Act*").

2. We understand that the offer and sale of the Notes have not been registered under the Securities Act, and that the Notes and any interest therein may not be offered or sold except as permitted in the following sentence. We agree, on our own behalf and on behalf of any accounts for which we are acting as hereinafter stated, that if we should sell the Notes or any interest therein, we will do so only (A) to the Company or any subsidiary thereof, (B) in accordance with Rule 144A under the Securities Act to a "qualified institutional buyer" (as defined therein), (C) to an institutional "accredited investor" (as defined below) that, prior to such transfer, furnishes (or has furnished on its behalf by a U.S. broker-dealer) to you and to the Company a signed letter substantially in the form of this letter and an Opinion of Counsel in form reasonably acceptable to the Company to the effect that such transfer is in compliance with the Securities Act, (D) outside the United States in accordance with Rule 904 of Regulation S under the Securities Act, (E) pursuant to the provisions of Rule 144(k) under the Securities Act or (F) pursuant to an effective registration statement under the Securities Act, and we further agree to provide to any Person purchasing the Definitive Note or beneficial interest in a Global Note from us in a transaction meeting the requirements of clauses (A) through (E) of this paragraph a notice advising such purchaser that resales thereof are restricted as stated herein.

3. We understand that, on any proposed resale of the Notes or beneficial interest therein, we will be required to furnish to you and the Company such certifications, legal opinions and other information as you and the Company may reasonably require to confirm that the proposed sale complies with the foregoing restrictions. We further understand that the Notes purchased by us will bear a legend to the foregoing effect.

4. We are an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act) and have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Notes, and we and any accounts for which we are acting are each able to bear the economic risk of our or its investment.

5. We are acquiring the Notes or beneficial interest therein purchased by us for our own account or for one or more accounts (each of which is an institutional "accredited investor") as to each of which we exercise sole investment discretion.

You and the Company are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

_____

[Insert Name of Accredited Investor]

By: _____

Name:

Title:

Dated: _____

EXHIBIT E

FORM OF SUPPLEMENTAL INDENTURE
TO BE DELIVERED BY SUBSEQUENT GUARANTORS

SUPPLEMENTAL INDENTURE (this "*Supplemental Indenture*"), dated as of _____, 20__, among _____ (the "*Guaranteeing Subsidiary*"), a subsidiary of Calpine Corporation (or its permitted successor), a Delaware corporation (the "*Company*"), the Company and Wilmington Trust, National Association, as trustee under the Indenture referred to below (the "*Trustee*").

W I T N E S S E T H

WHEREAS, the Company has heretofore executed and delivered to the Trustee an indenture (as amended or supplemented from time to time, the "*Indenture*"), dated as of December 16, 2020 providing for the issuance of 3.750% Senior Secured Notes due 2031 (the "*Notes*");

WHEREAS, the Indenture provides that under certain circumstances the Guaranteeing Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which the Guaranteeing Subsidiary shall agree to guarantee all of the Company's Obligations under the Notes and the Indenture on the terms and conditions set forth herein (the "*Note Guarantee*"); and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Guaranteeing Subsidiary and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

1. CAPITALIZED TERMS. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

2. AGREEMENT TO GUARANTEE. The Guaranteeing Subsidiary hereby agrees to become subject to the Guarantee and Collateral Agreement pursuant to Section 4.13 of the Indenture.

3. NO RECOURSE AGAINST OTHERS. No past, present or future director, officer, employee, incorporator, stockholder or agent of the Guaranteeing Subsidiary, as such, shall have any liability for any obligations of the Company or any Guaranteeing Subsidiary under the Notes, any Note Guarantees, the Indenture or this Supplemental Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. Such waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the Commission that such a waiver is against public policy.

4. NEW YORK LAW TO GOVERN. THE INTERNAL LAW OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS SUPPLEMENTAL INDENTURE WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

5. COUNTERPARTS. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. Delivery of an executed counterpart of a signature page to this Supplemental Indenture by telecopier, facsimile or other electronic transmission (i.e. a "pdf" or "tif") shall be effective as delivery of a manually executed counterpart thereof.

6. EFFECT OF HEADINGS. The Section headings herein are for convenience only and shall not affect the construction hereof.

7. THE TRUSTEE. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guaranteeing Subsidiary and the Company.

IN WITNESS HEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed and attested, all as of the date first above written.

Dated: _____, 20___

[GUARANTEEING SUBSIDIARY]

By: _____
Name:
Title:

CALPINE CORPORATION

By: _____
Name:
Title:

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Signatory

EXHIBIT F

FORM OF CERTIFICATE OF BENEFICIAL OWNERSHIP

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, Minnesota 55402
Facsimile No.: (612) 217-5651

Re: $900,000,000 aggregate principal amount of 3.750% Senior Secured Notes due 2031 (the "*Notes*") of Calpine Corporation (the "*Company*")

Ladies and Gentlemen:

This is to certify that based solely on certifications we have received in writing, by tested telex or by electronic transmission from institutions appearing in our records as persons being entitled to a portion of the principal amount of Notes represented by a Regulation S Temporary Global Note issued under the Indenture, dated as of December 16, 2020 (as amended or supplemented from time to time, the "*Indenture*"), among the Company, the Guarantors party thereto and Wilmington Trust, National Association, as trustee, that as of the date hereof, $_____ principal amount of Notes represented by the Regulation S Temporary Global Note being submitted herewith for exchange is beneficially owned by persons that are either (i) non-U.S. persons (within the meaning of Regulation S under the Securities Act of 1933, as amended) or (ii) U.S. persons that purchased the Notes in a transaction that did not require registration under the Securities Act of 1933, as amended.

We further certify that (i) we are not submitting herewith for exchange any portion of such Regulation S Temporary Global Note excepted in such certifications and (ii) as of the date hereof, we have not received any notification from any institution to the effect that the statements made by such institution with respect to any portion of such Regulation S Temporary Global Note submitted herewith for exchange are no longer true and cannot be relied upon as of the date hereof.

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.

Yours faithfully,

[Name of DTC Participant]

By: _____
Name:
Title:
Address:

Date: _____

FIRST SUPPLEMENTAL INDENTURE

FIRST SUPPLEMENTAL INDENTURE, dated as of August 20, 2025 (this "*Supplemental Indenture*"), to the Indenture, dated as of December 16, 2020, among Calpine Corporation, a Delaware corporation ("*Calpine*" or the "*Company*"), each of the guarantors party to the Indenture (as defined below) (the "*Guarantors*") and Wilmington Trust, National Association, as Trustee (the "*Trustee*") (as amended, supplemented, waived or otherwise modified prior to the date hereof, the "*Indenture*").

WHEREAS, Calpine, the Guarantors and the Trustee are parties to the Indenture, pursuant to which Calpine issued its 3.750% Senior Secured Notes due 2031 (the "*Notes*");

WHEREAS, Section 9.01(1) of the Indenture provides that Calpine, the Guarantors and the Trustee, without the consent of any Holder, may amend or supplement the Indenture to cure any ambiguity, defect or inconsistency in the Indenture in a manner that does not adversely affect the rights of any Holder; and

WHEREAS, all conditions necessary to authorize the execution and delivery of this Supplemental Indenture and to make this Supplemental Indenture valid and binding have been complied with or performed.

NOW, THEREFORE, for and in consideration of the foregoing premises, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Notes, as follows:

ARTICLE 1
DEFINITIONS

Section 1.01. *Defined Terms; References*. Unless otherwise specifically defined herein, each term used herein that is defined in the Indenture has the meaning assigned to such term in the Indenture. Each reference to "hereof", "hereunder", "herein" and "hereby" and each other similar reference and each reference to "this Indenture" and each other similar reference contained in the Indenture shall, after this Supplemental Indenture becomes effective, refer to the Indenture as amended hereby.

ARTICLE 2
AMENDMENTS

Section 2.01. *Amendments*.

(a) Section 4.10 of the Indenture is hereby amended by adding the inserted text (indicated in the same manner as the following example: inserted text) as set forth below:

Section 4.10 *Corporate Existence*

Subject to Article 5 hereof, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect:

(1) its corporate, partnership or other existence, and the corporate, partnership or other existence of each of the Guarantors, in accordance with the respective organizational documents (as the same may be amended from time to time) of the Company or any such Guarantor; and

(2) the rights (charter and statutory), licenses and franchises of the Company and the Guarantors; *provided*, *however*, that the Company shall not be required to preserve any such right, license or franchise, or the corporate, partnership or other existence of any of the Guarantors, if (a) the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and the Guarantors, taken as a whole, and that the loss thereof is not adverse in any material respect to the Holders and (b) if a Guarantor is to be dissolved, such Guarantor has no assets.

ARTICLE 3
EFFECT; EFFECTIVENESS; RATIFICATION

Section 3.01. *Effect of Supplemental Indenture*. Except as amended hereby, all of the terms of the Indenture shall remain and continue in full force and effect and are hereby confirmed in all respects. From and after the date of this Supplemental Indenture, all references to the Indenture (whether in the Indenture or in any other agreements, documents or instruments) shall be deemed to be references to the Indenture as amended and supplemented by this Supplemental Indenture.

Section 3.02. *Effectiveness*. The provisions of this Supplemental Indenture shall be effective upon execution and delivery of this instrument by the parties hereto.

Section 3.03. *Ratification of Indenture; Supplemental Indenture Part of Indenture*. Except as expressly amended hereby, the Indenture and the Notes are in all respects ratified and confirmed, and all of the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture is executed as, and shall constitute an indenture supplemental to the Indenture and shall be construed in connection with and form a part of the Indenture for all purposes, and every Holder of Notes heretofore or hereafter authenticated and delivered shall be bound hereby.

ARTICLE 4
MISCELLANEOUS PROVISIONS

Section 4.01. *Concerning the Trustee*. The Trustee makes no representations as to the validity or sufficiency of this Supplemental Indenture. The recitals and statements herein are deemed to be those of Calpine and the Guarantors, and not of the Trustee.

Section 4.02. *Governing Law*. This Supplemental Indenture shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to applicable principles of conflicts of law to the extent that the application of the laws of another jurisdiction would be required thereby.

Section 4.03. *Separability*. In case any provision in this Supplemental Indenture 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 4.04. *Counterparts*. This Supplemental Indenture may be executed in any number of counterparts, each of which will be deemed to be an original, but all such counterparts together will constitute one and the same instrument. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original Supplemental 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. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to this Supplemental Indenture or any document to be signed in connection with this Supplemental Indenture shall be deemed to include electronic signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code; provided that notwithstanding anything herein to the contrary, the Trustee is not under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Trustee pursuant to reasonable procedures approved by the Trustee.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed as of the day and year first above written.

CALPINE CORPORATION

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Senior Vice President, Finance and Treasurer

GUARANTORS

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President of each of the Guarantors listed on Annex A-I hereto

By: /s/ Diana Woodman Hammett
Name: Diana Woodman Hammett
Title: Vice President of each of the Guarantors listed on Annex A-II hereto

WILMINGTON TRUST, NATIONAL ASSOCIATION
as Trustee

By: /s/ Karleen R. Bratland
Name: Karleen R. Bratland
Title: Assistant Vice President

Signature Page to First Supplemental Indenture (3.750% Senior Secured Notes due 2031)

Guarantor

Anacapa Land Company, LLC
Anderson Springs Energy Company, LLC
Aviation Funding Corp.
CalGen Expansion Company, LLC
CalGen Project Equipment Finance Company Three, LLC
Calpine Administrative Services Company, Inc.
Calpine Auburndale Holdings, LLC
Calpine Bethlehem, LLC
Calpine c*Power, Inc.
Calpine CalGen Holdings, LLC
Calpine Central Texas GP, Inc.
Calpine Central, Inc.
Calpine Central-Texas, Inc.
Calpine Cogeneration Corporation
Calpine Eastern Corporation
Calpine Edinburg, Inc.
Calpine Energy Services GP, LLC
Calpine Energy Services LP, LLC
Calpine Energy Services, L.P.
Calpine Fuels Corporation
Calpine Generating Company, LLC
Calpine Gilroy 1, LLC
Calpine Global Services Company, Inc.
Calpine Hidalgo Energy Center, L.P.
Calpine Hidalgo Holdings, Inc.
Calpine Hidalgo, Inc.
Calpine Kennedy Operators, Inc.
Calpine KIA, Inc.
Calpine King City, Inc.
Calpine Leasing Inc.
Calpine Long Island, Inc.
Calpine Magic Valley Pipeline, LLC
CPN Clear Lake, Inc.
Calpine Mid-Atlantic Energy, LLC
Calpine Mid-Atlantic Generation, LLC
Calpine Mid-Atlantic Marketing, LLC
Calpine MVP, LLC
Calpine New Jersey Generation, LLC
Calpine Northbrook Holdings Corporation
Calpine Northbrook Investors, LLC
Calpine Northbrook Project Holdings, LLC
Calpine Operations Management Company, Inc.
Calpine Power Company
Calpine Power Management, LLC
Calpine Power, Inc.
Calpine PowerAmerica, LLC
Calpine PowerAmerica - CA, LLC
Calpine PowerAmerica - ME, LLC
Calpine Project Holdings, Inc.
Calpine Solar, LLC
Calpine Stony Brook, Inc.
Calpine Stony Brook Operators, Inc.
Calpine TCCL Holdings, Inc.
Calpine Texas Pipeline GP, LLC
Calpine Texas Pipeline LP, LLC
Calpine Texas Pipeline, L.P.
Calpine University Power, Inc.
Calpine Vineland Solar, LLC
Channel Energy Center, LLC
Corpus Christi Cogeneration, LLC
CPN 3rd Turbine, Inc.
CPN Acadia, Inc.
CPN Cascade, Inc.
CPN Pipeline Company
CPN Pryor Funding Corporation
CPN Telephone Flat, Inc.

Deer Park Energy Center LLC
Deer Park Holdings, LLC
Delta Energy Center, LLC
Freestone Power Generation, LLC
GEC Bethpage Inc.
Geysers Power I Company, LLC
Idlewild Fuel Management Corp.
JMC Bethpage, Inc.
Los Medanos Energy Center LLC
Magic Valley Pipeline, L.P.
Metcalf Energy Center, LLC
Metcalf Holdings, LLC
Modoc Power, Inc.
New Development Holdings, LLC
Pastoria Energy Center, LLC
Pastoria Energy Facility L.L.C.
Pine Bluff Energy, LLC
Stony Brook Cogeneration Inc.
Stony Brook Fuel Management Corp.
Sutter Dryers, Inc.
Texas Cogeneration Five, Inc.
Thermal Power Company, LLC
Zion Energy LLC

Guarantor
Calpine Construction Management Company, Inc.
Calpine Mid-Atlantic Operating, LLC
Calpine Operating Services Company, Inc.

Exhibit 10.1

Execution Version

REGISTRATION RIGHTS AGREEMENT

OF

CONSTELLATION ENERGY CORPORATION

Dated as of January 7, 2026

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REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT, dated as of January 7, 2026 (this "Agreement"), by and among Constellation Energy Corporation, a Pennsylvania corporation ("Parent"), and each of the persons whose name appears on the signature pages hereto or becomes a party hereto from time to time pursuant to Section 1.10 or Section 5.4 (collectively, the "Company Stockholders").

W I T N E S S E T H:

WHEREAS, pursuant to and subject to the terms and conditions of the Agreement and Plan of Merger, dated as of January 10, 2025 (as amended, supplemented or otherwise modified from time to time, the "Merger Agreement"), with Calpine Corporation, a Delaware corporation ("Company"), CPN CS Holdco Corp., a Delaware corporation and direct wholly-owned subsidiary of Company ("New Company"), CPN CKS Corp., a Delaware corporation and wholly-owned subsidiary of New Company, Cascade Transco, Inc., a Delaware corporation and direct wholly-owned subsidiary of Parent, Cascade Transco – 1, LLC, a Delaware limited liability company and direct wholly-owned subsidiary of Parent, and Volt Energy Holdings GP, LLC, a Delaware limited liability company, solely in its capacity as the representative of the stockholders of Company, Parent is delivering to the Company Stockholders shares of common stock of Parent, no par value (the "Parent Shares" and any such shares of Parent Shares delivered to the Company Stockholders, including Additional Shares (as defined below), the "Shares"), as part of the consideration for the Mergers on the date hereof; and

WHEREAS, Parent has agreed to grant the Company Stockholders registration rights in respect of the Shares and to cooperate with each of the Company Stockholders in connection with sales or other dispositions of the Shares, on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

ARTICLE I
REGISTRATION

1.1 Piggyback Registrations.

(a) Subject to the terms and conditions hereof, whenever Parent proposes (whether on its own behalf or for any Person) to register any Parent Shares under the Securities Act (other than a registration by Parent (i) on Form S-4 or any successor form thereto or similar form that relates to a transaction subject to Rule 145 under the Securities Act or (ii) on Form S-8 or any successor form thereto or in connection with any employee stock option or other benefit plan) (each, a "Piggyback Registration"), Parent shall give all Company Stockholders prompt written notice thereof (but not less than five (5) Business Days prior to the filing by Parent with the Commission of any registration statement with respect thereto or two (2) Business Days with respect to any Non-Marketed Underwritten Offering). Such notice (each, a "Piggyback Notice") shall specify the number of shares of Parent Shares proposed to be registered, the proposed date of filing of such registration statement with the Commission, the proposed means of distribution and the proposed managing underwriter(s) (if any) and a minimum offering price of such shares of Parent Shares (if any), in each case to the extent then known. Subject to Section 1.1(b), Parent shall include in each such Piggyback Registration all Registrable Securities held by the Company Stockholders (each, a "Piggyback Seller") with respect to which Parent has received a written request (which written request shall specify the number of Registrable Securities requested to be disposed of by such Piggyback Seller) for inclusion therein within three (3) Business Days after such Piggyback Notice is received by such Piggyback Seller or one (1) Business Day with respect to any Non-Marketed Underwritten Offering.

(b) If, in connection with a Piggyback Registration that involves an Underwritten Offering, the lead managing underwriter(s) advises Parent that, in its opinion, the inclusion of all the shares of Parent Shares sought to be included in such Piggyback Registration by (i) Parent, (ii) other Persons who have sought to have shares of Parent Shares registered in such Piggyback Registration pursuant to rights to demand (other than pursuant to so-called "piggyback" or other incidental or participation registration rights) such registration (such Persons being "Other Demanding Sellers"), (iii) the Piggyback Sellers and (iv) any other proposed sellers of shares of Parent Shares (such Persons being "Other Proposed Sellers"), as the case may be, would adversely affect the proposed offering price, the timing, the distribution method, or the probability of success of such offering, then Parent shall include in the registration statement applicable to such Piggyback Registration only such shares of Parent Shares as Parent is so advised in writing (email being sufficient) by such lead managing underwriter(s) can be sold without such an effect, as follows and in the following order of priority:

(i) if the Piggyback Registration relates to an offering for Parent's own account, then (A) first, such number of shares of Parent Shares to be sold by Parent as Parent, in its reasonable judgment and acting in good faith and in accordance with sound financial practice, shall have determined, (B) second, Registrable Securities of the Piggyback Sellers, pro rata based on the number of Registrable Securities then held by each such Piggyback Seller (provided that any Registrable Securities thereby allocated to a Piggyback Seller that exceed such Piggyback Seller's request shall be reallocated among the remaining Piggyback Sellers in like manner), (C) third, shares of Parent Shares sought to be registered by Other Demanding Sellers, pro rata on the basis of the number of shares of Parent Shares proposed to be sold by such Other Demanding Sellers and (D) fourth, other shares of Parent Shares proposed to be sold by any Other Proposed Sellers;

(ii) if the Piggyback Registration relates to a Shelf Offering by the Demanding Shareholder(s), then (A) first, such number of Registrable Securities sought to be registered by the Demanding Shareholder(s) and each Piggyback Seller, pro rata in proportion to the number of securities sought to be registered by all such Demanding Shareholder(s) and Piggyback Sellers, (B) second, shares of Parent Shares sought to be registered by each Other Demanding Seller, pro rata in proportion to the number of securities sought to be registered by all such Other Demanding Sellers, (B) third, shares of Parent Shares to be sold by Parent and (C) fourth, other shares of Parent Shares proposed to be sold by any Other Proposed Sellers.

(iii) if the Piggyback Registration relates to an offering other than for Parent's own account or the Demanding Shareholder(s), then (A) first, such number of Registrable Securities and shares of Parent Shares sought to be registered by each Piggyback Seller and Other Demanding Seller, pro rata in proportion to the number of securities sought to be registered by all such Piggyback Sellers and Other Demanding Sellers, (B) second, shares of Parent Shares to be sold by Parent and (C) third, other shares of Parent Shares proposed to be sold by any Other Proposed Sellers.

(c) For clarity, in connection with any Underwritten Offering under this Section 1.1, Parent shall not be required to include the Registrable Securities of a Piggyback Seller in the Underwritten Offering unless such Piggyback Seller accepts the terms of the underwriting as agreed upon between Parent and the lead managing underwriter(s), which shall be selected by Parent (after consultation with Piggyback Sellers).

(d) If, at any time after giving written notice of its intention to register any shares of Parent Shares as set forth in this Section 1.1 and prior to the time the registration statement filed in connection with such Piggyback Registration is declared effective, Parent shall determine for any reason not to register such shares of Parent Shares, Parent may, at its election, give written notice of such determination as soon as reasonably practicable to the Piggyback Sellers and thereupon shall be relieved of its obligation to register any Registrable Securities in connection with such particular withdrawn or abandoned Piggyback Registration.

1.2 Shelf Registration Statement.

(a) On or prior to the later to occur of (x) the Closing Date or (y) 30 days after Parent has received, to its reasonable satisfaction, the financial statements described by Section 8.1(c)(i) of the Merger Agreement (such later date, the "Shelf Filing Deadline"), Parent shall use its reasonable best efforts to have an effective registration statement on Form S-3 ("Form S-3"), or if Parent is not eligible to use Form S-3, an effective registration statement on Form S-1, or any successor forms thereto providing for an offering to be made on a continuous basis pursuant to Rule 415 under the Securities Act (any such registration statement, a "Shelf Registration Statement"), which may be in the form of an automatic shelf registration statement (as defined in Rule 405 under the Securities Act), if available, or any other Shelf Registration Statement registering all Registrable Securities then held by the Company Stockholders. For the avoidance of doubt, Parent may satisfy its obligations with respect to the effectiveness of a Shelf Registration Statement by filing with the Commission and providing the Company Stockholders with a prospectus supplement under a "universal" or other Shelf Registration Statement of Parent that also registers sales of securities for the account of Parent or other holders (provided that, for the avoidance of doubt, Parent shall comply with all of its other obligations under this Agreement with respect to a Shelf Registration Statement, including Section 1.2(b)), it being agreed that, if available, Parent shall file such a prospectus supplement in lieu of a new Shelf Registration Statement, unless Parent and the Company Stockholders otherwise agree. Notwithstanding the foregoing, if it is not possible to prepare the Required Financial Statements (as defined in the Merger Agreement) as of the Shelf Filing Deadline because the Closing occurs during a period when more current historical or pro forma financial statements are required under Regulation S-X, Parent may delay the filing of the Shelf Registration Statement until as soon as reasonably practicable after Parent files its next Quarterly Report on Form 10-Q (if the Required Financial Statements are for such next interim period) or Annual Report on Form 10-K (if the Required Financial Statements include annual financial statements for such next fiscal year).

(b) Subject to Section 1.2(c), Parent will use its reasonable best efforts to keep a Shelf Registration Statement continuously effective until the earlier of (i) the date on which the total amount of Registrable Securities as of such date is not a Registrable Amount; and (ii) the date on which this Agreement terminates pursuant to Section 5.1.

(c) Notwithstanding anything to the contrary contained in this Agreement, Parent shall be entitled, from time to time, by providing written notice to the Company Stockholders whose Registrable Securities are registered under the Shelf Registration Statement, to require such Company Stockholder to suspend the use of the prospectus for sales of Registrable Securities under the Shelf Registration Statement during any Blackout Period. In the event of a Blackout Period, Parent shall deliver to such Company Stockholder a certificate signed by the chief executive officer, the chief financial officer or the general counsel of Parent certifying that, in the good faith judgment of Parent, the conditions described in the definition of Blackout Period are met. After the expiration of any Blackout Period and without any further request from a Company Stockholder, Parent to the extent necessary shall as promptly as reasonably practicable prepare a post-effective amendment or supplement to the Shelf Registration Statement or the prospectus, or any document incorporated therein by reference, or file any other required document so that, as thereafter delivered to purchasers of the Registrable Securities included therein, the prospectus will not include an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. Parent shall promptly provide written notice to the Company Stockholders whose Registrable Securities are registered under the Shelf Registration Statement of the expiration of any Blackout Period.

(d) At any time that a Shelf Registration Statement is effective, if one or more Demanding Shareholders deliver a notice to Parent (a "Take-Down Notice") stating that such Demanding Shareholder intends to (i) sell a Registrable Amount of Registrable Securities (which Take-Down Notice shall specify the maximum number of Registrable Securities intended to be sold by such Demanding Shareholder) on the Shelf Registration Statement in an Underwritten Offering or (ii) distribute Registrable Securities (which Take-Down Notice shall specify the maximum number of Registrable Securities intended to be distributed by such Demanding Shareholder) on the Shelf Registration Statement (each, a "Shelf Offering"), Parent shall, promptly, and in a manner reasonably agreed with such Demanding Shareholder(s) (and in any event within (i) five (5) Business Days after the receipt of a Take-Down Notice for any Marketed Underwritten Shelf Offering, (ii) two (2) Business Days after the receipt of a Take-Down Notice for any Non-Marketed Underwritten Shelf Offering and (iii) one (1) Business Day after receipt of a Take-Down Notice for any other Shelf Offering, in each case, unless a longer period is agreed to by the Demanding Shareholder(s) representing a majority of the Registrable Securities that made the Take-Down Notice), amend or supplement the Shelf Registration Statement as may be necessary in order to enable such Registrable Securities to be distributed pursuant to the Shelf Offering. The Demanding Shareholder(s) holding a majority of the Registrable Securities to be sold in the Underwritten Offering shall have the right to select the underwriter(s) for any Underwritten Offering conducted pursuant to a Take-Down Notice (which shall consist of one or more reputable nationally-recognized investment banks), subject to Parent's prior approval (which shall not be unreasonably withheld, conditioned or delayed). The Demanding Shareholders may demand, pursuant to this Section 1.2(d), (i) in the aggregate, not more than six (6) Shelf Offerings and (ii) not more than three (3) Shelf Offerings in any twelve (12)-month period, *provided, however* that each of Access and CPP may each individually only demand one (1) Shelf Offering pursuant to this Section 1.2(d).

(e) Parent shall not be obligated to effect any Shelf Offering (A) within 60 days of an Underwritten Offering in which the Company Stockholders were offered "piggyback" rights pursuant to Section 1.1 (subject to Section 1.1(b)) and at least 80% of the number of Registrable Securities requested by the Company Stockholders to be included in such Underwritten Offering were included and sold or (B) within 60 days of the completion of any Shelf Offering.

(f) In the event any Company Stockholder requests to participate in a registration pursuant to this Section 1.2 in connection with a Permitted Distribution in Kind, such registration shall provide for resale by such partners or members, if requested by the Company Stockholder and subject to such partners or members providing such cooperation to Parent as would be required if such partners or members were Company Stockholders under this Agreement. Furthermore, Parent will assist with such Permitted Distribution in Kind in the manner reasonably requested by such Company Stockholder and in compliance with the Securities Act and the Exchange Act, as applicable.

1.3 Withdrawal Rights. Prior to the filing of the applicable "red herring" prospectus or prospectus supplement used for marketing a Shelf Offering, any Company Stockholder shall have the right to withdraw from such Shelf Offering any or all of the Registrable Securities designated by it for registration, provided that one or more Company Stockholder(s) may elect to have Parent continue a Shelf Offering if a Registrable Amount of Registrable Securities is proposed to be sold in the Shelf Offering by such Company Stockholder(s). In the event of any such withdrawal, Parent shall not include such Registrable Securities in the applicable Shelf Offering and such Registrable Securities shall continue to be Registrable Securities for all purposes of this Agreement (subject to the other terms and conditions of this Agreement). If withdrawn, a demand for a Shelf Offering (other than the first Shelf Offering withdrawn following the date of this Agreement, if any (provided such Shelf Offering was withdrawn prior to the issuance of a press release announcing the launch of such Shelf Offering)) shall constitute a demand for a Shelf Offering by the Company Stockholders for purposes of Section 1.2(d).

1.4 Holdback Agreements. In connection with any Underwritten Offering in which any Company Stockholder participates, each such Company Stockholder agrees to enter into customary lock-up agreement in favor of the managing underwriter(s), restricting the sale or distribution of equity securities of Parent (including sales pursuant to Rule 144 under the Securities Act) to the extent required in writing (email being sufficient) by the lead managing underwriter(s) with respect to an applicable Underwritten Offering during the period commencing on the date of the "pricing" of such Underwritten Offering and continuing for not more than the lesser of (i) the period to which Parent (subject to customary carve-outs and limitations) is restricted and (ii) (a) ninety (90) days after the date of the "final" prospectus (or "final" prospectus supplement if the Marketed Underwritten Offering is made pursuant to a Shelf Registration Statement), pursuant to which such Marketed Underwritten Offering shall be made or (b) forty-five (45) days after the date of the "final" prospectus (or "final" prospectus supplement if the Non-Marketed Underwritten Offering is made pursuant to a Shelf Registration Statement), pursuant to which such Non-Marketed Underwritten Offering shall be made, or, in each case, such shorter period as is required by the lead managing underwriter(s). Any discretionary waiver or termination of the requirements under the foregoing provisions made by Parent or applicable lead managing underwriter(s) shall apply to each Company Stockholder on a pro rata basis.

1.5 Registration Procedures.

(a) If and whenever Parent is required to use reasonable best efforts to effect the registration of any Registrable Securities under the Securities Act as provided in Section 1.2, Parent shall as expeditiously as reasonably practicable:

(i) prepare and file with the Commission a registration statement to effect such registration in accordance with the intended method or methods of distribution of such securities and thereafter use reasonable best efforts to cause such registration statement to become and remain effective pursuant to the terms of this Article I; provided, however, that Parent may discontinue any registration of its securities which are not Registrable Securities at any time prior to the effective date of the registration statement relating thereto; provided, further, that before filing such registration statement or any amendments thereto, Parent will furnish to the Company Stockholders which are including Registrable Securities in such registration (the "Selling Stockholders"), their counsel (which shall be one counsel for all Selling Stockholders, as designed by the Company Stockholders) and the lead managing underwriter(s) and their counsel, if any, copies of all such documents proposed to be filed, which documents will be subject to the review and reasonable comment of such underwriter(s) counsel, and other documents reasonably requested by such underwriter(s) counsel, including any comment letter from the Commission. Parent shall not file any such registration statement or prospectus or any amendments or supplements thereto with respect to a Shelf Offering to which the Company Stockholders and their counsel or the lead managing underwriter(s), if any, shall reasonably object, in writing, on a timely basis, unless, in the opinion of Parent, such filing is necessary to comply with Applicable Law;

(ii) prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary at the sole opinion of Parent to keep such registration statement effective pursuant to the terms of this Article I, and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement;

(iii) if requested by the lead managing underwriter(s), if any, or any of the Company Stockholders, promptly include in a prospectus supplement or post-effective amendment such information as the lead managing underwriter(s), if any, and such Company Stockholders may reasonably request in order to permit the intended method of distribution of such securities and make all required filings of such prospectus supplement or such post-effective amendment as soon as reasonably practicable after Parent has received such request; provided, however, that Parent shall not be required to take any actions under this Section 1.5(a)(iii) that are not, in the opinion of counsel for Parent, in compliance with Applicable Law;

(iv) furnish to each Selling Stockholder and each underwriter, if any, of the securities being sold by such Selling Stockholder such number of conformed copies of such registration statement and of each amendment and supplement thereto, such number of copies of the prospectus contained in such registration statement (including each preliminary prospectus and any summary prospectus) and each free writing prospectus (as defined in Rule 405 of the Securities Act) (each, a "Free Writing Prospectus") utilized in connection therewith and any other prospectus filed under Rule 424 under the Securities Act, in conformity with the requirements of the Securities Act, and such other documents as each Selling Stockholder and each underwriter, if any, may reasonably request in order to facilitate the public sale or other disposition of the Registrable Securities owned by such Selling Stockholder; provided, however, that notwithstanding the foregoing, Parent shall not be required to provide any documents or information to an underwriter or broker, sales agent or placement agent if such underwriter or broker, sales agent or placement agent has not then been named with respect to the applicable Underwritten Offering or other offering involving a registration as an underwriter or broker, sales agent or placement agent, as applicable;

(v) use reasonable best efforts to cause such Registrable Securities to be listed on the NASDAQ Stock Market (or another national securities exchange);

(vi) use reasonable best efforts to provide and cause to be maintained a transfer agent and registrar for all Registrable Securities covered by such registration statement from and after a date not later than the effective date of such registration statement;

(vii) in an Underwritten Offering, enter into an underwriting agreement in form, scope and substance as is customary in underwritten offerings and in connection therewith deliver such documents and certificates as are reasonably requested by the Company Stockholders, their counsel and the lead managing underwriter(s), if any, to evidence the continued validity of the representations and warranties made therein and to evidence compliance with any customary conditions contained in the underwriting agreement (all of the above shall be done at each closing under such underwriting agreement, or as and to the extent required thereunder);

(viii) use reasonable best efforts to obtain for the Selling Stockholders and underwriter(s) (A) opinion of counsel for Parent, covering the matters customarily covered in corporate opinions and negative assurance letters requested in Underwritten Offerings and (B) "comfort" letter and updates thereof (or, in the case of any such Person which does not satisfy the conditions for receipt of a "comfort" letter specified in Statement on Auditing Standards No. 72, an "agreed upon procedures" letter) signed by the independent public accountants who have certified Parent's financial statements and, to the extent required, any other financial statements included in such registration statement, covering the matters customarily covered in "comfort" letters in connection with Underwritten Offerings;

(ix) make available for inspection by each Selling Stockholder or any underwriter participating in any disposition pursuant to any registration statement, and any attorney, accountant or other agent or representative retained in connection with such offering by such Selling Stockholder or underwriter (collectively, the "Inspectors"), such financial and other records, pertinent corporate documents and instruments of Parent (collectively, the "Records"), as shall be reasonably necessary to enable them to exercise their due diligence responsibility, and cause the officers, directors and employees of Parent and its subsidiaries (and use its reasonable best efforts to cause its auditors) to participate in customary due diligence calls and to supply all information in each case reasonably requested by any such Inspector in connection with such registration statement; provided, however, that Parent shall not be required to provide any information under this clause (ix) if (A) Parent believes, after consultation with counsel for Parent, that to do so would cause Parent to forfeit an attorney-client privilege that was applicable to such information or (B) if either (1) Parent has requested and been granted from the Commission confidential treatment of such information contained in any filing with the Commission or documents provided supplementally or otherwise or (2) Parent reasonably determines in good faith that such Records are confidential and so notifies the Inspectors in writing (email being sufficient); unless prior to furnishing any such information with respect to clause (1) or (2), such Inspector enters into a confidentiality agreement with Parent, on terms and conditions reasonably acceptable to Parent; provided, further, that each Selling Stockholder agrees that it will, upon learning that disclosure of such Records is sought in a court of competent jurisdiction or by another Governmental Authority, give notice to Parent and allow Parent, at its expense, to undertake appropriate action seeking to prevent disclosure of the Records deemed confidential;

(x) as promptly as practicable notify in writing (email being sufficient) the Selling Stockholders and the underwriters, if any, of the following events: (A) the filing of the registration statement, any amendment thereto, the prospectus or any prospectus supplement related thereto or post-effective amendment to the registration statement or any Free Writing Prospectus utilized in connection therewith, and, with respect to the registration statement or any post-effective amendment thereto, when the same has become effective; (B) any request by the Commission or any other U.S. or state Governmental Authority for amendments or supplements to the registration statement or the prospectus or for additional information; (C) the issuance by the Commission of any stop order suspending the effectiveness of the registration statement or the initiation of any proceedings by any Person for that purpose; (D) the receipt by Parent of any notification with respect to the suspension of the qualification of any Registrable Securities for sale under the securities or "blue sky" laws of any jurisdiction or the initiation or threat of any proceeding for such purpose; and (E) subject to the provisions of this Agreement relating to a Blackout Period, upon Parent's knowledge of the occurrence of any event that makes any statement made in such registration statement or related prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires the making of any changes in such registration statement, prospectus or documents so that, in the case of the registration statement, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and that in the case of the prospectus, it will not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, and, at the request of any Selling Stockholder, promptly prepare and furnish to such Selling Stockholder a reasonable number of copies of a supplement to or an amendment of such registration statement or prospectus as may be necessary so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(xi) use reasonable best efforts to obtain the withdrawal of any order suspending the effectiveness of such registration statement, or the lifting of any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction at the earliest reasonable practicable date, except that Parent shall not for any such purpose be required to (A) qualify generally to do business as a foreign corporation in any jurisdiction wherein it would not but for the requirements of this clause (x) be obligated to be so qualified, (B) subject itself to taxation in any such jurisdiction or (C) file a general consent to service of process in any such jurisdiction;

(xii) cooperate with each of the Selling Stockholders and each underwriter participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with FINRA; and

(xiii) in a Marketed Underwritten Shelf Offering, have appropriate officers of Parent prepare and make presentations at a reasonable number of "road shows" and before analysts, as the case may be, and other information meetings reasonably organized by the underwriters and otherwise use its reasonable best efforts to cooperate as reasonably requested by the Company Stockholders and the underwriters in the offering, marketing or selling of the Registrable Securities.

(b) Parent may require each Selling Stockholder and each underwriter, if any, to furnish Parent in writing such information regarding such Selling Stockholder or such underwriter and the distribution of such Registrable Securities as Parent may from time to time reasonably request in writing (email being sufficient) to complete or amend the information required by such registration statement.

(c) Each Selling Stockholder agrees that upon receipt of any notice from Parent of the happening of any event of the kind described in clauses (B), (C), (D) or (E) of Section 1.5(a)(x), such Selling Stockholder shall forthwith discontinue such Selling Stockholder's disposition of Registrable Securities pursuant to the applicable registration statement and prospectus relating thereto until such Selling Stockholder's receipt of the copies of the supplemented or amended prospectus contemplated by Section 1.5(a)(x), or until it is advised in writing (email being sufficient) by Parent that the use of the applicable prospectus may be resumed, and has received copies of any additional or supplemental filings that are incorporated or deemed to be incorporated by reference in such prospectus.

(d) With a view to making available to the Company Stockholders the benefits of Rule 144 under the Securities Act, Parent shall:

(i) use reasonable best efforts to make and keep public information available, as those terms are defined in Rule 144 under the Securities Act;

(ii) use reasonable best efforts to file with the Commission in a timely manner all reports and other documents required of Parent under the Exchange Act, at any time when Parent is subject to such reporting requirements; and

(iii) otherwise use commercially reasonable efforts to provide such Company Stockholder with such customary assistance as is reasonably requested.

1.6 Registration Expenses. All documented, out-of-pocket expenses incident to Parent's performance of its obligations under this Article I, including (a) all registration and filing fees, and reasonable fees and expenses associated with filings required to be made with FINRA, (b) all printing (including expenses of printing certificates for the Registrable Securities in a form eligible for deposit with the Depository Trust Company and of printing prospectuses if the printing of prospectuses is requested by a Company Stockholder) and copying expenses, (c) all messenger, telephone and delivery expenses, (d) reasonable fees and expenses of Parent's independent certified public accountants and counsel (including with respect to "comfort" letters and opinions), and (e) expenses of Parent incurred in connection with any "road show", shall be borne solely by Parent whether or not any registration statement is filed or becomes effective, subject to Section 1.3. In connection with Parent's performance of its obligations under this Article I, Parent will pay its internal expenses (including all salaries and expenses of its officers and employees performing legal or accounting duties and the expense of any annual audit). Each Company Stockholder shall pay its portion of all underwriting discounts and commissions and transfer taxes, if any, relating to the sale of such Company Stockholder's Registrable Securities pursuant to any registration. Parent shall not be responsible for legal fees incurred by Company Stockholders incurred in connection with Parent's performance of its obligations under this Article I.

1.7 Miscellaneous.

(a) Not less than five (5) Business Days before the expected filing date of each registration statement pursuant to this Agreement, Parent shall notify each Company Stockholder of Registrable Securities who have timely provided the requisite notice hereunder entitling such Company Stockholder to register Registrable Securities in such registration statement, of the information, documents and instruments from such Company Stockholder that Parent or any underwriter reasonably requests in connection with such registration statement, including, to the extent applicable, a questionnaire, custody agreement, power of attorney, lock-up letter (not to exceed a 90 day lock-up period) and underwriting agreement (the "Requested Information"), provided that a Company Stockholder shall not be required to sign or deliver a custody agreement or power of attorney. If Parent has not received, on or before the second (2nd) Business Day before the expected filing date, the Requested Information from such Company Stockholder, Parent may file the registration statement without including Registrable Securities of such Company Stockholder. The failure to so include in any registration statement the Registrable Securities of such Company Stockholder of Registrable Securities (with regard to that registration statement) shall not result in any liability on the part of Parent to the Company Stockholders.

(b) Prior to December 31, 2027, Parent shall not grant any demand, piggyback or shelf registration rights, the terms of which are senior to or conflict with the rights granted to the Company Stockholders hereunder to any other Person, without the prior written consent of the Company Stockholders holding a majority of the Registrable Securities.

(c) Parent will cooperate with the Company Stockholders and the managing underwriter(s), if any, to facilitate the timely preparation and delivery of book entries representing Shares to be sold or distributed by any Company Stockholder pursuant to any registration statement or sold pursuant to Rule 144 under the Securities Act, including Parent causing any restrictive legend on any Shares relating to securities law transfer restrictions to be removed, including using its reasonable best efforts to cause an opinion of Parent's counsel be provided in connection therewith, and using its reasonable best efforts to cause the Parent's transfer agent to issue such Shares in such names as such Company Stockholder or managing underwriter(s) may request, if (i) such Shares are sold or distributed pursuant to any registration statement, (ii) such Shares are registered for resale under the Securities Act, (iii) upon a Permitted Distribution in Kind that occurs at least six (6) months after the date of this Agreement, (iv) upon request of any Company Stockholder in connection with any sale or other disposition of the Shares by such Company Stockholder pursuant to Rule 144 within one (1) trading day of any such request therefor from such Company Stockholder, or (v) the Shares can be sold, assigned or transferred pursuant to Rule 144 without restriction, provided that in each case, Parent and Parent's transfer agent have timely received from such Company Stockholder customary representations and documentation reasonably acceptable to Parent and Parent's transfer agent in connection therewith. Parent shall be responsible for the fees of Parent's transfer agent and counsel and all Depository Trust Company fees associated with such issuance.

1.8 Registration Indemnification.

(a) Parent agrees to indemnify and hold harmless, to the fullest extent permitted by Law, each Selling Stockholder and its Affiliates and their respective officers, directors, members, shareholders, employees, managers, partners and agents and each Person who controls (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act) such Selling Stockholder or such other indemnified Person and the officers, directors, members, shareholders, employees, managers, partners and agents of each such controlling Person, from and against all losses, claims, damages, liabilities, costs, out-of-pocket expenses (including reasonable and documented attorneys' fees and expenses) and amounts paid in settlement (collectively, the "Losses"), as incurred, resulting from any untrue statement of a material fact contained in any registration statement, prospectus or preliminary prospectus, Free Writing Prospectus, any a written communication within the meaning of Rule 405 under the Securities Act ("Written Testing-the-Waters Communication") prepared or authorized by the Company or any road show as defined in Rule 433(h) under the Securities Act or any amendment or supplement thereto or any omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of a prospectus, preliminary prospectus, Free Writing Prospectus or any amendment or supplement thereto, in the light of the circumstances under which they were made) not misleading, except insofar as the same are caused by any information furnished in writing to Parent by any Selling Stockholder expressly for use therein.

(b) In connection with any registration statement in which a Selling Stockholder is participating, each such Selling Stockholder shall indemnify Parent, its directors, officers, stockholders, employees, managers, partners and agents, and each Person who controls (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act) Parent, from and against all Losses, as incurred, resulting from any untrue statement of material fact contained in the registration statement, prospectus or preliminary prospectus, Free Writing Prospectus, Written Testing-the-Waters Communication or any road show as defined in Rule 433(h) under the Securities Act or any amendment or supplement thereto or any omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of a prospectus, preliminary prospectus, Free Writing Prospectus or any amendment or supplement thereto, in the light of the circumstances under which they were made) not misleading, in each case solely to the extent, but only to the extent, that such untrue statement or omission is made in such registration statement, prospectus or preliminary prospectus or Free Writing Prospectus or any amendment or supplement thereto in reliance upon and in conformity with written information regarding such Selling Stockholder furnished to Parent by such Selling Stockholder expressly for inclusion in such registration statement, prospectus or preliminary prospectus or Free Writing Prospectus or any amendment or supplement thereto. Notwithstanding the foregoing, no Selling Stockholders shall be liable under this Section 1.8(b) for amounts in excess of the net proceeds received by such holder in the offering giving rise to such liability.

(c) Any Person entitled to indemnification hereunder shall give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification; provided, however, the failure to give such notice shall not release the indemnifying party from its obligation, except to the extent that the indemnifying party has been actually and materially prejudiced by such failure to provide such notice on a timely basis.

(d) In any case in which any such action is brought against any indemnified party, and it notifies an indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein, and, to the extent that it may wish, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party, and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof and acknowledging the obligations of the indemnifying party with respect to such proceeding, the indemnifying party will not (so long as it shall continue to have the right to defend, contest, litigate and settle the matter in question in accordance with this paragraph) be liable to such indemnified party hereunder for any legal or other expense subsequently incurred by such indemnified party in connection with the defense thereof (unless (i) such indemnified party reasonably objects to such assumption on the grounds that there are defenses available to it which are different from or in addition to the defenses available to such indemnifying party and, as a result, a conflict of interest exists or (ii) the indemnifying party shall have failed within a reasonable period of time to assume such defense and the indemnified party is or would reasonably be expected to be materially prejudiced by such delay, in either of which events the indemnified party shall be promptly reimbursed by the indemnifying party for the reasonable and documented fees and expenses incurred in connection with retaining one separate legal counsel (for the avoidance of doubt, for all indemnified parties in connection therewith)). For the avoidance of doubt, notwithstanding any such assumption by an indemnifying party, the indemnified party shall have the right to employ separate counsel in any such matter and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such indemnified party except as provided in the previous sentence. An indemnifying party shall not be liable for any settlement of an action or claim effected without its consent (which consent shall not be unreasonably withheld, conditioned or delayed). No matter shall be settled by an indemnifying party without the consent of the indemnified party, unless such settlement (x) includes as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or litigation, (y) does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of any indemnified party and (z) is settled solely for cash for which the indemnifying party shall be solely liable.

(e) The indemnification provided for under this Agreement shall survive the sale of the Registrable Securities and the termination of this Agreement.

(f) If recovery is not available under the foregoing indemnification provisions for any reason or reasons other than as specified therein, any Person who would otherwise be entitled to indemnification by the terms thereof shall nevertheless be entitled to contribution with respect to any Losses with respect to which such Person would be entitled to such indemnification but for such reason or reasons, in such proportion as is appropriate to reflect the relative fault of the indemnifying party, on the one hand, and such indemnified party, on the other hand, in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party, the Persons' relative knowledge and access to information concerning the matter with respect to which the claim was asserted, the opportunity to correct and prevent any statement or omission, and other equitable considerations appropriate under the circumstances. It is hereby agreed that it would not necessarily be equitable if the amount of such contribution were determined by pro rata or per capita allocation. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not found guilty of such fraudulent misrepresentation. Notwithstanding the foregoing, no Selling Stockholder shall be required to make a contribution in excess of the net proceeds received by such Selling Stockholder from its sale of Registrable Securities in connection with the offering that gave rise to the contribution obligation.

1.9 Lock-Up.

(a) Notwithstanding anything in this Agreement to the contrary, each Company Stockholder agrees that it shall not Transfer any Lock-up Shares prior to the end of the applicable Lock-up Period (the "Lock-up").

(b) Notwithstanding the provisions set forth in this Section 1.9, each Company Stockholder may Transfer the Lock-up Shares during the Lock-up Period (i) to another corporation, partnership, limited liability company, trust, syndicate, association or other business entity that controls, is controlled by or is under common control or management with the Company Stockholder, (ii) to a charitable organization or other Person as a gift, (iii) in a Permitted Distribution in Kind, (iv) pursuant to a pledge of the Parent Shares, or indirectly pursuant to a pledge of the equity interests of the entity that directly owns the applicable Parent Shares, in connection with any Permitted Loan (it being agreed that any foreclosure under such Permitted Loan on any pledged Parent Shares and any subsequent transfer of the Parent Shares by any lender or agent under such Permitted Loan shall not be deemed to violate this Section 1.9), (v) in connection with a liquidation, merger, stock exchange, reorganization, tender offer approved by Parent's board of directors or a duly authorized committee thereof or other similar transaction which results in all of Parent's stockholders having the right to exchange their Parent Shares for cash, securities or other property subsequent to the Closing Date or (vi) to a sovereign wealth fund approved by Parent (collectively, "Permitted Transferee"). The parties acknowledge and agree that any Permitted Transferee of a Company Stockholder shall be subject to the transfer restrictions set forth in this Section 1.9(b) with respect to the Lock-Up Shares upon and after acquiring such Lock-Up Shares.

1.10 Additional Parties; Joinder. In addition to Persons who may become Company Stockholders pursuant to Section 5.4 hereof, if requested of Parent in writing by ECP ControlCo, the ECP GPs or any Affiliated Fund, any Person who received Company Common Shares or Common Shares (each as defined in the Merger Agreement), as applicable, in connection with the DIK Transaction (as defined in the Merger Agreement) and subsequently received Parent Shares in connection with the Mergers, or any of their respective Permitted Transferees, shall be admitted as a party hereunder and become a Company Stockholder upon its execution and delivery of an Additional Parties Joinder Agreement; whereupon such Person shall be treated as a Company Stockholder for all intents and purposes of this Agreement (each such Person, an "Additional Company Stockholder"); provided that such Additional Company Stockholder and its Affiliates Beneficially Own at least 1% of the then outstanding Parent Shares in the aggregate at the time of such execution and delivery if such Additional Parties Joinder Agreement is executed on a date after June 30, 2027. Upon the execution and delivery of an Additional Parties Joinder Agreement by such Additional Company Stockholder, the Parent Shares received by such Additional Company Stockholder in connection with the Mergers and remaining held by such Additional Company Stockholder at the time of such execution and delivery (the "Additional Shares") shall be Shares and Registrable Securities ("Additional Registrable Securities"), subject to the terms of this Agreement, and Parent shall use commercially reasonable efforts to effect the registration of any such Additional Registrable Securities under the Securities Act as provided in Section 1.2 and Section 1.5 within ten (10) business days of such request, provided ECP ControlCo, the ECP GPs or any Affiliated Fund, collectively, may only make such request two (2) times pursuant to this Section 1.10. Notwithstanding anything to the contrary contained in this Agreement, Parent shall not be required to effect the registration of any such Additional Registrable Securities under the Securities Act in the event that, and for so long as, Parent determines in good faith (after consultation with outside counsel) that the registration of Additional Registrable Securities would (a) reasonably be expected to materially adversely affect or materially interfere with any material proposed acquisition, disposition, financing or other material transaction under consideration by Parent or (b) require disclosure of material information that has not been, and is not otherwise required to be, disclosed to the public, the premature disclosure of which would materially adversely affect Parent.

ARTICLE II
FINANCING COOPERATION

2.1 Cooperation.

(a) The Parent shall (and shall cause its Subsidiaries to) use commercially reasonable efforts, at the sole expense of ECP ControlCo, the ECP GPs, any Affiliated Fund or any of their Affiliates or Access or CPP, as applicable, to provide such person with customary cooperation reasonably requested by such person in connection with any Permitted Loan.

(b) Notwithstanding the foregoing, (i) such requested cooperation shall not unreasonably disrupt or interfere with the ongoing business or operations of the Parent or its Subsidiaries, (ii) neither the Parent nor any of its Subsidiaries shall be required to bear any cost or out-of-pocket expense, pay any commitment or other fee or agree to provide any indemnity in connection with any actions described in this Article II, (iii) neither the Parent nor any of its Subsidiaries shall be required take any action that would conflict with or violate or result in a default or breach under any provision of any of their respective governing or constituent documents or any Applicable Law or any material binding agreements, (iv) neither the Parent nor any of its Subsidiaries shall be required take any action that would subject any of the Parent's or its Subsidiaries' respective directors, managers, officers or employees to any personal liability (as opposed to liability in his or her capacity as a director, manager, officer or employee of such person), and (v) the Parent shall not be obliged to provide any information which (A) would result in the loss or waiver of any attorney-client privilege of the Parent or any of its Subsidiaries or (B) would contravene any Applicable Law (provided that the Parent shall use commercially reasonable efforts to make substitute arrangements or permit such disclosure in a manner that would not result in the loss or waiver of any such attorney-client privilege).

2.2 Expenses. Each of ECP ControlCo, the ECP GPs, any Affiliated Fund or any of their Affiliates or Access or CPP, as applicable, shall indemnify, defend and hold harmless each of the Parent and its Subsidiaries from and against any and all liabilities, losses, damages, claims, costs and expenses suffered or incurred by them in connection with their performance of their respective obligations under this Article II with respect to such party requesting cooperation and the provision of any information utilized in connection therewith (other than information provided by or on behalf of the Parent or any of its Subsidiaries), in each case, other than to the extent any of the foregoing was suffered or incurred as a result of the bad faith, gross negligence or willful misconduct by, the Parent, any of its Subsidiaries or any of their respective representatives (as determined by a court of competent jurisdiction in a final and non-appealable judgment). Each of ECP ControlCo, the ECP GPs, any Affiliated Fund or any of their Affiliates or Access or CPP, as applicable, shall, promptly upon written request of the Parent, reimburse the Parent and its Subsidiaries for all reasonable and documented out-of-pocket fees, costs and expenses incurred by the Parent or any of its Subsidiaries in connection with the cooperation required by this Article II with respect to such party.

ARTICLE III
INFORMATION RIGHTS

3.1 Information Rights. Subject to and without limiting any rights of ECP ControlCo, the ECP GPs, any Affiliated Fund or any of their Affiliates under the constituent documents of Parent or Applicable Law, ECP ControlCo, the ECP GPs, any Affiliated Fund or any of their Affiliates acknowledges and agrees that, from and after the First Effective Time (as defined in the Merger Agreement) and until such time as neither ECP ControlCo nor the ECP GPs nor any Affiliated Fund nor any of their Affiliates are a direct or indirect owner of at least 2% of the outstanding Parent Shares, Parent shall provide, and shall cause its Affiliates to provide, to ECP ControlCo, the ECP GPs, any Affiliated Fund or any of their Affiliates at the reasonable request of ECP ControlCo, the ECP GPs, any Affiliated Fund or any of their Affiliates:

(a) within ninety (90) days after the end of each fiscal year of Parent, (i) an audited, consolidated balance sheet of Parent and its Subsidiaries as of the end of such fiscal year, (ii) an audited, consolidated income statement of Parent and its Subsidiaries for such fiscal year, (iii) an audited, consolidated statement of cash flows of Parent and its Subsidiaries for such fiscal year and (iv) an audited, consolidated statement of equity of Parent and its Subsidiaries for such fiscal year; provided that this requirement shall be deemed to have been satisfied if, on or prior to such date, Parent files its Annual Report on Form 10-K for the applicable fiscal year with the Commission;

(b) within forty-five (45) days after the end of each of the first three (3) quarters of each fiscal year of Parent, (i) an unaudited, consolidated balance sheet of Parent and its Subsidiaries as of the end of such fiscal quarter, (ii) an unaudited, consolidated income statement of Parent and its Subsidiaries for such fiscal quarter, (iii) an unaudited, consolidated statement of cash flows of Parent and its Subsidiaries for such fiscal quarter and (iv) an unaudited, consolidated statement of equity of Parent and its Subsidiaries for such fiscal quarter; provided that this requirement shall be deemed to have been satisfied if, on or prior to such date, Parent files its Quarterly Report on Form 10-Q for the applicable fiscal year with the Commission; and

(c) annual consolidated budgets, quarterly financial operating and capital expenditure reports, in each case, to the extent prepared by Parent in the ordinary course of business (excluding, for the avoidance of doubt, plant level detail);

provided, that Parent shall not be obligated to provide such access or materials if Parent determines, in its reasonable judgment (after consultation with outside legal counsel), that doing so would (w) violate Applicable Law, an applicable order or a contract or obligation of confidentiality owing to a third party, (x) result in a waiver of the attorney-client privilege by Parent or any of its Subsidiaries, (y) result in the disclosure of competitively sensitive information of Parent or any of its Subsidiaries to ECP ControlCo, the ECP GPs, any Affiliated Fund or any of their Affiliates (as determined in the reasonable sole discretion of Parent) or (z) cause ECP ControlCo, the ECP GPs, any Affiliated Fund or any of their Affiliates to be considered by FERC to be an "affiliate" pursuant to the FPA (such clauses (w) to (z), the "Disclosure Exceptions"); provided, in each case, that Parent shall, and shall cause its Affiliates to, use commercially reasonable efforts to provide such access or materials (or any portion thereof) to ECP ControlCo, the ECP GPs, any Affiliated Fund or any of their Affiliates in a manner that would not otherwise result in the circumstances described in clauses (w) through (z) hereof. ECP ControlCo, the ECP GPs, any Affiliated Fund or any of their Affiliates agrees that Parent shall not be obligated to provide any such information under this Section 3.1 or Section 3.2 below clause (c) unless ECP ControlCo, the ECP GPs, any Affiliated Fund or any of their Affiliates enters into a written agreement with Parent, providing for customary confidentiality obligations on terms reasonably acceptable to Parent with respect to such information. For the avoidance of doubt, without prejudice to any rights of ECP ControlCo, the ECP GPs, any Affiliated Fund or any of their Affiliates under the constituent documents of Parent, Applicable Law or any other contract, nothing in this provision entitles ECP ControlCo, the ECP GPs, any Affiliated Fund or any of their Affiliates to any voting rights, veto rights or consent rights to any actions of Parent and its Subsidiaries.

3.2 Inspection Rights. So long as ECP ControlCo, the ECP GPs, any Affiliated Fund or any of their Affiliates is a direct or indirect owner of at least 2% of the outstanding Parent Shares, upon reasonable advance notice and during normal business hours, but in no event more than one (1) time per fiscal quarter, ECP ControlCo, the ECP GPs, any Affiliated Fund or any of their Affiliates shall have the right to hold a meeting by teleconference or videoconference with, and Parent shall provide and ensure that ECP ControlCo, the ECP GPs, any Affiliated Fund or any of their Affiliates have reasonable access to, officers and senior management of Parent and its Subsidiaries in respect of the business, operations and affairs of Parent and its Subsidiaries; provided, that Parent shall not be obligated to provide such access if Parent determines, in its reasonable judgment (after consultation with outside legal counsel), that there is a Disclosure Exception.

ARTICLE IV
DEFINITIONS

4.1 Defined Terms. Capitalized terms when used in this Agreement have the following meanings:

"Additional Company Stockholder" has the meaning set forth in Section 1.10.

"Additional Parties Joinder Agreement" means a joinder agreement, a form of which is attached as Exhibit A to this Agreement.

"Additional Registrable Securities" has the meaning set forth in Section 1.10.

"Additional Shares" has the meaning set forth in Section 1.10.

"Affiliate" means any other Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such specified Person (for the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), 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), including (a) for the avoidance of doubt, if such specified Person is an investment fund, any other investment fund, the primary investment advisor to which is the primary investment advisor to such specified Person or an Affiliate thereof, and (b) if such specified Person is a natural Person, any family member of such natural Person. "Controlled" and "controlling" shall be construed accordingly. Notwithstanding the foregoing, for all purposes of this Agreement, in no event shall an Affiliate of ECP ControlCo, the ECP GPs and any Affiliated Fund include any portfolio companies, directly or indirectly, owned, managed, or controlled by investment funds managed or advised by any of ECP ControlCo, the ECP GPs and any Affiliated Fund.

"Affiliated Fund" means, (i) any fund controlled directly or indirectly by any of the ECP GPs or ECP ControlCo, (ii) any investment fund, continuation fund or other vehicle or account managed by ECP Management LP, or otherwise sponsored or controlled, directly or indirectly, by ECP ControlCo or its Affiliates and (iii) any investment vehicle or other arrangement investing on a parallel basis with or in lieu of any entity described in clause (ii).

"Agreement" has the meaning set forth in the preamble.

"Applicable Law" means, with respect to any Person, any Law applicable to such Person, its assets, properties, operations or business.

"Beneficially Own" means, with respect to any securities, having "beneficial ownership" of such securities for purposes of Rule 13d-3 or 13d-5 under the Exchange Act as in effect on the date hereof. Similar terms such as "Beneficial Ownership" and "Beneficial Owner" shall have the corresponding meanings.

"Blackout Period" means a period of up to 60 days in the event that Parent determines in good faith (after consultation with outside counsel) that the registration or sale of Registrable Securities would (a) reasonably be expected to materially adversely affect or materially interfere with any material proposed acquisition, disposition, financing or other material transaction under consideration by Parent or (b) require disclosure of material information that has not been, and is not otherwise required to be, disclosed to the public, the premature disclosure of which would materially adversely affect Parent; provided that a Blackout Period may not occur more than twice in any period of 12 consecutive months and no more than 60 days in a 180 day period. For the avoidance of doubt, a Blackout Period shall expire when the conditions in the foregoing clauses (a) or (b), as applicable, cease to be true.

"Business Day" means a day on which banks are generally open for normal business in New York, New York, which day is not a Saturday or a Sunday.

"Closing" has the meaning set forth in the Merger Agreement.

"Closing Date" has the meaning set forth in the Merger Agreement.

"Commission" means the Securities and Exchange Commission or any other federal agency administering the Securities Act.

"Company" has the meaning set forth in the preamble.

"Demanding Shareholders" means (a) ECP ControlCo, the ECP GPs, any Affiliated Fund or any of their Affiliates who Beneficially Own Parent Shares, (b) AI Holdings (BVI) L.P. ("Access") and (c) Canada Pension Plan Investment Board ("CPP").

"ECP III GP" means Energy Capital Partners III, LLC, a Delaware limited liability company.

"ECP IV GP" means Energy Capital Partners IV, LLC, a Delaware limited liability company.

"ECP Calpine GP" means ECP Calpine GP, LLC, a Delaware limited liability company.

"ECP ControlCo" means ECP ControlCo, LLC, a Delaware limited liability company.

"ECP GPs" means, collectively, ECP III GP, ECP IV GP and ECP Calpine GP.

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

"FERC" means the United States Federal Energy Regulatory Commission or any successor agency.

"Form S-3" has the meaning set forth in Section 1.2(a).

"FPA" means the Federal Power Act.

"Free Writing Prospectus" has the meaning set forth in Section 1.5(a)(iv).

"Governmental Authority" means any court, administrative agency or commission or other governmental authority or instrumentality, domestic or foreign, or applicable exchange or self-regulatory organization, including FINRA.

"Inspectors" has the meaning set forth in Section 1.5(a)(ix).

"Joinder Agreement" means any Additional Parties Joinder Agreement and any Transferee Joinder Agreement.

"Law" means any federal, state, provincial, local, municipal, foreign, international, multinational or other order, judgment, decree, constitution, law, ordinance, regulation, statute, treaty, writ, injunction, or any policy, guideline, notice or protocol, in each case, to the extent that it has the force of law.

"Lock-up" has the meaning set forth in Section 1.9(a).

"Lock-up Period" shall mean, without Parent's prior written consent, the period beginning on the Closing Date and ending on June 30, 2027, provided that (i) on June 30, 2026, the Lock-up Period shall expire with respect to 50% of the aggregate number of Shares acquired by each Company Stockholders at Closing, and (ii) on June 30, 2027, the Lock-up Period shall expire with respect to all remaining Shares acquired by the Company Stockholders at Closing.

"Lock-up Shares" shall mean (i) the Shares acquired by the Company Stockholders at the Closing or otherwise held by any Additional Company Stockholder upon its execution and delivery of an Additional Parties Joinder Agreement and (ii) any Shares transferred by a Company Stockholder in accordance with Section 1.9(b). For the avoidance of doubt, Lock-up Shares shall not include any Parent Shares acquired or held by a Company Stockholder or Additional Company Stockholder that were not acquired as part of the consideration for the Mergers.

"Losses" has the meaning set forth in Section 1.8(a).

"Marketed Underwritten Shelf Offering" means any Shelf Offering that is an Underwritten Offering and where the plan of distribution set forth in the applicable Take-Down Notice includes a customary "road show" (including an "electronic road show") or other substantial marketing effort by Parent and the underwriters.

"Merger Agreement" has the meaning set forth in the recitals.

"Mergers" has the meaning set forth in the Merger Agreement.

"Non-Marketed Underwritten Shelf Offering" means any Shelf Offering that is an Underwritten Offering but is not a Marketed Underwritten Shelf Offering (including, for the avoidance of doubt, any such Shelf Offering that includes a customary pre-marketing confidential wall-cross process that is not a Marketed Underwritten Shelf Offering).

"Other Demanding Sellers" has the meaning set forth in Section 1.1(b).

"Other Proposed Sellers" has the meaning set forth in Section 1.1(b).

"Parent Shares" has the meaning set forth in the recitals.

"Permitted Distribution in Kind" shall mean a distribution by a Company Stockholder of Parent Shares held by such Company Stockholder or its Permitted Transferees to the members, shareholders, partners or other direct or indirect holders of interests in such Company Stockholder.

"Permitted Loan" means a bona fide financing arrangement of ECP ControlCo, the ECP GPs, a Company Stockholder, any Affiliated Fund or any of their Affiliates or Access or CPP, as applicable, with respect to Parent Shares owned by such party, in each case, in the nature of a margin loan, back-leveraged debt, net asset value loan or equity financing or similar arrangement and entered into with a third party, nationally-recognized financial institution in the business of providing the financing of the applicable nature; provided that the initial loan-to-value ratio (and not for the avoidance of doubt margin call and other loan-to-value ratios customary for such financings) with respect to any such financing arrangement does not exceed 20.0% of the value of the Parent Shares that constitute the underlying value for such financing plus the value of the other eligible assets that are included in the applicable financing and that any such financing arrangement is recourse only to ECP ControlCo, the ECP GPs, a Company Stockholder, any Affiliated Fund or any of their Affiliates or Access or CPP, as applicable, and/or its assets and not to the Parent or its Subsidiaries.

"Permitted Transferee" has the meaning set forth in Section 1.9(b).

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

"Piggyback Notice" has the meaning set forth in Section 1.1(a).

"Piggyback Registration" has the meaning set forth in Section 1.1(a).

"Piggyback Seller" has the meaning set forth in Section 1.1(a).

"Records" has the meaning set forth in Section 1.5(a)(ix).

"Registrable Amount" means a number of Registrable Securities having an aggregate value of at least $50 million (based on the anticipated offering price (as reasonably determined in good faith by Parent)), without regard to any underwriting discount or commission.

"Registrable Securities" means the Shares and any shares of Parent Shares received in respect of the Shares in connection with any stock split or subdivision, stock dividend, distribution or similar transaction; provided that any such Shares shall cease to be Registrable Securities upon the earliest of (i) when they are sold by the Company Stockholders pursuant to an effective registration statement under the Securities Act, (ii) when they have been sold by the Company Stockholders pursuant to Rule 144, and (iii) when they shall have ceased to be outstanding.

"Requested Information" has the meaning set forth in Section 1.7(a).

"Rule 144" means Rule 144 promulgated by the Commission pursuant to the Securities Act.

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

"Selling Stockholder" has the meaning set forth in Section 1.2(a)(i).

"Shares" has the meaning set forth in the recitals.

"Shelf Offering" has the meaning set forth in Section 1.2(d).

"Shelf Registration Statement" has the meaning set forth in Section 1.2(a).

"Subsidiary" means, as to any Person, any other Person, in which such first Person (i) owns, directly or indirectly, fifty percent (50%) or more of the outstanding voting securities, equity securities, profits interest or capital interest or (ii) is entitled to elect at least a majority of the board of directors, board of managers or similar governing body.

"Take-Down Notice" has the meaning set forth in Section 1.2(d).

"Transfer" shall mean directly or indirectly, sell, transfer, assign, pledge, encumber, hypothecate or similarly dispose of, either voluntarily or involuntarily, or to enter into any contract, option or other arrangement or understanding with respect to the sale, transfer, assignment, pledge, encumbrance, hypothecation or similar disposition of, any interest owned by a Person or any interest (including a beneficial interest or an economic entitlement) in, or the ownership, control or possession of, any interest owned by a Person, by operation of law or otherwise.

"Transferee Joinder Agreement" means a joinder agreement, a form of which is attached as Exhibit B to this Agreement.

"Underwritten Offering" means a sale of securities of Parent to an underwriter or underwriters for reoffering to the public.

"Written Testing-the-Waters Communication" has the meaning set forth in Section 1.8(a).

4.2 Interpretation. Whenever used herein, the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation," and the words "hereof" and "herein" and similar words shall be construed as references to this Agreement as a whole and not limited to the particular Article, Section, Annex, Exhibit or Schedule in which the reference appears. The word "or" shall not be exclusive but shall mean "and/or" except where the context shall otherwise require. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Annexes, Exhibits and Schedules mean the Articles, Sections and Annexes of, and Exhibits and Schedules attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. References to "$" or "dollars" means United States dollars. Any reference in this Agreement to any gender shall include all genders. The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms. The Annexes, and Schedules referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein. The headings of the Articles and Sections are for convenience of reference only and do not affect the interpretation of any of the provisions hereof. If, and as often as, there is any change in the outstanding shares of Parent Shares by reason of stock dividends, splits, reverse splits, spin-offs, split-ups, mergers, reclassifications, reorganizations, recapitalizations, combinations or exchanges of shares and the like, appropriate adjustment shall be made in the provisions of this Agreement so as to fairly and equitably preserve, as far as practicable, the rights and obligations set forth herein that continue to be applicable on the date of such change. No rule of construction against the drafting Person shall be applied in connection with the interpretation or enforcement of this Agreement, as this Agreement is the product of negotiation between sophisticated parties advised by counsel. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is not a Business Day, the period in question shall end on the next succeeding Business Day.

ARTICLE V
MISCELLANEOUS

5.1 Term. This Agreement will be effective as of the Closing Date and shall terminate on the date when the Company Stockholders cease to Beneficially Own any Registrable Securities, or, with respect to any individual Company Stockholder (x) on the date after June 30, 2027 when such Company Stockholder and its Affiliates cease to Beneficially Own at least 1% of the then outstanding Parent Shares in the aggregate or (y) by written notice at any time by such Company Stockholder to Parent; provided that any such Company Stockholder shall not sell any Shares during any Blackout Period pending at the time of such termination. Notwithstanding the foregoing, Section 1.8, Section 1.9 and Articles II, IV and V shall survive any termination.

5.2 Notices. All notices, consents and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by hand delivery, by prepaid overnight courier (providing written proof of delivery), by confirmed email transmission or by certified or registered mail (return receipt requested and first class postage prepaid), addressed as follows:

(a) If to any Company Stockholder, to the address set forth on such Company Stockholder's signature page attached hereto or in the relevant Joinder Agreement.

(b) if to Parent, to:

Constellation Energy Corporation
1310 Point Street, 8th Floor
Baltimore, MD 21231
Email: David.Dardis@Constellation.com
LegalNotices@Constellation.com
Attention: David O. Dardis, EVP and Chief Legal and Policy Officer
Legal Department

with a copy (which shall not constitute notice) to:

Kirkland & Ellis LLP
609 Main Street
Houston, Texas 77002
Email: andrew.calder@kirkland.com
douglas.bacon@kirkland.com
matt.pacey@kirkland.com
Attention: Andrew T. Calder, P.C.
Douglas E. Bacon, P.C.
Matthew R. Pacey, P.C.

and

Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Email: david.feirstein@kirkland.com
Attention: David B. Feirstein, P.C.

5.3 Amendments and Waivers. Other than as a result of the execution and delivery of a Joinder Agreement, no provision of this Agreement may be amended or modified unless such amendment or modification is in writing and signed by (i) Parent and (ii) any Company Stockholder(s) and its Affiliates that at the time of such amendment or modification collectively owns at least a majority of the Registrable Securities remaining on the date of such amendment or modification; provided, however, that notwithstanding the foregoing, any amendment hereto that adversely affects a Company Stockholder, solely in its capacity as a holder of Registrable Securities (including, without limitation, Section 1.9 of this Agreement or the definitions of "Lock-up Period" or "Lock-up Shares"), shall require the consent of the Company Stockholder so affected. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Applicable Law.

5.4 Assigns and Transferees. Any Company Stockholder may initially assign all or a portion of its rights hereunder to any Person to which such Company Stockholder has transferred all or any of its Registrable Securities, provided that such transferee shall only be admitted as a party hereunder and become a Company Stockholder upon its execution and delivery of a Transferee Joinder Agreement; whereupon such Person shall be treated as a Company Stockholder for all intents and purposes of this Agreement, with the same rights, benefits and obligations hereunder as such transferring Company Stockholder with respect to the transferred Registrable Securities. Notwithstanding the foregoing, no Company Stockholder hereunder may transfer Registrable Securities, or its rights, benefits and obligations hereunder, to any Person who is not an "accredited investor" (as defined in Rule 501 promulgated under the Securities Act), and such transferee will provide such customary representations and warranties as may be reasonably required by Parent to that effect. Except as provided in the preceding two sentences, neither this Agreement nor any of the rights or obligations hereunder shall be assigned by any of the parties hereto without the prior written consent of the other parties. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns. Any attempted assignment in violation of this Section 5.4 shall be void.

5.5 Severability. It is the intent of the parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under Applicable Law and public policies applied in each jurisdiction in which enforcement is sought. If any particular provision or portion of this Agreement shall be adjudicated to be invalid or unenforceable, such provision or portion thereof shall be deemed amended to the minimum extent necessary to render such provision or portion valid and enforceable, and such amendment will apply only with respect to the operation of such provision or portion in the particular jurisdiction in which such adjudication is made.

5.6 Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the parties and delivered to the other parties, it being understood that each party need not sign the same counterpart. Counterparts may be delivered via facsimile, electronic mail (including any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other Applicable Law, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

5.7 Entire Agreement. This Agreement (including the documents and the instruments referred to in this Agreement), together with the Merger Agreement (including the Disclosure Schedule and Exhibits thereto, and together with the other instruments referred to therein), constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement.

5.8 APPLICABLE LAW; JURISDICTION OF DISPUTES. THIS AGREEMENT AND ALL LITIGATION, CLAIMS, ACTIONS, SUITS, HEARINGS OR PROCEEDINGS (WHETHER CIVIL, CRIMINAL OR ADMINISTRATIVE AND WHETHER BASED ON CONTRACT, TORT OR OTHERWISE), DIRECTLY OR INDIRECTLY, ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR THE ACTIONS OF PARENT OR ANY COMPANY STOCKHOLDER IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF OR THEREOF, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT GIVING EFFECT TO ANY CHOICE OR CONFLICT OF LAWS PROVISION OR RULE (WHETHER OF THE STATE OF DELAWARE OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF DELAWARE. EACH OF THE PARTIES HERETO HEREBY EXPRESSLY AND IRREVOCABLY (A) SUBMITS TO THE EXCLUSIVE PERSONAL JURISDICTION OF THE COURT OF CHANCERY OF THE STATE OF DELAWARE (PROVIDED THAT, IF JURISDICTION IS NOT THEN AVAILABLE IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE, THE PERSONAL JURISDICTION OF ANY UNITED STATES FEDERAL COURT LOCATED IN THE STATE OF DELAWARE OR ANY OTHER DELAWARE STATE COURT) IN THE EVENT ANY DISPUTE ARISES OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, (B) AGREES THAT IT WILL NOT ATTEMPT TO DENY OR DEFEAT SUCH PERSONAL JURISDICTION BY MOTION OR OTHER REQUEST FOR LEAVE FROM ANY SUCH COURT AND (C) AGREES THAT IT WILL NOT BRING ANY ACTION RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT IN ANY COURT OTHER THAN THE COURT OF CHANCERY OF THE STATE OF DELAWARE (PROVIDED THAT, IF JURISDICTION IS NOT THEN AVAILABLE IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE, SUCH ACTION MAY BE BROUGHT IN ANY UNITED STATES FEDERAL COURT LOCATED IN THE STATE OF DELAWARE OR ANY OTHER DELAWARE STATE COURT); PROVIDED THAT EACH OF THE PARTIES SHALL HAVE THE RIGHT TO BRING ANY ACTION OR PROCEEDING FOR ENFORCEMENT OF A JUDGMENT ENTERED BY ANY UNITED STATES FEDERAL COURT LOCATED IN THE STATE OF DELAWARE OR ANY DELAWARE STATE COURT IN ANY OTHER COURT OR JURISDICTION.

5.9 WAIVER OF JURY TRIAL. EACH OF PARENT AND EACH COMPANY STOCKHOLDER IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF PARENT OR ANY COMPANY STOCKHOLDER IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT THEREOF.

5.10 Specific Performance. The parties hereto agree that monetary damages would not be an adequate remedy in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms. It is expressly agreed that the parties hereto shall be entitled to seek equitable relief, including injunctive relief and specific performance of the terms hereof, this being in addition to any other remedies to which they are entitled at Law or in equity.

5.11 No Third Party Beneficiaries. Nothing in this Agreement shall confer any rights upon any Person other than the parties hereto and each such party's respective heirs, successors and permitted assigns; provided that the Persons indemnified under Section 1.8 are intended third party beneficiaries of Section 1.8.

5.12 No Recourse. No Person who is not party to this Agreement, including any past, present or future director, officer, employee, incorporator, member, partner, manager, equityholder, Affiliate, agent, attorney, representative or assignee of, and any financial advisor or lender to any of the foregoing (a "Nonrecourse Party") shall have any liability (whether in contract or in tort, in law or in equity, or granted by statute) for any claims, causes of action, obligations, or liabilities arising under, out of, in connection with, or related in any manner to this Agreement or based on, in respect of, or by reason of this Agreement or its negotiation, execution, performance, or breach, other than in the case of fraud. To the maximum extent permitted by Law, each party hereby waives and releases all such claims, causes of action, obligations, or liabilities against any Nonrecourse Parties.

5.13 Expenses. If within 90 days after the Closing, Parent notifies in writing (email being sufficient) the Stockholders' Representative (as defined in the Merger Agreement) of additional Company Expenses (as defined in the Merger Agreement), accompanied by documents reasonably requested by the Stockholders' Representative to evidence such Company Expenses, that were not paid at the Closing or otherwise accounted for in computation of the Aggregate Cash Consideration (as defined in the Merger Agreement) under the Merger Agreement (the "Outstanding Company Expenses"), the Stockholders' Representative for the account of the former limited partners of Volt Parent, LP agrees to reimburse Parent reasonably promptly for any such Outstanding Company Expenses.

[*The remainder of this page left intentionally blank.*]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement by their authorized representatives as of the date first above written.

CONSTELLATION ENERGY CORPORATION

By: /s/ Daniel L. Eggers
Name: Daniel L. Eggers
Title: Executive Vice President and Chief Financial Officer

[*Signature Page to Registration Rights Agreement*]

EXHIBIT A

FORM OF ADDITIONAL PARTIES JOINDER AGREEMENT

This REGISTRATION RIGHTS AGREEMENT ADDITIONAL PARTIES JOINDER ("Joinder"), dated [●], is executed by [●] (the "Additional Company Stockholder") pursuant to the terms of the Registration Rights Agreement, dated as of January 7, 2026, by and among Constellation Energy Corporation, a Pennsylvania corporation, and each of the persons whose name appears on the signature pages thereto (the "Registration Rights Agreement"). Capitalized terms used but not otherwise defined herein have the meanings set forth in the Registration Rights Agreement.

1. Acknowledgment. Additional Company Stockholder hereby acknowledges that it has received and reviewed a copy of the Registration Rights Agreement and all other documents it deems necessary to review in order to enter into this Joinder, and hereby acknowledges and agrees to join and become a party to the Registration Rights Agreement and to be bound by the terms, conditions, covenants, agreements, representations, warranties, acknowledgements and other provisions of the Registration Rights Agreement as a Company Stockholder with all attendant rights, duties and obligations stated therein, with the same force and effect as if originally named therein as a party and as if such party executed the Registration Rights Agreement on the date thereof.

2. Authority. Additional Company Stockholder represents and warrants on and as of the date hereof that it has organizational power and authority to execute, deliver and perform its obligations under this Joinder, and all organizational action required to be taken by it for the due and proper authorization, execution, delivery and performance of this Joinder and the consummation of the transactions contemplated hereby has been duly and validly taken; this Joinder has been duly authorized, executed and delivered by Additional Company Stockholder.

3. Full Force and Effect of Registration Rights Agreement. This Joinder does not cancel, extinguish, limit or otherwise adversely affect any right or obligation of the parties under the Registration Rights Agreement. The parties hereto acknowledge and agree that all of the provisions of the Registration Rights Agreement shall remain in full force and effect.

4. Headings. The section headings used herein are for convenience only and shall not affect the construction hereof.

5. Notice. Any notice required or permitted by the Agreement shall be given to Additional Company Stockholder at the address listed beside Additional Company Stockholder's signature below.

[*Signature page follows*]

ADDITIONAL COMPANY STOCKHOLDER

[_____]

_____

By:
Title:

Address for Notices:

[●]

Email: [●]

Attention: [●]

with a copy (which shall not constitute notice) to:

[●]

Email: [●]

Attention: [●]

EXHIBIT B

FORM OF TRANSFEREE JOINDER AGREEMENT

This REGISTRATION RIGHTS AGREEMENT TRANSFEREE JOINDER ("Joinder"), dated [●], is executed by [●] (the "Transferee") and by [●] (the "Transferor") pursuant to the terms of the Registration Rights Agreement, dated as of January 7, 2026, by and among Constellation Energy Corporation, a Pennsylvania corporation, and each of the persons whose name appears on the signature pages thereto (the "Registration Rights Agreement"). Capitalized terms used but not otherwise defined herein have the meanings set forth in the Registration Rights Agreement.

1. Acknowledgment. Transferee and Transferor each acknowledge that Transferee is acquiring Parent Shares from Transferor, upon the terms and subject to the conditions of the Registration Rights Agreement. Transferee hereby further acknowledges that it has received and reviewed a copy of the Registration Rights Agreement and all other documents it deems necessary to review in order to enter into this Joinder, and hereby acknowledges and agrees to join and become a party to the Registration Rights Agreement and to be bound by the terms, conditions, covenants, agreements, representations, warranties, acknowledgements and other provisions of the Registration Rights Agreement with all attendant rights, duties and obligations stated therein, with the same force and effect as if originally named therein as a party and as if such party executed the Registration Rights Agreement on the date thereof.

2. Assignment. Transferor hereby assigns its rights under the Registration Rights Agreement as follows:

    a) Transferor assigns all rights with respect to the Parent Shares under the Registration Rights Agreement to Transferee.

    b) Transferor and Transferee each confirm that Transferee is a Permitted Transferee and that Transferor and Transferee have each provided notice of this assignment to Parent pursuant to Section 5.2 of the Registration Rights Agreement.

3. Authority. Transferee represents and warrants on and as of the date hereof that it has organizational power and authority to execute, deliver and perform its obligations under this Joinder, and all organizational action required to be taken by it for the due and proper authorization, execution, delivery and performance of this Joinder and the consummation of the transactions contemplated hereby has been duly and validly taken; this Joinder has been duly authorized, executed and delivered by Transferee.

4. Full Force and Effect of Registration Rights Agreement. This Joinder does not cancel, extinguish, limit or otherwise adversely affect any right or obligation of the parties under the Registration Rights Agreement. The parties hereto acknowledge and agree that all of the provisions of the Registration Rights Agreement shall remain in full force and effect.

5. Counterparts. This Joinder may be signed in one or more counterparts (which may be delivered in original form or telecopier), each of which when so executed shall constitute an original and all of which together shall constitute one and the same instrument.

6. Headings. The section headings used herein are for convenience only and shall not affect the construction hereof.

7. Notice. Any notice required or permitted by the Agreement shall be given to Transferee at the address listed beside Transferee's signature below.

[*Signature page follows*]

TRANSFEROR

[_____]

_____

By:
Title:

TRANSFEREE

[_____]

_____

By:
Title:

Address for Notices:

[●]

Email: [●]

Attention: [●]

with a copy (which shall not constitute notice) to:

[●]

Email: [●]

Attention: [●]

Exhibit 10.2

EXECUTION VERSION

CREDIT AGREEMENT

among

CALPINE CONSTRUCTION FINANCE COMPANY, L.P.,

as Borrower

and

THE LENDERS PARTY HERETO,

and

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,

as Administrative Agent and Collateral Agent

and

SUMITOMO MITSUI BANKING CORPORATION

and

ING CAPITAL LLC,

as Co-Managers

Dated as of December 15, 2017

CREDIT SUISSE SECURITIES (USA) LLC

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

CITIGROUP GLOBAL MARKETS INC.

BARCLAYS BANK PLC

CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK

BNP PARIBAS SECURITIES CORP.

NATIXIS SECURITIES AMERICAS LLC

MORGAN STANLEY SENIOR FUNDING, INC.

DEUTSCHE BANK SECURITIES INC.

THE BANK OF TOKYO-MITSUBISHI UFJ, LTD.

GOLDMAN SACHS LENDING PARTNERS LLC

ROYAL BANK OF CANADA

UBS SECURITIES LLC

As Joint Lead Arrangers and Joint Bookrunners

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Exhibit E-2	—	Form of United States Tax Compliance Certificate (For Non-U.S. Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)
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THIS CREDIT AGREEMENT, dated as of December 15, 2017, among CALPINE CONSTRUCTION FINANCE COMPANY, L.P., a Delaware limited partnership (the "Borrower"), CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as administrative agent (in such capacity and including any successors in such capacity, the "Administrative Agent") and as collateral agent (in such capacity and including any successors in such capacity, the "Collateral Agent" and together with the Administrative Agent, the "Agents"), SUMITOMO MITSUI BANKING CORPORATION and ING CAPITAL LLC (collectively, the "Co-Managers") and each of the financial institutions from time to time party hereto (collectively, the "Lenders").

W I T N E S S E T H:

WHEREAS, the Borrower has outstanding obligations under the 2013 Credit Agreement (as defined below); and

WHEREAS, the Borrower intends to repay all outstanding obligations under the 2013 Credit Agreement and to pay fees and expenses related thereto (including, without limitation, any breakage fees) and any swap breakage costs (if any) resulting therefrom with the extensions of credit and commitments under this Agreement on the Effective Date;

NOW, THEREFORE, the parties hereto hereby agree as follows:

SECTION 1

Definitions

1.1. Defined Terms. As used in this Agreement, the following terms shall have the meanings specified below:

"2013 Credit Agreement": that certain Credit Agreement, dated as of May 3, 2013 (as amended, amended and restated, supplemented or otherwise modified from time to time), by and among the Borrower, Goldman Sachs Lending Partners LLC, as collateral agent and administrative agent, and the lenders party thereto.

"2017 Notes": the 5.250% Senior Secured Notes due 2026 issued by Calpine Corporation.

"Administrative Agent": the meaning set forth in the preamble to this Agreement.

"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 a Person will be deemed to be an Affiliate if the Borrower has knowledge that such Person beneficially owns 10% or more of the Voting Stock of the Borrower. For purposes of this definition, the terms "controlling," "controlled by" and "under common control with" have correlative meanings.

"Agents": the meaning set forth in the preamble to this Agreement.

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

"ALTA": American Land Title Association.

"Anti-Corruption Laws": means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or any of its Restricted Subsidiaries from time to time concerning or relating to bribery or corruption.

"Applicable Margin": a percentage per annum equal to, in the case of Term Loans maintained as (i) Base Rate Loans, 1.50% and (ii) Eurodollar Loans, 2.50%.

"Approved Electronic Communication": any notice, demand, communication, information, document or other material that any Loan Party provides to the Administrative Agent pursuant to any Loan Document or the transactions contemplated therein which is distributed to the Agents or to the Lenders by means of electronic communications pursuant to Section 9.2(b).

"Approved Fund": as defined in Section 9.6(b)(ii).

"Arranger": each of the Joint Lead Arrangers and Co-Managers.

"Asset Sale":

(1) the sale, lease, conveyance or other disposition of any assets; provided that the sale, conveyance or other disposition of all or substantially all of the assets of the Borrower and its Restricted Subsidiaries taken as a whole will be governed by the provisions of Section 2.14 and/or Section 6.3 and not Section 6.8; and

(2) the issuance of Equity Interests in any of the Borrower's Restricted Subsidiaries.

Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale:

(1) any single transaction or series of related transactions that involves assets having a Fair Market Value (calculated at the time of the relevant transaction) of less than the greater of (x) $40.0 million and (y) 2.0% of Total Assets;

(2) a transfer of assets between or among the Borrower and any of its Restricted Subsidiaries;

(3) an issuance of Equity Interests by a Restricted Subsidiary to the Borrower or any of its Restricted Subsidiaries;

(4) the sale or lease of products, services, accounts receivable or other assets (including power, capacity, fuel or emission credits or other environmental attributes) in the ordinary course of business (it being understood that a disposition of a quantity of power, capacity, fuel or emission credits, environmental attributes or other products, services or accounts receivable that is material to the Borrower and its Restricted Subsidiaries, as the case may be, shall not alone cause such disposition not to be in the ordinary course of business) and any sale or other disposition of damaged, worn out or obsolete assets or assets no longer used or useful or desirable in the Borrower or any of its Restricted Subsidiaries' business;

(5) the sale or other disposition of cash or Cash Equivalents;

(6) a Restricted Payment that either (x) does not violate Section 6.9 or (y) constitutes a Permitted Investment;

(7) a disposition resulting from any condemnation or other taking, or temporary or permanent requisition, of any property, any interest therein or right appurtenant thereto, or any change of grade affecting any property, in each case, as the result of the exercise of any right of condemnation or eminent domain, including any sale or other transfer to a Governmental Authority in lieu of, or in anticipation of, any of the foregoing events; provided that if such disposition involves assets having a Fair Market Value in excess of $40.0 million, any cash proceeds received in connection therewith are treated as Net Proceeds of an Asset Sale;

(8) any exchange of like property for use in a Permitted Business;

(9) the creation of a Permitted Lien and dispositions in connection with Permitted Liens;

(10) a disposition of assets (other than any assets securing Parity Secured Debt) in connection with a foreclosure, transfer or deed in lieu of foreclosure or other exercise of remedial action;

(11) any disposition of products, services or accounts receivable (including power, capacity, fuel or emission credits) or other obligation pursuant to the Power Purchase and Sale Agreement with South Texas Electric Cooperative, Inc., dated May 22, 1998, as in effect on the Effective Date;

(12) [Reserved];

(13) [Reserved];

(14) any disposition of the rights to the Purchase Option for the pipeline system more fully described in the Agreement to Construct, Lease, and Operate Natural Gas Pipeline Facilities between Tejas Gas Pipeline, L.P. and Jack A. Fusco Energy Center, LLC (f/k/a Brazos Valley Energy LLC), successor in interest to Brazos Valley Energy LP, dated June 26, 2001;

(15) [Reserved];

(16) any disposition of up to 49.9% of (x) the Equity Interests of the Subsidiary that owns exclusively the Bosque Facility (as well as other assets with an aggregate value less than the greater of (x) $40.0 million and (y) 2.0% of Total Assets) and any assets or contracts related thereto or (y) an interest in the Bosque Facility and any assets or contracts related thereto;

(17) 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;

(18) the licensing or sublicensing of intellectual property 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 Borrower and its Restricted Subsidiaries (taken as a whole);

(19) the trading, exchange, swap or other sharing of parts and components, among the Borrower and its Affiliates, in the ordinary course of business and consistent with past or current best practices of the relevant Persons, including for purposes of spare or replacement parts or emergency repairs; and

(20) any sale or disposition of the Equity Interests of any Unrestricted Subsidiary.

"Asset Sale Offer": the meaning set forth in Section 6.8(d).

"Assignee": as defined in Section 9.6(b)(i).

"Assignment and Acceptance": in the case of assignments of Term Loans, an assignment and acceptance entered into by a Lender and an Assignee and accepted by the Administrative Agent to the extent required pursuant to Section 9.6, substantially in the form of Exhibit C hereto.

"Attributable Debt": in respect of a sale and leaseback transaction means, at the time of determination, the present value of the obligation of the lessee for net rental payments during the remaining term of the lease included in such sale and leaseback transaction including any period for which such lease has been extended or may, at the option of the lessor, be extended. Such present value shall be calculated using a discount rate equal to the rate of interest implicit in such transaction, determined in accordance with GAAP; provided, however, that if such sale and leaseback transaction results in a Capital Lease Obligation, the amount of Indebtedness represented thereby will be determined in accordance with the definition of "Capital Lease Obligation."

"Auction": the meaning set forth in Section 2.28.

"Auction Manager": the meaning set forth in Section 2.28.

"Auction Notice": the meaning set forth in Exhibit I.

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

"Bail-In Legislation": with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"Bankruptcy Code": The Bankruptcy Reform Act of 1978, as heretofore and hereafter amended, and codified as 11 U.S.C. §§ 101 *et seq*.

"Bankruptcy Law": The Bankruptcy Code or any similar federal or state law for the relief of debtors.

"Base Rate": for any day, the highest of (a) the Federal Funds Effective Rate plus ½ of 1% per annum, (b) the Prime Rate or (c) the Eurodollar Rate (which rate shall be calculated based upon an Interest Period of one month and shall be determined on a daily basis and, for the avoidance of doubt,the Eurodollar Rate for any day shall be based on the rate determined on such day at 11:00 a.m. (London Time)) on such date, plus 1.0%. Any change in the Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Published LIOB Rate shall be effective as of the opening of business on the effective day of such change in the Prime Rate, the Federal Funds Effective Rate or Published LIBO Rate, respectively.

"Base Rate Loans": Term Loans the rate of interest applicable to which is based upon the Base Rate.

"Beneficial Owner": has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act.

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

"Benefited Lender": the meaning set forth in Section 9.7(a).

"Board of Directors":

(1) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board;

(2) with respect to a partnership, the board of directors of the general partner of the partnership;

(3) with respect to a limited liability company, the managing member or members or any controlling committee of managing members or board of directors thereof; and

(4) with respect to any other Person, the board or committee of such Person serving a similar function.

"Board of Governors": the Board of Governors of the Federal Reserve System of the United States or any Governmental Authority which succeeds to the powers and functions thereof.

"Borrower": the meaning set forth in the preamble to this Agreement.

"Borrowing": the making of Term Loans by the Lenders on a Borrowing Date.

"Borrowing Date": the Business Day specified in a notice pursuant to Section 2.2 as a date on which the Borrower requests the Term Loans or Incremental Term Loans hereunder.

"Bosque Facility": the approximately 762 MW nameplate capacity natural gas-fired combined cycle electric generating facility located on a 280 acre site in Bosque County, Texas. The plant consists of three GE combustion turbines, three Alstom HRSGs, one GE steam turbine, one Alstom steam turbine, together with related water supply agreements, gas and power interconnections and interconnection agreements, equipment, supplies, permits, licenses, contracts and agreements.

"Business Day": any day other than a Legal Holiday; provided that with respect to notices and determinations in connection with, and payments of principal and interest on, Eurodollar Loans, such day is also a day for trading by and between banks in Dollar deposits in the interbank eurodollar market.

"Capital Lease Obligation": at the time any determination is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet in accordance with GAAP, and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such capital lease prior to the first date upon which such capital lease may be prepaid by the lessee without payment of a penalty.

"Capital Stock":

(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; 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.

"Cash Equivalents":

(1) United States dollars;

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

(3) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition thereof and, at the time of acquisition, having one of the highest ratings obtainable from either S&P or Moody's;

(4) deposit accounts with any Lender or bank that has a long-term debt rating of A+ or better by S&P and A1 or better by Moody's (an "Approved Bank");

(5) time deposits, certificates of deposit, acceptances or prime commercial paper issued by an Approved Bank at the time acquired or issued (as applicable and whichever is latest), in each case, having a maturity of not more than one year from the date of acquisition;

(6) repurchase obligations for underlying securities of the types described in preceding clauses (2), (3) and (5) entered into with an Approved Bank at the time acquired, issued or entered into (as applicable and whichever is latest), in each case, having a maturity of not more than one year from the date of acquisition;

(7) commercial paper with a rating of at least A-1 by S&P and at least P-1 by Moody's and, in each case, maturing within one year after the date of acquisition; and

(8) money market funds which invest primarily in Cash Equivalents of the kinds described in clauses (1) through (7) of this definition.

"Cash Management Obligations": with respect to a Loan Party, any obligations of such Loan Party in respect of treasury management arrangements, depositary or other cash management services, including in connection with any automated clearing house transfer of funds or any similar transactions.

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

(1) the direct or indirect sale, 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 properties or assets of the Borrower and its Subsidiaries taken as a whole to any "person" (as that term is used in Section 13(d) of the Exchange Act, but excluding any employee benefit plan of the Borrower or any of its Restricted Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) other than Calpine Corporation, any Subsidiary of Calpine Corporation, a Beneficial Owner of 50% or more of the Voting Stock of Calpine Corporation or any Designated Holder;

(2) the adoption of a plan relating to the liquidation or dissolution of the Borrower other than (A) the consolidation with, merger into or transfer of all or part of the properties and assets of any Restricted Subsidiary of the Borrower to the Borrower or any other Restricted Subsidiary of the Borrower and (B) the merger of the Borrower with an Affiliate solely for the purpose of reincorporating the Borrower or reforming the Borrower in another jurisdiction; or

(3) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any "person" (as defined above) becomes the Beneficial Owner, directly or indirectly, of more than 50% of the Voting Stock of the Borrower, measured by voting power rather than number of shares, other than Calpine Corporation, a Subsidiary of Calpine Corporation, a Beneficial Owner of 50% or more of the Voting Stock of Calpine Corporation or a Designated Holder.

"Co-Managers": as defined in the preamble.

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

"Collateral": all properties and assets of the Loan Parties now owned or hereafter acquired in which Liens have been granted to the Collateral Agent to secure the Secured Obligations.

"Collateral Agent": the meaning set forth in the preamble to this Agreement.

"Commodity Exchange Act": the Commodity Exchange Act (7 U.S.C. § 1 *et seq*.), as amended from time to time, and any successor statute.

"Commonly Controlled Entity": an entity, whether or not incorporated, that is under common control with the Borrower within the meaning of Section 4001 of ERISA or is part of a controlled group that includes the Borrower and that is treated as a single employer under Section 414 of the Code.

"Consolidated Cash Flow": with respect to any specified Person for any period, the Consolidated Net Income of such Person for such period *plus*, without duplication:

(1) an amount equal to any extraordinary, unusual or non-recurring loss plus any net loss realized by such Person or any of its Restricted Subsidiaries in connection with an Asset Sale or the disposition of any securities by such Person or any of its Restricted Subsidiaries or the extinguishment of any Indebtedness of such Person or any of its Restricted Subsidiaries, to the extent such losses were deducted in computing such Consolidated Net Income; *plus*

(2) provision for taxes based on income or profits of such Person and its Restricted Subsidiaries for such period, to the extent that such provision for taxes was deducted in computing such Consolidated Net Income; *plus*

(3) the Fixed Charges of such Person and its Restricted Subsidiaries for such period, to the extent that such Fixed Charges were deducted in computing such Consolidated Net Income; *plus*

(4) depreciation, depletion, amortization (including amortization of intangibles) and other non-cash expenses (excluding any such non-cash expense to the extent that it represents an accrual of or reserve for cash expenses in any future period) of such Person and its Restricted Subsidiaries for such period to the extent that such depreciation, amortization and other non-cash expenses were deducted in computing such Consolidated Net Income; *plus*

(5) major maintenance expense as reflected in Consolidated Net Income; *plus*

(6) charges associated with fees and expenses, including professional fees, incurred in connection with the Term Commitments and Term Loans on any Borrowing Date or the modification of or preparation in connection therewith of Indebtedness of the Borrower to the extent such charges were deducted in computing such Consolidated Net Income, and charges or expenses recognized as a result of repayment of Indebtedness; *plus*

(7) the upfront costs of any obligations under Swap Agreements or Cash Management Obligations, to the extent such costs were deducted in computing Consolidated Net Income; *plus*

(8) cash received during such period related to mark-to-market activities; *less*

(9) cash paid during such period related to mark-to-market activities;

provided, however, that for purposes of this definition, any mark-to-market earnings or losses shall be excluded from the calculation of Consolidated Cash Flow to the extent taken into account in calculating Consolidated Net Income for such period.

"Consolidated Interest Expense": for any period, total cash interest expense (including that attributable to Capital Lease Obligations) of the Borrower and its Restricted Subsidiaries for such period with respect to all outstanding Indebtedness of the Borrower and its Restricted Subsidiaries, operating lease expense of the Borrower and its Restricted Subsidiaries, and dividends paid in cash in respect of any preferred Capital Stock of the Borrower and its Restricted Subsidiaries (including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing and net costs under obligations under Swap Agreements or Cash Management Obligations in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP but excluding any dividend paid by a Restricted Subsidiary to the Borrower or any other Restricted Subsidiary), net of interest income during such period, in each case determined on a consolidated basis in accordance with GAAP.

"Consolidated Net Income": with respect to any specified Person for any period, the aggregate of the Net Income of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, determined in accordance with GAAP; provided that:

(1) the Net Income of any Person that is not a Restricted Subsidiary or that is accounted for by the equity method of accounting will be included only to the extent of the amount of dividends or similar distributions (including pursuant to other intercompany payments) paid in cash (or to the extent subsequently converted into cash) to the specified Person or a Restricted Subsidiary of the Person; and

(2) any non-cash impairment charges incurred subsequent to the Effective Date will be excluded.

"Consolidated Senior Secured Leverage Ratio": as of any date, the ratio of (i) Total Debt to the extent constituting senior secured Indebtedness of such Person and its Restricted Subsidiaries as of the date of such transaction, after giving effect to all incurrences and repayments of Indebtedness on or about such date, to (ii) Consolidated Cash Flow of such Person for the most recent four consecutive full fiscal quarters for which financial statements are available ending on or prior to such date, with such *pro forma* and other adjustments as are consistent with the *pro forma* and other adjustment provisions set forth in the definition of "Fixed Charge Coverage Ratio."

"Consolidated Total Leverage Ratio": as of any date of determination, the ratio of (1) the Total Debt as of such date to (2) Consolidated Cash Flow of the Borrower and its Restricted Subsidiaries for the period of the most recent four consecutive fiscal quarters for which internal financial statements are available ending on or prior to such date, with such *pro forma* and other adjustments as are consistent with the *pro forma* and other adjustment provisions set forth in the definition of "Fixed Charge Coverage Ratio."

"Contractual Obligation": as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Credit Facility" or "Credit Facilities": one or more debt facilities, indentures, credit agreements, note purchase agreements, commercial paper facilities or similar facilities, in each case, with banks or other lenders or holders providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to such lenders or holders or others or to special purpose entities formed to borrow from such lenders or holders or others against such receivables), letters of credit or debt securities, in each case, as amended, restated, modified, renewed, refunded, replaced or refinanced, in each case, in whole or in part from time to time.

"Default": any of the events specified in Section 7.1, whether or not any requirement for the giving of notice, the expiration of applicable cure or grace periods, or both, has been satisfied.

"Designated Holders": Energy Capital Partners III, LP (together with its parallel funds and co-invest vehicles), Energy Capital Partners IV, LP (together with its parallel funds and co-invest vehicles), Access Industries Inc. (together with its parallel funds and co-invest vehicles), Canadian Pension Plan Investment Board (together with its parallel funds and co-invest vehicles) and the respective Affiliates of each of the foregoing (together with their respective parallel funds and co-invest vehicles).

"Designated Non-Cash Consideration": the Fair Market Value of non-cash consideration received by the Borrower or one of its Restricted Subsidiaries in connection with an Asset Sale that is so designated as Designated Non-Cash Consideration pursuant to an officer's certificate, setting forth the basis of such valuation.

"Direct Parents": Calpine CCFC GP, Inc. and Calpine CCFC LP, Inc.

"Disqualified Capital Stock": any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case, at the option of the holder of the Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the date that is 91 days after the latest applicable Termination Date in effect at the time of the issuance of such Capital Stock (other than pursuant to a change of control provision substantially similar to that described under Section 2.14). Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Capital Stock solely because the holders of the Capital Stock have the right to require the Borrower to repurchase such Capital Stock upon the occurrence of a change of control or an asset sale will not constitute Disqualified Capital Stock if the terms of such Capital Stock provide that the Borrower may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption complies with Section 6.9. The amount of Disqualified Capital Stock deemed to be outstanding at any time for purposes of this Agreement shall be equal to the maximum amount that the Borrower and its Restricted Subsidiaries may become obligated to pay upon the maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Capital Stock, exclusive of accrued dividends.

"Disqualified Lender":

(a) any Person identified in writing from time to time as a competitor (or an affiliate of such competitor identified in writing) of the Borrower or its Subsidiaries;

(b) any Person that is engaged as a principal primarily in private equity, mezzanine financing or venture capital, and those banks, financial institutions, other institutional lenders and other Persons, in each case, identified in writing to the Administrative Agent on or prior to the Closing Date; and

(c) any reasonably identifiable (on the basis of its name or as identified in writing from time to time) affiliate of the entities described in the preceding clauses (a) and (b), other than, with respect to this clause (c), any *bona fide* debt fund affiliate thereof (except to the extent separately identified under clause (a) or (b) above) that is primarily engaged in, or that advises funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit or securities in the ordinary course and with respect to which such applicable person or entity described in the preceding clause (a) or (b) does not, directly or indirectly, possess the power to direct or cause the direction of the investment policies of such entity,

it being understood and agreed that no written notice delivered pursuant to clauses (a) and/or (c) above shall apply retroactively to disqualify any Person that has previously acquired an assignment or participation interest in any Loans.

"Dollars" and "$": dollars in lawful currency of the United States.

"Domestic Subsidiary": any Restricted Subsidiary of the Borrower that was formed under the laws of the United States or any state of the United States or the District of Columbia.

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

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

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

"Effective Date": the date when all the conditions set forth in Section 4.1 have been satisfied (or waived in accordance with Section 4.1), which shall be the date hereof.

"Effective Date Facilities": the Bosque facility, the Jack A. Fusco facility (f/k/a the Brazos Valley facility), the Fore River facility, the Gaudalupe facility, the Magic Valley facility, and the Westbrook facility, each as designated on Schedule 1.1B.

"Environmental CapEx Debt": Indebtedness of the Borrower or any of its Restricted Subsidiaries incurred for the purpose of financing capital expenditures deemed necessary by the Borrower or its Restricted Subsidiaries to comply with Environmental Laws.

"Environmental Laws": any and all applicable foreign, Federal, state or local laws, rules, orders, regulations, statutes, ordinances, codes, decrees, legally binding requirements of any Governmental Authority or other Requirements of Law (including common law) regulating, relating to or imposing liability or standards of conduct concerning protection of the environment or of human health (to the extent related to exposure to Materials of Environmental Concern), as now or may at any time hereafter be in effect.

"Equity Interests": 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).

"ERISA": the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

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

"Eurocurrency Reserve Requirements": for any day, means the aggregate (without duplication) of the maximum rates (expressed as a fraction) of reserve requirements in effect on such day (including, basic, supplemental, marginal and emergency reserves) under any regulations of the Board or other Governmental Authority having jurisdiction with respect thereto dealing with reserve requirements prescribed for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board) maintained by a member bank of the Federal Reserve System.

"Eurodollar Loans": Term Loans the rate of interest applicable to which is based upon the Eurodollar Rate.

"Eurodollar Rate": means the Published LIBO Rate, as adjusted to reflect the Eurocurrency Reserve Requirements; provided that in no event shall the Eurodollar Rate be less than 0.0%.

"Event of Default": any of the events specified in Section 7.1, provided that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

"Exchange Act": the Securities Exchange Act of 1934, as amended, or any successor statute or statutes thereto.

"Excluded Assets" shall have the meaning given to such term in the Security Documents.

"Excluded Subsidiary": (a) any Foreign Subsidiary, (b) any Subsidiary of the Borrower that is (A) a Domestic Subsidiary of the Borrower substantially all of the assets of which consist of the Capital Stock of one or more Foreign Subsidiaries or (B) a Domestic Subsidiary of the Borrower substantially all of the assets of which consist of the Capital Stock of one or more Subsidiaries described in clause (A) hereof (whether such ownership is directly held or through another one or more such Subsidiaries), (c) any Immaterial Subsidiary, (d) [reserved], (e) any Unrestricted Subsidiary, and (f) any non-Wholly-Owned Subsidiary that is a Restricted Subsidiary. Notwithstanding the foregoing, any Excluded Subsidiary may be designated by the Borrower as a Guarantor under this Agreement, in which case (including in case of Section 5.8(2)) upon such Subsidiary executing and delivering a counterpart of the Guaranty Agreement and the Pledge and Security Agreement, such Excluded Subsidiary shall cease to be an Excluded Subsidiary for the purposes of this Agreement and the other Loan Documents until such time, if any, as it becomes an Excluded Subsidiary thereafter in accordance with the terms hereof.

"Excluded Swap Obligation": with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof). If a Swap Obligation arises under a Master Agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

"Excluded Taxes": with respect to the Administrative Agent or any Lender (i) Taxes imposed on or measured by it's overall net income (however denominated), gross receipts Taxes (imposed in lieu of net income Taxes) and franchise Taxes (imposed in lieu of net income Taxes) imposed on the Administrative Agent or any Lender as a result of such Administrative Agent or Lender (A) being organized or having its principal office in the applicable taxing jurisdiction, or in the case of any Lender, having its applicable lending office in such jurisdiction, or (B) having any other present or former connection with the applicable taxing jurisdiction (other than any such connection arising solely from the Administrative Agent or such Lender having executed, delivered, become a party to, or performed its obligations or received a payment under, or enforced, and/or engaged in any activities contemplated with respect to this Agreement or any other Loan Document); (ii) any Taxes in the nature of the branch profits tax within the meaning of Section 884 of the Code imposed by any jurisdiction described in clause (i) above; (iii) other than in the case of an assignee pursuant to a request by the Borrower under Section 2.26, any U.S. federal withholding tax (A) except to the extent such withholding tax results from a change in a Requirement of Law after the recipient became a party hereto or (B) except to the extent that such recipient's assignor (if any) was entitled immediately prior to such assignment to receive additional amounts from any Loan Party with respect to such withholding tax pursuant to this Section 2.19(a); (iv) any withholding tax that is attributable to a Lender's failure to comply with Section 2.19(e); and (v) any United States federal withholding Taxes imposed pursuant to FATCA.

"Extended Term Loans": the meaning set forth in Section 2.27(a).

"Extending Term Lender": the meaning set forth in Section 2.27(a).

"Extension": the meaning set forth in Section 2.27(a).

"Extension Offer": the meaning set forth in Section 2.27(a).

"Facilities": the Effective Date Facilities and any other power or energy generating facilities acquired or constructed after the Effective Date described in the definition of "Permitted Business."

"Fair Market Value": the value that would be paid by a willing buyer to a willing seller in a transaction, determined in good faith by a Responsible Officer or Board of Directors of the Borrower (unless otherwise provided in this Agreement).

"FATCA": Sections 1471 through 1474 of the Code as in existence on the date hereof (and any amended or successor version that is substantively comparable and not materially more onerous to comply with), any regulations thereunder or published administrative guidance implementing such Sections and any agreements entered into pursuant to current Section 1471(b) of the Code (or any amended or successor version described above) and any fiscal or regulatory legislation, rules or official administrative pronouncements adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

"Federal Funds Effective Rate": for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day of such transactions received by the Administrative Agent from three federal funds brokers of nationally recognized standing selected by it.

"Fees": collectively, the fees pursuant to that certain fee letter dated December 4, 2017 among the Borrower and the Joint Lead Arrangers, the fees referred to in Section 2.22 or 9.5 and any other fees payable by any Loan Party pursuant to this Agreement or any other Loan Document.

"Financial Officer": the chief financial officer, principal accounting officer, controller or treasurer of the Borrower.

"Fixed Amounts": as such term is defined in Section 1.4.

"Fixed Charge Coverage Ratio": with respect to any specified Person for any period, the ratio of the Consolidated Cash Flow of such Person and its Restricted Subsidiaries for such period to the Fixed Charges of such Person for such period. In the event that the specified Person or any of its Restricted Subsidiaries incurs, assumes, guarantees, repays, repurchases, redeems, defeases or otherwise discharges any Indebtedness (other than ordinary working capital borrowings) or issues, repurchases or redeems preferred stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated and on or prior to the date on which the event for which the calculation of the Fixed Charge Coverage Ratio is made (the "Calculation Date"), then the Fixed Charge Coverage Ratio will be calculated giving *pro forma* effect to such incurrence, assumption, guarantee, repayment, repurchase, redemption, defeasance or other discharge of Indebtedness, or such issuance, repurchase or redemption of preferred stock, and the use of the proceeds therefrom as if the same had occurred at the beginning of the applicable four-quarter reference period.

In addition, for purposes of calculating the Fixed Charge Coverage Ratio:

(1) acquisitions that have been made by the specified Person or any of its Restricted Subsidiaries, including through mergers or consolidations, or any Person or any of its Restricted Subsidiaries acquired by the specified Person or any of its Restricted Subsidiaries, and including any related financing transactions and including increases in ownership of Restricted Subsidiaries, during the four-quarter reference period or subsequent to such reference period and on or prior to the Calculation Date will be given *pro forma* effect to any intercompany tolling arrangements which shall be on terms reflecting the market conditions at such time put into place and to any expense and cost reduction that (x) has occurred or (y) in the reasonable judgment of a Financial Officer of the Borrower, is reasonably expected to occur; provided that in the case of this clause (y), the Borrower shall have delivered to the Administrative Agent an officer's certificate of a Responsible Officer certifying that such Financial Officer believes in good faith that such expenses or cost reductions are reasonably expected to occur within twelve months from the date of any such acquisition, in each case, as if they had occurred on the first day of the four-quarter reference period and Consolidated Cash Flow for such reference period will be calculated on a *pro forma* basis;

(2) the Consolidated Cash Flow attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded;

(3) the Fixed Charges attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded, but only to the extent that the obligations giving rise to such Fixed Charges will not be obligations of the specified Person or any of its Restricted Subsidiaries following the Calculation Date; and

(4) if any Indebtedness that is being incurred on the Calculation Date bears a floating rate of interest, the interest expense on such Indebtedness will be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the entire period (taking into account any obligations under Swap Agreements or Cash Management Obligations applicable to such Indebtedness, but only for such period of time as equals the then remaining term of such obligations under Swap Agreements or Cash Management Obligations as of the Calculation Date).

"Fixed Charges": with respect to any specified Person for any period, the sum, without duplication, of:

(1) Consolidated Interest Expense; *plus*

(2) the consolidated interest of such Person and its Restricted Subsidiaries that was capitalized during such period; *plus*

(3) any interest paid on Indebtedness of a Person other than the Borrower and its Restricted Subsidiaries that is Guaranteed by such Person or one of its Restricted Subsidiaries or secured by a Lien on assets of such Person or one of its Restricted Subsidiaries, to the extent such Guarantee or Lien is called upon; *plus*

(4) the product of (A) all dividends, paid in cash, on any series of preferred stock of such Person or any of its Restricted Subsidiaries, other than dividends on Equity Interests payable solely in Equity Interests of the Borrower (other than Disqualified Capital Stock) or to the Borrower or a Restricted Subsidiary of the Borrower, times (B) a fraction, the numerator of which is one and the denominator of which is one minus the then current combined federal, state and local statutory income tax rate of such Person, expressed as a decimal, in each case, on a consolidated basis and in accordance with GAAP.

"Flood Insurance Laws": collectively, (i) the National Flood Insurance Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (ii) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto, (iii) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto, and (iv) all other applicable Laws relating to policies and procedures that address requirements placed on federally regulated lenders relating to flood matters, in each case, as now or hereafter in effect or any successor statute thereto.

"Foreign Subsidiary": any Subsidiary of the Borrower organized under the laws of any jurisdiction outside the United States, any state thereof or the District of Columbia.

"Funding Office": the office of the Administrative Agent specified in Section 9.2(a) or such other office as may be specified from time to time by the Administrative Agent as its funding office by written notice to the Borrower and the Lenders.

"GAAP": generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession.

"Governmental Authority": the government of the United States 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).

"Grantors": any Person that pledges any Collateral under the Security Documents to secure any Obligation.

"Guarantee": a guarantee other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner including, without limitation, by way of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Indebtedness (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take or pay or to maintain financial statement conditions or otherwise).

"Guarantor": each of (1) Jack A. Fusco Energy Center LLC (f/k/a Brazos Valley Energy LLC), Calpine Bosque Energy Center, LLC, Guadalupe Power Partners, LP, Calpine Fore River Energy Center, LLC and Westbrook Energy Center, LLC and (2) any other Restricted Subsidiary of the Borrower that executes a counterpart of the Guaranty Agreement in accordance with the provisions of this Agreement, and their respective successors and assigns, in each case, until the Guarantee of such Person has been released in accordance with the provisions of this Agreement or the Guaranty Agreement.

"Guaranty Agreement": that certain Guaranty Agreement, dated as of the Effective Date (as amended, amended and restated, supplemented or otherwise modified from time to time) by and among the Borrower, the Guarantors, the Administrative Agent and the Collateral Agent.

"Guaranty Reimbursement Obligations": all obligations of the Loan Parties under Section 1 of the Guaranty Agreement.

"Immaterial Subsidiary": any Domestic Subsidiary that is not a Material Domestic Subsidiary.

"Increased Amount Date": the meaning set forth in Section 2.25(a).

"Incremental Commitment": the meaning set forth in Section 2.25(a).

"Incremental Commitment Supplement": the meaning set forth in Section 2.25(a).

"Incremental Lender": the meaning set forth in Section 2.25(a).

"Incremental Term Loans": the meaning set forth in Section 2.25(a).

"Incremental Term Percentage": as to any Lender at any time, the percentage which such Lender's Incremental Commitment then constitutes of the aggregate of the Incremental Commitments in respect of any series of Incremental Term Loans (or, at any time after the making of such Incremental Term Loans, the percentage which the aggregate principal amount of such Lender's series of Incremental Term Loans then outstanding constitutes of the aggregate principal amount of all Incremental Term Loans of such series then outstanding).

"Incurrence-Based Amounts": as such term is defined in Section 1.4.

"Indebtedness": with respect to any specified Person, any indebtedness of such Person (excluding accrued expenses or trade payables), whether or not contingent (without duplication):

(1) in respect of borrowed money;

(2) evidenced by bonds, notes, debentures or similar instruments or letters of credit or reimbursement agreements in respect thereof;

(3) in respect of bankers' acceptances;

(4) representing Capital Lease Obligations or Attributable Debt in respect of sale and leaseback transactions;

(5) representing the balance deferred and unpaid of the purchase price of any property or services due more than six months after such property is acquired or such services are completed; or

(6) representing any obligations under Swap Agreements (except as expressly set forth below),

if and to the extent any of the preceding items (other than letters of credit, Attributable Debt or obligations under Swap Agreements) would appear as a liability upon a balance sheet of the specified Person prepared in accordance with GAAP. In addition, the term "Indebtedness" includes all Indebtedness of others secured by a Lien on any asset of the specified Person (whether or not such Indebtedness is assumed by the specified Person) and, to the extent not otherwise included, the Guarantee by the specified Person of any Indebtedness of any other Person.

The amount of any Indebtedness outstanding as of any date will be:

(1) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue discount;

(2) the principal amount of the Indebtedness, in the case of any other Indebtedness; and

(3) in respect of Indebtedness of other Persons secured by a Lien on the assets of the specified Person, the lesser of:

(A) the Fair Market Value of such asset at such date of determination, and

(B) the amount of such Indebtedness of such other Persons.

Notwithstanding the foregoing, "Indebtedness" shall not include:

(1) any obligations under Swap Agreements or Cash Management Obligations that are entered into for bona fide hedging or cash management purposes of the Borrower or its Restricted Subsidiaries (as determined in good faith by the Board of Directors or senior management of the Borrower, whether or not accounted for as a hedge in accordance with GAAP); and

(2) in-kind obligations relating to energy balancing positions arising in the ordinary course of business and consistent with past practice.

"indemnified liabilities": the meaning set forth in Section 9.5.

"Indemnitee": the meaning set forth in Section 9.5.

"Information Memorandum": that certain Presentation to Lenders related to this Agreement dated as of December 4, 2017.

"Insolvency": with respect to any Multiemployer Plan, the condition that such Multiemployer Plan is insolvent within the meaning of Section 4245 of ERISA.

"Insolvent": pertaining to a condition of Insolvency.

"Intellectual Property": the collective reference to all rights, priorities and privileges relating to intellectual property of any Loan Party, whether arising under United States, multinational or foreign laws or otherwise, including copyrights, copyright licenses, patents, patent licenses, trademarks, trademark licenses, technology, know-how and processes, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

"Interest Payment Date": (a) as to any Base Rate Loan, the last Business Day of each March, June, September and December to occur while such Base Rate Loan is outstanding and the final maturity date of such Base Rate Loan, (b) as to any Eurodollar Loan having an Interest Period of three months or less, the last day of such Interest Period, (c) as to any Eurodollar Loan having an Interest Period longer than three months, each day that is three months, or a whole multiple thereof, after the first day of such Interest Period and the last day of such Interest Period and (d) as to any Eurodollar Loan, the date of any repayment or prepayment made in respect thereof.

"Interest Period": as to any Eurodollar Loan, (a) with respect to all Term Loans borrowed or converted on or after the Effective Date, initially, the period commencing on the borrowing or conversion date, as the case may be, with respect to such Eurodollar Loan and ending one, two, three or six months (or, if agreed to by all relevant Lenders, twelve months or a period of less than one month) thereafter, as selected by the Borrower in its notice of borrowing or notice of conversion, as the case may be, given with respect thereto; and (b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Eurodollar Loan and ending one, two, three or six months (or, if agreed to by all relevant Lenders, twelve months or a period of less than one month) thereafter, as selected by the Borrower by irrevocable notice to the Administrative Agent not later than 10:00 A.M., New York City time, on the date that is three (3) Business Days prior to the last day of the then current Interest Period with respect thereto; provided that, all of the foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) the Borrower may not select an Interest Period that would extend beyond the Termination Date; and

(iii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month.

"Interpolated Rate": in relation to any Eurodollar Loan, the rate per annum determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the applicable Published LIBO Rate for the longest period (for which the applicable Published LIBO Rate is available) that is shorter than the Interest Period of that Published LIBO Rate Loan and (b) the applicable Published LIBO Rate for the shortest period (for which such Published LIBO Rate is available) that exceeds the Interest Period of that Eurodollar Loan, in each case, as of 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period.

"Investment Grade Rating": a rating equal to or higher than Baa3 (or the equivalent) by Moody's or BBB- (or the equivalent) by S&P.

"Investments": with respect to any Person, all direct or indirect investments by such Person in other Persons (including Affiliates) in the forms of loans (including Guarantees or similar obligations), advances or capital contributions (excluding payroll, commission, travel and similar advances to officers and employees made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP. "Investment" shall exclude extensions of trade credit by the Borrower and its Restricted Subsidiaries in the ordinary course of business. If the Borrower or any Restricted Subsidiary of the Borrower sells or otherwise disposes of any Equity Interests of any direct or indirect Restricted Subsidiary of the Borrower such that, after giving effect to any such sale or disposition, such Person is no longer a Restricted Subsidiary of the Borrower, the Borrower will be deemed to have made an Investment on the date of any such sale or disposition equal to the Fair Market Value of the Borrower's Investments in such Restricted Subsidiary that were not sold or disposed of. Except as otherwise provided in this Agreement, the amount of an Investment shall be its Fair Market Value at the time the Investment is made and without giving effect to subsequent changes in value.

"Joint Bookrunners": collectively, Credit Suisse Securities (USA) LLC, Morgan Stanley Senior Funding, Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Global Markets Inc., Barclays Bank PLC, Credit Agricole Corporate and Investment Bank, BNP Paribas Securities Corp., Deutsche Bank Securities Inc., The Bank of Tokyo-Mitsubishi UFJ, LTD., Goldman Sachs Lending Partners LLC, Royal Bank of Canada, Natixis Securities Americas LC and UBS Securities LLC.

"Joint Lead Arrangers": collectively, Credit Suisse Securities (USA) LLC, Morgan Stanley Senior Funding, Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citigroup Global Markets Inc., Barclays Bank PLC, Credit Agricole Corporate and Investment Bank, BNP Paribas Securities Corp., Deutsche Bank Securities Inc., The Bank of Tokyo-Mitsubishi UFJ, LTD., Goldman Sachs Lending Partners LLC, Royal Bank of Canada, Natixis Securities Americas LC and UBS Securities LLC.

"Legal Holiday": a Saturday, a Sunday or a day on which banking institutions in the City of New York or at a place of payment are authorized by law, regulation or executive order to remain closed. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday.

"Lenders": the meaning set forth in the preamble to this Agreement, including any Person that shall have become a party to this Agreement as a Lender pursuant to an Assignment and Acceptance or pursuant to Section 2.25, other than any Person that ceases to be a party hereto as a Lender pursuant to an Assignment and Acceptance or pursuant to Section 2.26.

"Lien": with respect to any asset, any mortgage, lien, pledge, charge, security interest 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 and any lease that constitutes a security interest.

"Loan": any Term Loan.

"Loan Documents": this Agreement and, after execution and delivery thereof pursuant to the terms of this Agreement, the Guaranty Agreement, the Security Documents, each Note, each Incremental Commitment Supplement and any amendment, waiver, supplement or other modification to any of the foregoing.

"Loan Parties": the Borrower and the Guarantors.

"Material Adverse Effect": a material adverse effect on (a) the business, financial condition, results of operations or properties of the Borrower and its Subsidiaries taken as a whole, (b) the ability of the Loan Parties, taken as a whole, to perform their payment obligations under the Loan Documents, (c) the validity or enforceability of the Loan Documents taken as a whole or (d) the material rights and remedies available to, or conferred upon, the Lenders, the Administrative Agent and the Collateral Agent under the Loan Documents, taken as a whole (it being understood that any event or condition described in Section 7.1(f) or (g) hereof that would not give rise to a Default or Event of Default thereunder shall not constitute a Material Adverse Effect under preceding clause (c) or (d)).

"Material Domestic Subsidiary": any Domestic Subsidiary having Total Assets that constitute more than 5% of Total Assets.

"Materials of Environmental Concern": any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products, or asbestos, or polychlorinated biphenyls or any other chemicals, substances, materials, wastes, pollutants or contaminants in any form, regulated under any Environmental Law.

"Master Agreement": the meaning set forth in the definition of "Swap Agreement."

"Maximum Incremental Facilities Amount": at any date of determination, (a) the sum of (i) $50,000,000, (ii) an additional aggregate principal amount equal to the greater of (x) $100.0 million and (y) 5.0% of Total Assets, (iii) the aggregate principal amount of all voluntary prepayments or purchases of Term Loans (at the price paid in the case of such purchases at below par) made after the Effective Date (other than to the extent funded with long-term Indebtedness (other than revolving Indebtedness)) and (iv) an additional aggregate principal amount of Indebtedness if (in the case of this clause (iv) only), (x) the Fixed Charge Coverage Ratio for the Borrower's most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred would have been at least 2.0 to 1.0, determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if the additional Indebtedness had been incurred, at the beginning of such four-quarter period and (y) after giving effect to the incurrence of such Indebtedness and the application of the proceeds from such Indebtedness, the Consolidated Senior Secured Leverage Ratio of the Borrower was not greater than 4:75:1.00 (it being understood that the Borrower shall be deemed to have used amounts under clause (iv) to the maximum extent permitted thereunder prior to utilization of amounts under any of clauses (i), (ii) or (iii) and any such amounts incurred under any of such clauses (i), (ii) or (iii) shall not be included in any calculation of amounts incurred under such clause (iv)), minus (b) the aggregate principal amount of Indebtedness theretofore issued or incurred (including any unused commitments obtained) pursuant to clause (i) or (xvii) of the definition of Permitted Debt and outstanding on such date.

"Minimum Extension Condition": the meaning set forth in Section 2.27(b).

"Moody's": Moody's Investors Service, Inc. or its successor.

"Mortgaged Property": collectively, the owned real properties of the Borrower or applicable Guarantor described in Schedule 1.1B and designated as Mortgaged Property thereon, as to which the Collateral Agent for the benefit of the Secured Parties is or shall be granted a Lien pursuant to the Mortgages and the other owned real properties of the Borrower or any Guarantor, as to which the Collateral Agent for the benefit of the Secured Parties is or shall be granted a Lien pursuant to the Mortgages or this Agreement.

"Mortgages": collectively, each of the mortgages and deeds of trust made by any Loan Party in favor of, or for the benefit of, the Collateral Agent for the benefit of the Secured Parties referred to therein, as each may be amended, restated, supplemented or otherwise modified from time to time.

"Multiemployer Plan": a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which the Borrower or any Commonly Controlled Entity makes or is obligated to make contributions or during the preceding five plan years, has made or been obligated to make contributions.

"Net Income": with respect to any specified Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends, excluding, however:

(1) any gain (or loss), together with any related provision for taxes on such gain (or loss), realized in connection with: (A) any Asset Sale; or (B) the disposition of any securities by such Person or any of its Restricted Subsidiaries or the extinguishment of any Indebtedness of such Person or any of its Restricted Subsidiaries; and

(2) any extraordinary gain (or loss), together with any related provision for taxes on such extraordinary gain (or loss).

"Net Proceeds": the aggregate cash proceeds received by the Borrower or any of its Restricted Subsidiaries in respect of any Asset Sale (including, without limitation, any cash received upon the sale or other disposition of any non-cash consideration received in any Asset Sale), net of (i) the principal amount, premium or penalty, if any, interest and other amounts on Indebtedness that is secured by the asset subject to such Asset Sale, (ii) the fees, expenses and costs relating to such Asset Sale, including, without limitation, legal, accounting and investment banking fees, costs and expenses, and sales commissions, and any relocation expenses incurred as a result of the Asset Sale, (iii) taxes paid or payable as a result of the Asset Sale, in each case, after taking into account any available tax credits or deductions and any tax sharing arrangements, and (iv) amounts reserved for adjustment in respect of (x) the sale price of such asset or assets established in accordance with GAAP and (y) any liabilities associated with such asset or assets and retained by the Borrower or any Restricted Subsidiaries after such Asset Sale.

"Non-Excluded Taxes": all Taxes, other than Excluded Taxes.

"Non-Recourse": with respect to any specified Person and the Indebtedness of such Person:

(1) neither the Borrower nor any of its Restricted Subsidiaries (A) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness) for the Indebtedness of such Person other than a pledge of the Equity Interests of such Person or Indebtedness otherwise permitted hereunder, (B) is directly or indirectly liable as a guarantor or otherwise of the Indebtedness of such Person, or (C) constitutes the lender with respect to the Indebtedness of such Person; and

(2) in the case of an Unrestricted Subsidiary, no default on the Indebtedness of such Person (including any rights that the holders of the Indebtedness may have to take enforcement action against an Unrestricted Subsidiary) would permit upon notice, lapse of time or both any holder of Indebtedness of the Borrower or any of its Restricted Subsidiaries to declare a default on such Indebtedness of the Borrower or any of its Restricted Subsidiaries or cause the payment of such Indebtedness of the Borrower nor any of its Restricted Subsidiaries to be accelerated or payable prior to its stated maturity.

"Notes": the collective reference to any promissory note evidencing Term B Loans or any Incremental Term Loans.

"obligations": any principal, interest, penalties, fees, expenses, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.

"Obligations": the unpaid principal of and interest on (including interest accruing after the maturity of the Term Loans and interest, fees and other amounts accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower, whether or not a claim for post-filing or post-petition interest, fees or other amounts is allowed in such proceeding) the Term Loans and all other obligations and liabilities of the Borrower to the Administrative Agent or to any Lender, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, any other Loan Document or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including all fees, charges and disbursements of counsel to the Administrative Agent or to any Lender that are required to be paid by the Borrower pursuant hereto) or otherwise.

"Offer Document": the meaning set forth in Exhibit I.

"Original Term B Termination Date": January 15, 2025.

"Other Taxes": all present or future stamp or documentary Taxes or any other excise, property or similar Taxes arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

"Parent": any direct or indirect parent company of the Borrower.

"Parity Secured Debt":

(1) Indebtedness incurred pursuant to clause (i) of the definition of "Permitted Debt";

(2) Indebtedness incurred pursuant to clause (xv) of the definition of Permitted Debt; provided that after giving effect to such incurrence and the application of the proceeds from, and the creation of Liens to secure, such Indebtedness, the Consolidated Senior Secured Leverage Ratio of the Borrower was not greater than 4.75 to 1.0;

(3) [Intentionally Omitted];

(4) Indebtedness incurred pursuant to clause (xvii) of the definition of Permitted Debt;

(5) the Obligations under this Agreement, including pursuant to Section 2.25;

(6) Permitted Refinancing Indebtedness incurred by the Borrower or a Guarantor;

(7) Permitted Refinancing Indebtedness, the net proceeds of which are used to refinance Parity Secured Debt; and

(8) any other Indebtedness incurred by the Borrower or any Guarantor if (A) when it was incurred, the incurrence of such Indebtedness by the Borrower or such Guarantor was permitted by this Agreement and (B) on the day such Indebtedness was incurred, after giving effect to such incurrence and the application of the proceeds from, and the creation of Liens to secure, such Indebtedness, the Consolidated Senior Secured Leverage Ratio of the Borrower was not greater than 4.75 to 1.0;

provided, in each case (except in the case of the Term Loans), that the Secured Debt Representative on behalf of the holders of any such Indebtedness shall have become party to the Parity Secured Intercreditor Agreement.

"Parity Secured Intercreditor Agreement": the intercreditor agreement in form and substance as may be satisfactory to the Administrative Agent and the Borrower.

"Parity Secured Obligations": collectively, all Obligations in respect of Parity Secured Debt.

"Participant": the meaning set forth in Section 9.6(c).

"Participant Register": the meaning set forth in Section 9.6(c)(ii).

"Partnership Interest Pledge Agreement": that certain non-recourse Partnership Interest Pledge Agreement dated as of the Effective Date among the Direct Parents and the Collateral Agent.

"Patriot Act": the USA Patriot Act, Title III of Pub. L. 107-56, signed into law on October 26, 2001, as amended.

"Payment Default": the meaning set forth in Section 7.1(e)(i)(A).

"PBGC": the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA (or any successor).

"Perfection Certificate": the meaning set forth in the Pledge and Security Agreement.

"Permitted Business": the ownership, construction, operation and maintenance of the Effective Date Facilities and any other power and energy generating facilities located in the United States, together with any related assets or facilities, including gas pipelines supplying natural gas to such generating facilities, electric transmission lines carrying energy generated from such generating facilities, and any related gas or electric interconnection facilities, as well as the engagement in commodity transactions in connection with such business operations, or any business that is similar, reasonably related, incidental, complimentary or ancillary to any of the foregoing.

"Permitted Counterparty Lien": a Lien in favor of a counterparty under a PPA; provided that the following conditions are satisfied:

(1) the counterparty is not an Affiliate of the Borrower;

(2) the Lien does not secure any Indebtedness and (a) is granted solely to secure the performance obligations of the Borrower or the applicable Restricted Subsidiary under the PPA and/or any obligation of the Borrower or the applicable Restricted Subsidiary to make a termination payment under the PPA upon the occurrence of the event described in clause (3)(c)(i) below or the termination by the counterparty upon the occurrence of any of the events described in clause (3)(c)(ii) below, or (b) creates rights designed to enable the counterparty to assume operational control of the relevant Facility or Facilities (*e.g.*, step-in rights) or otherwise continue performance of the Borrower's or the applicable Restricted Subsidiary's obligations under the PPA;

(3) the counterparty can exercise its rights with respect to the Lien only (a) for so long as the counterparty remains current with respect to all of its payment obligations under the PPA and is not otherwise in a continuing default under the PPA, (b) if the counterparty continues to acknowledge the existence of the Liens securing the Parity Secured Obligations (unless and until Liens securing the Parity Secured Obligations are eliminated in connection with a foreclosure of the Permitted Counterparty Liens as contemplated by clause (4) of this definition) and (c) if either (i) the Borrower or the applicable Restricted Subsidiary has terminated, rejected or repudiated the PPA (including, without limitation, any rejection or similar act by or on behalf of the Borrower or the applicable Restricted Subsidiary in connection with any bankruptcy proceeding) or (ii) the Borrower or the applicable Restricted Subsidiary has intentionally breached its obligations under the PPA; provided that the following actions will be considered an intentional breach by the Borrower or the applicable Restricted Subsidiary under the PPA:

(A) the Borrower or the applicable Restricted Subsidiary provides or delivers capacity or energy to a third party if the Borrower or the applicable Restricted Subsidiary is required under the PPA to provide or deliver such capacity or energy to the counterparty;

(B) the Borrower or the applicable Restricted Subsidiary fails to operate or attempt to operate one or more of the relevant Facilities at a time when the Borrower or the applicable Restricted Subsidiary was required under the PPA to operate or attempt to operate such Facility or Facilities and such operation or attempted operation is not prevented by force majeure, forced outage or other events or circumstances outside the reasonable control of the Person responsible therefor;

(C) any failure by the Borrower or the applicable Restricted Subsidiary to comply with any provisions of the PPA designed to enable the counterparty to assume operational control of the relevant Facility or Facilities (*e.g.*, step-in rights) or otherwise take actions necessary to continue performance of the Borrower's or the applicable Restricted Subsidiary's obligations under the PPA, in each case to the extent the Borrower or the applicable Restricted Subsidiary is then capable of complying with such provisions; or

(D) any failure by the Borrower or the applicable Restricted Subsidiary to pay to the counterparty any amount due and payable in accordance with the terms and conditions of the PPA; and

(4) the counterparty's exercise of its rights with respect to the Lien is limited to (a) the taking of actions pursuant to any provisions of the PPA designed to enable the counterparty to assume operational control of the relevant Facility or Facilities (*e.g.*, step-in rights) or otherwise necessary to continue performance of the Borrower's or the applicable Restricted Subsidiary's obligations under the PPA or (b) the recovery of any termination payment due under the PPA upon the occurrence of the event described in clause (3)(c)(i) above or the termination by the counterparty upon the occurrence of any of the events described in clause (3)(c)(ii) above.

"Permitted Debt" the meaning set forth in Section 6.1(b).

"Permitted Investments":

(1) any Investment in the Borrower or in a Restricted Subsidiary of the Borrower;

(2) any Investment in Cash Equivalents;

(3) any Investment by the Borrower or any Restricted Subsidiary of the Borrower in a Person, if as a result of such Investment:

(A) such Person becomes a Restricted Subsidiary of the Borrower; or

(B) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Borrower or a Restricted Subsidiary of the Borrower;

(4) any Investment made as a result of the receipt of non-cash consideration from an Asset Sale that was made pursuant to and in compliance with Section 6.8 or as a result of a sale or other disposition of any asset that does not constitute an Asset Sale;

(5) Investments made as a result of the sale of Equity Interests of any Person that is a Subsidiary of the Borrower such that, after giving effect to any such sale, such Person is no longer a Subsidiary of the Borrower and, if the sale of such Equity Interests constitutes an Asset Sale, the Net Proceeds received from such Asset Sale are applied and/or reinvested as set forth in Section 6.8;

(6) any acquisition of assets or Equity Interests solely in exchange for the issuance of Equity Interests of the Borrower (other than Disqualified Capital Stock) or any Parent;

(7) any Investments received in compromise or resolution of (A) obligations of trade creditors or customers that were incurred in the ordinary course of business of the Borrower or any of its Restricted Subsidiaries, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer; or (B) litigation, arbitration or other disputes with Persons who are not Affiliates;

(8) Investments represented by obligations under Swap Agreements or Cash Management Obligations;

(9) loans or advances to officers, directors or employees made in the ordinary course of business up to an aggregate principal amount not to exceed $10.0 million at any one time;

(10) any Investment acquired by the Borrower or any of its Restricted Subsidiaries on account of any claim against, or interest in, any other Person (A) acquired in good faith in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of such other Person or (B) as a result of a bona fide foreclosure by the Borrower or any of its Restricted Subsidiaries with respect to any claim against any other Person;

(11) repurchases of the Term Loans pursuant to Section 2.28 or Section 9.6(f) or *pari passu* Indebtedness;

(12) receivables owing to the Borrower or a Restricted Subsidiary of the Borrower, if 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 Borrower or such Restricted Subsidiary deems reasonable under the circumstances;

(13) any Investments in the form of, or pursuant to, working interests, royalty interests, mineral leases, processing agreements, farm-out agreements, contracts for the sale, transportation or exchange of oil and natural gas, unitization agreements, pooling agreements, area of mutual interest agreements, production sharing agreements or other similar or customary agreements, transactions, properties, interests or arrangements, and Investments and expenditures in connection therewith or pursuant thereto, in each case, made or entered into in the ordinary course of business;

(14) [Reserved];

(15) other Investments so long as, at the time thereof, the aggregate Fair Market Value (measured on the date each such Investment was made and without giving effect to subsequent changes in value) of such Investments, taken together with all other Investments made pursuant to this clause (15), does not to exceed the greater of (x) $20.0 million and (y) 1.0% of Total Assets; and

(16) Investments existing on the Effective Date.

"Permitted Liens":

(1) Liens on Collateral securing all Parity Secured Obligations which, if any Parity Secured Debt other than the Obligations under this Agreement are outstanding, shall be subject at all times to the Parity Secured Intercreditor Agreement;

(2) Liens securing an aggregate principal amount of Indebtedness under Credit Facilities not to exceed the greater of (x) amount permitted to be incurred pursuant to Section 6.1(b)(i) and (y) an amount that would not cause the Consolidated Senior Secured Leverage Ratio, after giving effect to such incurrence, to exceed 4.75 to 1.0;

(3) Liens (x) on property of a Person existing at the time such Person is merged with or into or consolidated with the Borrower or any Restricted Subsidiary of the Borrower or (y) on property (including Capital Stock) existing at the time of acquisition of such property by the Borrower or any Restricted Subsidiary of the Borrower; provided that such Liens were in existence prior to the contemplation of such merger or consolidation and do not extend to any assets other than those of the Person merged into or consolidated with the Borrower or the Restricted Subsidiary or the property acquired;

(4) Liens securing Indebtedness (including Capital Lease Obligations) permitted to be incurred pursuant to Section 6.1(b)(iii) covering only the assets acquired with or financed by such Indebtedness plus repairs, improvements, additions and accessions to such assets and proceeds or distributions thereof;

(5) Liens securing obligations under sale leaseback transactions permitted by Section 6.4 covering only the assets subject to such transaction plus repairs, improvements, additions and accessions to such assets and proceeds or distributions thereof;

(6) Liens in favor of the Borrower or the Guarantors;

(7) Liens for taxes, assessments or governmental charges or claims that (x) are not yet delinquent or that are being contested in good faith by appropriate proceedings; provided that any reserve or other appropriate provision as is required in conformity with GAAP has been made therefor or (y) are immaterial;

(8) Liens imposed by law, such as carriers', warehousemen's, landlord's and mechanics', materialmen's, repairmen's, landlords' or other similar Liens, in each case, incurred in the ordinary course of business;

(9) survey exceptions, encumbrances, easements or reservations, including those for licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines, mineral reservations and rights and leases, zoning restrictions and other restrictions (including defects or irregularities in title and similar encumbrances that are not material to the operations of the Borrower and its Restricted Subsidiaries taken as a whole) as to the use of real property that were not incurred in connection with Indebtedness and that (A) exist on the Effective Date and are recorded on such date, (B) are permitted under the terms of the Loan Documents or (C) do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(10) Liens to secure any Permitted Refinancing Indebtedness permitted to be incurred under this Agreement if such Permitted Refinancing Indebtedness is incurred by one or more of the same obligors on the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded; provided, however, that:

(A) the new Lien shall be limited to all or part of the same categories of property and assets that secured or, under the written agreements pursuant to which the original Lien arose, could secure the original Lien (plus repairs, improvements, additions and accessions to such property or proceeds or distributions thereof); and

(B) the Indebtedness secured by the new Lien is not increased to any amount greater than the sum of (i) the outstanding principal amount or, if greater, committed amount of the Permitted Refinancing Indebtedness, (ii) an amount necessary to pay any interest, fees and expenses, including premiums, related to such refinancings, refunding, extension, renewal or replacement and (iii) any protective advances with respect to the property and assets that secure such Permitted Refinancing Indebtedness;

(11) financing statements (including precautionary statements) filed in connection with a Capital Lease Obligation or an operating lease, in each case, not prohibited hereunder; provided that no such financing statement extends to, covers or refers to as collateral any property or assets of the Borrower or a Restricted Subsidiary of the Borrower, other than the property or assets which are subject to such Capital Lease Obligation or such operating lease;

(12) Liens arising out of or in connection with (x) any judgment that does not constitute an Event of Default or (y) in connection with any litigation or other legal proceeding as to which an appeal to contest or review is timely commenced in good faith by appropriate proceedings and as to which adequate reserves have been established in accordance with GAAP; provided that (in the case of this clause (y)) any right to levy, seizure, attachment, sequestration, foreclosure or garnishment of any property and assets of the Borrower or a Restricted Subsidiary thereof arising out of or in connection with any such Lien has been and continues to be enjoined or effectively stayed;

(13) inchoate statutory Liens arising under ERISA;

(14) Liens (A) on cash and short-term investments (i) deposited by the Borrower or any of its Restricted Subsidiaries in margin accounts with or on behalf of futures contract brokers or paid over to other counterparties or (ii) pledged or deposited as collateral to a contract counterparty or issuer of surety bonds or letters of credit by the Borrower or any of its Restricted Subsidiaries, in the case of clause (i) or (ii), to secure obligations with respect to (a) contracts for commercial and trading activities in the ordinary course of business and contracts (including without limitation, physical delivery, option (whether cash or financial), exchange, swap and futures contracts) for the purchase, transmission, distribution, sale, lease or hedge of any energy-related commodity or service or (b) interest rate, commodity price, or currency rate management contracts or derivatives and (B) encumbering assets other than accounts or receivables arising out of contracts or agreements relating to the generation, distribution or transmission of energy; provided that all such agreements or contracts are entered into in the ordinary course of business;

(15) Liens arising by virtue of any statutory or common law provision relating to banker's liens, rights of setoff or similar rights, contractual rights of setoff or netting arrangements entered into in the ordinary course of business and similar rights with respect to deposit accounts, commodity accounts and/or securities accounts;

(16) pledges and deposits to secure the payment of worker's compensation, unemployment insurance, social security benefits or obligations under similar laws, or to secure the payment or performance of statutory or public obligations (including environmental, municipal and public utility commission obligations and requirements), reimbursement or indemnity obligations arising out of surety, performance, or other similar bonds, and other obligations of a like nature, in each case incurred in the ordinary course of business;

(17) Liens existing on the Effective Date (but excluding, from and after the Effective Date, Liens securing the 2013 Credit Agreement to be repaid with the proceeds of the Tem Loans on the Effective Date after such Indebtedness has been repaid); provided that the Borrower shall use commercially reasonable efforts to enter into a subordination agreement having terms not materially less favorable, taken as a whole, to the Secured Parties than the liens subordination agreement in effect immediately prior to the Effective Date pursuant to which the Lien granted by the Borrower in favor of Magic Valley Electric Cooperative, Inc. (as subsequently assigned to South Texas Electric Cooperative, Inc.) pursuant to the Power Purchase and Sale Agreement dated as of May 22, 1998 securing certain obligations thereunder shall be subordinated to the Liens granted in favor of the Collateral Agent;

(18) Liens not in respect of Indebtedness consisting of the interest of the lessor under any operating lease entered into in the ordinary course of business and not otherwise prohibited by this Agreement;

(19) Liens securing obligations under Swap Agreements and Cash Management Obligations permitted under this Agreement;

(20) Liens securing obligations with respect to contracts (other than for Indebtedness) for commercial and trading activities for the purchase, distribution, sale, lease or hedge of any energy-related commodity or service (including contracts and derivative financial instruments entered into with respect to electric energy or capacity, emissions allowances, fuel and other commodities);

(21) 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 Borrower or any of its Restricted Subsidiaries;

(22) any restrictions on any Equity Interest or undivided interests, as the case may be, of a Person providing for a breach, termination or default under any joint venture, stockholder, membership, limited liability company, partnership, owners', participation or other similar agreement between such Person and one or more other holders of Equity Interests or undivided interests of such Person, as the case may be, if a security interest or Lien is created on such Equity Interest or undivided interest, as the case may be, as a result thereof;

(23) any customary provisions limiting the disposition or distribution of assets or property (including without limitation Equity Interests) or any related restrictions thereon in joint venture, partnership, membership, stockholder and limited liability company agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements, including owners', participation or similar agreements governing projects owned through an undivided interest; provided, however, that any such limitation is applicable only to the assets that are the subjects of such agreements;

(24) Liens granted by a Person in favor of a commercial trading counterparty pursuant to a netting agreement, which Liens encumber rights under agreements that are subject to such netting agreement and which Liens secure such Person's obligations to such counterparty under such netting agreement; provided that any such agreements and netting agreements are entered into in the ordinary course of business; and provided, further, that the Liens are incurred in the ordinary course of business and when granted, do not secure obligations which are past due;

(25) Liens arising out of or in connection with the transfer of an undivided interest in the Magic Valley Generating Center in Edinburg, Texas pursuant to the purchase option set forth in Article XIV of the Power Purchase and Sale Agreement with South Texas Electric Cooperative, Inc., dated May 22, 1998, as in effect on the Effective Date;

(26) Permitted Counterparty Liens, which Liens shall rank *pari passu* to the Liens securing Parity Secured Obligations (although the Obligations securing such Permitted Counterparty Liens shall not constitute Parity Secured Obligations under this Agreement);

(27) Liens on the Equity Interests of Unrestricted Subsidiaries;

(28) [Reserved];

(29) [Reserved]; and

(30) Liens securing obligations that at the time of incurrence of any such Lien do not in the aggregate with any of Liens created pursuant to this clause (30) exceed the greater of (x) $20.0 million and (y) 1.0% of Total Assets.

"Permitted Refinancing Indebtedness": any Indebtedness of the Borrower or any of its Restricted Subsidiaries issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund, other Indebtedness of the Borrower or any of its Restricted Subsidiaries (other than intercompany Indebtedness); provided that:

(1) the principal amount (or accreted value, if higher) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness extended, refinanced, renewed, replaced, defeased or refunded (plus all accrued interest on the Indebtedness and the amount of all expenses, costs and fees and premiums incurred in connection therewith);

(2) such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded;

(3) if the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is subordinated in right of payment to the Term Loans, such Permitted Refinancing Indebtedness is subordinated in right of payment to the Term Loans on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded, as reasonably determined by the Borrower or such Restricted Subsidiary;

(4) such Indebtedness is incurred either by the Borrower or any of its Restricted Subsidiaries who is the obligor on the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded; and

(5) (x) if incurred by the Borrower, such Indebtedness may be guaranteed by the Guarantors and (y) if incurred by a Guarantor, such Indebtedness may be guaranteed by the Borrower and the other Guarantors.

"Person": any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, joint venture, limited liability company, Governmental Authority or other entity of whatever nature.

"Plan": at a particular time, any employee benefit plan, other than a Multiemployer Plan, that is covered by Section 302 or Title IV of ERISA or Section 412 of the Code, and in respect of which the Borrower or a Commonly Controlled Entity is (or, if such plan were terminated at such time, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Platform": the meaning set forth in Section 9.2(b).

"Pledge and Security Agreement": that certain Pledge and Security Agreement, dated as of the Effective Date (as amended, amended and restated, supplemented or otherwise modified from time to time), by and among the Borrower, the other Grantors from time to time party thereto and the Collateral Agent.

"Pledged Stock": as defined in the Pledge and Security Agreement.

"PPA": an agreement (including a tolling agreement, fuel conversion services agreement or other similar agreement) entered into by the Borrower or any of its Restricted Subsidiaries for the sale of capacity or energy (and services ancillary or related thereto) from one or more of the Facilities.

"Prime Rate": the rate of interest announced, from time to time, by the Administrative Agent as its prime rate. The Prime Rate is a reference rate and does not necessarily represent the lowest rate actually charged to any customer. Credit Suisse AG, Cayman Islands Branch may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

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

"Public Lender": the meaning set forth in Section 9.15.

"Published LIBO Rate": with respect to any Interest Period when used in reference to any Loan or Borrowing:

(a) the rate of interest appearing on Reuters Screen LIBOR01 Page (or on any successor or substitute page of such service, or any successor to such service as determined by Administrative Agent) as the London interbank offered rate for deposits in Dollars for a term comparable to such Interest Period, at approximately 11:00 a.m. (London time) on the date which is two Business Days prior to the commencement of such Interest Period (but if more than one rate is specified on such page, the rate will be an arithmetic average of all such rates),

(b) if the rates described in clauses (a) is not available at such time for any reason, then the "Published LIBO Rate" for such Interest Period shall be the Interpolated Rate, or

(c) if the rates referenced in preceding clauses (a) and (b) are not available at such time for any reason, then the "Published LIBO Rate" for such Interest Period shall be a comparable successor rate that is, at such time, broadly accepted by the syndicated loan market for loans denominated in Dollars in lieu of the "Published LIBO Rate" or, if no such broadly accepted comparable successor rate exists at such time, a successor index rate as the Administrative Agent may determine with the consent of the Borrower and the Required Lenders.

"PUHCA 2005": the meaning set forth in Section 3.19.

"Qualified ECP Guarantor": in respect of any Swap Obligation, each Loan Party that has total assets exceeding $10.0 million at the time the relevant Guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation is incurred or such other person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Quarterly Payment Date": the last Business Day of each March, June, September and December of each year.

"Register": the meaning set forth in Section 9.6(b)(iv).

"Regulation U": Regulation U of the Board of Governors as in effect from time to time.

"Related Persons": with respect to any Indemnitee, any Affiliate of such Indemnitee and any officer, director, employee, representative or agent of such Indemnitee or Affiliate thereof, in each case that has provided any services in connection with the transactions contemplated under this Agreement and the other Loan Documents.

"Reorganization": with respect to any Multiemployer Plan, the condition that such Multiemployer Plan is in reorganization within the meaning of Section 4241 of ERISA.

"Reportable Event": any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than those events as to which the thirty (30) day notice period is waived under any regulation promulgated by the PBGC.

"Repricing Transaction": the prepayment (excluding, for the avoidance of doubt, (x) regularly scheduled amortization payments and (y) any prepayments under Section 2.14) or refinancing of all or a portion of the Term B Loans with the incurrence by any Loan Party of any long-term secured term loan bank debt financing (excluding intercompany loans and obligations among the Borrower and its Subsidiaries) having an effective weighted average yield (with the comparative determinations to be made by the Administrative Agent consistent with generally accepted financial practices, after giving effect to, among other factors, margin, interest rate floors, upfront or similar fee or "original issue discount" shared with all lenders of such loans or Term B Loans, as the case may be, but excluding the effect of any arrangement, structuring, syndication or other fees payable in connection therewith that are not shared with all lenders of such loan or Term B Loans, as the case may be, and without taking into account any fluctuations in the Eurodollar Rate) that is less than the weighted average yield (as determined by the Administrative Agent on the same basis) of the Term B Loans, including without limitation, as may be effected through any amendment to this Agreement relating to the interest rate for, or weighted average yield of, the Term B Loans, but excluding any prepayment or amendment in connection with any Change of Control or Transformative Acquisition.

"Required Incremental Lenders": at any time for any series of Incremental Term Loans, Lenders holding more than 50% of the aggregate unpaid principal amount of such series of Incremental Term Loans then outstanding.

"Required Term B Lenders": at any time, Lenders holding more than 50% of the aggregate unpaid principal amount of the Term B Loans then outstanding.

"Required Lenders": at any time, Lenders holding more than 50% of the aggregate unpaid principal amount of the Term Loans then outstanding.

"Requirement of Law": as to any Person, the certificate of incorporation and by-laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Responsible Officer": the chief executive officer, president, any executive vice president or Financial Officer of the Borrower, but in any event, with respect to financial matters, a Financial Officer of the Borrower.

"Restricted Payment": the meaning set forth in Section 6.9.

"Restricted Subsidiary": of a Person means any Subsidiary of the referent Person that is not an Unrestricted Subsidiary.

"S&P": Standard & Poor's Ratings Services, or its successor.

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

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

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

"SEC": the Securities and Exchange Commission, any successor thereto and any analogous Governmental Authority.

"Secured Debt Representative": the meaning set forth in the Parity Secured Intercreditor Agreement.

"Secured Parties": collectively, the Administrative Agent, the Collateral Agent, the Arrangers, the Lenders and each counterparty to a Swap Agreement or a Cash Management Agreement if such person is an Agent or a Lender or an Affiliate of an Agent or a Lender or if at the date of entering into such Swap Agreement or a Cash Management Agreement such person was an Agent or a Lender or an Affiliate of an Agent or a Lender.

"Secured Obligations": collectively, (a) the Obligations, (b) the due and punctual payment and performance of all obligations of Borrower and the other Loan Parties under each Swap Agreement entered into with any counterparty that is a Secured Party and (c) the due and punctual payment and performance of all obligations of Borrower and the other Loan Parties (including overdrafts and related liabilities) under each Cash Management Agreement entered into with any counterparty that is a Secured Party; provided that Excluded Swap Obligations shall not be a Secured Obligation of any Guarantor that is not a Qualified ECP Guarantor.

"Security Documents": the Pledge and Security Agreement, the Mortgages, the Partnership Interest Pledge Agreement, and all other security agreements, pledge agreements, control agreements, collateral assignments, mortgages, deed of trusts or other grants or transfers for security or agreements related thereto executed and delivered by the Borrower or any Guarantor creating (or purporting to create) a Lien upon Collateral in favor of the Collateral Agent to secure the Secured Obligations, in each case, as amended, modified, renewed, restated or replaced, in whole or in part, from time to time.

"Significant Subsidiary": any Restricted Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Exchange Act, as such Regulation is in effect on the date of this Agreement.

"Solvent": when used with respect to any Person and its Subsidiaries, means that, as of any date of determination, (a) the amount of the "present fair saleable value" of the assets of such Person and its Subsidiaries on a consolidated basis will, as of such date, exceed the amount of all "liabilities of such Person and its Subsidiaries on a consolidated basis, contingent or otherwise", as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (b) the present fair saleable value of the assets of such Person and its Subsidiaries will, as of such date, be greater than the amount that will be required to pay the probable liability of such Person and its Subsidiaries on a consolidated basis on its debts as such debts become absolute and matured, (c) such Person and its Subsidiaries on a consolidated basis will not have, as of such date, an unreasonably small amount of capital with which to conduct their business, and (d) such Person and its Subsidiaries will be able to pay their debts as they mature. For purposes of this definition, (i) "debt" means liability on a "claim", and (ii) "claim" means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

"Stated Maturity": (i) in the case of the Term B Loans, the Original Term B Termination Date and (ii) in the case of Incremental Term Loans of any series, the final maturity date for such series of Incremental Term Loans; provided that, with respect to any tranche of Extended Term Loans, the Stated Maturity with respect thereto shall instead be the final maturity date as specified in the applicable Extension Offer accepted by the respective Lender.

"Subsidiary": with respect to any specified Person:

(1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, 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).

"Swap Agreements": any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions (whether or not any such agreement is governed by or subject to any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement or any other similar master agreement (any such master agreement, together with any related schedules, a "Master Agreement")); provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or any of its Subsidiaries shall be a "Swap Agreement."

"Swap Obligation": with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"Taxes": all present or future taxes, levies, imposts, duties, deductions, charges, assessments, fees, withholdings or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term B Commitment": with respect to each Lender, the obligation of such Lender, if any, to make Term B Loans in an aggregate principal amount not to exceed the amount set forth opposite its name on Schedule 1.1A annexed hereto under the heading "Term B Commitment Amounts".

"Term B Lender": at any time, (a) on or prior to the Effective Date, any Lender that has a Term B Commitment at such time and (b) at any time after the Effective Date, any Lender that holds Term B Loans at such time.

"Term B Loans": the meaning set forth in Section 2.1.

"Term B Percentage": as to any Lender at any time, the percentage which such Lender's Term B Commitment then constitutes of the aggregate Term B Commitments (or, at any time after the making of the Terms B Loans on the Effective Date, the percentage which the aggregate principal amount of such Lender's Term B Loans then outstanding constitutes of the aggregate principal amount of all Term B Loans then outstanding).

"Term Loans": collectively, the Term B Loans and, if applicable, the Incremental Term Loans.

"Term Percentage": as to any Lender at any time, the percentage which such Lender's Term Commitment then constitutes of the aggregate Term Commitments (or, at any time after the making of the Terms Loans on the Effective Date, the percentage which the aggregate principal amount of such Lender's Term Loans then outstanding constitutes of the aggregate principal amount of all Term Loans then outstanding).

"Termination Date": the earlier to occur of (a) the Stated Maturity and (b) the acceleration of any Term Loans. In the event that one or more Extensions are effected in accordance with Section 2.27, then the Termination Date of each tranche of Term Loans shall be determined based on the respective Stated Maturity applicable thereto (except in cases where clause (b) of the preceding sentence is applicable).

"Title Insurance Company": Stewart Title Insurance Company, or such other title insurance company as shall be reasonably acceptable to the Administrative Agent.

"Total Assets": the total assets of the Borrower and its Restricted Subsidiaries on a consolidated basis, as shown on the Borrower's most recent internally available balance sheet, as may be expressly stated.

"Total Debt": as of any date of determination, the aggregate principal amount of Indebtedness of the Borrower and its Restricted Subsidiaries outstanding on such date, determined on a consolidated basis, but only to the extent required to be recorded on a balance sheet, in accordance with GAAP, consisting of Indebtedness for borrowed money, Capital Lease Obligations and debt obligations evidenced by promissory notes or similar instruments.

"tranche": the meaning set forth in Section 2.27(a).

"Transferee": any Assignee or Participant.

"Transformative Acquisition": any acquisition or Investment by the Borrower or any of its Restricted Subsidiaries that (i) is not permitted by the terms of the Loan Documents immediately prior to the consummation of such acquisition or Investment or (ii) if permitted by the terms of this Agreement immediately prior to the consummation of such acquisition or Investment, would not provide the Borrower and its Restricted Subsidiaries with adequate flexibility under this Agreement for the continuation and/or expansion of their combined operations following such consummation, as determined by the Borrower acting in good faith.

"United States": the United States of America.

"Unrestricted": when referring to cash or Cash Equivalents means unrestricted cash and Cash Equivalents as determined under GAAP.

"Unrestricted Subsidiary": any Subsidiary of the Borrower or any successor to the Borrower that is designated by the Board of Directors of the Borrower as an Unrestricted Subsidiary pursuant to a Board Resolution, but only to the extent that such Subsidiary:

(1) has no Indebtedness other than Indebtedness that is Non-Recourse to the Borrower and its Restricted Subsidiaries;

(2) is not party to any agreement, contract, arrangement or understanding with the Borrower or any Restricted Subsidiary of the Borrower unless the terms of any such agreement, contract, arrangement or understanding are no less favorable to the Borrower or such Restricted Subsidiary in any material respect than those that might be obtained at the time from Persons who are not Affiliates of the Borrower; and

(3) is a Person with respect to which neither the Borrower nor any of its Restricted Subsidiaries has any direct or indirect obligation (A) to subscribe for additional Equity Interests or (B) to maintain or preserve such Person's financial condition or to cause such Person to achieve any specified levels of operating results.

Any designation of a Subsidiary of the Borrower as an Unrestricted Subsidiary will be evidenced to the Administrative Agent by filing with the Administrative Agent a certified copy of the Board Resolution giving effect to such designation and an officer's certificate of a Responsible Officer certifying that such designation complied with the preceding conditions and was permitted by Section 6.9. If, at any time, any Unrestricted Subsidiary would fail to meet the preceding requirements as an Unrestricted Subsidiary, it will thereafter cease to be an Unrestricted Subsidiary for purposes of this Agreement and any Indebtedness of such Subsidiary will be deemed to be incurred by a Restricted Subsidiary of the Borrower as of such date and, if such Indebtedness is not permitted to be incurred as of such date in Section 6.1 the Borrower will be in default of such covenant. The Board of Directors of the Borrower may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary of the Borrower; provided that such designation will be deemed to be an incurrence of Indebtedness by a Restricted Subsidiary of the Borrower of any outstanding Indebtedness of such Unrestricted Subsidiary and such designation will only be permitted if (1) such Indebtedness is permitted under Section 6.1, calculated on a *pro forma* basis as if such designation had occurred at the beginning of the four-quarter reference period; and (2) no Default or Event of Default would be in existence following such designation.

"Upgrades": the development and implementation of the FD 3 upgrade to the combustion turbines of any Facility and all activities directly related thereto.

"Voting Stock": of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

"Weighted Average Life to Maturity": when applied to any Indebtedness at any date, the number of years obtained by dividing:

(1) the sum of the products obtained by multiplying (A) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect of the Indebtedness, by (B) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by

(2) the then outstanding principal amount of such Indebtedness.

"Wholly-Owned Domestic Subsidiary": a Domestic Subsidiary that is a Wholly-Owned Subsidiary of any Person.

"Wholly-Owned Subsidiary": of any Person means a Restricted Subsidiary of such Person, 100% of the outstanding Equity Interests of which (other than directors' qualifying shares) shall at the time be owned by such Person or by one or more Wholly-Owned Subsidiaries of such Person.

"Write-Down and Conversion Powers": with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

1.2. Other Definitional Provisions.

(a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Loan Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Loan Documents, and any certificate or other document made or delivered pursuant hereto or thereto, (i) the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation," (ii) the word "incur" shall be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words "incurred" and "incurrence" shall have correlative meanings) and (iii) 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, Capital Stock, securities, revenues, accounts, leasehold interests and contract rights.

(c) The words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms. Whenever the context may required, any pronoun shall include the corresponding masculine, feminine and neuter forms. References to agreements or other Contractual Obligations shall, unless otherwise specified, be deemed to refer to such agreements or Contractual Obligations as amended, supplemented, restated or otherwise modified from time to time to the extent permitted herein.

Except as otherwise provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP.

1.3. Delivery of Notices or Receivables. Any reference to a delivery or notice date that is not a Business Day shall be deemed to mean the next succeeding day that is a Business Day.

1.4 Fixed Amounts and Incurrence-Based Amounts. Notwithstanding anything to the contrary herein, with respect to any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement that does not require compliance with a financial ratio or test (including, without limitation, the Consolidated Senior Secured Leverage Ratio and the Fixed Charge Coverage Ratio) (any such amounts, the "Fixed Amounts") substantially concurrently with any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement that requires compliance with any such financial ratio or test (any such amounts, the "**Incurrence-Based Amounts**"), it is understood and agreed that any Fixed Amount (and any cash proceeds thereof) shall be disregarded in the calculation of the financial ratio or test applicable to the relevant Incurrence-Based Amount in connection with such substantially concurrent incurrence.

SECTION 2

Amount and Terms of Loans and Commitments

2.1. Term Commitments. Subject to the terms and conditions hereof, each Term B Lender severally agrees to make a term loan (a "Term B Loan") to the Borrower on the Effective Date in an amount equal to the amount of the Term B Commitment of such Lender. The Term B Loans may from time to time be Eurodollar Loans or Base Rate Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.2 and 2.15. The Term B Commitments shall automatically terminate upon the borrowing of the Term B Loans on the Effective Date.

2.2. Procedure for Term Loan Borrowing. The Borrower shall give the Administrative Agent irrevocable notice substantially in the form of Exhibit B hereto (which notice must be received by the Administrative Agent prior to 12:00 Noon, New York City time (a) three (3) Business Days prior to the requested Borrowing Date (or such shorter period as may be agreed to by the Administrative Agent), in the case of Eurodollar Loans or (b) on the requested Borrowing Date, in the case of Base Rate Loans requesting that the applicable Lenders make the applicable Term Loans on the Effective Date (or, in the case of Incremental term Loans, the funding date thereon) and specifying the amount to be borrowed for each such Term Loans; provided, however, with respect to Incremental Term Loans, the Administrative Agent may agree in its sole discretion that any such notice may be revocable by the Borrower and may shorten the time periods set forth above for incurring such Incremental Term Loans. Upon receipt of such notice the Administrative Agent shall promptly notify each applicable Lender thereof. Not later than 12:00 Noon, New York City time, on the Effective Date (or, in the case of Incremental Term Loans, the funding date thereon), each Lender shall make available to the Administrative Agent at the Funding Office an amount in immediately available funds equal to the Term Loan or Term Loans to be made by such Lender. The Administrative Agent shall make the proceeds of such Term Loan or Term Loans available to the Borrower on the Borrowing Date by wire transfer in immediately available funds to a bank account designated in writing by the Borrower to the Administrative Agent.

2.3. RESERVED.

2.4. RESERVED.

2.5. RESERVED.

2.6. RESERVED.

2.7. RESERVED.

2.8. Repayment of Loans; Evidence of Debt.

(a) On each Quarterly Payment Date, beginning with the Quarterly Payment Date on March 30, 2018, the Borrower shall repay to the Administrative Agent for the ratable account of the Term B Lenders an aggregate principal amount of Term B Loans then outstanding equal to 0.25% of the aggregate initial principal amounts of all Term B Loans theretofore borrowed by the Borrower pursuant to Section 2.1 (which amounts shall be reduced as a result of the application of prepayments or repayments (which, for the avoidance of doubt, shall not include repayments pursuant to this Section 2.8)). The remaining unpaid principal amount of the Term B Loans and all other Obligations under or in respect of the Term B Loans shall be due and payable in full, if not earlier in accordance with this Agreement, on the Termination Date for the Term B Loans. The Borrower hereby further agrees to pay interest on the unpaid principal amount of the Term B Loans from time to time outstanding from the date hereof until payment in full thereof at the rates per annum, and on the dates, set forth in Section 2.9.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing Indebtedness of the Borrower to such Lender resulting from each Term Loan of such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(c) The Administrative Agent shall, in respect of this Agreement, record in the Register, with separate sub-accounts for each Lender, (i) the amount and Borrowing Date of each Term Loan made hereunder, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) both the amount of any payment received by the Administrative Agent hereunder from the Borrower and each Lender's Term B Percentage or Incremental Term Percentage, as applicable, thereof.

(d) The entries made in the Register and the accounts of each Lender maintained pursuant to Sections 2.8(b) and (c) shall, to the extent permitted by applicable law, be prima facie evidence of the existence and amounts of the obligations of the Borrower therein recorded absent manifest error; provided, however, that the failure of any Lender or the Administrative Agent to maintain the Register or any such account, or any error therein, shall not in any manner affect the obligation of the Borrower to repay (with applicable interest) the Term Loans made to the Borrower by such Lender in accordance with the terms of this Agreement.

(e) If so requested after the Effective Date by any Lender by written notice to the Borrower (with a copy to the Administrative Agent), the Borrower will execute and deliver to such Lender, promptly after the Borrower's receipt of such notice, a Note to evidence such Lender's Term Loans in form and substance reasonably satisfactory to the Administrative Agent and the Borrower.

2.9. Interest Rates and Payment Dates.

(a) Each Eurodollar Loan shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to the Eurodollar Rate determined for such Interest Period *plus* the Applicable Margin.

(b) Each Base Rate Loan shall bear interest at a rate per annum equal to the Base Rate from time to time *plus* the Applicable Margin.

(c) Notwithstanding the foregoing, upon the occurrence and during the continuance of an Event of Default under Section 7.1(a) or (b) or at any time after the date on which any principal amount of any Term Loan is due and payable (whether on the maturity date therefor, upon acceleration or otherwise), and, in each case, for so long as such overdue Obligation remains unpaid, the Borrower shall pay, but only to the extent permitted by law, interest (after as well as before judgment) on such unpaid overdue amounts at a rate per annum equal to (a) in the case of overdue principal on any Term Loan, the rate of interest that otherwise would be applicable to such Term Loan plus 2% per annum and (b) in the case of overdue interest, fees, and other monetary Obligations, the rate then applicable to Base Rate Loans *plus* 2% per annum.

(d) Interest shall be payable in arrears on each Interest Payment Date; provided that interest accruing pursuant to paragraph (c) of this Section shall be payable from time to time on demand.

(e) The provisions of this Section 2.9 (and the interest rates applicable to various extensions of credit hereunder) shall be subject to modification as expressly provided in Section 2.27.

2.10. Computation of Interest and Fees.

(a) Interest and fees payable pursuant hereto shall be calculated on the basis of a 360-day year for the actual days elapsed, except that, with respect to Base Rate Loans, the interest thereon shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed. The Administrative Agent shall as soon as practicable notify the Borrower and the Lenders of each determination of a Eurodollar Rate. Any change in the interest rate on a Term Loan resulting from a change in the Base Rate or the Eurocurrency Reserve Requirements shall become effective as of the opening of business on the day on which such change becomes effective. The Administrative Agent shall as soon as practicable notify the Borrower and the Lenders of the effective date and the amount of each such change in interest rate.

(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error. The Administrative Agent shall, at the request of the Borrower, deliver to the Borrower a statement showing the quotations used by the Administrative Agent in determining any interest rate hereunder.

2.11. Inability to Determine Interest Rate. If prior to the first day of any Interest Period:

(i) the Administrative Agent shall have reasonably determined (which determination shall be conclusive and binding upon the Borrower) that, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the Eurodollar Rate for such Interest Period, or

(ii) the Administrative Agent shall have received notice from the Required Lenders that the Eurodollar Rate determined or to be determined for such Interest Period in good faith by such Required Lenders will not adequately and fairly reflect the cost to such Lenders (as conclusively certified by such Lenders) of making or maintaining their affected Term Loans during such Interest Period,

the Administrative Agent shall give telecopy or telephonic notice thereof to the Borrower and the relevant Lenders as soon as practicable thereafter. If such notice is given (x) any Eurodollar Loans hereunder requested to be made on the first day of such Interest Period shall be made as Base Rate Loans, (y) any Term Loans hereunder that were to have been converted on the first day of such Interest Period to Eurodollar Loans shall be continued as Base Rate Loans and (z) any outstanding Eurodollar Loans hereunder shall be converted, on the last day of the then-current Interest Period, to Base Rate Loans; provided that if the circumstances giving rise to such notice shall cease or otherwise become inapplicable to such Required Lenders, then such Required Lenders shall promptly give notice of such change in circumstances to the Administrative Agent and the Borrower. Until such notice has been withdrawn by the Administrative Agent, no further Eurodollar Loans hereunder shall be made or continued as such, nor shall the Borrower have the right to convert Term Loans hereunder to Eurodollar Loans.

2.12. RESERVED.

2.13. Optional Prepayment of Loans; Repricing Transaction.

(a) Subject to the provisos below, the Borrower may at any time and from time to time prepay either the Term B Loans or any series of Incremental Term Loans, in whole or in part, without premium or penalty, upon irrevocable notice delivered to the Administrative Agent prior to 10:00 A.M., New York City time on the same Business Day, which notice shall specify the date and amount of prepayment and whether the prepayment is (i) of Eurodollar Loans or Base Rate Loans or a combination thereof, and if a combination thereof, the amount allocable to each and (ii) whether the repayment is of the Term B Loans or Incremental Term Loans of a given series or a combination thereof, and if a combination thereof, the amount allocable to each; provided that if a Eurodollar Loan is prepaid on any day other than the last day of the Interest Period applicable thereto, the Borrower shall also pay any amounts owing pursuant to Section 2.20. Upon receipt of any such notice of prepayment, the Administrative Agent shall notify each relevant Lender thereof on the date of receipt of such notice. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein, together with (except in the case of prepayments of Term Loans maintained as Base Rate Loans) accrued interest to such date on the amount prepaid. Partial prepayments shall be in an aggregate principal amount of $1,000,000 or a whole multiple of $100,000 in excess thereof (or, if less, the then outstanding principal amount of Term B Loans or any series of Incremental Term Loans, as applicable). The application of any prepayment pursuant to this Section 2.13(a) shall be made, first, to Base Rate Loans of the respective Lenders (and of the respective tranche, if there are multiple tranches) and, second, to Eurodollar Loans of the respective Lenders (and of the respective tranche, if there are multiple tranches). Any prepayments of Term Loans pursuant to this Section 2.13(a) shall be applied to the remaining scheduled installments of the Term B Loans or any series of Incremental Term Loan, as applicable, as directed by the Borrower. A notice of prepayment of all outstanding Term B Loans or any series of Incremental Term Loans, as applicable, pursuant to this Section 2.13(a) may state that such notice is conditioned upon the effectiveness of other credit facilities the proceeds of which will be used to refinance in full this Agreement, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied.

(b) At the time of the effectiveness of any Repricing Transaction that (x) results in any prepayment of Term B Loans, or (y) effects any amendment of this Agreement resulting in a Repricing Transaction with respect to Term B Loans and (in either case) is consummated prior to June 15, 2018, the Borrower agrees to pay to the Administrative Agent, for the ratable account of each applicable Term B Lender, a fee in an amount equal to, without duplication, (I) in the case of clause (x), a prepayment premium of 1% of the principal amount of the Term B Loans being prepaid and (II) in the case of clause (y), a payment equal to 1% of the aggregate amount of the applicable Term B Loans outstanding immediately prior to such amendment and subject to such Repricing Transaction.

2.14. Prepayment Offers.

(a) If a Change of Control occurs, the Borrower shall make an offer to prepay the entire principal amount of all outstanding Term Loans (the "Change of Control Prepayment Offer") at 101% of the aggregate principal amount thereof and the Borrower shall notify the Administrative Agent in writing of the Change of Control Prepayment Offer in writing within thirty (30) days after the date of such Change of Control. Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the amount of such prepayment and include the payment date, which shall be no earlier than thirty (30) days and no later than sixty (60) days from the date of such notice is mailed (the "Change of Control Payment Date"). The Administrative Agent will promptly notify each relevant Lender of the contents of any such prepayment notice and of such Lender's *pro rata* share of the prepayment. Any Lender may elect, by delivering not less than three (3) Business Days prior to the Change of Control Payment Date, a written notice (such notice, an "Acceptance Notice") that any change of control prepayment be made with respect to all or any portion of the Term Loans held by such Lender pursuant to this Section 2.14(a). If a Lender fails to deliver an Acceptance Notice within the time frame specified above, any such failure will be deemed a rejection of the Change of Control Prepayment Offer as to all outstanding Term Loans of such Lender. Any prepayment of Term Loans pursuant to this Section 2.14(a) shall be applied to the remaining scheduled installments of such Term Loans as directed by the Borrower.

(b) If, pursuant to Section 6.8, the Borrower shall be required to commence an Asset Sale Offer, the Borrower shall notify the Administrative Agent in writing of the Asset Sale Offer in writing within thirty (30) days after the date of such Asset Sale. Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the amount of such prepayment and include the payment date, which shall be no earlier than thirty (30) days and no later than sixty (60) days from the date of such notice is mailed (the "Asset Sale Payment Date"). The Administrative Agent will promptly notify each relevant Lender of the contents of any such prepayment notice and of such Lender's *pro rata* share of the prepayment. Any Lender may elect, by delivering not less than three (3) Business Days prior to the Asset Sale Payment Date, a written notice (such notice, a "Acceptance Notice") that any prepayment be made with respect to all or any portion of the Term Loans held by such Lender pursuant to this Section 2.14(b). If a Lender fails to deliver an Acceptance Notice within the time frame specified above, any such failure will be deemed a rejection of the Asset Sale Offer as to all outstanding Term Loans of such Lender. Any prepayment of Term Loans pursuant to this Section 2.14(b) shall be applied to the remaining scheduled installments of such Term Loans as directed by the Borrower.

2.15. Conversion and Continuation Options.

(a) The Borrower may elect from time to time to convert Eurodollar Loans to Base Rate Loans by giving the Administrative Agent prior irrevocable notice, in substantially the form attached hereto as Exhibit F, of such election no later than 12:00 Noon, New York City time, on the Business Day preceding the proposed conversion date, provided that any such conversion of Eurodollar Loans may only be made on the last day of an Interest Period with respect thereto. The Borrower may elect from time to time to convert Base Rate Loans to Eurodollar Loans by giving the Administrative Agent prior irrevocable notice of such election no later than 12:00 Noon, New York City time, on the third (3rd) Business Day preceding the proposed conversion date (which notice shall specify the length of the initial Interest Period therefor), provided that no Base Rate Loan may be converted into a Eurodollar Loan when any Event of Default has occurred and is continuing and the Administrative Agent or the Required Lenders have determined in its or their sole discretion not to permit such conversions. Upon receipt of any such notice, the Administrative Agent shall promptly notify each relevant Lender thereof.

(b) Any Eurodollar Loan may be continued as such upon the expiration of the then current Interest Period with respect thereto by the Borrower giving irrevocable notice to the Administrative Agent, in substantially the form attached hereto as Exhibit F, in accordance with the applicable provisions of the term "Interest Period" set forth in Section 1.1, of the length of the next Interest Period to be applicable to such Term Loans, provided that no Eurodollar Loan may be continued as such when any Event of Default has occurred and is continuing and the Administrative Agent has or the Required Lenders have determined in its or their sole discretion not to permit such continuations, and provided, further, that if the Borrower shall fail to give any required notice as described above in this paragraph or if such continuation is not permitted pursuant to the preceding proviso such Eurodollar Loans shall be automatically converted to Base Rate Loans on the last day of such then expiring Interest Period. Upon receipt of any such notice, the Administrative Agent shall promptly notify each relevant Lender thereof.

2.16. Limitations on Eurodollar Tranches. Notwithstanding anything to the contrary in this Agreement, all borrowings, conversions and continuations of Eurodollar Loans and all selections of Interest Periods shall be in such amounts and be made pursuant to such elections so that, (i) after giving effect thereto, the aggregate principal amount of the Eurodollar Loans comprising each tranche of Eurodollar Loans shall be equal to $5,000,000 or a whole multiple of $500,000 in excess thereof and (ii) no more than ten different Interest Periods for any tranche of Term Loans be outstanding at any one time (unless a greater number of Interest Periods is permitted by the Administrative Agent).

2.17. Pro Rata Treatment, etc.

(a) Except as otherwise provided herein (including Section 2.27), each Borrowing by the Borrower from the Lenders hereunder shall be made *pro rata* according to the Term B Percentages or applicable Incremental Term Percentages, as applicable, of the relevant Lenders.

(b) Except as otherwise provided herein (including Sections 2.14, 2.27, 2.28 and 9.6(f)), each payment (including each prepayment) by the Borrower on account of principal or interest on each tranche of Term Loans shall be made *pro rata* according to the respective outstanding principal amounts of the Term B Loans or any series of Incremental Term Loans, as applicable, then held by the applicable Lenders.

(c) All payments by the Borrower hereunder and under any Notes shall be made in Dollars in immediately available funds at the Funding Office of the Administrative Agent by 2:00 P.M., New York City time, on the date on which such payment shall be due, provided that if any payment hereunder would become due and payable on a day other than a Business Day such payment shall become due and payable on the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension. Interest in respect of any Term Loan hereunder shall accrue from and including the date of such Term Loan to but excluding the date on which such Term Loan is paid in full.

(d) Unless the Administrative Agent shall have been notified in writing by any Lender prior to a Borrowing that such Lender will not make the amount that would constitute its share of such Borrowing available to the Administrative Agent, the Administrative Agent may assume that such Lender is making such amount available to the Administrative Agent and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower a corresponding amount. If such amount is not made available to the Administrative Agent by the required time on the Borrowing Date therefor, such Lender shall pay to the Administrative Agent on demand, such amount with interest thereon, at a rate equal to the greater of (i) the Federal Funds Effective Rate and (ii) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, for the period until such Lender makes such amount immediately available to the Administrative Agent. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this paragraph shall be conclusive in the absence of manifest error. If such Lender's share of such borrowing is not made available to the Administrative Agent by such Lender within three (3) Business Days after such Borrowing Date, the Administrative Agent shall also be entitled to recover such amount with interest thereon at the rate per annum applicable to Base Rate Loans under this Agreement, on demand, from the Borrower, such recovery to be without prejudice to the rights of the Borrower against any such Lender.

(e) Unless the Administrative Agent shall have been notified in writing by the Borrower prior to the date of any payment due to be made by the Borrower hereunder that the Borrower will not make such payment to the Administrative Agent, the Administrative Agent may assume that the Borrower is making such payment, and the Administrative Agent may, but shall not be required to, in reliance upon such assumption, make available to the applicable Lenders their respective *pro rata* shares of a corresponding amount. If such payment is not made to the Administrative Agent by the Borrower within three (3) Business Days after such due date, the Administrative Agent shall be entitled to recover, on demand, from each Lender to which any amount which was made available pursuant to the preceding sentence, such amount with interest thereon at the rate per annum equal to the daily average Federal Funds Effective Rate. Nothing herein shall be deemed to limit the rights of the Administrative Agent or any Lender against the Borrower.

(f) Notwithstanding anything to the contrary contained in this Section 2.17 or elsewhere in this Agreement, the Borrower may extend the final maturity of any tranche of Term Loans in connection with an Extension that is permitted under Section 2.27 without being obligated to effect such extensions on a *pro rata* basis among the relevant Lenders. Furthermore, the Borrower may take all actions contemplated by Section 2.27 in connection with any Extension (including modifying pricing and repayments or prepayments), and in each case such actions shall be permitted, and the differing payments contemplated therein shall be permitted without giving rise to any violation of this Section 2.17 or any other provision of this Agreement.

2.18. Requirements of Law.

(a) If the adoption of or any change in any Requirement of Law or in the interpretation or application thereof or compliance by any Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority, in each case, made subsequent to the Effective Date (including, but not limited to, the Dodd-Frank Wall Street Reform and Consumer Protection Act and, in each case, all requests, rules, guidelines or directives thereunder or issued in connection therewith):

(i) shall subject any Lender to any Tax of any kind whatsoever with respect to this Agreement or any Eurodollar Loan made by it (except for Non-Excluded Taxes or Other Taxes required to be indemnified under Section 2.19 and any Excluded Taxes);

(ii) shall impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, deposits or other liabilities in or for the account of, advances, loans or other extensions of credit by, or any other acquisition of funds by, any office of such Lender that is not otherwise included in the determination of the Eurodollar Rate; or

(iii) shall impose on any such Lender any other condition;

and the result of any of the foregoing is to increase the cost to such Lender, by an amount that such Lender deems to be material, of making, converting into, continuing or maintaining Eurodollar Loans, or to reduce any amount receivable hereunder in respect thereof, then, in any such case, the Borrower shall promptly pay such Lender, upon its demand, any additional amounts necessary to compensate such Lender for such increased cost or reduced amount receivable. If any Lender becomes entitled to claim any additional amounts pursuant to this paragraph, it shall promptly notify the Borrower (with a copy to the Administrative Agent) of the event by reason of which it has become so entitled.

(b) If any Lender shall have determined that the adoption of or any change in any Requirement of Law regarding capital adequacy or in the interpretation or application thereof or compliance by such Lender or any corporation controlling such Lender with any request or directive regarding capital adequacy (whether or not having the force of law) from any Governmental Authority made subsequent to the Effective Date shall have the effect of reducing the rate of return on such Lender's or such corporation's capital as a consequence of its obligations hereunder to a level below that which such Lender or such corporation could have achieved but for such adoption, change or compliance (taking into consideration such Lender's or such corporation's policies with respect to capital adequacy) by an amount deemed by such Lender to be material, then from time to time, after submission by such Lender to the Borrower (with a copy to the Administrative Agent) of a written request therefor, the Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or such corporation for such reduction.

(c) A certificate as to any additional amounts payable pursuant to this Section submitted by any Lender to the Borrower (with a copy to the Administrative Agent) shall be conclusive in the absence of manifest error. Notwithstanding anything to the contrary in this Section 2.18, the Borrower shall not be required to compensate any Lender pursuant to this Section 2.18 for any amounts incurred more than 180 days prior to the date that such Lender notifies the Borrower of such Lender's intention to claim compensation therefor; provided that, if the circumstances giving rise to such claim have a retroactive effect, then such 180 days period shall be extended to include the period of such retroactive effect. The obligations of the Borrower pursuant to this Section 2.18 shall survive the termination of this Agreement and the payment of the Term Loans and all other amounts payable hereunder.

2.19. Taxes.

(a) Unless required by applicable law (as determined in good faith by the applicable withholding agent), all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall be made free and clear of, and without deduction or withholding for or on account of, any Taxes. If any Taxes are required by law to be withheld by the applicable withholding agent from any amounts payable to the Administrative Agent or any Lender hereunder, or under any other Loan Document: (x) to the extent such Taxes are Non-Excluded Taxes or Other Taxes, the amounts so payable by the applicable Loan Party to the Administrative Agent or such Lender shall be increased to the extent necessary so that after all required deductions (including deductions applicable to additional sums payable under this Section 2.19) have been made, such Lender (or, in the case of payments made to the Administrative Agent for its own account, the Administrative Agent) receives an amount equal to the sum it would have received had no such withholding or deductions been made, (y) the applicable withholding agent shall make such deductions, and (z) the applicable withholding agent shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

Notwithstanding anything to the contrary contained in this Section 2.19(a) or Section 2.19(b), unless the Administrative Agent or a Lender gives notice to the applicable Loan Party that it is obligated to pay an amount under Section 2.19(a) or Section 2.19(b) within 180 days of the later of (x) the date the applicable party incurs the Taxes or (y) the date the applicable party has knowledge of its incurrence of the Taxes, then such party shall only be entitled to be compensated for such amount by the applicable Loan Party pursuant to Section 2.19(a) or Section 2.19(b) to the extent the Taxes are incurred or suffered on or after the date which occurs 180 days prior to such party giving notice to the applicable Loan Party that it is obligated to pay the respective amounts pursuant to Section 2.19(a) or Section 2.19(b), but if the circumstances giving rise to such claim have a retroactive effect (*e.g.*, in connection with the audit of a prior tax year), then such 180 day period shall be extended to include such period of retroactive effect.

(b) In addition, the relevant Loan Party shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Whenever any Non-Excluded Taxes or Other Taxes are payable by a Loan Party, as promptly as possible thereafter such Loan Party shall send to the Administrative Agent for its own account or for the account of the relevant Lender, as the case may be, a certified copy of an original official receipt received, if any, by the Borrower or other documentary evidence showing payment thereof.

(d) The Borrower shall indemnify the Administrative Agent and the Lenders (within 30 days after demand therefor) for the full amount of any Non-Excluded Taxes or Other Taxes (including Non-Excluded Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.19), and for any reasonable expenses arising therefrom or with respect thereto, that may become payable by the Administrative Agent or any Lender, whether or not such Non-Excluded Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; provided that the Borrower shall not be obligated to indemnify the Administrative Agent or any Lender for any penalties, interest or expenses relating to Non-Excluded Taxes or Other Taxes to the extent that such penalties, interest or expenses are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such party's gross negligence or willful misconduct. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Each Lender shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with any documentation prescribed by law, or reasonably requested by the Borrower or the Administrative Agent, certifying as to any entitlement of such Lender to an exemption from, or reduction in, any withholding Tax with respect to any payments to be made to such Lender under the Loan Documents. Each such Lender shall, whenever a lapse in time or change in circumstances renders such documentation expired, obsolete or inaccurate in any material respect, deliver promptly to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the applicable withholding agent) or promptly notify the Borrower and the Administrative Agent of its legal ineligibility to do so. Unless the applicable withholding agent has received forms or other documents satisfactory to it indicating that payments under any Loan Document to or for a Lender are not subject to withholding tax or are subject to such Tax at a rate reduced by an applicable tax treaty, the Borrower, Administrative Agent or other applicable withholding agent shall withhold amounts required to be withheld by applicable law from such payments at the applicable statutory rate. Each Lender hereby authorizes the Administrative Agent to deliver to the Borrower and to any successor Administrative Agent any documentation provided by the Lender to the Administrative Agent pursuant to this Section 2.19(e).

Without limiting the generality of the foregoing:

(i) Each Lender that is a "United States person" (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly signed original copies of Internal Revenue Service Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal backup withholding.

(ii) Each Lender that is not a "United States person" (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement whichever of the following is applicable:

(A) two duly completed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or any successor forms) claiming eligibility for the benefits of an income tax treaty to which the United States of America is a party,

(B) two duly completed copies of Internal Revenue Service Form W-8ECI (or any successor forms),

(C) in the case of a Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate, in substantially the form of Exhibit E (any such certificate a "United States Tax Compliance Certificate"), or any other form approved by the Administrative Agent, to the effect that such Lender is not (A) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code, and that no payments in connection with the Loan Documents are effectively connected with such Lender's conduct of a U.S. trade or business and (y) two duly completed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or any successor forms),

(D) to the extent a Lender is not the beneficial owner (for example, where the Lender is a partnership, or is a Lender that has granted a participation), Internal Revenue Service Form W-8IMY (or any successor forms) of the Lender, accompanied by a Form W-8ECI, W-8BEN, W-8BEN-E, United States Tax Compliance Certificate, Form W-9, Form W-8IMY (or other successor forms) or any other required information from each beneficial owner, as applicable (provided that, if the Lender is a partnership (and not a participating Lender) and one or more direct or indirect partners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate shall be provided by such Lender on behalf of such direct or indirect partner(s)), or

(E) any other form prescribed by applicable requirements of U.S. federal income tax law as a basis for claiming exemption from or a reduction in U.S. federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable Requirements of Law to permit the Borrower and the Administrative Agent to determine the withholding or deduction required to be made.

(iii) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Sections 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their FATCA obligations, to determine whether such Lender has or has not complied with such Lender's FATCA obligations and to determine the amount, if any, to deduct or withhold from such payment. Solely for purposes of this clause (iii), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Notwithstanding any other provision of this clause (e), a Lender shall not be required to deliver any documentation that such Lender is not legally eligible to deliver.

(f) If the Administrative Agent or any Lender determines, in its sole discretion, that it has received a refund of any Non-Excluded Taxes or Other Taxes as to which it has been indemnified by a Loan Party or with respect to which a Loan Party has paid additional amounts pursuant to this Section 2.19, it shall pay over such refund to the applicable Loan Party (but only to the extent of indemnity payments made, or additional amounts paid, by the such Loan Party under this Section 2.19 with respect to the Non-Excluded Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of the Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund, net of any Taxes payable by the Administrative Agent or such Lender); provided that the applicable Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender, as the case may be, is required to repay such refund to such Governmental Authority. This paragraph shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Borrower or any other Person.

(g) The agreements in this Section 2.19 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder or any other Loan Document and any assignment of rights by, or replacement of, any Lender.

(h) For the avoidance of doubt, any payments made by the Administrative Agent to any Lender shall be treated as payments made by the applicable Loan Party.

2.20. Indemnity. The Borrower agrees to indemnify each Lender for, and to hold each Lender harmless from, any loss or expense that such Lender may sustain or incur as a consequence of (a) default by the Borrower in making a borrowing of, conversion into or continuation of Eurodollar Loans after the Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, (b) default by the Borrower in making any prepayment of or conversion from Eurodollar Loans after the Borrower has given a notice thereof in accordance with the provisions of this Agreement or (c) the making of a prepayment or conversion of Eurodollar Loans on a day that is not the last day of an Interest Period with respect thereto. Such indemnification may include an amount equal to the excess, if any, of (i) the amount of interest that would have accrued on the amount so prepaid, or not so borrowed, converted or continued, for the period from the date of such prepayment or of such failure to borrow, convert or continue to the last day of such Interest Period (or, in the case of a failure to borrow, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Loans provided for herein (excluding, however, the Applicable Margin included therein, if any) over (ii) the amount of interest (as reasonably determined by such Lender) that would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank eurodollar market. A certificate as to any amounts payable pursuant to this Section submitted to the Borrower by any Lender shall be conclusive in the absence of manifest error. Notwithstanding anything to the contrary in this Section 2.20, the Borrower shall not be required to compensate a Lender pursuant to this Section 2.20 for any amounts incurred more than 180 days prior to the date that such Lender notifies the Borrower of such Lender's intention to claim compensation therefor; provided that, if the circumstances giving rise to such claim have a retroactive effect, then such 180 days period shall be extended to include the period of such retroactive effect. This covenant shall survive the termination of this Agreement and the payment of the Term Loans and all other amounts payable hereunder.

2.21. Change of Lending Office. Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 2.18 or 2.19(a) with respect to such Lender, it will, if requested by the Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to designate another lending office for any Term Loans affected by such event with the object of avoiding the consequences of such event; provided that such designation is made on terms that, in the good faith judgment of such Lender, cause such Lender and its lending office(s) to suffer no economic, legal or regulatory disadvantage, and provided, further, that nothing in this Section shall affect or postpone any of the obligations of the Borrower or the rights of any Lender pursuant to Section 2.18 or 2.19(a).

2.22. Fees.

(a) The Borrower agrees to pay to the Administrative Agent the administrative agent fees in the amounts and on the dates as set forth in any written agreements from time to time between the Administrative Agent and the Borrower.

(b) The Borrower agrees to pay on the Effective Date to the Administrative Agent for the pro rata benefit of each Lender an upfront fee in an amount equal to 0.125% of the aggregate principal amount of the Term B Loans incurred on the Effective Date; provided that such upfront fee may be structured as original issue discount as agreed between the Borrower and the Administrative Agent.

2.23. RESERVED.

2.24. Nature of Fees. All Fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent (for the respective accounts of the Administrative Agent and the Lenders), as provided herein. Once paid, none of the Fees shall be refundable under any circumstances.

2.25. Incremental Term Loans.

(a) At any time after the Effective Date, the Borrower may by written notice to the Administrative Agent elect to request the establishment of one or more incremental term loan commitments (any such incremental term loan commitment, an "Incremental Commitment") to make one or more additional term loans (any such additional term loan, an "Incremental Term Loan"); provided that (1) the total aggregate principal amount for all such Incremental Commitments shall not (as of any date of incurrence thereof) exceed the Maximum Incremental Facilities Amount at such time and (2) the total aggregate principal amount for each Incremental Commitment (and the Incremental Term Loans made thereunder) shall not be less than $25,000,000 (or such lesser amount as may be (x) approved by the Administrative Agent or (y) remaining pursuant to foregoing clause (1). Each such notice shall specify the date (each, an "Increased Amount Date") on which the Borrower proposes that any Incremental Commitment shall be effective, which shall be a date not less than five (5) Business Days (or such shorter period as the Administrative Agent may agree to) after the date on which such notice is delivered to the Administrative Agent. The Borrower may invite any Lender, any Affiliate of any Lender and/or any Approved Fund, and/or any other Person reasonably satisfactory to the Administrative Agent, to provide an Incremental Commitment (any such Person, an "Incremental Lender"). Any proposed Incremental Lender offered or approached to provide all or a portion of any Incremental Commitment may elect or decline, in its sole discretion, to provide such Incremental Commitment. Any Incremental Commitment shall become effective as of such Increased Amount Date; *provided* that:

(i) all the conditions in Section 4.2 shall have been met; provided that in connection with an acquisition or investment permitted hereunder or an irrevocable redemption of other Indebtedness permitted hereunder, if agreed to by the respective Incremental Lenders, the Borrower shall only be required to (i) comply with Section 4.2(a), (ii) make customary "Sungard" representations and warranties and (iii) comply with a requirement that no Event of Default under Sections 7.1(a), (b), (i) or (j) shall have occurred and be continuing on the applicable Increased Amount Date or after giving effect to the making of the Incremental Term Loans on such Increased Amount Date.

(ii) the proceeds of any Incremental Term Loans shall be used for the working capital and general corporate purposes (including acquisitions, investments and Restricted Payments permitted under this Agreement) of the Borrower and its Restricted Subsidiaries;

(iii) each Incremental Commitment (and the Incremental Term Loans made thereunder) shall constitute Obligations and Parity Secured Obligations for all purposes under the Loan Documents and shall be secured and guaranteed with the other Term Loans hereunder on a pari passu basis;

(iv) in the case of each series of Incremental Term Loans (the terms of which shall be set forth in an amendment (an "Incremental Commitment Supplement") to this Agreement in form and substance reasonably satisfactory to the Administrative Agent and the Borrower):

(A) such Incremental Term Loan will mature and amortize in a manner reasonably acceptable to the Incremental Lenders making such Incremental Term Loan and the Borrower, but will not in any event have a shorter Weighted Average Life to Maturity than the remaining Weighted Average Life to Maturity of the initial Term Loans made on the Effective Date or a final maturity date earlier than that of such initial Term Loans;

(B) the Applicable Margin, pricing grid, if applicable, and fees for such Incremental Term Loan shall be determined by the applicable Incremental Lenders and the Borrower and set forth in the applicable Incremental Commitment Supplement;

(C) any Incremental Lender making any Incremental Term Loan shall be entitled to the same voting rights as the existing Lenders and each Incremental Term Loan shall receive proceeds of prepayments on the same basis as the Term B Loans and, in the case of mandatory prepayment offers required pursuant to Section 2.14, such prepayments offers shall be on made pro rata on the basis of the original aggregate funded amount thereof among the Term B Loans and the Incremental Term Loans (except, in each case, to the extent that the respective Incremental Lenders elect a lesser prepayment);

(D) each series of Incremental Term Loan Commitments shall be effected pursuant to an Incremental Commitment Supplement executed and delivered by the Borrower, the Administrative Agent and the applicable Incremental Lenders (which Incremental Commitment Supplement may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of this Section 2.25); and

(E) the Borrower shall deliver or cause to be delivered any customary legal opinions or other customary documents (including, without limitation, a resolution duly adopted by the board of directors (or equivalent governing body) of each Loan Party authorizing such Incremental Term Loan and/or Incremental Term Loan Commitment) reasonably requested by the Administrative Agent in connection with any such transaction.

(b) (i) Unless otherwise specifically provided herein, all references in the Loan Documents to Term Loans shall be deemed, unless the context otherwise requires, to include references to Incremental Term Loans that are Term Loans made pursuant to this Agreement; provided that such Incremental Term Loan either shall be designated as a separate tranche of Term Loans for all purposes of this Agreement or may be added to a then existing tranche of Term Loans (and thereafter, for all purposes of the Loan Documents, be treated as part of such existing tranche of Term Loans).

(ii) The Incremental Lenders shall be included in any determination of the Required Lenders and, unless otherwise agreed or provided for in this Agreement, the Incremental Lenders will not constitute a separate voting class for any purposes under this Agreement.

(iii) The Incremental Term Loans may be drawn on a delayed draw basis if agreed by the Incremental Lenders providing such Incremental Term Loans.

(c) On any Increased Amount Date on which any Incremental Term Loan Commitment becomes effective, subject to the foregoing terms and conditions, each Incremental Lender with an Incremental Term Loan Commitment shall make, or be obligated to make, an Incremental Term Loan to the Borrower in an amount equal to its Incremental Term Loan Commitment and shall become a Lender hereunder with respect to such Incremental Term Loan Commitment and the Incremental Term Loan made pursuant thereto.

(d) The Lenders hereby irrevocably authorize the Administrative Agent and the Collateral Agent to enter into amendments to this Agreement and the other Loan Documents with the Borrower and the other applicable Loan Parties as may be necessary in order to effectuate the terms of this Section 2.25 (including, without limitation, as applicable, (1) to permit the Incremental Term Loans to share ratably in the benefits of this Agreement and the other Loan Documents and (2) to include the Incremental Term Loan Commitments or outstanding Incremental Term Loans in any determination of Required Lenders). Without limiting the foregoing, in connection with any Incremental Term Loan, the respective Loan Parties shall (at their expense) amend (and the Collateral Agent is hereby directed to amend) any Mortgage that has a maturity date prior to the then latest Stated Maturity so that such maturity date is extended to the then latest Stated Maturity (or such later date as may be advised by local counsel to the Collateral Agent).

2.26. Replacement of Lenders. The Borrower shall be permitted to replace any Lender that (a) requests reimbursement for amounts owing pursuant to Section 2.18, 2.19 or 2.20, (b) refuses to extend its Term Loans pursuant to an Extension Offer pursuant to Section 2.27 or (c) does not consent to any proposed amendment, supplement, modification, consent or waiver of any provision of this Agreement or any other Loan Document that requires the consent of each of the Lenders or each of the Lenders affected thereby (so long as the consent of the Required Lenders has been obtained), in each case with a replacement financial institution; provided that (i) prior to any such replacement pursuant to preceding clause (a), such Lender shall have taken no action under Section 2.21 so as to eliminate the continued need for payment of amounts owing pursuant to Section 2.18, 2.19 or 2.20, (ii) the replacement financial institution shall purchase, at par, all Term Loans outstanding and other amounts related thereto owing to such replaced Lender on or prior to the date of replacement, (iii) the Borrower shall be liable to such replaced Lender under Section 2.20 if any Eurodollar Loan owing to such replaced Lender shall be purchased other than on the last day of the Interest Period relating thereto, (iv) the replacement financial institution (if other than a then existing Lender or an affiliate thereof or an Approved Fund) shall be reasonably satisfactory to the Administrative Agent, (v) the replaced Lender shall be obligated to make such replacement in accordance with the provisions of Section 9.6 (provided that the Borrower shall be obligated to pay the registration and processing fee referred to therein), (vi) until such time as such replacement shall be consummated, the Borrower shall pay all additional amounts (if any) required pursuant to Section 2.18, 2.19 or 2.20, as the case may be, and (vii) any such replacement shall not be deemed to be a waiver of any rights that the Borrower, the Administrative Agent or any other Lender shall have against the replaced Lender.

2.27. Extensions of Loans and Commitments.

(a) Notwithstanding anything to the contrary in this Agreement, pursuant to one or more offers (each, an "Extension Offer") made from time to time by the Borrower to any or all Lenders holding Term B Loans or Incremental Term Loans of a given series with a like Stated Maturity, the Borrower may from time to time extend the maturity date of such Term Loans and otherwise modify the terms of such Term Loans pursuant to the terms of the relevant Extension Offer (including, without limitation, by increasing the interest rate or fees payable in respect of such Term Loans (and related outstandings), in each case, without the consent of any other Lenders) (an "Extension," and each group of Term Loans so extended, as well as the original Term Loans (not so extended), being a "tranche"; any Extended Term Loans shall constitute a separate tranche of Term Loans from the tranche of Term Loans from which they were converted), so long as the following terms are satisfied: (i) no Event of Default shall have occurred and be continuing at the time any the offering document in respect of an Extension Offer is delivered to the relevant Lenders, (ii) except as to interest rates, fees and final maturity, the Term Loans of any Lender (an "Extending Term Lender") extended pursuant to an Extension (an "Extended Term Loan") shall be a Term Loan with the same terms as the original Term Loans; provided that at no time shall there be Term Loans hereunder (including Extended Term Loans and any original Term Loans) which have more than three different Stated Maturities (unless a greater number is permitted by the Administrative Agent), (iii) if the aggregate principal amount of Term Loans in respect of which Lenders shall have accepted the relevant Extension Offer shall exceed the maximum aggregate principal amount of Term Loans offered to be extended by the Borrower pursuant to such Extension Offer, then the Term Loans of such Lenders shall be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings of record) with respect to which such Lenders have accepted such Extension Offer, (viii) all documentation in respect of such Extension shall be consistent with the foregoing, and all written communications by the Borrower generally directed to the Lenders in connection therewith shall be in form and substance consistent with the foregoing and otherwise reasonably satisfactory to the Administrative Agent, and (ix) any applicable Minimum Extension Condition shall be satisfied.

(b) With respect to all Extensions consummated by the Borrower pursuant to this Section 2.27, (i) such Extensions shall not constitute voluntary or mandatory payments or prepayments for purposes of Section 2.13 or 2.14 and (ii) no Extension Offer is required to be in any minimum amount or any minimum increment, provided that the Borrower may at its election specify as a condition (a "Minimum Extension Condition") to consummating any such Extension that a minimum amount (to be determined and specified in the relevant Extension Offer in the Borrower's discretion) of Term Loans of any or all applicable tranches be tendered. The Administrative Agent and the Lenders hereby consent to the Extensions and the other transactions contemplated by this Section 2.27(b) (including, for the avoidance of doubt, payment of any interest or fees in respect of any Extended Term Loans on such terms as may be set forth in the relevant Extension Offer) and hereby waive the requirements of any provision of this Agreement (including, without limitation, Sections 2.13, 2.14, 2.17 and 9.7(a)) or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 2.27.

(c) The Lenders hereby irrevocably authorize the Administrative Agent to enter into amendments to this Agreement and the other Loan Documents with the Borrower and the other applicable Loan Parties as may be necessary in order establish new tranches or sub-tranches in respect of Term Loans so extended and such technical amendments as may be necessary in connection with the establishment of such new tranches or sub-tranches, in each case on terms consistent with this Section 2.27. Notwithstanding the foregoing, the Administrative Agent shall have the right (but not the obligation) to seek the advice or concurrence of the Required Lenders with respect to any matter contemplated by this Section 2.27(c) and, if the Administrative Agent seeks such advice or concurrence, the Administrative Agent shall be permitted to enter into such amendments with the Borrower in accordance with any instructions actually received by such Required Lenders and shall also be entitled to refrain from entering into such amendments with the Borrower unless and until it shall have received such advice or concurrence; provided, however, that whether or not there has been a request by the Administrative Agent for any such advice or concurrence, all such amendments entered into with the Borrower by the Administrative Agent hereunder shall be binding and conclusive on the Lenders. Without limiting the foregoing, in connection with any Extensions, the respective Loan Parties shall (at their expense) amend (and the Collateral Agent is hereby directed to amend) any Mortgage that has a maturity date prior to the then latest Stated Maturity so that such maturity date is extended to the then latest Stated Maturity (or such later date as may be advised by local counsel to the Collateral Agent).

(d) In connection with any Extension, the Borrower shall provide the Administrative Agent at least five (5) Business Days' (or such shorter period as may be agreed by the Administrative Agent) prior written notice thereof, and shall agree to such procedures, if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.27.

2.28. Dutch Auction Buy Backs. Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, the Borrower may conduct reverse Dutch auctions from time to time after the Effective Date in order to purchase either Term B Loans or any Incremental Term Loans of any particular tranche(s) (as determined by the Borrower in its sole discretion) (each, an "Auction") (each such Auction to be managed exclusively by Credit Suisse AG, Cayman Islands Branch or another investment bank or commercial bank of recognized standing selected by the Borrower (in such capacity, the "Auction Manager")), so long as the following conditions are satisfied: (i) each Auction shall be conducted in accordance with the procedures, terms and conditions set forth in this Section 2.28 and Exhibit I, (ii) no Event of Default shall have occurred and be continuing on the date of the delivery of each Auction Notice in connection with any Auction, (iii) the minimum principal amount (calculated on the face amount thereof) of each and all tranches of Term Loans that the Borrower offers to purchase in any such Auction shall be no less than $25,000,000 (across all such tranches) or an integral multiple of $1,000,000 in excess thereof (or such lesser amount as may be reasonably acceptable to the Auction Manager) and (iv) the aggregate principal amount (calculated on the face amount thereof) of all Term Loans of the applicable tranche or tranches so purchased by the Borrower shall automatically be cancelled and retired by the Borrower on the settlement date of the relevant purchase (and may not be resold). The Borrower must terminate an Auction if it fails to satisfy one or more of the conditions set forth above which are required to be met at the time which otherwise would have been the time of purchase of Term Loans pursuant to the respective Auction. If the Borrower commences any Auction (and all relevant requirements set forth above which are required to be satisfied at the time of the commencement of the respective Auction have in fact been satisfied), and if at such time of commencement the Borrower reasonably believes that all required conditions set forth above which are required to be satisfied at the time of the purchase of Term Loans pursuant to such Auction shall be satisfied, then the Borrower shall have no liability to any Lender for any termination of the respective Auction as a result of its failure to satisfy one or more of the conditions set forth above which are required to be met at the time which otherwise would have been the time of purchase of Term Loans pursuant to the respective Auction, and any such failure shall not result in any Default or Event of Default hereunder. With respect to all purchases of Term Loans of the applicable tranche or tranches made by the Borrower pursuant to this Section 2.28, (x) the Borrower shall pay on the settlement date of each such purchase all accrued and unpaid interest (except to the extent otherwise set forth in the relevant Offer Documents), if any, on the purchased Term Loans of the applicable tranche or tranches up to the settlement date of such purchase and (y) such purchases (and the payments made by the Borrower and the cancellation of the purchased Loans, in each case in connection therewith) shall not constitute voluntary or mandatory payments or prepayments for purposes of Section 2.13 or 2.14. Each Lender acknowledges and agrees that in connection with each Auction, (i) the Borrower may purchase or acquire Term Loans hereunder from Lenders from time to time, subject to this Section 2.28, (ii) the Borrower then may have, and later may come into possession of, information regarding the Term Loans or the Loan Parties hereunder that is not known to such Lender and that may be material to a decision by such Lender to enter into an assignment of such Term Loans hereunder ("Excluded Information"), (iii) such Lender has independently and without reliance on the Borrower or any of its Subsidiaries or Affiliates made such Lender's own analysis and determined to enter into an assignment of such Term Loans and to consummate the transactions contemplated thereby notwithstanding such Lender's lack of knowledge of the Excluded Information and (iv) the Borrower and its Subsidiaries shall have no liability to such Lender, and such Lender hereby waives and releases, to the extent permitted by law, any claims such Lender may have against the Borrower and its Subsidiaries, under applicable laws or otherwise, with respect to the nondisclosure of the Excluded Information. Each Lender further acknowledges that the Excluded Information may not be available to the Administrative Agent, the Auction Manager or the other Lenders hereunder. Each Lender which tenders (or does not tender) Term Loans pursuant to an Auction agrees to the provisions of the two preceding sentences, and agrees that they shall control, notwithstanding any inconsistent provision hereof or in any Assignment and Acceptance. The Administrative Agent and the Lenders hereby consent to the Auctions and the other transactions contemplated by this Section 2.28 and hereby waive the requirements of any provision of this Agreement or any other Loan Document that may otherwise prohibit any Auction or any other transaction contemplated by this Section 2.28. The Auction Manager acting in its capacity as such hereunder shall be entitled to the benefits of the provisions of Section 8 and Section 9.5 *mutatis mutandis* as if each reference therein to the "Administrative Agent" or an "Agent" were a reference to the Auction Manager, and the Administrative Agent shall cooperate with the Auction Manager as reasonably requested by the Auction Manager in order to enable it to perform its responsibilities and duties in connection with each Auction.

SECTION 3

Representations and Warranties

In order to induce the Lenders to enter into this Agreement and to make Term Loans, the Borrower represents and warrants on the Effective Date to the Administrative Agent and to each Lender as follows:

3.1. Existence; Compliance with Law. Each Loan Party (a) is duly organized, validly existing and (to the extent such concept is applicable) in good standing under the laws of the jurisdiction of its organization, (b) has the power and authority, and the legal right, to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign corporation or other organization and (to the extent such concept is applicable) in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification and (d) is in compliance with all Requirements of Law, except, in the case of each of the foregoing clauses (a) through (d), to the extent that the failure to comply therewith would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.2. Power; Authorizations; Enforceable Obligations. Each Loan Party has the power and authority, and the legal right, to make, deliver and perform the Loan Documents to which it is a party and, in the case of the Borrower, to obtain extensions of credit hereunder. Each Loan Party has taken all necessary organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrower, to authorize the extensions of credit on the terms and conditions of this Agreement. No consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority is required in connection with the extensions of credit hereunder or with the execution, delivery, performance, validity or enforceability of this Agreement or any of the Loan Documents, except (i) that have been obtained or made and are in full force and effect, (ii) the filings made in respect of the Security Documents and (iii) to the extent that the failure to obtain any such consent, authorization, filing, notice or other act would not, in the aggregate, reasonably be expected to have a Material Adverse Effect. Each Loan Document has been duly executed and delivered on behalf of each Loan Party party thereto. This Agreement constitutes, and each other Loan Document upon execution will constitute, a legal, valid and binding obligation of each Loan Party party thereto, enforceable against each such Loan Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

3.3. No Legal Bar. The execution, delivery and performance of this Agreement and the other Loan Documents, the borrowings hereunder and the use of the proceeds thereof (x) will not violate any Requirement of Law or any material Contractual Obligation of any Loan Party and (y) will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any Requirement of Law or any such material Contractual Obligation (other than the Liens created by the Security Documents and other Permitted Liens).

3.4. Accuracy of Information. No statement or information contained in this Agreement, any other Loan Document, the Information Memorandum or any other document, certificate or statement furnished by or on behalf of any Loan Party to the Administrative Agent or the Lenders, or any of them, for use in connection with the transactions contemplated by this Agreement or the other Loan Documents, contained as of the Effective Date, taken as a whole and in light of the circumstances in which made, any untrue statement of a material fact or omitted to state a material fact necessary to make the statements contained herein or therein not materially misleading.

3.5. No Material Adverse Effect. Since December 31, 2016, there has been no development or event that has had or would reasonably be expected to have a Material Adverse Effect.

3.6. Subsidiaries. Schedule 3.6 annexed hereto sets forth the name and jurisdiction of organization of each Restricted Subsidiary of the Borrower as of the Effective Date and, as to each such Restricted Subsidiary, the percentage of each class of Capital Stock owned by any Loan Party as of the Effective Date, and (b) as of the Effective Date, there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options or restricted stock granted to employees or directors and directors' qualifying shares) of any nature relating to any Capital Stock of any of the Guarantors directly owned by the Loan Parties that are included in the Collateral, except as created by the Loan Documents or permitted under Section 6.2.

3.7. Title to Assets; Liens. The Loan Parties have title in fee simple to, or a valid leasehold or easement interest in, all their material real property, taken as a whole, and good and marketable title to, or a valid leasehold or easement interest in, all their other material property, taken as a whole, and none of such property is subject to any Lien except Permitted Liens.

3.8. Intellectual Property. Each Loan Party owns, or is licensed to use, all Intellectual Property material to the conduct of its business, and the conduct of the business of each Loan Party does not infringe upon the intellectual property rights of any other Person, in each case except where the failure to do so would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.9. Use of Proceeds. The proceeds of the Term Loans shall be utilized (i) together with the proceeds from the issuance of the 2017 Notes or any other capital contributions to the Borrower or cash on hand, to repay all outstanding obligations under the 2013 Credit Agreement, fees and expenses related thereto (including without limitation, any breakage fees) and any swap breakage costs (if any) resulting therefrom and (ii) for general corporate purposes of the Borrower and its Subsidiaries (including to pay cash dividends by the Borrower). The proceeds of Incremental Term Loans shall be used for the purposes described in Section 2.25.

3.10. Litigation. Except as disclosed in writing to the Administrative Agent and the Lenders prior to the Effective Date or otherwise disclosed in the Borrower's public filings made prior to the Effective Date (other than any such disclosure in the "Risk Factors" section of such public filings or in any other forward-looking statements contained therein), no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of the Borrower, threatened in writing by or against any Loan Party or against any of their respective properties or revenues that, in the aggregate, would reasonably be expected to have a Material Adverse Effect.

3.11. Federal Reserve Regulations. No part of the proceeds of any Term Loan will be used (a) for "buying" or "carrying" any "margin stock" within the respective meanings of each of the quoted terms under Regulation U as now in effect for any purpose that violates the provisions of the Regulations of the Board of Governors or (b) for any purpose that violates the provisions of the Regulations of the Board of Governors. Neither the Borrower nor any of its Restricted Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any "margin stock."

3.12. Solvency. The Borrower and its Subsidiaries, taken as a whole, are, and after giving effect to the incurrence of all Indebtedness and obligations being incurred in connection herewith on the Effective Date will be, Solvent.

3.13. Taxes. Each Loan Party has filed or caused to be filed all federal and state income Tax and other Tax returns that are required to be filed, except if the failure to make any such filing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and has paid all Taxes (including in its capacity as withholding agent) shown to be due and payable on said returns or on any assessments made against it or any of its property and all other Taxes, fees or other charges imposed on it or any of its property by any Governmental Authority (other than any (x) the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the relevant Loan Party, or (y) those where the failure to pay, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect). There is no proposed Tax assessment or other claim against, and no Tax audit with respect to, any Loan Party that would reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect.

3.14. ERISA. Except as, in the aggregate, does not or would not reasonably be expected to result in a Material Adverse Effect: neither a Reportable Event nor a failure to satisfy the minimum funding standard of Section 430 of the Code or Section 303 of ERISA, whether or not waived, with respect to a Plan has occurred during the five year period prior to the date on which this representation is made or deemed made with respect to any Plan, and each Plan has complied in all respects with the applicable provisions of ERISA and the Code; no termination of a Plan has occurred, and no Lien in favor of the PBGC or a Plan has arisen, during such five-year period; the present value of all accrued benefits under each Plan (based on those assumptions used to fund such Plans) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Plan allocable to such accrued benefits; neither the Borrower nor any Commonly Controlled Entity has had a complete or partial withdrawal (including under Section 4062(e) of ERISA) from any Plan or Multiemployer Plan; to the knowledge of the Borrower, neither the Borrower nor any Commonly Controlled Entity would become subject to any liability under ERISA if the Borrower or any such Commonly Controlled Entity were to withdraw completely from all Multiemployer Plans as of the valuation date most closely preceding the date on which this representation is made or deemed made; and to the knowledge of the Borrower, no Multiemployer Plan is in Reorganization or Insolvent.

3.15. Environmental Matters; Hazardous Material. There have been no matters with respect to Environmental Laws or Materials of Environmental Concern which, in the aggregate, would reasonably be expected to have a Material Adverse Effect.

3.16. Investment Company Act; Other Regulations. No Loan Party is an "investment company", or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended. No Loan Party is subject to regulation under any Requirement of Law (other than Regulation X of the Board of Governors) that limits its ability to incur Indebtedness under this Agreement and the other Loan Documents.

3.17. Labor Matters. Except as, in the aggregate, would not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against any Loan Party pending or, to the knowledge of the Borrower, threatened; (b) hours worked by and payment made to employees of each Loan Party have not been in violation of the Fair Labor Standards Act or any other applicable Requirement of Law dealing with such matters; and (c) all payments due from any Loan Party on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the relevant Loan Party.

3.18. Security Documents.

(a) After the execution and delivery thereof, the Pledge and Security Agreement and the Partnership Interest Pledge Agreement are effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof. In the case of the Pledged Stock described in the Pledge and Security Agreement and the Partnership Interest Pledge Agreement, when stock certificates (if any) representing such Pledged Stock are delivered to the Collateral Agent, and in the case of the Collateral described in the Pledge and Security Agreement and the Partnership Interest Pledge Agreement, when financing statements and other filings specified on Schedule 5 of the Perfection Certificate in appropriate form are filed in the offices specified on Schedule 6 of the Perfection Certificate, the Pledge and Security Agreement and the Partnership Interest Pledge Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and the proceeds thereof to the extent security interests can be so perfected (by delivery or filing UCC financing statements as applicable) on such Collateral, as security for the Secured Obligations, in each such case prior and superior in right to any other Person (except Permitted Liens).

(b) After the execution and delivery thereof, each of the Mortgages, is or will be effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable Lien on the Mortgaged Properties described therein and proceeds thereof, and each such Mortgage shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in the Mortgaged Properties and the proceeds thereof, as security for the Secured Obligations, in each case prior and superior in right to any other Person other than Permitted Liens. Schedule 1.1B lists, as of the Effective Date, each parcel of owned real property and each leasehold interest in real property located in the United States and held by the Borrower or any of its Guarantors that has a value, in the reasonable opinion of the Borrower, in excess of $25,000,000.

3.19. Energy Regulation. The Borrower and its Restricted Subsidiaries are in compliance with the Public Utility Holding Company Act of 2005 and the implementing regulations of the Federal Energy Regulatory Commission, as amended from time to time (together, "PUHCA 2005"), and consummation of the transactions contemplated by this Agreement and the other Loan Documents will not cause the Borrower or its Restricted Subsidiaries to cease to be in compliance with PUHCA 2005, except where any such non-compliance would not reasonably be expected to have a Material Adverse Effect.

3.20. Anti-Corruption Laws and Sanctions. No Loan Party is a Sanctioned Person. No Borrowing (or use of proceeds thereof) will violate any Anti-Corruption Law or applicable Sanctions.

SECTION 4

Conditions Precedent

4.1. Conditions to the Effective Date. The occurrence of the Effective Date is subject to the satisfaction or waiver of the following conditions precedent:

(a) Credit Agreement. The Administrative Agent shall have received (i) counterparts hereof executed and delivered by the Borrower, the Administrative Agent, the Collateral Agent and each other Lender and (ii) Schedules to this Agreement.

(b) Lien Searches. The Administrative Agent shall have received the results of a recent lien search in each jurisdiction where a Loan Party is organized, and such search shall reveal no liens on any of the assets of the Loan Parties except for liens permitted by Section 6.2 or discharged on or prior to the Effective Date pursuant to documentation reasonably satisfactory to the Administrative Agent.

(c) Corporate Documents and Proceedings. The Administrative Agent shall have received (i) a certificate of each Loan Party, dated the Effective Date, substantially in the form attached hereto as Exhibit A-1 or A-2 (as applicable), with appropriate insertions and attachments, including the certificate of incorporation of each Loan Party that is a corporation certified by the relevant authority of the jurisdiction of organization of such Loan Party, and (ii) a long form good standing certificate for each Loan Party from its jurisdiction of organization.

(d) No Material Adverse Effect. Since December 31, 2016, there has been no development or event that has had or would reasonably be expected to have a Material Adverse Effect.

(e) Legal Opinion. The Administrative Agent shall have received an executed legal opinion from White & Case LLP, counsel to the Borrower and the Guarantors, in form and substance reasonably satisfactory to the Arrangers.

(f) Filings, Registrations and Recordings. Each document (including any Uniform Commercial Code financing statement) required by the Security Documents or under law or reasonably requested by the Administrative Agent to be filed, registered or recorded in order to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than with respect to Permitted Liens), shall be in proper form for filing, registration or recordation (other than, in each case, with respect to any Mortgages or any real property).

(g) [Reserved].

(h) Payment of Fees; Expenses. The Arrangers and the Administrative Agent shall have received all fees required to be paid, and all reasonable costs and expenses required to be paid and for which invoices have been presented (including the reasonable fees and expenses of legal counsel), on or before the Effective Date.

(i) Term Notes. The Administrative Agent shall have received a Note executed by the Borrower in favor of each Lender requesting a Note.

(j) 2017 Notes. Prior to, or substantially concurrently with the occurrence of the Effective Date, Calpine Corporation shall have issued the 2017 Notes and the Borrower shall have received all or a portion of the net cash proceeds therefrom as capital equity in the form of common equity or preferred equity reasonably acceptable to the Administrative Agent, to be applied to the repayment of the 2013 Credit Agreement.

(k) 2013 Credit Agreement. Substantially concurrently with the occurrence of the Effective Date, the Administrative Agent shall have received customary documentation evidencing the repayment of the outstanding aggregate principal amount of all obligations under the 2013 Credit Agreement and the release of all Liens, if any, in connection therewith.

(l) Loan Documents. The Administrative Agent shall have received executed counterparts of the Loan Documents listed in Schedule 4.2, each in form reasonably satisfactory to the Administrative Agent.

4.2. Conditions to Each Borrowing of Term Loans. The occurrence of the Effective Date and the making of Term Loans hereunder are subject to the satisfaction or waiver of the following conditions precedent (except to the extent otherwise provided in Section 2.25):

(a) Notice. The Administrative Agent shall have received the applicable notice of borrowing, in substantially the form attached as Exhibit J, from the Borrower.

(b) Representations and Warranties. All representations and warranties contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the date of each Borrowing of Term Loans hereunder with the same effect as if made on and as of such date (unless stated to relate to a specific earlier date, in which case, such representations and warranties shall be true and correct in all material respects as of such earlier date) (it being understood that any representation or warranty that is qualified as to materiality or Material Adverse Effect shall be correct in all respects).

(c) No Default or Event of Default. No Default or Event of Default shall have occurred and be continuing on such Borrowing Date or after giving effect to the making of the Term Loans on such Borrowing Date.

SECTION 5

Affirmative Covenants

The Borrower hereby agrees that, so long as any Term Loan or other amount is owing to any Lender or the Administrative Agent hereunder or under any other Loan Document (other than contingent indemnification obligations for which no claim has been asserted) or the Term Commitments are outstanding, the Borrower shall and shall cause each of its Restricted Subsidiaries to:

5.1. Financial Statements, Etc. Whether or not required by the SEC's rules and regulations, the Borrower will furnish to the Administrative Agent (for distribution to the Lenders) unaudited quarterly financial statements of the Borrower for the first three fiscal quarters of each fiscal year of the Borrower (which statements have been certified by a Responsible Officer of the Borrower) beginning with the fiscal quarter ended March 31, 2018, and audited annual financial statements of the Borrower (which annual financial statements shall include a report thereon from the Borrower's certified independent accountants), in each case prepared in accordance with GAAP (in absence of footnote disclosures and year-end audit adjustments as it pertains to quarterly financial statements) and, in each case, within (x) 90 days after the end of the fiscal year of the Borrower, in the case of audited annual financial statements and (y) 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, in the case of unaudited quarterly financial statements of the Borrower.

5.2. Compliance Certificate.

(a) The Borrower shall deliver to the Administrative Agent, within 90 days after the end of each fiscal year of the Borrower, an officers' certificate of a Responsible Officer of the Borrower stating that a review of the activities of the Borrower and its Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Responsible Officer with a view to determining whether any Default or Event of Default has occurred and is continuing under this Agreement, and further stating, as to such Responsible Officer signing such certificate, that to the best of his or her knowledge no Default or Event of Default has occurred and is continuing under this Agreement (or, if a Default or Event of Default has occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Borrower is taking or proposes to take with respect thereto).

(b) The Borrower will deliver to the Administrative Agent, promptly upon any Responsible Officer becoming aware of any Default or Event of Default, an officers' certificate of a Responsible Officer of the Borrower specifying such Default or Event of Default and what action the Borrower is taking or proposes to take with respect thereto.

5.3. Maintenance of Existence. Preserve, renew and keep in full force and effect its organizational existence and (ii) take all reasonable action to maintain all rights, privileges and franchises reasonably necessary in the normal conduct of its business, except, in each case, (x) as otherwise permitted by Section 6.3 or 6.8 or (y) to the extent that failure to do so would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.4. Maintenance of Insurance.

(a) The Borrower and the Grantors will maintain insurance policies (or self-insurance) on all its material property in at least such amounts and against at least such risks as are usually insured against by companies of a similar size engaged in the same or a similar business and, from and after the Effective Date, will name the Collateral Agent as an additional insured and loss payee as its interests may appear, to the extent required by the Security Documents. Upon the request of the Collateral Agent, the Borrower and the Grantors will furnish to the Collateral Agent full information as to their property and liability insurance carriers; and

(b) If at any time any Building or Mobile Home (each as defined by the Flood Insurance Laws) located on a Mortgaged Property subject to a Mortgage is located in an area identified by the Federal Emergency Management Agency (or any successor agent) as a special flood hazard area, then the Borrower shall, or shall cause the applicable Loan Party to, (i) maintain with a financially sound and reputable insurer flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) if requested by the Administrative Agent, deliver to the Administrative Agent evidence of such compliance.

5.5. RESERVED.

5.6. RESERVED.

5.7. RESERVED.

5.8. Additional Guarantees. If (1) the Borrower acquires or creates another Wholly-Owned Domestic Subsidiary after the date of this Agreement (that does not constitute an Excluded Subsidiary) or (2) any Wholly-Owned Domestic Subsidiary of the Borrower ceases to constitute an Excluded Subsidiary, then such Wholly-Owned Domestic Subsidiary will become a Guarantor under the Guaranty Agreement within 60 days thereof (as such date may be extended by the Administrative Agent).

5.9. After-Acquired Collateral.

(a) With respect to any property acquired after the Effective Date by the Borrower or any Guarantor (other than (x) property constituting an "Excluded Asset" under (and as defined in) the Pledge and Security Agreement and (y) any property described in clauses (b)-(d) of this Section 5.9) as to which the Collateral Agent, for the benefit of the Secured Parties, does not have a perfected Lien, the Borrower and each applicable Guarantor shall promptly:

(i) execute and deliver to the Collateral Agent such amendments to the Pledge and Security Agreement or such other documents as the Collateral Agent deems necessary or advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a security interest in such property; and

(ii) take all actions necessary or advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected first priority security interest in such property (subject to Permitted Liens), including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Pledge and Security Agreement or by law or as may be reasonably requested by the Collateral Agent.

(b) With respect to any fee interest in any real property having a fair market value (together with improvements thereof) of at least $25,000,000 acquired after the date of this Agreement by the Borrower or any Guarantor (other than any such real property subject to a Permitted Lien which precludes the granting of a Mortgage thereon), within 90 days after the creation or acquisition thereof (as such date may be extended by the Administrative Agent), the Borrower or the applicable Guarantor shall:

(i) execute and deliver a first priority Mortgage or where appropriate under the circumstances, an amendment to an existing Mortgage (subject to Permitted Liens), in each case in favor of the Collateral Agent, for the benefit of the Secured Parties, covering such real property,

(ii) if requested by the Collateral Agent, provide the Collateral Agent with (A) either (i) title insurance covering such real property in an amount at least equal to the purchase price of such real property (or such other amount as shall be reasonably specified by the Collateral Agent) in form and substance reasonably satisfactory to the Collateral Agent, as well as a current ALTA survey thereof, together with a surveyor's certificate (only with respect to any power plant or any other real property for which an ALTA survey was obtained when such property was acquired) or (ii) where an amendment to an existing Mortgage has been delivered pursuant to clause (i) instead of a Mortgage, an endorsement to the existing title policy adding such property as an insured parcel, and (B) any consents or estoppels reasonably deemed necessary or advisable by the Collateral Agent in connection with such Mortgage or Mortgage amendment (to the extent obtainable using commercially reasonable efforts), each of the foregoing in form and substance reasonably satisfactory to the Collateral Agent;

(iii) if requested by the Collateral Agent, deliver to the Collateral Agent customary legal opinions relating to the matters described in clauses (i) and (ii) above; and

(iv) a completed "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each Mortgaged Property, and to the extent any Building or Mobile Home (as defined by the Flood Insurance Laws) on the Mortgaged Property is located in an area identified by the Federal Emergency Management Agency (or any successor agent) as a special flood hazard area, (i) a notice about special flood hazard area status and flood disaster assistance duly executed by the Borrower and (ii) evidence of flood insurance as required by Section 5.4 hereof.

(c) With respect to any new Wholly-Owned Domestic Subsidiary (other than an Excluded Subsidiary) created or acquired after the date of this Agreement by the Borrower or any Guarantor (which, for the purposes of this paragraph (c), shall include any existing Wholly-Owned Domestic Subsidiary that ceases to be an Excluded Subsidiary), within 60 days of the creation or acquisition thereof (as such date may be extended by the Administrative Agent), the Borrower and each applicable Guarantor shall:

(i) execute and deliver to the Collateral Agent such amendments to the Pledge and Security Agreement as the Collateral Agent deems necessary or advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected first priority security interest in the Capital Stock of such new Wholly-Owned Domestic Subsidiary that is owned by the Borrower or any Guarantor (subject to Permitted Liens and unless constituting an Excluded Asset),

(ii) deliver to the Collateral Agent the certificates representing such Capital Stock (unless constituting an Excluded Asset), together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the Borrower or the relevant Guarantor,

(iii) cause such new Wholly-Owned Domestic Subsidiary (A) to become a party to the Pledge and Security Agreement, (B) to take such actions necessary or advisable to grant to the Collateral Agent for the benefit of the Secured Parties a perfected first priority security interest in the Collateral described in the Pledge and Security Agreement with respect to such new Wholly-Owned Domestic Subsidiary (subject to Permitted Liens), including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Pledge and Security Agreement or by law or as may be requested by the Collateral Agent and (C) to deliver to the Collateral Agent a customary closing certificate of such Wholly-Owned Domestic Subsidiary, with appropriate insertions and attachments, and

(iv) if requested by the Collateral Agent, deliver to the Collateral Agent customary legal opinions relating to the matters described above.

(d) With respect to any new direct Foreign Subsidiary created or acquired after the Effective Date by the Borrower or any Guarantor, the Borrower or the applicable Guarantor shall promptly:

(i) execute and deliver to the Collateral Agent such amendments to the Pledge and Security Agreement as the Collateral Agent deems necessary or advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected first priority security interest in the Capital Stock of such new Foreign Subsidiary that is owned by the Borrower or such Guarantor (provided that in no event shall more than 65% of the total outstanding voting Capital Stock of any such new Foreign Subsidiary be required to be so pledged and then only so long as such Capital Stock does not constitute an Excluded Asset), and

(ii) if commercially reasonable, deliver to the Collateral Agent the certificates representing such Capital Stock (unless constituting an Excluded Asset), together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the Borrower or the relevant Guarantor, and take such other action as may be necessary or, in the opinion of the Collateral Agent, desirable to perfect the Collateral Agent's security interest therein.

5.10. Post-Closing Matters.

(a) Within thirty (30) days of the Effective Date (or such longer period as Administrative Agent may agree in its sole discretion), the Collateral Agent shall have received evidence of property and liability insurance policies (or self-insurance) on all of the Borrower's material property in at least such amounts and against at least such risks as are usually insured against by companies of a similar size engaged in the same or a similar business and, from and after the Effective Date, endorsements naming the Collateral Agent as an additional insured and loss payee as its interests may appear, to the extent required by the Security Documents; and

(b) Within the time periods set forth on Schedule 1.1B (or such longer period as the Administrative Agent may agree in its sole discretion), the Collateral Agent shall have received:

(1) counterparts of a Mortgage with respect to each real property designated as a Mortgaged Property listed on Schedule 1.1B hereto, duly executed and delivered by the record owner of such property in form suitable for filing or recording in the filing or recording office in the jurisdiction in which such property is located or as the Collateral Agent may reasonably deem necessary or desirable in order to create a valid and subsisting perfected first-priority Lien (subject only to Permitted Liens) on the property and/or rights described therein in favor of the Collateral Agent for the benefit of the Secured Parties, and evidence that all filing and recording taxes and fees have been paid or otherwise provided for in a manner reasonably satisfactory to the Collateral Agent (it being understood that if a mortgage tax will be owed on the entire amount of the indebtedness evidenced hereby, then the amount of such mortgage tax shall be calculated based on the lesser of (x) the amount of the Indebtedness allocated to the applicable Mortgaged Property and (y) 110% of the fair market value of the Mortgaged Property at the time the Mortgage is entered into, which in the case of clause (x) will result in a limitation of the debt secured by the Mortgage to such amount);

(2) fully paid policies of title insurance (or marked-up title insurance commitments having the effect of policies of title insurance) on each Mortgaged Property naming the Collateral Agent as the insured party for its benefit and that of the Secured Parties and respective successors and assigns (the "Title Insurance Policies") issued by the Title Insurance Company, such Title Insurance Policies to be in form and substance and in an amount reasonably acceptable to the Collateral Agent, insuring the Mortgages to be valid subsisting first-priority Liens (subject to Permitted Liens) on the property described therein, free and clear of all Liens other than Permitted Liens, each of which shall (i) to the extent reasonably necessary, include such reinsurance arrangements or coinsurance as shall be reasonably acceptable to the Collateral Agent, (ii) contain a "tie-in" endorsement, if available under applicable law and (iii) have been supplemented by such endorsements as shall be reasonably requested by the Collateral Agent (including, if reasonably requested by the Collateral Agent, endorsements on matters relating to usury, first loss, zoning, contiguity, revolving credit, doing business, access, variable rate, survey, environmental lien, subdivision, mortgage recording tax, separate tax lot and so-called comprehensive coverage over covenants and restrictions);

(3) either (a) a new survey with respect to the plant site located on each Mortgaged Property prepared by a surveyor selected by the Borrower and reasonably acceptable to the Collateral Agent, certified to the Administrative Agent, the Collateral Agent and the Title Insurance Company issuing the title insurance policy for such Mortgaged Property pursuant to clause (2) above, and complying with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," each in form and substance reasonably acceptable to the Collateral Agent; or (b) an existing survey of the plant site located on each Mortgaged Property together with an "affidavit of no-change", in each case sufficient to provide coverage under the Title Insurance Policies referred to in clause (2) above that does not contain a general survey exception for survey matters with respect to the plant site and which contains survey-related endorsements with respect to the plant site reasonably acceptable to the Collateral Agent;

(4) customary legal opinions, addressed to the Administrative Agent, the Collateral Agent and the Lenders (a) in the state in which the applicable Mortgaged Property is located with respect to the enforceability and perfection of such Mortgage and any related fixture filing and any other customary matters reasonably requested by the Collateral Agent and (b) in the state in which the mortgagor is organized or formed, with respect to due authorization, execution and delivery of such Mortgage and other customary matters reasonably requested by the Collateral Agent;

(5) with respect to each Mortgaged Property, a completed "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination, and to the extent any Building or Mobile Home (as defined by the Flood Insurance Laws) on the Mortgaged Property is located in an area identified by the Federal Emergency Management Agency (or any successor agent) as a special flood hazard area, (i) a notice about special flood hazard area status and flood disaster assistance duly executed by the Borrower and (ii) evidence of flood insurance as required by Section 5.4 hereof.

(6) with respect to the Magic Valley Facility, a collateral assignment of (a) that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated as of August 14, 2003, between Calpine Construction Finance Company, L.P., Malcom S. Morris, and Magic Valley Pipeline L.P., recorded on August 20, 2003 as document number 1233814 and (b) that certain Option Agreement, dated as of August 14, 2003, as evidenced by that certain Memorandum of Option Agreement, made effective as of August 14, 2003, in each case in form and substance satisfactory to the Collateral Agent; and

(7) a subordination agreement having terms not materially less favorable, taken as a whole, to the Secured Parties than the lien subordination agreement in effect immediately prior to the Effective Date pursuant to which the Lien granted by the Borrower in favor of Magic Valley Electric Cooperative, Inc. (as subsequently assigned to South Texas Electric Cooperative, Inc.) pursuant to the Power Purchase and Sale Agreement dated as of May 22, 1998 securing certain obligations thereunder shall be subordinated to the Liens granted in favor of the Collateral Agent; provided, however, that Borrower shall only be required to use commercially reasonably efforts to deliver such subordination agreement.

SECTION 6

Negative Covenants

The Borrower agrees that, so long as any Term Loan or other amount is owing to any Lender or the Administrative Agent hereunder or under any other Loan Document (other than contingent indemnification obligations for which no claim has been asserted) or the Term Commitments are outstanding:

6.1. Limitation on Incurrence of Indebtedness and Issuance of Preferred Stock.

(a) The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "incur") any Indebtedness, and the Borrower will not issue any Disqualified Capital Stock and will not permit any of its Restricted Subsidiaries to issue any shares of preferred stock; provided, however, that the Borrower may incur Indebtedness or issue Disqualified Capital Stock, and the Guarantors may incur Indebtedness or issue preferred stock, if the Fixed Charge Coverage Ratio for the Borrower's most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Capital Stock or preferred stock is issued would have been at least 2.0 to 1.0, determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if the additional Indebtedness had been incurred or the Disqualified Capital Stock or preferred stock had been issued, as the case may be, at the beginning of such four-quarter period.

(b) The provisions of Section 6.1(a) will not prohibit the incurrence of any of the following items of Indebtedness (collectively, "Permitted Debt"):

(i) the incurrence by the Borrower and its Restricted Subsidiaries and the guarantee by the Borrower and its Restricted Subsidiaries of Indebtedness and letters of credit under Credit Facilities in an aggregate principal amount at any one time outstanding under this Section 6.1(b)(i) (with letters of credit being deemed to have a principal amount equal to the maximum potential liability of the Borrower and its Restricted Subsidiaries thereunder) not to exceed $50.0 million less the amount incurred pursuant to clause (a)(i) of the definition of "Maximum Incremental Facilities Amount" (but only to the extent that such amount is then outstanding);

(ii) the incurrence by the Borrower and its Restricted Subsidiaries of Indebtedness represented by the Term Loans (including Incremental Term Loans) and the related guarantees and the incurrence by any Restricted Subsidiary of the Borrower of any other guarantee of the Term Loans (including Incremental Term Loans) and other Obligations;

(iii) the incurrence by the Borrower or any of its Restricted Subsidiaries of Indebtedness represented by Capital Lease Obligations, mortgage financings or purchase money obligations, in each case, incurred for the purpose of financing all or any part of the purchase price or cost of design, construction, installation or improvement of property, plant or equipment used or useful in the business of the Borrower or any of its Restricted Subsidiaries or within 180 days thereafter; provided that at the time of incurrence of any such Indebtedness, the aggregate amount of Indebtedness outstanding under this Section 6.1(b)(iii), including all Permitted Refinancing Indebtedness incurred to refund, refinance or replace any Indebtedness incurred pursuant to this Section 6.1(b)(iii), does not exceed the greater of (x) $100.0 million and (y) 5.0% of Total Assets;

(iv) Indebtedness, Disqualified Capital Stock or preferred stock of Persons or assets that are acquired by the Borrower or any of its Restricted Subsidiaries or merged into the Borrower or any of its Restricted Subsidiaries in accordance with the terms of this Agreement; provided that such Indebtedness, Disqualified Capital Stock or preferred stock is not incurred in contemplation of such acquisition or merger; and provided further that after giving effect to such acquisition or merger, either (a) the Borrower would be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 6.1(a) or (b) the Fixed Charge Coverage Ratio would be no less than that immediately prior to such acquisition or merger;

(v) the incurrence by the Borrower or any of its Restricted Subsidiaries of Permitted Refinancing Indebtedness in exchange for, or the net proceeds of which are used to refund, refinance or replace, Indebtedness (other than intercompany Indebtedness) that was permitted by this Agreement to be incurred under Section 6.1(a) or clauses (ii), (iii), (iv), (v), (xiii), (xiv), (xv) or (xvii) of this Section 6.1(b);

(vi) the incurrence by the Borrower or any of its Restricted Subsidiaries of intercompany Indebtedness between or among the Borrower or any of its Restricted Subsidiaries; provided, however, that:

(A) if the Borrower or any Guarantor is the obligor on such Indebtedness and the payee is not the Borrower or a Guarantor, such Indebtedness must be expressly subordinated to the prior payment in full in cash of all Obligations then due with respect to the Loans, in the case of the Borrower, or the guarantee, in the case of a Guarantor; and

(B) (i) any subsequent issuance or transfer of Equity Interests that results in any such Indebtedness being held by a Person other than the Borrower or any of its Restricted Subsidiaries and (ii) any sale or other transfer of any such Indebtedness to a Person that is not either the Borrower or a Restricted Subsidiary of the Borrower (except transfers to the applicable Secured Debt Representative to secure Parity Secured Obligations) will be deemed, in each case, to constitute an incurrence of such Indebtedness by the Borrower or such Restricted Subsidiary, as the case may be, that was not permitted by this Section 6.1(b)(vi);

(vii) the Guarantee by the Borrower or any of its Restricted Subsidiaries of Indebtedness that was permitted by this Agreement to be incurred by another provision of this Section 6.1(b);

(viii) the issuance by any of the Borrower's Restricted Subsidiaries to the Borrower or to any of its Restricted Subsidiaries of shares of preferred stock; provided, however, that:

(A) any subsequent issuance or transfer of Equity Interests that results in any such preferred stock being held by a Person other than the Borrower or its Restricted Subsidiary; and

(B) any sale or other transfer of any such preferred stock to a Person that is not either the Borrower or a Restricted Subsidiary of the Borrower

will be deemed, in each case, to constitute an issuance of such preferred stock by such Restricted Subsidiary that was not permitted by this Section 6.1(b)(viii);

(ix) the incurrence by the Borrower or any of its Restricted Subsidiaries of obligations under Swap Agreements or Cash Management Obligations in the ordinary course of business or consistent with past practice;

(x) the incurrence by the Borrower or any of its Restricted Subsidiaries of Indebtedness in respect of workers' compensation claims, self-insurance obligations, bankers' acceptances, performance, surety and similar bonds provided by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(xi) the incurrence by the Borrower or any of its Restricted Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Indebtedness is covered within five Business Days;

(xii) the incurrence of Indebtedness arising from agreements of the Borrower or any of its Restricted Subsidiaries providing for indemnification, adjustment of purchase price or similar obligations, in each case, incurred or assumed in connection with the disposition or acquisition of any business, assets or Equity Interests of a Subsidiary; provided that the maximum aggregate liability in respect of all such Indebtedness in respect of a disposition shall at no time exceed the gross proceeds (including the Fair Market Value of non-cash proceeds) actually received by the Borrower and/or such Restricted Subsidiary in connection with such disposition;

(xiii) Indebtedness of the Borrower or any of its Restricted Subsidiaries consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business or consistent with past practice;

(xiv) Indebtedness of the Borrower and its Restricted Subsidiaries existing on the Effective Date (but excluding, from and after the Effective Date, the obligations under the 2013 Credit Agreement to be repaid with the proceeds of the Term Loans on the Effective Date when so repaid);

(xv) (a) Environmental CapEx Debt or (b) Indebtedness in respect of Upgrades; provided, in each case, that prior to the incurrence of any such Indebtedness, the Borrower shall deliver to the Administrative Agent an officer's certificate of a Responsible Officer designating such Indebtedness as Environmental CapEx Debt or Indebtedness in respect of Upgrades, as applicable;

(xvi) [Intentionally Omitted]; and

(xvii) the incurrence by the Borrower or any of its Restricted Subsidiaries of additional Indebtedness in an aggregate principal amount (or accreted value, as applicable) at any time outstanding pursuant to this Section 6.1(b)(xvii), including all Permitted Refinancing Indebtedness incurred to refund, refinance or replace any Indebtedness incurred pursuant to this clause (xvii), not to exceed the greater of (x) $100.0 million and (y) 5.0% of Total Assets (which may, but need not, be incurred under a Credit Facility) less the amount incurred pursuant to clause (a)(ii) of the definition of "Maximum Incremental Facilities Amount" (but only to the extent such amount is then outstanding).

(c) The Borrower shall not, and shall not permit any Guarantor to, incur any Indebtedness (including Permitted Debt) that is contractually subordinated in right of payment to any other Indebtedness of the Borrower or that Guarantor unless such Indebtedness is also contractually subordinated in right of payment to the Obligations or the applicable guarantee on substantially identical terms; provided, however, that no Indebtedness of the Borrower will be deemed to be contractually subordinated in right of payment to any other Indebtedness of the Borrower solely by virtue of being unsecured or by virtue of being secured on a junior basis.

(d) For purposes of determining compliance with this Section 6.1, in the event that an item of proposed Indebtedness meets the criteria of more than one of the categories of Permitted Debt described in clauses (i) through (xvii) of Section 6.1(b), or is entitled to be incurred pursuant to Section 6.1(a), the Borrower will be permitted to classify such item of Indebtedness on the date of its incurrence, or later reclassify from time to time all or a portion of such item of Indebtedness, in any manner that complies with this Section 6.1. The accrual of interest, the accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, and the payment of dividends on Disqualified Capital Stock or preferred stock in the form of additional shares of the same class of Disqualified Capital Stock or preferred stock will not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Capital Stock or preferred stock for purposes of this Section 6.1; provided, in each such case, that the amount thereof is included in (and to the extent required by) Fixed Charges of the Borrower as accrued. Notwithstanding any other provision of this Section 6.1, the maximum amount of Indebtedness that the Borrower or any of its Restricted Subsidiaries may incur pursuant to this Section 6.1 shall not be deemed to be exceeded solely as a result of fluctuations in exchange rates or currency values.

6.2. Limitation on Liens. The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, assume or otherwise cause or suffer to exist or become effective any Lien of any kind on any asset now owned or hereafter acquired, except Permitted Liens.

6.3. Merger, Consolidation, or Sale of Assets.

(a) The Borrower shall not, directly or indirectly, (1) consolidate or merge with or into another Person (whether or not the Borrower is the surviving corporation); or (2) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Borrower and its Restricted Subsidiaries taken as a whole, in one or more related transactions, to another Person, unless:

(i) either:

(A) the Borrower is the surviving corporation; or

(B) the Person formed by or surviving any such consolidation or merger (if other than an Borrower) or to which such sale, assignment, transfer, conveyance or other disposition has been made is either (i) a corporation organized or existing under the laws of the United States, any state of the United States or the District of Columbia or (ii) a partnership or limited liability company organized or existing under the laws of the United States, any state of the United States or the District of Columbia;

(ii) the Person formed by or surviving any such consolidation or merger (if other than the Borrower) or the Person to which such sale, assignment, transfer, conveyance or other disposition has been made assumes all the obligations of the Borrower under this Agreement and the Security Documents pursuant to a supplemental documentation reasonably satisfactory to the Administrative Agent;

(iii) immediately after such transaction, no Event of Default exists; and

(iv) the Borrower or the Person formed by or surviving any such consolidation or merger (if other than the Borrower) or to which such sale, assignment, transfer, conveyance or other disposition has been made will, on the date of such transaction after giving *pro forma* effect thereto and to any related financing transactions as if the same had occurred at the beginning of the applicable four-quarter period, either (i) have a *pro forma* Fixed Charge Coverage Ratio that is at least equal to the actual Fixed Charge Coverage Ratio of the Borrower as of such date or (ii) be permitted to incur at least $1.00 of additional Indebtedness pursuant to Section 6.1(a).

(b) In addition, the Borrower may not, directly or indirectly, lease all or substantially all of its properties or assets, in one or more related transactions, to any other Person.

(c) Notwithstanding the foregoing:

(i) any Restricted Subsidiary of the Borrower may consolidate with, merge into or transfer all or part of its properties and assets to the Borrower or any other Restricted Subsidiary of the Borrower; and

(ii) the Borrower may merge with an Affiliate solely for the purpose of reincorporating the Borrower or reforming in another jurisdiction.

(d) Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets of the Borrower in accordance with this Section 6.3, the successor entity formed by such consolidation or into or with which the Borrower is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, lease, conveyance or other disposition, the provisions of this Agreement referring to the Borrower shall refer instead to the successor entity and not to the Borrower), and may exercise every right and power of the Borrower under this Agreement with the same effect as if such successor Person had been named as the Borrower herein; provided that the predecessor Borrower shall not be relieved from the obligation to pay the principal of and interest on the Notes except in the case of a sale, assignment, transfer, conveyance or other disposition of all of the Borrower's assets that meets the requirements of this Section 6.3.

6.4. Limitation on Sale and Leaseback Transactions.

(a) The Borrower will not, and will not permit any of its Restricted Subsidiaries to, enter into any sale and leaseback transaction; provided that the Borrower or any of its Restricted Subsidiaries may enter into a sale and leaseback transaction if:

(i) the Borrower or the Restricted Subsidiary, as applicable, could have incurred Indebtedness in an amount equal to the Attributable Debt relating to such sale and leaseback transaction under Section 6.1;

(ii) the gross cash proceeds of that sale and leaseback transaction are at least equal to the Fair Market Value of the property that is the subject of that sale and leaseback transaction; and

(iii) if such sale and leaseback transaction constitutes an Asset Sale, the transfer of assets in that sale and leaseback transaction is permitted by, and the Borrower apply the proceeds of such transaction in compliance with, Section 6.8.

(b) Section 6.4(a) shall not apply to a sale and leaseback transaction entered into between the Borrower and a Restricted Subsidiary of the Borrower or between Restricted Subsidiaries of the Borrower.

6.5. Business Activities. The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, engage in any business other than Permitted Businesses, except to such extent as would not be material to the Borrower and its Subsidiaries taken as a whole.

6.6. Designation of Restricted and Unrestricted Subsidiaries. The Board of Directors of the Borrower may designate any Restricted Subsidiary of the Borrower to be an Unrestricted Subsidiary if that designation would not cause an Event of Default. If a Restricted Subsidiary of the Borrower is designated as an Unrestricted Subsidiary, the aggregate Fair Market Value of all outstanding Investments owned by the Borrower and its Restricted Subsidiaries in the Subsidiary properly designated will be deemed to be an Investment made as of the time of the designation and will reduce the amount available for Restricted Payments under Section 6.9 or Permitted Investments, as determined by the Borrower. That designation will only be permitted if the Investment would be permitted at that time and if the Restricted Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. The Board of Directors of the Borrower may redesignate any Unrestricted Subsidiary to be a Restricted Subsidiary.

6.7. Transactions with Affiliates.

(a) The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Borrower (each, an "Affiliate Transaction") involving aggregate payments in excess of $10.0 million, unless:

(i) the Affiliate Transaction is on terms that are no less favorable (as reasonably determined by the Borrower) to the Borrower or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Borrower or such Restricted Subsidiary with an unrelated Person; and

(ii) the Borrower delivers to the Administrative Agent:

(A) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $25.0 million, either (x) a resolution of the Board of Directors of the Borrower set forth in an officer's certificate of a Responsible Officer certifying that such Affiliate Transaction complies with this Section 6.7 and that such Affiliate Transaction has been approved by a majority of the members of the Board of Directors of the Borrower or (y) an opinion described in clause (B) below; and

(B) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $50.0 million, an opinion as to the fairness to the Borrower or such Restricted Subsidiary of such Affiliate Transaction from a financial point of view issued by an accounting, appraisal or investment banking firm of national standing.

(b) The following items will not be deemed to be Affiliate Transactions and, therefore, will not be subject to the provisions of Section 6.7(a):

(i) any employment agreement or director's engagement agreement, employee benefit plan, officer and director indemnification agreement or any similar arrangement entered into by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business or approved by the relevant Board of Directors;

(ii) transactions between or among the Borrower and/or its Restricted Subsidiaries;

(iii) transactions with a Person that is an Affiliate of the Borrower solely because the Borrower owns, directly or through a Restricted Subsidiary, an Equity Interest in, or controls, such Person;

(iv) payment of reasonable directors' fees and indemnities to Persons who are not otherwise Affiliates of the Borrower;

(v) any issuance of Equity Interests (other than Disqualified Capital Stock) of the Borrower to Affiliates of the Borrower;

(vi) Restricted Payments that do not violate the provisions of Section 6.9 or a Permitted Investment;

(vii) loans or advances to directors, officers and employees in the ordinary course of business not to exceed $10.0 million in the aggregate outstanding at any one time;

(viii) any agreement, instrument or arrangement as in effect as of the Effective Date and any transactions contemplated thereby and any amendment thereto or replacement thereof, so long as any such amendment or replacement agreement that at the time such amendment or agreement is executed is no less favorable than those that would have been obtained in a comparable transaction by the Borrower or such Restricted Subsidiary with an unrelated Person;

(ix) any *pro rata* distribution (including a rights offering) to all holders of a class of Equity Interests or Indebtedness of the Borrower or any of its Restricted Subsidiaries, including Persons who are Affiliates of the Borrower or any of its Restricted Subsidiaries;

(x) any transaction involving sales of electric capacity, energy, ancillary services, transmission services and products, steam, emissions credits, fuel, fuel transportation, shared services agreements, operation and maintenance agreements and fuel storage in the ordinary course of business on terms that are no less favorable (as reasonably determined by the Borrower) to the Borrower or the relevant Restricted Subsidiary of the Borrower than those that would have been obtained in a comparable transaction by the Borrower or such Restricted Subsidiary with an unrelated Person;

(xi) if the Borrower or any of its Restricted Subsidiaries enter into a transaction involving sales of electric capacity, energy, ancillary services, transmission services and products, steam, emissions credits, fuel, fuel transportation and fuel storage with any Person that is not an Affiliate, any amendment to any agreement with an Affiliate with respect thereto that modifies such agreement solely with respect to the subject matter of the transaction with such non-Affiliate;

(xii) the trading and sharing of parts and components for equipment, tools and non-material equipment among the Borrower and its Affiliates, in the ordinary course of business or consistent with past practices of the relevant Persons, including for purposes of spare or replacement;

(xiii) transactions with customers, clients, suppliers, joint venture partners or purchasers or sellers of goods or services (including pursuant to joint venture agreements) otherwise in compliance with the terms of this Agreement that are fair to the Borrower and its Restricted Subsidiaries, in the determination of a senior financial officer of the Borrower, or are on terms not materially less favorable taken as a whole would reasonably have been obtained at such time from an unaffiliated party; and

(xiv) transactions in which the Borrower or any Restricted Subsidiary of the Borrower, as the case may be, delivers to the Administrative Agent a letter from an accounting, appraisal or investment banking firm of national standing stating that such transaction is fair to the Borrower or such Restricted Subsidiary from a financial point of view or meets the requirements of Section 6.7(a)(i).

6.8. Asset Sales.

(a) The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, consummate an Asset Sale unless:

(i) the Borrower (or its Restricted Subsidiary, as the case may be) receive consideration at the time of the Asset Sale at least equal to the Fair Market Value of the assets or Equity Interests issued or sold or otherwise disposed of; and

(ii) at least 75% of the consideration received in the Asset Sale by the Borrower or such Restricted Subsidiary is in the form of cash or Cash Equivalents or Designated Non-Cash Consideration to the extent that all Designated Non-Cash Consideration at such time does not exceed the greater of $50.0 million and 2.5% of Total Assets (with the Fair Market Value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value). For purposes of this provision, each of the following will be deemed to be cash:

(A) any liabilities, as shown on the Borrower's most recent consolidated balance sheet, of the Borrower or any Restricted Subsidiary (other than contingent liabilities and liabilities that are by their terms subordinated to the Obligations or any guarantee thereof) and assumed by the transferee of any such assets pursuant to a customary novation agreement that releases the Borrower or such Restricted Subsidiary from further liability;

(B) any securities, notes or other obligations received by the Borrower or any such Restricted Subsidiary from such transferee that are converted (by sale or other disposition) by the Borrower or such Restricted Subsidiary into cash, to the extent of the cash received in that conversion within 60 days; and

(C) reasonable reserves for indemnity obligations and purchase price adjustments funded in cash or held back by the purchaser.

(b) Within 365 days after the receipt of any Net Proceeds from an Asset Sale or, if the Borrower or any of its Restricted Subsidiaries has entered into a binding commitment or commitments with respect to any of the actions described in Section 6.8(b)(iii)(A) through (iii)(C) below, within the later of (x) 365 days after the receipt of any Net Proceeds from an Asset Sale or (y) 365 days after the entering into such commitment or commitments, the Borrower (or the applicable Restricted Subsidiary, as the case may be) may apply such Net Proceeds:

(i) in the case of a sale of assets of a Restricted Subsidiary of the Borrower that is not a Guarantor, to repay Indebtedness of that Restricted Subsidiary and correspondingly reduce commitments with respect thereto;

(ii) in the case of a sale of assets pledged to secure Indebtedness (including Capital Lease Obligations), other than Parity Secured Debt, to repay the Indebtedness secured by those assets;

(iii) in the case of any Asset Sale:

(A) to acquire all or substantially all of the assets of (or any division, business unit or line of business of), or all or a majority of the Voting Stock of, a Person engaged in a Permitted Business, provided that such Person becomes a Restricted Subsidiary;

(B) to make a capital expenditure (including, without limitation, a maintenance capital expenditure or expense); or

(C) to acquire other assets that are not classified as current assets under GAAP and that are used or useful in a Permitted Business;

(iv) to collateralize the reimbursement obligations of the Borrower or any of its Restricted Subsidiaries in connection with surety or performance bonds or letters of credit or bankers' acceptances issued in the ordinary course of business; or

(v) any combination of the foregoing.

(c) As to any Net Proceeds from any Asset Sale, pending final application of such Net Proceeds in accordance with this Section 6.8, the Borrower or any of its Restricted Subsidiaries may temporarily reduce revolving credit borrowings or otherwise invest the Net Proceeds in any manner that is not prohibited by this Agreement.

(d) Any Net Proceeds from Asset Sales that are not applied or invested as provided in Section 6.8(b) will constitute "Excess Proceeds." When the aggregate amount of Excess Proceeds exceeds $40.0 million, the Borrower shall make an Asset Sale Offer pursuant to Section 2.14(b) to all Lenders and an offer to all holders of other Parity Secured Debt that is *pari passu* with the Term Loans containing provisions similar to those set forth in this Agreement with respect to offers to purchase or redeem with the proceeds of sales of assets, an aggregate principal amount of Term Loans and such other Parity Secured Debt that may be purchased (or repaid, prepaid or redeemed) on a pro rata basis equal to the aggregate Excess Proceeds (an "Asset Sale Offer"). The offer price for the Term Loans in any Asset Sale Offer will be equal to 100% of the principal amount plus accrued and unpaid interest to the date of purchase, and will be payable in cash. If any Excess Proceeds remain after consummation of an Asset Sale Offer, the Borrower may use those Excess Proceeds for any purpose not otherwise prohibited by this Agreement. If the aggregate principal amount of Term Loans and other Parity Secured Debt tendered into such Asset Sale Offer or other offer exceeds the amount of Excess Proceeds, the Borrower will select the Term Loans and such other Parity Secured Debt to be purchased on a *pro rata* basis. Upon completion of each Asset Sale Offer, the amount of Excess Proceeds will be reset at zero.

6.9. Limitation on Restricted Payments.

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

(i) declare or pay any dividend or make any other payment or distribution on account of the Borrower or any of its Restricted Subsidiaries' Equity Interests (including, without limitation, any payment in connection with any merger or consolidation involving the Borrower or any of its Restricted Subsidiaries) or to the direct or indirect holders of the Borrower's or any of its Restricted Subsidiaries' Equity Interests in their capacity as such (other than dividends or distributions payable in Equity Interests (other than Disqualified Capital Stock) of the Borrower or any of its Restricted Subsidiaries);

(ii) purchase, redeem or otherwise acquire or retire for value (including, without limitation, in connection with any merger or consolidation involving the Borrower) any Equity Interests of the Borrower or Parent;

(iii) make any payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value any Indebtedness of the Borrower or of any Guarantor that is subordinated to the Term Loans or any guarantee thereof (excluding any intercompany Indebtedness, intercompany receivables or intercompany advances between or among any of the Borrower and any of its Restricted Subsidiaries), except a payment of interest or principal at the Stated Maturity thereof; or

(iv) make any Investment that is not a Permitted Investment.

(all such payments and other actions set forth in these clauses (i) through (iv) above being collectively referred to as "Restricted Payments").

(b) The foregoing provisions of Section 6.9(a) shall not prohibit:

(i) the payment of any dividend or distribution or the consummation of any irrevocable redemption within 60 days after the date of declaration of the dividend or distribution or giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend, distribution or redemption payment would have complied with the provisions of this Agreement;

(ii) the making of any Restricted Payment in exchange for Equity Interests of the Borrower, or out of the net cash proceeds of the substantially concurrent sale (other than to a Subsidiary of any Borrower) of Equity Interests of the Borrower (other than Disqualified Capital Stock) and, to the extent contributed to the Borrower, Equity Interests of Parent, or out of the cash proceeds of the substantially concurrent contribution of common equity capital or surplus to the Borrower (other than, in each case, the proceeds of the 2017 Notes);

(iii) the defeasance, redemption, repurchase or other acquisition or retirement for value of Indebtedness or Disqualified Capital Stock of the Borrower or any Guarantor that is subordinated to the Obligations or to any guarantee thereof with the net cash proceeds from a substantially concurrent incurrence of Permitted Refinancing Indebtedness;

(iv) the payment of any dividend (or, in the case of any partnership or limited liability company, any similar distribution) by a Restricted Subsidiary of the Borrower to the holders of any series of its Equity Interests on a *pro rata* basis;

(v) so long as no Event of Default has occurred and is continuing or would be caused thereby, (A) the repurchase, redemption or other acquisition or retirement for value of any Equity Interests of any Parent, the Borrower or any Restricted Subsidiaries of the Borrower in connection with any management equity subscription agreement, stock option agreement, shareholders' agreement, severance agreement, employee benefit plan or agreement or similar agreement, (B) the repurchase for value of any Equity Interests of any Parent, the Borrower or any Restricted Subsidiaries of the Borrower in the open market to satisfy stock options issued by Parent, the Borrower or any Restricted Subsidiaries of the Borrower that are outstanding; provided that the aggregate price paid for all such repurchased, redeemed, acquired or retired Equity Interests after the Effective Date may not exceed (x) $10.0 million in any calendar year (or the *pro rata* portion thereof for the calendar year 2017) or (y) $40.0 million in the aggregate since the Effective Date; provided, however, that if the aggregate amount applied pursuant to this Section 6.9(b)(v) shall be less than $10.0 million in any calendar year or the *pro rata* portion thereof for the calendar year 2017 (before giving effect to any carryover), then the amount of such shortfall may be added to the amount that may be applied under this Section 6.9(b)(v) in any subsequent calendar year, subject at all times to the preceding clause (y);

(vi) the repurchase of Equity Interests deemed to occur upon the exercise of stock options to the extent such Equity Interests represent a portion of the exercise price of those stock options and repurchases of Equity Interests in connection with the withholding of a portion of the Equity Interests granted or awarded to a director or an employee to pay for the taxes payable by such director or employee upon such grant or award;

(vii) the purchase by the Borrower of fractional shares upon conversion of any securities of the Borrower into Equity Interests of the Borrower;

(viii) the declaration and payment of dividends to holders of any class or series of Disqualified Capital Stock of the Borrower or any preferred stock of its Restricted Subsidiaries issued on or after the Effective Date in accordance with the Fixed Charge Coverage Ratio test contained in Section 6.1;

(ix) upon the occurrence of (i) a Change of Control and after the completion of the Change of Control Prepayment Offer pursuant to Section 2.14(a) or (ii) an Asset Sale to the extent an Asset Sale Offer is required in accordance with this Agreement and after the completion of the Asset Sale Offer pursuant to Section 2.14(b) (including, in each case, the repayment of all Term Loans of accepting Lenders), any purchase, defeasance, retirement, redemption or other acquisition of Equity Interests or Indebtedness that is contractually subordinated to the Obligations or any guarantee thereof required under the terms of such Capital Stock or Indebtedness as a result of such Change of Control or Asset Sale, as applicable;

(x) [Reserved];

(xi) the transactions with any Person (including any Affiliate of the Borrower) set forth in clauses (i) and (iv) of Section 6.7 and the funding of any obligations in connection therewith;

(xii) the issuance of Equity Interests of the Borrower (other than Disqualified Capital Stock) for other Equity Interests of the Borrower in connection with any rights offering and payments for the redemption of fractional shares in connection with any rights offering;

(xiii) the declaration and payment of dividends or distributions to, or the making of loans to any Parent:

(A) with respect to any taxable period for which the Borrower is a partnership or disregarded entity for U.S. federal income Tax purposes that is wholly-owned (directly or indirectly) by a C corporation for U.S. federal and/or applicable state or local income Tax purposes, in amounts required for such Parent to pay federal, state and/or local income Taxes to the extent such income Taxes are attributable to the income of the Borrower and/or its Restricted Subsidiaries and, to the extent of the amount actually received from Unrestricted Subsidiaries, in amounts required to pay such Taxes to the extent attributable to the income of the Unrestricted Subsidiaries; provided, however, that in each case the amount of such payments in any taxable year does not exceed the amount that the Borrower and/or its applicable Restricted Subsidiaries (and, to the extent described above, its applicable Unrestricted Subsidiaries) would have been required to pay in respect of such federal, state and/or local income Taxes, as applicable, for such taxable year had the Borrower and/or such Restricted Subsidiaries (and/or such Unrestricted Subsidiaries, as applicable) paid such Taxes as a stand-alone taxpayer, less any such federal, state and/or local income Taxes, as applicable, actually payable directly by the Borrower and/or its Restricted Subsidiaries (and/or its Unrestricted Subsidiaries, as applicable); and

(B) in an aggregate amount not to exceed $1.0 million per annum (such amount to be adjusted upwards annually, beginning on January 1, 2018, by 5% on a compounded basis) to pay reasonable accounting, legal and administrative expenses of any Parent when due;

(xiv) Investments in Unrestricted Subsidiaries not to exceed the greater of (x) $50.0 million and (y) 5.0% of Total Assets since the Effective Date;

(xv) the making of any Restricted Payment with the proceeds from the transfer of an undivided interest in the Magic Valley Generating Center in Edinburg, Texas pursuant to the purchase option set forth in Article XIV of the Power Purchase and Sale Agreement with South Texas Electric Cooperative, Inc., dated May 22, 1998, as in effect on the Effective Date;

(xvi) additional Restricted Payments in an aggregate amount not to exceed $10.0 million in any calendar year (or the *pro rata* portion thereof for the calendar year 2017); provided, however, that if the aggregate amount applied pursuant to this Section 6.9(b)(xvi) shall be less than $10.0 million in any calendar year or the *pro rata* portion thereof for the calendar year 2017 (before giving effect to any carryover), then the amount of such shortfall may be added to the amount that may be applied under this Section 6.9(b)(xvi) in any subsequent calendar year;

(xvii) additional Restricted Payments so long as at the time of such Restricted Payment, the amount of such Restricted Payments together with all other Restricted Payments made pursuant to Section 6.9(b)(xvii) does not to exceed the greater of (x) $75.0 million and (y) 3.5% of Total Assets; and

(xviii) the dividend of the Equity Interests of any Unrestricted Subsidiary; and

(xix) the payment or making of any cash Restricted Payment; provided that no Default or Event of Default has occurred and is continuing or would occur as a consequence of such cash dividend.

The amount of all Restricted Payments (other than cash) will be the Fair Market Value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by the Borrower or its Restricted Subsidiaries, as the case may be, pursuant to the Restricted Payment. The Fair Market Value of any assets or securities that are required to be valued by this Section 6.9 will be determined by the Board of Directors of the Borrower; provided that if the Fair Market Value of such assets or securities involves an aggregate amount in excess of $50.0 million, the Borrower shall deliver to the Administrative Agent a resolution of the Board of Directors of the Borrower set forth in an officer's certificate of a Responsible Officer certifying that such valuation has been approved by a majority of the members of the Board of Directors of the Borrower.

For purposes of determining compliance with this Section 6.9, in the event that a Restricted Payment meets the criteria of more than one of the types of Restricted Payments described in the above clauses, the Borrower, in their sole discretion, may order and classify, and from time to time may reorder and reclassify, such Restricted Payment if it would be permitted at the time of any such reclassification.

6.10. Changes in Covenants When Term Loans Rated Investment Grade.

(a) If on any date following the Effective Date:

(i) the rating assigned to the Term Loans by either S&P or Moody's is an Investment Grade Rating and

(ii) no Default or Event of Default shall have occurred and be continuing,

then, beginning on that day and subject to the provisions of the following paragraph, the covenants contained in Sections 6.1, 6.3(a)(iv), 6.4(a)(i), 6.4(a)(iii), 6.5, 6.6, 6.7, 6.8 (and 2.14(b)) and 6.9 will be suspended.

(b) Notwithstanding the provisions of Section 6.10(a), if the ratings assigned by both such rating agencies with respect to the Term Loans should subsequently decline to below an Investment Grade Rating, the foregoing covenants will be reinstituted as of and from the date that both such ratings are below Investment Grade Ratings, unless and until such Term Loans subsequently attain an Investment Grade Rating from either S&P or Moody's (in which event the suspended covenants will again be suspended for such time that the Term Loans maintain an Investment Grade Rating from either S&P or Moody's); provided, however, that no Default, Event of Default or breach of any kind will be deemed to exist under this Agreement, the Security Documents or the related Guarantees with respect to the suspended covenants, and none of the Borrower or any of its Subsidiaries will bear any liability for any actions taken or events occurring after such Term Loans attain an Investment Grade Rating from either S&P or Moody's and before any reinstatement of the suspended covenants as provided above, or any actions taken at any time pursuant to any contractual obligation arising prior to the reinstatement, regardless of whether those actions or events would have been permitted if the applicable suspended covenant had remained in effect during such period.

SECTION 7

Events of Default

7.1. Events of Default. Each of the following is an "Event of Default":

(a) default for 30 days in the payment when due of interest on the Term Loans;

(b) default in payment when due (at maturity, upon redemption or otherwise) of the principal of, or premium, if any, on, the Term Loans;

(c) failure by Borrower to comply with the provisions of Section 2.14 or 6.3;

(d) failure by any Loan Party for 60 days after notice from the Administrative Agent or the Required Lenders to comply with any of the other agreements in this Agreement or the Security Documents required by this Agreement;

(e) (i) default under any other mortgage, indenture, agreement or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness of any Loan Party (or the payment of which is guaranteed by any Loan Party), whether such Indebtedness or Guarantee now exists, or is created after the date of this Agreement, if that default:

(A) is caused by a failure to pay principal of such Indebtedness at its stated final maturity (after giving effect to any applicable grace period provided in such Indebtedness) (a "Payment Default"); or

(B) results in the acceleration of such Indebtedness prior to its express maturity,

and 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 $100,000,000 or more; provided that this Section 7.1(e)(i) shall not apply to Indebtedness that becomes due solely as a result of the voluntary sale or transfer of property or assets to the extent such sale or transfer is permitted by the terms of such Indebtedness; or

(ii) [Reserved];

(f) any of the Security Documents shall cease, for any reason, to be in full force and effect (other than in accordance with its terms) with respect to Collateral with a book value greater than $50,000,000, or any Loan Party shall so assert, or any Lien (affecting Collateral with a book value greater than $50,000,000) created by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby (other than, in each case, pursuant to a failure of the Administrative Agent, the Collateral Agent, any other agent appointed by the Administrative Agent, the Collateral Agent or the Lenders to take any action within the sole control of such Person that is expressly required by the Loan Documents to be taken by such Person) (it being understood that the release of Collateral from the Security Documents or the discharge of a Guarantor therefrom in accordance with the terms hereof and thereof shall not be construed (x) as any of the Security Documents ceasing to be in full force and effect or (y) as any of the Liens created thereunder ceasing to be enforceable or of the same priority and effect purported to be created thereby);

(g) except as permitted by this Agreement, the Guaranty Agreement or the Pledge and Security Agreement, any Guaranty Reimbursement Obligation of a Significant Subsidiary ceases, for any reason, to be in full force and effect (other than in accordance with its terms), or any Significant Subsidiary that is a Guarantor denies or disaffirms in writing its obligations under its Guaranty Reimbursement Obligation;

(h) [Reserved];

(i) the Borrower or any Guarantor that is a Significant Subsidiary or any group of Guarantors that, taken together, would constitute a Significant Subsidiary, pursuant to or within the meaning of any Bankruptcy Law:

(i) commences a voluntary case,

(ii) consents to the entry of an order for relief against it in an involuntary case,

(iii) consents to the appointment of a custodian of it or for all or substantially all of its property,

(iv) makes a general assignment for the benefit of its creditors, or

(v) generally is not paying its debt as they become due; or

(j) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(i) is for relief against the Borrower or any Guarantor that is a Significant Subsidiary or any group of Guarantors that, taken together, would constitute a Significant Subsidiary, in an involuntary case;

(ii) appoints a custodian of the Borrower or any Guarantor that is a Significant Subsidiary or any group of Guarantors of the Borrower that, taken together, would constitute a Significant Subsidiary, or for all or substantially all of the property of the Borrower or any Guarantor that is a Significant Subsidiary or any group of Guarantors that, taken together, would constitute a Significant Subsidiary; or

(iii) orders the liquidation of the Borrower or any Guarantor that is a Significant Subsidiary or any group of Guarantors that, taken together, would constitute a Significant Subsidiary;

and the order or decree remains unstayed and in effect for 60 consecutive days.

In the case of an Event of Default specified in clause (i) or (j) of this Section 7.1 with respect to the Borrower, all outstanding Term Loans will become due and payable immediately without further action or notice. If any other Event of Default occurs and is continuing, the Required Lenders may declare all the Term Loans to be due and payable immediately. Upon any such declaration, the Term Loans shall become due and payable immediately. The Required Lenders by written notice to the Administrative Agent may, on behalf of all of the Lenders, rescind an acceleration and its consequences, if the rescission would not conflict with any judgment or decree and if all existing Events of Default (except nonpayment of principal, interest or premium that has become due solely because of the acceleration) have been cured or waived.

SECTION 8

The Agents

8.1. Appointment. Each Lender hereby irrevocably designates and appoints the Administrative Agent as the agent of such Lender under this Agreement and the other Loan Documents, and each such Lender irrevocably authorizes the Administrative Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Each Lender hereby irrevocably designates and appoints the Collateral Agent as the agent of such Lender under this Agreement and the other Loan Documents, and each such Lender irrevocably authorizes the Collateral Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Collateral Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, none of the Administrative Agent and the Collateral Agent shall have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent or the Collateral Agent.

8.2. Delegation of Duties. Each of the Administrative Agent and the Collateral Agent may execute any of their duties under this Agreement and the other Loan Documents by or through agents or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. None of the Administrative Agent and the Collateral Agent shall be responsible for the negligence or misconduct of any agents or attorneys in fact selected by it with reasonable care.

8.3. Exculpatory Provisions. Neither any Agent nor any of their respective officers, directors, employees, agents, attorneys in fact or affiliates shall be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Loan Document (except to the extent that any of the foregoing are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted from its or such Person's own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Agents under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for the creation, perfection or priority of any Lien purported to be created by the Security Documents, the value or sufficiency of the Collateral or for any failure of any Loan Party a party thereto to perform its obligations hereunder or thereunder. The Agents shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party.

8.4. Reliance by the Administrative Agent. The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any instrument, writing, resolution, notice, consent, certificate, affidavit, letter, telecopy, email message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including counsel to the Borrower), independent accountants and other experts reasonably selected by the Administrative Agent. The Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless the Administrative Agent shall first receive such advice or concurrence of the Required Lenders (or, if so specified by this Agreement, all Lenders) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders (or, if so specified by this Agreement or any other Loan Document, all Lenders), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans.

8.5. Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless it has received written notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that the Administrative Agent receives such a notice, it shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement or any other Loan Document, all Lenders); provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as the Administrative Agent shall deem advisable in the best interests of the Lenders.

8.6. Non-Reliance on Arrangers, Agents and Other Lenders. Each Lender expressly acknowledges that neither the Arrangers, the Agents nor any of their respective officers, directors, employees, agents, attorneys in fact or affiliates have made any representations or warranties to it and that no act by any Arranger or Agent hereafter taken, including any review of the affairs of a Loan Party or any affiliate of a Loan Party, shall be deemed to constitute any representation or warranty by any Arranger or Agent to any Lender. Each Lender represents to the Arrangers and Agents that it has, independently and without reliance upon any Arranger, Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates and made its own decision to make its Term Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon any Arranger, Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or any affiliate of a Loan Party that may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys in fact or affiliates.

8.7. Indemnification. The Lenders agree to indemnify the Agents in their capacity as such (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), ratably according to their respective Term Percentage in effect on the date on which indemnification is sought under this Section 8.7 (or, if indemnification is sought after the date upon which the Term B Commitments or any series of Incremental Commitments shall have terminated and the Term B Loans or any series of Incremental Term Loans shall have been paid in full, ratably in accordance with such Term Percentage or Incremental Term Percentage immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Term Loans) be imposed on, incurred by or asserted against such Agent, in any way relating to or arising out of, the Term B Commitments, any Incremental Commitment, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such Agent's, gross negligence or willful misconduct. The agreements in this Section 8.7 shall survive the payment of the Term Loans and all other amounts payable hereunder.

8.8. Agent in Its Individual Capacity. Each Agent and its affiliates may make loans to, accept deposits from and generally engage in any kind of business with any Loan Party as though such Agent were not an Agent. With respect to its Term Loans made or renewed by it, each Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not an Agent, and the terms "Lender" and "Lenders" shall include each Agent in its individual capacity.

8.9. Successor Administrative Agent. The Administrative Agent may resign as Administrative Agent upon ten (10) days' notice to the Lenders and the Borrower. If the Administrative Agent shall resign as Administrative Agent under this Agreement and the other Loan Documents, then the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders, which successor agent shall be subject to approval by the Borrower (which approval shall not be unreasonably withheld or delayed), whereupon such successor agent shall succeed to the rights, powers and duties of the Administrative Agent, and the term "Administrative Agent" shall mean such successor agent effective upon such appointment and approval, and the former Administrative Agent's rights, powers and duties as an Administrative Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Agreement or any holders of the Term Loans. If no successor agent has accepted appointment as an Administrative Agent by the date that is thirty (30) days following the retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective, and the Lenders shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. After the retiring Administrative Agent's resignation, the provisions of this Section 8 and Section 9.5 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement and the other Loan Documents.

8.10. RESERVED.

8.11. Collateral Security. The Collateral Agent will hold, administer and manage any Collateral pledged from time to time under the Security Documents either in its own name or as Collateral Agent, but each Lender shall hold a direct, undivided *pro rata* beneficial interest therein, on the basis of its proportionate interest in the secured obligations, by reason of and as evidenced by this Agreement and the other Loan Documents, subject to the priority of payments referenced in Section 7.2 of the Pledge and Security Agreement and subject to the terms of any applicable intercreditor agreement.

8.12. Enforcement by the Administrative Agent and Collateral Agent. All rights of action under this Agreement and under the Obligations and all rights to the Collateral hereunder may be enforced by the Administrative Agent and the Collateral Agent and any suit or proceeding instituted by the Administrative Agent or the Collateral Agent in furtherance of such enforcement shall be brought in its name as Administrative Agent or Collateral Agent without the necessity of joining as plaintiffs or defendants any other Lenders, and the recovery of any judgment shall be for the benefit of Lenders subject to the expenses of the Administrative Agent and the Collateral Agent.

8.13. Withholding Tax. To the extent required by any applicable law, the Administrative Agent may deduct or withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective), such Lender shall indemnify and hold harmless the Agents (to the extent that the Administrative Agent has not already been reimbursed by the Borrower pursuant to Sections 2.18 and 2.19 and without limiting or expanding the obligation of the Borrower to do so) fully for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, together with all expenses incurred, including legal expenses and any out-of-pocket expenses, whether or not such Tax was correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this Section 8.13. The agreements in this Section 8.13 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of this Agreement and the repayment, satisfaction or discharge of all other Obligations.

8.14. Intercreditor Agreements. The Administrative Agent and Collateral Agent are hereby authorized to enter into the Parity Secured Intercreditor Agreement, and the parties hereto acknowledge that the Parity Secured Intercreditor Agreement is binding upon them. Each Lender (a) hereby agrees that it will be bound by and will take no actions contrary to the provisions of the Parity Secured Intercreditor Agreements and (b) hereby authorizes and instructs the Administrative Agent and Collateral Agent to enter into the Parity Secured Intercreditor Agreement. In addition, but in conformance with the terms hereof, each Lender hereby authorizes the Administrative Agent and the Collateral Agent to enter into any amendments to the Parity Secured Intercreditor Agreements to the extent required to give effect to the establishment of intercreditor rights and privileges as contemplated and required by Section 6.2 of this Agreement. Each Lender waives any conflict of interest, now contemplated or arising hereafter, in connection therewith and agrees not to assert against any Agent or any of its affiliates any claims, causes of action, damages or liabilities of whatever kind or nature relating thereto.

SECTION 9

Miscellaneous

9.1. Amendments and Waivers.

(a) None of this Agreement, any Note, any other Loan Document, nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 9.1. Except to the extent otherwise provided in (or permitted by) the Parity Secured Intercreditor Agreement and/or the Guaranty Agreement and the Pledge and Security Agreement, the Required Lenders and each Loan Party party to the relevant Loan Document may, or, with the written consent of the Required Lenders, the Administrative Agent and each Loan Party party to the relevant Loan Document may, from time to time, (I) enter into written amendments, supplements or modifications hereto or to the other Loan Documents for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of the Lenders or of the Loan Parties hereunder or thereunder or (II) waive, on such terms and conditions as the Required Lenders or the Administrative Agent, as the case may be, may specify in such instrument, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; provided, however, that no such waiver and no such amendment, supplement or modification shall (A)(i) forgive the principal amount or extend the final scheduled date of maturity of any Term Loan, (ii) reduce the stated rate of any interest or fee payable hereunder (except in connection with the waiver of applicability of any post-default increase in interest rates (which waiver shall be effective with the consent of the Required Term B Lenders or Required Incremental Lenders with respect to Term B Loans or the applicable tranche of Incremental Term Loans, respectively)) or extend the scheduled date of any payment thereof, (iii) increase the amount or extend the expiration date of any Lender's Term Commitment or Incremental Commitment (it being understood that a waiver of any Event of Default or Default shall not be deemed to be an increase in the amount of any Lender's Term Commitment or Incremental Commitment), or (iv) release all or substantially all of the Collateral for the Obligations or release all or substantially all of the Guarantors (except, in either case, as expressly permitted by the Loan Documents), in each case without the written consent of each Lender directly affected thereby, (B) RESERVED; (C) without the consent of all the Lenders, (i) amend, modify or waive any provision of this Section 9.1(a) or any other provision of any Section hereof expressly requiring the consent of all the Lenders (except, in either case, for technical amendments with respect to additional extensions of credit pursuant to this Agreement which afford protections to such additional extensions of credit of the type provided to the Term Commitments on the Effective Date), or (ii) reduce the percentage specified in or otherwise change the definition of Required Lenders (it being understood that, with the consent of the Required Lenders or the Required Term B Lenders, as applicable, or as otherwise permitted hereunder, additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders on substantially the same basis as the extensions of Term Commitments are included on the Effective Date), or (iii) change Section 2.17 in a manner that would alter the *pro rata* sharing of payments required thereby (other than as permitted thereby or by Section 9.1(b)), (D) amend, modify or waive any provision of Section 8 or any other provision of this Agreement or the other Loan Documents, which affects, the rights, duties or obligations of the Administrative Agent without the written consent of the Administrative Agent, (E) require consent of any Person to an amendment to this Agreement made pursuant to Section 2.27 other than the Borrower and each Lender participating in the respective Extension and (F) reduce the percentage specified in or otherwise change the definition of Required Term B Lenders or Required Incremental Lenders without the consent of the Required Term B Lenders or Required Incremental Lenders, as applicable (other than as permitted by clause (C)(ii) above). Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Loan Parties, the Lenders, the Administrative Agent and all future holders of the Loans. In the case of any waiver, the Loan Parties, the Lenders and the Administrative Agent shall be restored to their former position and rights hereunder and under any other Loan Documents, and any Default or Event of Default waived shall be deemed to have not occurred or to be cured and not continuing, as the parties may agree; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon.

(b) Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the written consent of the Borrower and the institutions providing each Refinancing Credit Facility (as defined below) (a) to add one or more additional credit facilities to this Agreement for the purpose of refinancing or replacing any and all of the Term Loans and Term Commitments hereunder (each a "Refinancing Credit Facility") and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents and the accrued interest and fees in respect thereof and (b) to include appropriately the Lenders holding such credit facilities in any determination of the Required Term B Lenders or Required Incremental Lenders, as applicable; provided that (i) no Default or Event of Default then exists or would result therefrom, (ii) any Refinancing Credit Facility does not mature prior to the earliest maturity date of the Term Loans being refinanced and (iii) the other terms and conditions of such Refinancing Credit Facility (excluding pricing and optional prepayment and redemption terms) are substantially identical to, or (taken as a whole) are no more favorable to the Lenders providing such Refinancing Credit Facility than, those applicable to the Term Loans being refinanced (except for covenants or other provisions applicable only to periods after the latest Termination Date of the Term Loans existing at the time of such refinancing).

(c) Notwithstanding anything to the contrary contained in this Section 9.1, if the Administrative Agent and the Borrower shall have jointly identified an obvious error or any error or omission of a technical or immaterial nature, in each case, in any provision of the Loan Documents, then the Administrative Agent and the Borrower shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Required Lenders within five (5) Business Days following receipt of notice thereof. Notwithstanding anything to the contrary in this Agreement or the other Loan Documents, the Administrative Agent and the Collateral Agent are each hereby irrevocably authorized by each Lender (and each such Lender expressly consents), without any further action or the consent of any other party to any Loan Document, to make any technical amendments to the Guaranty Agreement and the Security Documents to correct any cross-references therein to any provision of this Agreement that may be necessary in order to properly reflect the amendments made to this Agreement.

(d) Notwithstanding the foregoing, this Agreement and the other Loan Documents may be amended (or amended and restated) as provided in Sections 2.25 and 2.27.

9.2. Notices.

(a) All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when received, addressed as follows in the case of the Loan Parties and the Administrative Agent, and as set forth in the administrative questionnaire delivered to the Administrative Agent in the case of the Lenders, or to such other address as may be hereafter notified by the respective parties hereto and any future Lenders:

The Borrower and the Guarantors:	Calpine Construction Finance Company, LP 717 Texas Avenue, Suite 11.051D Houston, TX 77002 Attention: Chief Legal Officer Telephone: 832-325-5065 Fascimile: 832-325-5066
The Administrative Agent:	Credit Suisse AG, Cayman Islands Branch Eleven Madison Avenue, 23rd Floor New York, NY 10010 Attention: Loan Operations – Agency Manager Telephone: 919-994-6369 Fascimile: 212-322-2291 E-mail: agency.loanops@credit-suisse.com with copies (which shall not constitute notice) to: Cahill Gordon & Reindel LLP 80 Pine Street New York, NY 10005 Attention: William J. Miller, Esq. Fascimile: 212-378-2500

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications (including e-mail and Internet or intranet websites or other information platform (the "Platform")) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Sections 2.2, 2.8(e), 2.11, 2.13, 2.14, 2.15, 2.20, 2.25 and 2.27(d) unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) RESERVED.

(d) Each of the Loan Parties understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution, except to the extent caused by the willful misconduct or gross negligence of the Administrative Agent, as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(e) The Platform and any Approved Electronic Communications are provided "as is" and "as available." None of the Agents or any of their respective officers, directors, employees, agents, advisors or representatives warrant the accuracy, adequacy, or completeness of the Approved Electronic Communications or the Platform and each expressly disclaims liability for errors or omissions in the Platform and the Approved Electronic Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects is made by any of the Agents or any of their respective officers, directors, employees, agents, advisors or representatives in connection with the Platform or the Approved Electronic Communications.

(f) Each of the Loan Parties, the Lenders and the Agents agree that Administrative Agent may, but shall not be obligated to, store any Approved Electronic Communications on the Platform in accordance with the Administrative Agent's customary document retention procedures and policies.

9.3. No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of the Administrative Agent or any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

9.4. Survival of Representations and Warranties. All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Term Loans and the other extensions of credit hereunder.

9.5. Payment of Expenses and Taxes. The Borrower agrees (a) to pay or reimburse each of the Administrative Agent and the Collateral Agent for all its reasonable out-of-pocket costs and expenses reasonably incurred in connection with (i) the development, negotiation, preparation, execution and delivery of this Agreement and any other documents prepared in connection herewith or therewith, including any amendment, supplement or modification to any of the foregoing and (ii) the consummation and administration of the transactions contemplated hereby and thereby, and the reasonable fees and disbursements of one counsel to the Administrative Agent, the Collateral Agent and the Arrangers, taken as a whole (and, to the extent necessary, one local counsel in each relevant jurisdiction for all such entities, taken as a whole and, solely in the case of an actual or potential conflict of interest, one additional local counsel in each relevant jurisdiction to the affected entities similarly situated, taken as a whole), and security interest filing and recording fees and expenses, (b) to pay or reimburse the Administrative Agent, the Collateral Agent and each Lender for all its reasonable costs and expenses reasonably incurred in connection with the enforcement or preservation of any rights under this Agreement, the other Loan Documents and any such other documents following the occurrence and during the continuance of an Event of Default, including without limitation, the reasonable fees and disbursements of one counsel to the Administrative Agent, the Collateral Agent and the Lenders and each of their respective affiliates, taken as a whole (and, to the extent reasonably necessary, one local counsel in each relevant jurisdiction for all such entities, taken as a whole, and, solely in the case of an actual or potential conflict of interest, one additional local counsel in each relevant jurisdiction to the affected entities similarly situated, taken as a whole), (c) to pay, and indemnify and hold harmless each Lender, each Arranger, the Collateral Agent and the Administrative Agent from, any and all recording and filing fees and any and all liabilities with respect to, or resulting from any delay in paying, stamp, excise and other taxes, if any, which may be payable or determined to be payable in connection with the execution and delivery of, or consummation or administration of any of the transactions contemplated by, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Agreement, the other Loan Documents and any such other documents (without duplication to payments made pursuant to Section 2.19) and (d) to pay, and indemnify and hold harmless each Lender, each Arranger, the Collateral Agent, the Administrative Agent and each of their respective Affiliates, directors, officers, employees, representatives, partners and agents (each, an "Indemnitee") from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance, preservation of rights and administration of this Agreement, the other Loan Documents or the use of the proceeds of the Term Loans or any of the foregoing relating to the violation of, noncompliance with or liability under, any Environmental Law applicable to the operations of the Loan Parties or any of their respective properties and the reasonable fees and expenses of one legal counsel for the Indemnitees taken as a whole in connection with claims, actions or proceedings by any Indemnitee against any Loan Party under any Loan Document (all the foregoing in this clause (d), collectively, the "indemnified liabilities"); provided that the Borrower shall have no obligation hereunder to any Indemnitee with respect to indemnified liabilities to the extent (x) determined by the final judgment of a court of competent jurisdiction to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnitee or any of such Indemnitee's Related Persons, (y) resulting from a material breach by such Indemnitee or any of such Indemnitee's Related Persons of its material obligations under this Agreement or the other Loan Documents or (z) related to any dispute solely among Indemnitees other than any claims against any Indemnitee in its capacity or in fulfilling its role as an Agent, an Arranger or any similar role under this Agreement and the other Loan Documents and other than any claims involving any act or omission on the part of the Borrower or its Subsidiaries; provided, further, that the Borrower shall in no event be responsible for consequential, indirect, special or punitive damages to any Indemnitee pursuant to this Section 9.5 except such consequential, indirect, special or punitive damages required to be paid by such Indemnitee in respect of any indemnified liabilities. Without limiting the foregoing, and to the extent permitted by applicable law, the Borrower agrees not to assert and to cause its Subsidiaries not to assert, and hereby waives and agrees to cause its Subsidiaries to waive, all rights for contribution or any other rights of recovery with respect to all claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature, under or related to Environmental Laws, that any of them might have by statute or otherwise against any Indemnitee related to the indemnified liabilities. To the extent permitted by applicable law, no Loan Party nor any of their respective Subsidiaries shall assert, and each Loan Party hereby waives, on behalf of itself and its Subsidiaries, any claim against each Lender, each Arranger, each Agent and their respective affiliates, directors, officers, employees, attorneys, representatives, agents or sub-agents, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Loan Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Term Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each Loan Party hereby waives, releases and agrees, on behalf of themselves and each of their respective Subsidiaries, not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor. All amounts due under this Section 9.5 shall be payable not later than 10 days after written demand therefor. Statements payable by the Borrower pursuant to this Section 9.5 shall be submitted to the Treasurer of the Borrower (Telecopy No. 713-353-9137), at the address of the Borrower set forth in Section 9.2 (with copies (which shall not constitute notice) to the Associate General Counsel of the Borrower at the respective addresses set forth in Section 9.2), or to such other Person or address as may be hereafter designated by the Borrower in a written notice to the Administrative Agent. The agreements in this Section shall survive repayment of the Term Loans and all other amounts payable hereunder.

9.6. Successors and Assigns; Participations.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted, except that (i) unless otherwise permitted by Section 6.3, the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees (other than a Disqualified Lender) (each, an "Assignee") all or a portion of its rights and obligations under this Agreement (including all or a portion of its Term Commitments and the respective tranche of Term Loans at the time owing to it) with the prior written consent of:

(A) the Borrower (such consent not to be unreasonably withheld, delayed or conditioned); provided that no consent of the Borrower shall be required for an assignment to a Lender, an affiliate of a Lender, an Approved Fund (as defined below) or, if an Event of Default under Section 7.1(a), (b), (i) (in the case of the Borrower only) or (j) (in the case of the Borrower only) has occurred and is continuing, any other Person; and

(B) the Administrative Agent (such consent not to be unreasonably withheld, delayed or conditioned), provided that no consent of the Administrative Agent shall be required for an assignment to a Lender, an affiliate of a Lender or an Approved Fund.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender, an affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Term Loans of the respective tranche, the amount of the Term Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than $5,000,000 unless each of the Borrower and the Administrative Agent otherwise consent, provided that (1) no such consent of the Borrower shall be required if an Event of Default under Section 7(a), Section 7.1(b), Section 7.1(i) (in the case of Borrower only) or Section 7(j) (in the case of the Borrower only) has occurred and is continuing and (2) such amounts shall be aggregated in respect of each Lender and its affiliates or Approved Funds, if any;

(B) (1) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of $3,500 (although the Borrower shall not be responsible for the payment of the recordation fee unless the Borrower has chosen to replace a Lender pursuant to Section 2.26) and (2) the assigning Lender shall have paid in full any amounts owing by it to the Administrative Agent;

(C) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an administrative questionnaire in which the Assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower and its Affiliates and their related parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws; and

(D) except as provided in Section 2.28 or in Section 9.6(f), none of the Loan Parties, their respective Affiliates or any natural person shall be an Assignee hereunder.

For the purposes of this Section 9.6, "Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an affiliate of a Lender or (c) an entity or an affiliate of an entity that administers or manages a Lender.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) below, from and after the effective date specified in each Assignment and Acceptance, the Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.18, 2.19, 2.20 and 9.5 for the period of time in which it was a Lender hereunder. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.6 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Term Commitments of, and principal amount (and interest amounts) of the Term Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice. Any assignment of any Term Loan shall be effective only upon appropriate entries with respect thereto being made in the Register.

(v) Upon its receipt of an Assignment and Acceptance (executed via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually)), by a transferor Lender and an Assignee, as the case may be (and, in the case of an Assignee that is not then a Lender, by the Administrative Agent and the Borrower to the extent required under paragraph (c) above), together with payment to the Administrative Agent by the transferor Lender or the Assignee of a recordation and processing fee of $3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent), the Administrative Agent shall (i) promptly accept such Assignment and Acceptance, (ii) on the effective date of such transfer determined pursuant thereto record the information contained therein in the Register and (iii) give notice of such acceptance and recordation to the transferor Lender, the Assignee and the Borrower.

(vi) Notwithstanding anything to the contrary contained in Section 9.6(b), no consent of the Administrative Agent (and no processing and recordation fee or administrative questionnaire) shall be required to be obtained, paid or delivered (as the case may be) for any assignment of Term Loans in any principal amount as part of a purchase of such Term Loans in accordance with Section 2.28.

(c) Any Lender may, without the consent of the Borrower or the Administrative Agent, sell participations to one or more banks or other entities (other than any Disqualified Lender) (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Term Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement and any other Loan Document or to otherwise exercise its voting righting rights under this Agreement and any other Loan Document; provided that such agreement may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that (1) requires the consent of each Lender directly affected thereby pursuant to the proviso to the second sentence of Section 9.1(a) and (2) directly affects such Participant. Subject to paragraph (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.18, 2.19 and 2.20 (subject to the requirements and limitations of such sections and Section 2.26) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section (it being understood that the documentation required under Section 2.19(e) shall be delivered solely to the participating Lender). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.7(b) as though it were a Lender, provided such Participant shall be subject to Section 9.7(a) as though it were a Lender.

(i) A Participant shall not be entitled to receive any greater payment under Section 2.18, 2.19 or 2.20 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent that any entitlement to a greater payment results from a change in any Requirement of Law arising after such Participant became a Participant.

(ii) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts (and related interest amounts) of each participant's interest in the Term Loans or other obligations under this Agreement (the "Participant Register"). The entries in the Participant Register shall be conclusive, absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary; provided that no Lender shall have the obligation to disclose all or a portion of the Participant Register (including the identity of the Participant or any information relating to a Participant's interest in any Loans or other obligations under any Loan Document) to any Person expect to the extent that such disclosure is necessary to establish that any Loans are in registered form for U.S. federal income tax purposes.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or Assignee for such Lender as a party hereto.

(e) Subject to Section 9.15, the Borrower authorizes each Lender to disclose to any Transferee and any prospective Transferee (in each case which agrees to comply with the provisions of Section 9.15 or confidentiality requirements no less restrictive on such prospective transferee than those set forth in Section 9.15) any and all financial information in such Lender's possession concerning the Borrower and its Affiliates which has been delivered to such Lender by or on behalf of the Borrower pursuant to this Agreement or any other Loan Document or which has been delivered to such Lender by or on behalf of the Borrower in connection with such Lender's credit evaluation of the Borrower and its Affiliates prior to becoming a party to this Agreement.

(f) Notwithstanding anything to the contrary contained herein, any Lender may assign all or any portion of its Loans hereunder to the Borrower or any of its Subsidiaries or Affiliates; provided that:

(i) upon the effectiveness of any such assignment (or contribution of Loans to the capital of the Borrower by an Affiliate thereof which shall occur substantially concurrently with the assignment to an Affiliate of the Borrower), such Loans shall be retired, and shall be deemed cancelled and not outstanding for all purposes under this Agreement; and

(ii) no Default or Event of Default shall exist or be continuing.

Each Lender acknowledges and agrees that in connection with each Assignment and Acceptance pursuant to this Section 9.6(f), (i) the Borrower then may have, and later may come into possession of Excluded Information, (ii) such Lender has independently and without reliance on the Borrower or any of its Subsidiaries or Affiliates made such Lender's own analysis and determined to enter into an assignment of such Term Loans and to consummate the transactions contemplated thereby notwithstanding such Lender's lack of knowledge of the Excluded Information and (iii) the Borrower and its Subsidiaries shall have no liability to such Lender, and such Lender hereby waives and releases, to the extent permitted by law, any claims such Lender may have against the Borrower and its Subsidiaries, under applicable laws or otherwise, with respect to the nondisclosure of the Excluded Information. Each Lender further acknowledges that the Excluded Information may not be available to the Administrative Agent or the other Lenders hereunder. Each Lender which assigns Term Loans pursuant to this Section 9.6(f) agrees to the provisions of the two preceding sentences, and agrees that they shall control, notwithstanding any inconsistent provision hereof or in any Assignment and Acceptance.

(g) The Borrower, on behalf of itself and its Affiliates and the Lenders, expressly acknowledges that the Administrative Agent (in its capacity as such or as an arranger, bookrunner or other agent hereunder) shall not have any obligation to monitor whether assignments or participations are made to Disqualified Lenders and none of the Borrower, the Lenders or any of their respective Affiliates will bring any claim to such effect. The Administrative Agent shall have the right to disclose the list of Disqualified Lenders to any Lender requesting the same.

9.7. Adjustments; Setoff.

(a) Except to the extent that this Agreement, any other Loan Document or a court order expressly provides or permits for payments to be allocated to a particular Lender or to the Lenders, if any Lender (a "Benefited Lender") shall receive any payment of all or part of the Obligations owing to it (other than in connection with an assignment or participation made pursuant to Section 9.6 or in connection with an Auction that is permitted under Section 2.28), or receive any collateral in respect thereof (whether voluntarily or involuntarily, by setoff, pursuant to events or proceedings of the nature referred to in Section 7.1(i) or (j), or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of the Obligations owing to such other Lender, such Benefited Lender shall purchase for cash from the other Lenders a participating interest in such portion of the Obligations owing to each such other Lender, or shall provide such other Lenders with the benefits of any such collateral, as shall be necessary to cause such Benefited Lender to share the excess payment or benefits of such collateral ratably with each of the Lenders; provided that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefited Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest. Notwithstanding anything to the contrary contained in this Section 9.7(a), no purchase or assignment of Term Loans in connection with an Auction that is permitted under Section 2.28 or Section 9.6(f) (and no payment made or cancellation of such Term Loans in connection therewith) and no extension of Term Loans that is permitted under Section 2.27 shall constitute a payment of any of such Term Loans for purposes of this Section 9.7.

(b) In addition to any rights and remedies of the Lenders provided by law and subject to the terms of the Pledge and Security Agreement, each Lender shall have the right, without notice to the Borrower, any such notice being expressly waived by the Borrower to the extent permitted by applicable law, upon any Obligations becoming due and payable by the Borrower (whether at the stated maturity, by acceleration or otherwise), to apply to the payment of such Obligations, by setoff or otherwise, any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender, any affiliate thereof or any of their respective branches or agencies to or for the credit or the account of the Borrower. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such application made by such Lender, provided that the failure to give such notice shall not affect the validity of such application.

9.8. Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or email transmission shall be effective as delivery of a manually executed counterpart hereof.

9.9. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

9.10. Integration. This Agreement and the other Loan Documents represent the entire agreement of the Borrower, the Administrative Agent and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents.

9.11. GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

9.12. Submission To Jurisdiction; Waivers.

(a) Subject to clause (b)(iii) of this Section 9.12, each party hereto hereby irrevocably and unconditionally submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the exclusive general jurisdiction of the courts of the State of New York, the courts of the United States for the Southern District of New York, and appellate courts from any thereof, in each case that are located in the Borough of Manhattan, The City of New York;

(b) The Borrower hereby irrevocably and unconditionally:

(i) agrees that any such action or proceeding shall be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(ii) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the Borrower at its address set forth in Section 9.2 or at such other address of which the Administrative Agent shall have been notified pursuant thereto;

(iii) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right of any Agent, any Arranger or any Lender to sue in any other jurisdiction; and

(iv) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

9.13. Acknowledgements. The Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) notwithstanding the provisions of this Agreement or any of the other Loan Documents and the Arrangers shall have no powers, duties, responsibilities or liabilities with respect to this Agreement and the other Loan Documents;

(c) the Agents, the Arrangers, the Lenders and their Affiliates may have economic interests that conflict with those of the Borrower; and

(d) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Borrower and the Lenders.

9.14. Releases of Guarantees and Liens.

(a) Notwithstanding anything to the contrary contained herein or in any other Loan Document, each of the Administrative Agent and the Collateral Agent is hereby irrevocably authorized by each Lender (and each such Lender hereby expressly consents) (without requirement of notice to or consent of any Lender except as expressly required by Section 9.1(a)) to take any action reasonably requested by the Borrower having the effect of releasing any Collateral or Guarantor from its guarantee obligations (i) that has been consented to in accordance with Section 9.1(a) or in connection with any sale, transfer or other disposition of any Collateral or Guarantor to a Person that is not a Loan Party, including as a result of any investments of Collateral in non-Guarantor Subsidiaries to the extent not prohibited by the Loan Documents, (ii) to the extent any such release is permitted at such time pursuant to any applicable intercreditor agreement and/or the applicable Security Document or (iii) under the circumstances described in paragraphs (b) or (c) below (and, upon the consummation of any such transaction in preceding clause (i), (ii) or (iii), such Collateral shall be disposed of free and clear of all Liens under the Security Documents and/or such Guarantor shall be released from its obligations under the Loan Documents).

(b) At such time as the Term Loans and the other Obligations under the Loan Documents (other than obligations under or in respect of Swap Agreements or Cash Management Agreements) shall have been paid in full and all Commitments of the Lenders have expired or terminated, the Collateral shall be released from the Liens created by the Security Documents, and the Security Documents and all obligations (other than those expressly stated to survive such termination) of the Administrative Agent, the Collateral Agent and each Loan Party under the Security Documents shall terminate, all without delivery of any instrument or performance of any act by any Person.

(c) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Lenders hereby agree, and each of the Administrative Agent and the Collateral Agent is hereby irrevocably authorized by each Lender (without requirement of notice to or consent of any Lender) to take any action required by the Borrower having the effect of releasing a Guarantor from its guarantee obligations under the Guaranty Agreement and as a Grantor under the Security Documents if (i) such Guarantor constitutes (or becomes) an Excluded Subsidiary and is not required to be a Guarantor of the Term Loans pursuant to Section 5.8, (ii) all or substantially all of the assets of such Guarantor have been sold or otherwise disposed of (including by way of merger or consolidation) to a Person that is not a Borrower or a Guarantor or (iii) such Guarantor has been liquidated or dissolved.

(d) In connection with any release of Collateral of the type described above in clause (a) or (c) notwithstanding anything to the contrary contained herein or in any other Loan Document, each of the Administrative Agent and the Collateral Agent is hereby irrevocably authorized by each Lender (and each such Lender hereby expressly consents) (without requirement of notice to or consent of any Lender except as expressly required by Section 9.1(a)) to take any action with respect to the Collateral requested by the Borrower to the extent necessary to permit such release or other transaction, including without limitation, directing the Collateral Agent to execute agreements with respect to any Collateral, upon the delivery to the Administrative Agent and Collateral Agent of a certificate signed by an officer of the Borrower stating that such action and the release of the Collateral or other transaction, as applicable, is permitted by each Loan Document.

9.15. Confidentiality. Each Agent, each Arranger and each Lender agrees to keep confidential all non-public information provided to it by any Loan Party, the Administrative Agent or any Lender pursuant to or in connection with this Agreement; provided that nothing herein shall prevent any Agent, any Arranger or any Lender from disclosing any such information (a) to the Administrative Agent, any other Lender or any affiliate thereof (so long as such affiliate agrees to be bound by the provisions of this Section 9.15), (b) subject to an agreement to comply with provisions no less restrictive than this Section 9.15, to any actual or prospective Transferee or any direct or indirect counterparty to any Swap Agreement (or any professional advisor to such counterparty), (c) to its employees, directors, officers, agents, attorneys, accountants, partners and other professional advisors or those of any of its affiliates, (d) upon the request or demand, or in accordance with the requirements (including reporting requirements), of any Governmental Authority having jurisdiction over such Lender, provided that to the extent permitted by law, such Lender shall promptly notify the applicable Loan Party of such disclosure (except with respect to any audit or examination conducted by bank accountants or any governmental bank authority exercising examination or regulatory authority), (e) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Requirement of Law or other legal process, provided that to the extent permitted by law, such Lender shall promptly notify the applicable Loan Party of such disclosure (except with respect to any audit or examination conducted by bank accountants or any governmental bank authority exercising examination or regulatory authority), (f) if requested or required to do so in connection with any litigation or similar proceeding; provided that to the extent permitted by law, such Lender shall promptly notify the applicable Loan Party of such disclosure, (g) to the extent such information has been independently developed by such Lender or that has been publicly disclosed other than in breach of this Agreement, (h) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender, or (i) in connection with the exercise of any remedy hereunder or under any other Loan Document.

Each Lender acknowledges that all information, including requests for waivers and amendments, furnished by the Borrower or the Administrative Agent pursuant to, or in the course of administering this Agreement or the other Loan Documents, will be syndicate-level information, which may (except as provided in the following paragraph) contain material non-public information concerning the Borrower and its Affiliates and their related parties or their respective securities. Accordingly, each Lender confirms to the Borrower and the Administrative Agent that (i) it has developed compliance procedures regarding the use of material non-public information, (ii) it has identified in its administrative questionnaire a credit contact who may receive information that may contain material non-public information in accordance with its compliance procedures and applicable law, including Federal and state securities laws and (iii) it will handle such material non-public information in accordance with those procedures and applicable law, including Federal and state securities laws.

The Borrower acknowledges that certain of the Lenders may be "public-side" Lenders (Lenders that do not wish to receive material non-public information with respect to the Borrower, its subsidiaries or their securities) (each, a "Public Lender") and, if documents required to be delivered pursuant to Section 5.1 or 5.2 or otherwise are being distributed through the Platform, the Borrower agrees to designate those documents or other information that are suitable for delivery to the Public Lenders as such. Any document that the Borrower has indicated contains non-public information shall not be posted on that portion of the Platform designated for such Public Lenders. If the Borrower has not indicated whether a document delivered pursuant to Section 5.1 or 5.2 contains non-public information, the Administrative Agent reserves the right to post such document or notice solely on that portion of the Platform designated for Lenders who wish to receive material nonpublic information with respect to the Borrower, its Subsidiaries and their securities. The Borrower acknowledges and agrees that copies of the Loan Documents may be distributed to Public Lenders (unless the Borrower promptly notifies the Administrative Agent that any such document contains material non-public information with respect to the Borrower or its securities).

9.16. WAIVERS OF JURY TRIAL. THE BORROWER, THE ADMINISTRATIVE AGENT, THE COLLATERAL AGENT AND THE LENDERS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

9.17. U.S.A. PATRIOT Act. Each Lender that is subject to the requirements of the PATRIOT Act hereby notifies each Loan Party that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the PATRIOT Act. The Borrower shall, and shall cause each of its Subsidiaries to, provide, to the extent commercially reasonable, such information and take such actions as are reasonably requested by each Lender and the Administrative Agent to maintain compliance with the PATRIOT Act.

9.18. No Fiduciary Duty. Each Agent, each Lender, the Arrangers and their respective Affiliates (collectively, solely for purposes of this paragraph, the "Lenders") may have economic interests that conflict with those of the Borrower, its stockholders and/or its affiliates. The Borrower agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and the Borrower, its stockholders or its affiliates, on the other. The Borrower acknowledges and agrees that (i) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Lenders, on the one hand, and the Borrower, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Lender has assumed an advisory or fiduciary responsibility in favor of the Borrower, its stockholders or its affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise the Borrower, its stockholders or its affiliates on other matters) or any other obligation to the Borrower except the obligations expressly set forth in the Loan Documents and (y) each Lender is acting solely as principal and not as the agent or fiduciary of the Borrower, its management, stockholders, creditors or any other Person. The Borrower acknowledges and agrees that the Borrower has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. The Borrower agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Borrower, in connection with such transaction or the process leading thereto. None of the Arrangers identified on the cover page or signature pages of this Agreement shall have any rights, powers, obligations, liabilities, responsibilities or duties under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as a Lender hereunder. Without limiting any other provision of this Article, none of such Arrangers in their respective capacities as such shall have or be deemed to have any fiduciary relationship with any Lender, the Administrative Agent or any other Person by reason of this Agreement or any other Loan Document.

9.19. Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of the Administrative Agent, the Co-Managers, the Joint Lead Arrangers, the Joint Bookrunners and each of their Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Term Loans or the Term Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Term Loans, the Term Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Term Loans, the Term Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Term Loans, the Term Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Term Loans, the Term Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, (I) unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (II) if such sub-clause (i) is not true with respect to a Lender and such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, the Co-Managers, the Joint Lead Arrangers, the Joint Bookrunners and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that:

(i) none of the Administrative Agent, the Co-Managers, the Joint Lead Arrangers, the Joint Bookrunners or any of their Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto),

(ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Term Loans, the Term Commitments and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other Person that holds, or has under management or control, total assets of at least $50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E),

(iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Term Loans, the Term Commitments and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Obligations),

(iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Term Loans, the Term Commitments and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Term Loans, the Term Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder, and

(v) no fee or other compensation is being paid directly to any of the Administrative Agent, the Co-Managers, the Joint Lead Arrangers, the Joint Bookrunners or any of their respective Affiliates for investment advice (as opposed to other services) in connection with the Term Loans, the Term Commitments or this Agreement.

(c) Each of the Administrative Agent, the Co-Managers, the Joint Lead Arrangers and the Joint Bookrunners hereby informs the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Term Loans, the Term Commitments and this Agreement, (ii) may recognize a gain if it extended the Term Loans or the Term Commitments for an amount less than the amount being paid for an interest in the Term Loans or the Term Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

9.20. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

***

IN WITNESS HEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and the year first written.

BORROWER:

CALPINE CONSTRUCTION FINANCE COMPANY, L.P.

By: /s/ ZAMIR RAUF
Name: Zamir Rauf
Title: Chief Financial Officer

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,
as Administrative Agent, Collateral Agent and a Lender

By: /s/ MIKHAIL FAYBUSOVICH
Name: Mikhail Faybusovich
Title: Authorized Signatory

By: /s/ WARREN VAN HEYST
Name: Warren Van Heyst
Title: Authorized Signatory

Exhibit 10.3

Execution Version

AMENDMENT NO. 3 TO CREDIT AGREEMENT

This AMENDMENT NO. 3 to Credit Agreement, dated as of August 2, 2023 (this "**Agreement**"), is entered into by and among CALPINE CONSTRUCTION FINANCE COMPANY, L.P., a Delaware limited partnership (the "**Borrower**"), the Guarantors party hereto, each Refinancing Term Loan Lender party hereto and CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as administrative agent (in such capacity and including any successors in such capacity, the "**Administrative Agent**") and as collateral agent (in such capacity and including any successors in such capacity, the "**Collateral Agent**"), and amends the Credit Agreement, dated as of December 15, 2017 (as amended by that certain Amendment No. 1, dated as of January 29, 2020, that certain Amendment No. 2, dated as of July 1, 2023, and as may be further restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof, the "**Credit Agreement**" and, as amended by this Agreement, the "**Amended Credit Agreement**") entered into among the Borrower, the institutions from time to time party thereto as Lenders (the "**Lenders**"), the Administrative Agent and the Collateral Agent.

WHEREAS, the Borrower desires to obtain term loans under a new Refinancing Credit Facility pursuant to Section 9.1(b) of the Credit Agreement, the net cash proceeds of which shall be used to consummate the Refinancing (as defined in the Amended Credit Agreement);

WHEREAS, each Refinancing Term Loan Lender (as defined in the Amended Credit Agreement) has agreed to provide Refinancing Term B Loans (as defined in the Amended Credit Agreement) pursuant to the terms and conditions hereof and the Amended Credit Agreement;

WHEREAS, Citibank, N.A., Bank of Montreal, Barclays Bank PLC, BNP Paribas Securities Corp., Mizuho Bank, Ltd., MUFG Bank, Ltd., Royal Bank of Canada, Sumitomo Mitsui Banking Corporation, Credit Suisse Loan Funding LLC, ING Capital LLC, Morgan Stanley Senior Funding, Inc. and BofA Securities, Inc. have agreed to act as joint lead arrangers and joint bookrunners in respect of the Refinancing Term B Loans (each in its capacity in such roles and titles, collectively, the "**Joint Lead Arrangers**" and "**Joint Bookrunners**");

WHEREAS, Goldman Sachs Bank USA, JPMorgan Chase Bank, N.A., Société Générale, Truist Securities, Inc., Natixis, New York Branch, Crédit Agricole Corporate and Investment Bank, Deutsche Bank Securities Inc. and Banco Santander, S.A. have agreed to act as co-managers in respect of the Refinancing Term B Loans (each in its capacity in such roles and titles, collectively, the "**Co-Managers**"); and

WHEREAS, in accordance with Section 9.1(b) of the Credit Agreement, the Borrower, the Guarantors, the Administrative Agent, the Collateral Agent and the Refinancing Term Loan Lenders have agreed to amend the Credit Agreement and the other Loan Documents in connection with, and to facilitate the incurrence of, such Refinancing Term B Loans;

WHEREAS, in connection with the Credit Agreement, the Borrower, the Guarantors and the Collateral Agent entered into (i) that certain Pledge and Security Agreement, dated December 15, 2017 (as amended, supplemented or otherwise modified from time to time prior to the date hereof, the "**Original Security Agreement**") and (ii) that certain Guaranty Agreement, dated December 15, 2017 (as amended, supplemented or otherwise modified from time to time prior to the date hereof, the "**Original Guaranty Agreement**");

WHEREAS, the Borrower has requested that the Lenders (x)(i) agree to amend and restate the Original Security Agreement, substantially in the form attached as Exhibit B hereto (the "**A&R Security Agreement**") and (ii) authorize and direct the Collateral Agent to enter into the A&R Security Agreement and (y)(i) agree to amend and restate the Original Guaranty Agreement, substantially in the form attached as Exhibit C hereto (the "**A&R Guaranty Agreement**") and (ii) authorize and direct the Collateral Agent to enter into the A&R Guaranty Agreement; and

WHEREAS, the Lenders party hereto, constituting all of the Lenders under the Credit Agreement on the date hereof, have agreed to authorize and direct the Collateral Agent to enter into the A&R Security Agreement and the A&R Guaranty Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

Section 1. *Defined Terms; References.* Unless otherwise specifically defined herein, each term used herein which is defined in the Amended Credit Agreement has the meaning assigned to such term in the Amended Credit Agreement. The rules of construction and other interpretive provisions specified in Sections 1.2 and 1.3 of the Amended Credit Agreement shall apply to this Agreement, including terms defined in the preamble and recitals hereto.

Section 2. *Refinancing Transactions*.

(a) With effect from and including the Effective Date, the Person identified on the signature pages hereof as the "Refinancing Term Loan Lender" (i) shall become party to the Amended Credit Agreement as a "Lender" and a "Refinancing Term Loan Lender" and (ii) shall have a commitment in an aggregate principal amount equal to $1,250,000,000 (such commitment, the "**Refinancing Term Loan Commitment**") and shall have all of the rights and obligations of a "Lender" and a "Refinancing Term Loan Lender" under the Amended Credit Agreement and the other Loan Documents (as amended hereby).

(b) On the Effective Date:

(i) the Refinancing Term Loan Lender shall make a Refinancing Term B Loan to the Borrower in accordance with this Section 2(b) and Section 2.1(b) of the Amended Credit Agreement by delivering to the Administrative Agent immediately available funds in an amount of $1,250,000,000; and

(ii) the Administrative Agent, on behalf of the Borrower, shall apply the entirety of the funds made available to the Administrative Agent pursuant to Section 2(b)(i) hereof to effect the Refinancing and to pay fees and expenses relating thereto (including, without limitation, any breakage fees) and any swap breakage costs (if any) resulting therefrom.

(c) The Refinancing Term B Loans made on the Effective Date pursuant to Section 2(b) shall constitute Term SOFR Loans having an initial Interest Period ending on August 31, 2023.

Section 3. *Amendment; Borrowings on Effective Date; Authorizations.*

(a) Each of the parties hereto agrees that, effective as of the Effective Date, the Credit Agreement shall be amended and restated in its entirety as set forth on Exhibit A attached hereto (including the Exhibits and Schedules attached thereto).

(b) With effect from the Effective Date, (i) each Refinancing Term B Loan made on the Effective Date in accordance with Section 2(b) hereof and 2.1(b) of the Amended Credit Agreement shall constitute, for all purposes of the Amended Credit Agreement, a Refinancing Term B Loan made pursuant to the Amended Credit Agreement and this Agreement; *provided* that, pursuant to this Agreement, each such Refinancing Term B Loan shall constitute a separate class of Term Loans from the "Initial Term B Loans" for all purposes of the Amended Credit Agreement, and (ii) for all purposes under the Loan Documents, the Initial Term B Loans shall be prepaid in full and shall no longer be outstanding. Any amount of the Refinancing Term B Loans that is subsequently repaid or prepaid may not be reborrowed.

(c) The Refinancing Term Loan Commitments provided for hereunder shall terminate on the Effective Date immediately upon the borrowing of the Refinancing Term B Loans pursuant to Section 2(b) hereof and 2.1(b) of the Amended Credit Agreement.

(d) This Agreement constitutes a notice of prepayment to the Administrative Agent pursuant to Section 2.13(a) of the Credit Agreement and the Borrower shall be deemed to have complied with the requirement that such notice of prepayment be delivered to the Administrative Agent prior to 10:00 A.M., New York City time, one (1) Business Day prior to the date of such prepayment.

(e) Each of the Lenders party hereto authorizes and directs the Collateral Agent to enter into the A&R Security Agreement and the A&R Guaranty Agreement.

Section 4. *Effect of Agreement; Reaffirmation; Etc.*

(a) Except as expressly set forth herein or in the Amended Credit Agreement, this Agreement (x) shall not by implication or otherwise limit, impair, constitute a waiver of or otherwise affect the rights and remedies of the Lenders or the Agents under the Credit Agreement or under any other Loan Document and (y) shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Credit Agreement or any other provision of the Credit Agreement or of any other Loan Document, all of which are ratified and affirmed in all respects and shall continue in full force and effect. Without limiting the foregoing, (i) each Loan Party and each Direct Parent hereby affirms acknowledges and agrees that (A) each Loan Document to which it is a party is hereby confirmed and ratified and shall remain in full force and effect according to its respective terms (in the case of the Credit Agreement, as amended hereby, in the case of the Guaranty Agreement, as amended by the A&R Guaranty Agreement and in the case of the Security Agreement, as amended by the A&R Security Agreement) after giving effect to this Agreement and (B) the Security Documents do, and all of the Collateral does, and in each case shall continue to, secure the payment of all Secured Obligations (including, for the avoidance of doubt, the Refinancing Term B Loans made on the Effective Date) on the terms and conditions set forth in the Security Documents, and hereby ratifies and affirms the prior Liens and security interests granted by it pursuant to the Security Documents, all of which shall continue in full force and effect after giving effect to this Agreement and the A&R Security Agreement and (ii) each Guarantor hereby confirms and ratifies its continuing unconditional obligations as Guarantor under each Guarantee (including the A&R Guaranty Agreement) to which it is a party with respect to all of the Secured Obligations (including, for the avoidance of doubt, the Refinancing Term B Loans made on the Effective Date).

(b) Each Loan Party and each Direct Parent hereby acknowledges, confirms and agrees that any financing statement, fixture filing or other instrument similar in effect under any applicable law covering all or any part of the Collateral previously filed in favor of the Collateral Agent are in full force and effect as of the date hereof and each Loan Party and each Direct Parent hereby ratifies its authorization for the Collateral Agent to file in any relevant jurisdiction any such financing statement financing statement, fixture filing or other instrument relating to all or any part of the Collateral filed prior to or in connection with the Effective Date.

(c) From and after the Effective Date, each reference in the Credit Agreement to "this Agreement", "hereunder", "hereof", "herein", or words of like import, and each reference to the "Credit Agreement" in any other Loan Document shall be deemed a reference to the Amended Credit Agreement. From and after the Effective Date, this Agreement shall constitute a "Loan Document" for all purposes of the Credit Agreement and the other Loan Documents (as amended by this Agreement).

(d) Nothing herein or in the Amended Credit Agreement shall be construed as a novation of the Credit Agreement or any other Loan Documents.

Section 5. *Representations of Loan Parties.* Each of the Loan Parties hereby represents and warrants that as of the Effective Date:

(a) each of the representations and warranties contained in Section 3 (Representations and Warranties) of the Amended Credit Agreement and each other Loan Document is true and correct in all material respects (and in all respects if qualified by materiality) on and as of the Effective Date, as if made on and as of such date and except to the extent that such representations and warranties specifically relate to a specific date, in which case such representations and warranties shall be true and correct in all material respects (and in all respects if qualified by materiality) as of such specific date; *provided*, *however*, that references therein to the "*Credit Agreement*" shall be deemed to refer to the Amended Credit Agreement and after giving effect to the consents and waivers set forth herein;

(b) no Default or Event of Default under the Credit Agreement has occurred or is continuing or would result from the transactions contemplated by this Agreement, including, without limitation, the borrowing of Refinancing Term B Loans; and

(c) Each Loan Party party hereto and each Direct Parent has the corporate or other organizational power and authority to execute, deliver and carry out the terms and provisions of this Agreement, and the other Loan Documents to which it is a party and has taken all necessary corporate or other organizational action to authorize the execution and delivery of this Agreement and the performance of this Agreement, the Amended Credit Agreement and any other Loan Documents to which it is a party. This Agreement has been duly authorized, executed and delivered by each Loan Party party hereto and constitutes the legal, valid and binding obligations of each such Loan Party and each Direct Parent enforceable against it in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting the enforceability of creditors' rights generally and general principles of equity (whether considered in a proceeding in equity or law).

Section 6. *Governing Law.* THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

Section 7. *Counterparts*. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by facsimile or other electronic method of transmission, such as portable document format (.pdf) or software-based electronic signature facility (including "DocuSign"), shall have the same force and effect as delivery of an original executed counterpart of this Amendment and shall constitute an original signature for all record-keeping purposes. Any electronic signature shall have the same legal validity and enforceability as a manually executed signature to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any similar federal or state law, rule or regulation, as the same may be in effect from time to time, and the parties hereby waive any objection to the contrary.

Section 8. *Miscellaneous*. The jurisdiction and waiver of right to trial by jury provisions in Sections 9.12 and 9.16 of the Credit Agreement are incorporated herein by reference *mutatis mutandis*.

Section 9. *Effectiveness.* This Agreement, and the obligation of the Refinancing Term Loan Lender to make the Refinancing Term B Loans to be made by it pursuant to Section 2 of this Agreement, shall become effective on the date when each of the conditions set forth in Section 4 of the Amended Credit Agreement have been satisfied or waived.

[SIGNATURE PAGES FOLLOW]

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.

CALPINE CONSTRUCTION FINANCE COMPANY, L.P., as the Borrower

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

JACK A. FUSCO ENERGY CENTER LLC (F/K/A BRAZOS VALLEY ENERGY LLC), as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

CALPINE BOSQUE ENERGY CENTER, LLC, as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

GUADALUPE POWER PARTNERS, LP, as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

MAGIC VALLEY ENERGY CENTER, LLC, as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

CALPINE NORTHEAST DEVELOPMENT, LLC, as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

CALPINE GUADALUPE GP, LLC, as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

CALPINE GUADALUPE LP, LLC, as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

CALPINE FORE RIVER ENERGY CENTER, LLC, as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

WESTBROOK ENERGY CENTER, LLC, as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

[Signature Page to Incremental Agreement No. 2 to Credit Agreement]

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as Administrative Agent and Collateral Agent

By: /s/ Komal Shah
Name: Komal Shah
Title: Authorized Signatory

By: /s/ Nawshaer Safi
Name: Nawshaer Safi
Title: Authorized Signatory

CITIBANK, N.A., as Refinancing Term Loan Lender

By: /s/ Agha Murtaza
Name: Agha Murtaza
Title: Director / Authorized Signatory

Exhibit A

[Amendments to Credit Agreement attached]

Exhibit A

Execution Version

AMENDED AND RESTATED CREDIT AGREEMENT
among

CALPINE CONSTRUCTION FINANCE COMPANY, L.P.,
as Borrower

and

THE LENDERS PARTY HERETO,

and

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,

as Administrative Agent and Collateral Agent,

Originally dated as of December 15, 2017

and as amended and restated as of August 2, 2023

CITIBANK, N.A.

BMO Capital Markets Corp.

Barclays Bank PLC

BNP Paribas Securities Corp.

Mizuho Bank, Ltd.

Royal Bank of Canada

Sumitomo Mitsui Banking Corporation

ING Capital LLC

Morgan Stanley Senior Funding, Inc.

BofA Securities, Inc.

As Joint Lead Arrangers and Joint Bookrunners

Goldman Sachs Bank USA
Société Générale
Crédit Agricole Corporate and Investment Bank

JPMorgan Chase Bank, N.A.
Truist Securities, Inc.
Deutsche Bank Securities Inc.

Banco Santander, S.A.

As Co-Managers

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Exhibit E-3 — Form of United States Tax Compliance Certificate (For Non-U.S. Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)
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THIS AMENDED AND RESTATED CREDIT AGREEMENT, originally dated as of December 15, 2017 and as amended and restated as of August 2, 2023, among CALPINE CONSTRUCTION FINANCE COMPANY, L.P., a Delaware limited partnership (the "Borrower"), CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as administrative agent (in such capacity and including any successors in such capacity, the "Administrative Agent") and as collateral agent (in such capacity and including any successors in such capacity, the "Collateral Agent" and together with the Administrative Agent, the "Agents") and each of the financial institutions from time to time party hereto (collectively, the "Lenders").

W I T N E S S E T H:

WHEREAS, the Borrower has outstanding Initial Term B Loans under the Existing Credit Agreement (as defined below); and

WHEREAS, the Borrower intends to refinance all outstanding Initial Term B Loans under the Existing Credit Agreement (the "Refinancing"), to pay fees and expenses related thereto (including, without limitation, any breakage fees) and any swap breakage costs (if any) resulting therefrom with the extensions of credit and commitments under this Agreement on the Effective Date and for general corporate purposes (including a partial prepayment of the Term B-5 Term Loan);

NOW, THEREFORE, the parties hereto hereby agree as follows:

SECTION 1

Definitions

1.1. Defined Terms. As used in this Agreement, the following terms shall have the meanings specified below:

"Administrative Agent": the meaning set forth in the preamble to this Agreement.

"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, for purposes of Section 6.7, a Person will be deemed to be an Affiliate of the Borrower if the Borrower has knowledge that such Person beneficially owns 10% or more of the Voting Stock of the Borrower. For purposes of this definition, the terms "controlling," "controlled by" and "under common control with" have correlative meanings.

"Agency Assignment Agreement": a resignation and appointment agreement in form and substance reasonably satisfactory to the Administrative Agent, the Collateral Agent and the Borrower.

"Agents": the meaning set forth in the preamble to this Agreement.

"Agreement": this Amended and Restated Credit Agreement, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"ALTA": American Land Title Association.

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

"Amendment No. 3": that certain Amendment No. 3 to this Agreement, dated as of August 2, 2023, among the Borrower, the other Loan Parties party thereto, the Administrative Agent, the Collateral Agent and the other parties thereto.

"Anti-Corruption Laws": all laws, rules, and regulations of any jurisdiction applicable to the Borrower or any of its Restricted Subsidiaries from time to time concerning or relating to bribery or corruption.

"Applicable Margin": a percentage per annum equal to, (x) in the case of Initial Term B Loans maintained as (i) Base Rate Loans, 1.00% and (ii) Term SOFR Loans, 2.00% and (y) in the case of Refinancing Term B Loans maintained as (i) Base Rate Loans, 1.25% and (ii) Term SOFR Loans, 2.25%.

"Approved Electronic Communication": any notice, demand, communication, information, document or other material that any Loan Party provides to the Administrative Agent pursuant to any Loan Document or the transactions contemplated therein which is distributed to the Agents or to the Lenders by means of electronic communications pursuant to Section 9.2(b).

"Approved Fund": as defined in Section 9.6(b)(ii).

"Arranger": each of the Joint Lead Arrangers, Joint Bookrunners and Co-Managers.

"Asset Sale":

(1) the sale, lease, conveyance or other disposition of any assets; provided that the sale, conveyance or other disposition of all or substantially all of the assets of the Borrower and its Restricted Subsidiaries taken as a whole will be governed by the provisions of Section 2.14 and/or Section 6.3 and not Section 6.8; and

(2) the issuance of Equity Interests in any of the Borrower's Restricted Subsidiaries.

Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale:

(1) any single transaction or series of related transactions that involves assets having a Fair Market Value (calculated at the time of the relevant transaction) of less than the greater of (x) $40.0 million and (y) 2.0% of Total Assets;

(2) a transfer of assets between or among the Borrower and any of its Restricted Subsidiaries;

(3) an issuance of Equity Interests by a Restricted Subsidiary to the Borrower or any of its Restricted Subsidiaries;

(4) the sale or lease of products, services, accounts receivable or other assets (including power, capacity, fuel or emission credits or other environmental attributes) in the ordinary course of business (it being understood that a disposition of a quantity of power, capacity, fuel or emission credits, environmental attributes or other products, services or accounts receivable that is material to the Borrower and its Restricted Subsidiaries, as the case may be, shall not alone cause such disposition not to be in the ordinary course of business) and any sale or other disposition of damaged, worn out or obsolete assets or assets no longer used or useful or desirable in the Borrower or any of its Restricted Subsidiaries' business;

(5) the sale or other disposition of cash or Cash Equivalents;

(6) a Restricted Payment that either (x) does not violate Section 6.9 or (y) constitutes a Permitted Investment;

(7) (i) a disposition resulting from any condemnation or other taking, or temporary or permanent requisition, of any property, any interest therein or right appurtenant thereto, or any change of grade affecting any property, in each case, as the result of the exercise of any right of condemnation or eminent domain, including any sale or other transfer to a Governmental Authority in lieu of, or in anticipation of, any of the foregoing events; provided that if such disposition involves assets having a Fair Market Value in excess of $40.0 million, any cash proceeds received in connection therewith are treated as Net Proceeds of an Asset Sale and (ii) the proposed condemnation proceedings at the Magic Valley facility as previously disclosed by the Borrower to the Administrative Agent;

(8) any substantially concurrent purchase and sale or exchange of like property (or a combination thereof) for use in a Permitted Business;

(9) the creation of a Permitted Lien and dispositions in connection with Permitted Liens;

(10) a disposition of assets (other than any assets securing Parity Secured Debt or other secured Indebtedness permitted by this Agreement) in connection with a foreclosure, transfer or deed in lieu of foreclosure or other exercise of remedial action;

(11) any disposition of products, services or accounts receivable (including power, capacity, fuel or emission credits) or other obligation pursuant to the Power Purchase and Sale Agreement with South Texas Electric Cooperative, Inc., dated May 22, 1998, as in effect on the Effective Date;

(12) the sale, transfer, lapse, abandonment or other disposition of patents, trademarks and other intellectual property of Borrower and its Restricted Subsidiaries to the extent not economically desirable in the conduct of their business and so long as any such sale, lapse, abandonment or other disposition would not, in the aggregate, reasonably be expected to result in a Material Adverse Effect;

(13) any disposition of products, services or accounts receivable (including power, capacity, fuel or emission credits) or other obligation pursuant to the Power Purchase Agreement between The City of San Antonio, acting by and through City Public Service Board and Guadalupe Power Partners, LP, dated as of January 30, 2023, as in effect on the Effective Date;

(14) any disposition of the rights to the Purchase Option for the pipeline system more fully described in the Agreement to Construct, Lease, and Operate Natural Gas Pipeline Facilities between Tejas Gas Pipeline, L.P. and Jack A. Fusco Energy Center, LLC (f/k/a Brazos Valley Energy LLC), successor in interest to Brazos Valley Energy LP, dated June 26, 2001;

(15) any surrender or waiver of contractual rights and settlement or waiver of contractual or litigation claims in the ordinary course of business or consistent with past practice or industry practice;

(16) any disposition of up to 49.9% of (x) the Equity Interests of the Subsidiary that owns exclusively the Bosque Facility (as well as other assets with an aggregate value less than the greater of (x) $40.0 million and (y) 2.0% of Total Assets) and any assets or contracts related thereto or (y) an interest in the Bosque Facility and any assets or contracts related thereto;

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

(18) (i) the licensing or sublicensing of intellectual property or other general intangibles and (ii) licenses, leases or subleases of other property in the ordinary course of business which do not materially interfere with the business of the Borrower and its Restricted Subsidiaries (taken as a whole);

(19) the trading, exchange, swap or other sharing of parts and components, among the Borrower and its Affiliates, in the ordinary course of business or consistent with past or current best practices of the relevant Persons, including for purposes of spare or replacement parts or emergency repairs;

(20) any sale or disposition of the Equity Interests or Indebtedness of any Unrestricted Subsidiary;

(21) voluntary terminations or unwinding of Swap Agreements (including, without limitation, upon a Loan Party or Restricted Subsidiary exercising its early voluntary termination rights following the occurrence of an event of default or termination event (however described) in respect of a counterparty in accordance with the terms of the relevant Swap Agreement) and other contracts in the ordinary course of business or consistent with past practice or industry practice;

(22) sales, transfers or other dispositions of Investments in joint ventures or other non-wholly owned Persons to the extent required by, or made pursuant to, customary buy/sell arrangements between the applicable parties set forth in joint venture arrangements or similar binding arrangements; and

(23) any sale or disposition of assets in connection with a sale-leaseback transaction consummated within 365 days of the acquisition thereof or the substantial completion of construction of improvements thereto (but in any event no later than 540 days after the date of the acquisition thereof).

"Asset Sale Offer": the meaning set forth in Section 6.8(d).

"Assignee": as defined in Section 9.6(b)(i).

"Assignment and Acceptance": in the case of assignments of Term Loans, an assignment and acceptance entered into by a Lender and an Assignee and accepted by the Administrative Agent to the extent required pursuant to Section 9.6, substantially in the form of Exhibit C hereto.

"Attributable Debt": in respect of a sale and leaseback transaction means, at the time of determination, the present value of the obligation of the lessee for net rental payments during the remaining term of the lease included in such sale and leaseback transaction including any period for which such lease has been extended or may, at the option of the lessor, be extended. Such present value shall be calculated using a discount rate equal to the rate of interest implicit in such transaction, determined in accordance with GAAP; provided, however, that if such sale and leaseback transaction results in a Capital Lease Obligation, the amount of Indebtedness represented thereby will be determined in accordance with the definition of "Capital Lease Obligation."

"Auction": the meaning set forth in Section 2.28.

"Auction Manager": the meaning set forth in Section 2.28.

"Auction Notice": the meaning set forth in Exhibit I.

"Available Tenor": as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to Section 2.11(e).

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

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

"Bankruptcy Code": The Bankruptcy Reform Act of 1978, as heretofore and hereafter amended, and codified as 11 U.S.C. §§ 101 *et seq*.

"Bankruptcy Law": The Bankruptcy Code or any similar federal or state law for the relief of debtors.

"Base Rate": for any day, a rate per annum equal to the highest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus 0.50% and (c) Term SOFR for a one-month tenor in effect on such day plus 1.00%. Any change in the Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or Term SOFR shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or Term SOFR, respectively; provided, that if the Base Rate determined as provided above shall ever be less than 1.00%, then the Base Rate shall be deemed to be 1.00%

"Base Rate Loans": Term Loans the rate of interest applicable to which is based upon the Base Rate.

"Base Rate Term SOFR Determination Day": the meaning set forth in the definition of "Term SOFR."

"Benchmark": initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.11(b).

"Benchmark Replacement": with respect to any Benchmark Transition Event, the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then current Benchmark for Dollar-denominated syndicated credit facilities at such time and (ii) the related Benchmark Replacement Adjustment; provided that, if such, Benchmark Replacement as determined would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

"Benchmark Replacement Adjustment": with respect to any replacement of any then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

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

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

(b) in the case of clause (c) of the definition of "Benchmark Transition Event", the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

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

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

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

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

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

"Benchmark Transition Start Date": in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

"Benchmark Unavailability Period": the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.11 and (b) ending at the time that a Benchmark Replacement has replaced the then current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.11.

"Beneficial Ownership Certification": a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

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

"Beneficial Owner": has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act.

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

"Benefited Lender": the meaning set forth in Section 9.7(a).

"Board of Directors":

(1) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board;

(2) with respect to a partnership, the board of directors of the general partner of the partnership;

(3) with respect to a limited liability company, the managing member or members or any controlling committee of managing members or board of directors thereof; and

(4) with respect to any other Person, the board or committee of such Person serving a similar function.

"Board of Governors": the Board of Governors of the Federal Reserve System of the United States or any Governmental Authority which succeeds to the powers and functions thereof.

"Borrower": the meaning set forth in the preamble to this Agreement.

"Borrowing": the making of Term Loans by the Lenders on a Borrowing Date.

"Borrowing Date": the Business Day specified in a notice pursuant to Section 2.2 as a date on which the Borrower requests any Term Loans or Incremental Term Loans hereunder.

"Bosque Facility": the approximately 792 MW nameplate capacity natural gas-fired combined cycle electric generating facility located on a 280 acre site in Bosque County, Texas. The plant consists of three GE combustion turbines, three Alstom HRSGs, one GE steam turbine, one Alstom steam turbine, together with related water supply agreements, gas and power interconnections and interconnection agreements, equipment, supplies, permits, licenses, contracts and agreements.

"Business Day": any day that is not a Saturday, Sunday or other day that is a legal holiday under the laws of the State of New York or is a day on which banking institutions in such state are authorized or required by Law to close; provided, that, when used in connection with a Term SOFR Loan, the term "Business Day" shall exclude any day which is not a U.S. Government Securities Business Day.

"Calpine Platform": IntraLinks/IntraAgency, SyndTrak or other relevant website or other information platform of Calpine Corporation to which the Administrative Agent has access.

"Capital Lease Obligation": at the time any determination is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet in accordance with GAAP, and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such capital lease prior to the first date upon which such capital lease may be prepaid by the lessee without payment of a penalty; provided, however, that if any operating lease (whether in effect on the Effective Date or thereafter incurred) would be recharacterized as a capital lease due to changes in the accounting treatment of such operating leases under GAAP since December 31, 2018, then solely with respect to the accounting treatment of any such lease, GAAP shall be interpreted as it was in effect on December 31, 2018; provided, further, that any lease that is treated as an operating lease for purposes of GAAP as of December 31, 2018 shall not be treated as Indebtedness or as a Capital Lease Obligation and shall continue to be treated as an operating lease (and any future lease, if it were in effect on the Effective Date, that would be treated as an operating lease for purposes of GAAP as of December 31, 2018, shall be treated as an operating lease), in each case for purposes of this Agreement, notwithstanding any actual or proposed change in or application of GAAP after December 31, 2018.

"Capital Stock":

(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; 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.

"Cash Equivalents":

(1) United States dollars;

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

(3) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition thereof and, at the time of acquisition, having one of the highest ratings obtainable from either S&P or Moody's;

(4) deposit accounts with any Lender or bank that has a long-term debt rating of A+ or better by S&P and A1 or better by Moody's (an "Approved Bank");

(5) time deposits, certificates of deposit, acceptances or prime commercial paper issued by an Approved Bank at the time acquired or issued (as applicable and whichever is latest), in each case, having a maturity of not more than one year from the date of acquisition;

(6) repurchase obligations for underlying securities of the types described in preceding clauses (2), (3) and (5) entered into with an Approved Bank at the time acquired, issued or entered into (as applicable and whichever is latest), in each case, having a maturity of not more than one year from the date of acquisition;

(7) commercial paper with a rating of at least A-1 by S&P and at least P-1 by Moody's and, in each case, maturing within one year after the date of acquisition; and

(8) money market funds which invest primarily in Cash Equivalents of the kinds described in clauses (1) through (7) of this definition.

"Cash Management Agreement": with respect to a Loan Party, any agreement to which such Loan Party is a party as an obligor in respect of treasury management arrangements, depositary or other cash management services, including in connection with any automated clearing house transfer of funds or any similar transactions.

"Cash Management Bank": any Person in its capacity as a counterparty to a Cash Management Agreement that (a) is an Agent or a Lender or an Affiliate of an Agent or a Lender, (b) at the date of entering into such Cash Management Agreement was an Agent or a Lender or an Affiliate of an Agent or a Lender or (c) (i) is designated by the Borrower as a "Cash Management Bank" by written notice to the Administrative Agent and (ii) such Person executes and delivers to the Administrative Agent a letter agreement in form and substance acceptable to the Administrative Agent pursuant to which such person (i) appoints the Collateral Agent as its agent under the applicable Loan Documents and (ii) agrees to be bound by the provisions of Sections 8.3, 8.7, 9.11 and 9.12 as if it were a Lender.

"Cash Management Obligations": with respect to a Loan Party, any obligations of such Loan Party in respect of treasury management arrangements, depositary or other cash management services, including in connection with any automated clearing house transfer of funds or any similar transactions.

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

(1) the direct or indirect sale, 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 properties or assets of the Borrower and its Subsidiaries taken as a whole to any "person" (as that term is used in Section 13(d) of the Exchange Act, but excluding any employee benefit plan of the Borrower or any of its Restricted Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) other than Calpine Corporation, any Subsidiary of Calpine Corporation, a Beneficial Owner of 50% or more of the Voting Stock of Calpine Corporation or any Designated Holder;

(2) the adoption of a plan relating to the liquidation or dissolution of the Borrower other than (A) the consolidation with, merger into or transfer of all or part of the properties and assets of any Restricted Subsidiary of the Borrower to the Borrower or any other Restricted Subsidiary of the Borrower and (B) the merger of the Borrower with an Affiliate solely for the purpose of reincorporating the Borrower or reforming the Borrower in another jurisdiction; or

(3) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any "person" (as defined above) becomes the Beneficial Owner, directly or indirectly, of more than 50% of the Voting Stock of the Borrower, measured by voting power rather than number of shares, other than Calpine Corporation, a Subsidiary of Calpine Corporation, a Beneficial Owner of 50% or more of the Voting Stock of Calpine Corporation or a Designated Holder.

"Change of Control Triggering Event": the occurrence of both a Change of Control and a Rating Event.

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

"Collateral": all properties and assets of the Loan Parties now owned or hereafter acquired in which Liens have been (or have been purported to be) granted to the Collateral Agent to secure the Secured Obligations.

"Collateral Agent": the meaning set forth in the preamble to this Agreement.

"Co-Managers": collectively, Goldman Sachs Bank USA, JPMorgan Chase Bank, N.A., Société Générale, Truist Securities, Inc., Natixis, New York Branch, Crédit Agricole Corporate and Investment Bank, Deutsche Bank Securities Inc. and Banco Santander, S.A.

"Commodity Exchange Act": the Commodity Exchange Act (7 U.S.C. § 1 *et seq*.), as amended from time to time, and any successor statute.

"Commonly Controlled Entity": an entity, whether or not incorporated, that is under common control with the Borrower within the meaning of Section 4001 of ERISA or is part of a controlled group that includes the Borrower and that is treated as a single employer under Section 414 of the Code.

"Conforming Changes": with respect to either the use or administration of Term SOFR or the use, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "Business Day," the definition of "U.S. Government Securities Business Day," the definition of "Interest Period" or any similar or analogous definition (or the addition of a concept of "interest period"), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.18 and other technical, administrative or operational matters) that the Administrative Agent (in consultation with the Borrower) decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent (in consultation with the Borrower) decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

"Consolidated Cash Flow": with respect to any specified Person for any period, the Consolidated Net Income of such Person for such period *plus*, without duplication:

(1) an amount equal to any extraordinary, exceptional, unusual or non-recurring loss plus any net loss realized by such Person or any of its Restricted Subsidiaries in connection with an asset sale or the disposition of any securities by such Person or any of its Restricted Subsidiaries or the extinguishment of any Indebtedness of such Person or any of its Restricted Subsidiaries, to the extent such losses were deducted in computing such Consolidated Net Income; *plus*

(2) provision for taxes based on income or profits of such Person and its Restricted Subsidiaries for such period, to the extent that such provision for taxes was deducted in computing such Consolidated Net Income; *plus*

(3) the Fixed Charges of such Person and its Restricted Subsidiaries for such period, to the extent that such Fixed Charges were deducted in computing such Consolidated Net Income; *plus*

(4) depreciation, depletion, amortization (including amortization of intangibles) and other non-cash expenses (provided that if any such non-cash expense represents an accrual of or reserve for cash expenses in any future period, the cash payment in respect thereof in such future period shall be subtracted from Consolidated Cash Flow in such future period to such extent) of such Person and its Restricted Subsidiaries for such period to the extent that such depreciation, amortization and other non-cash expenses were deducted in computing such Consolidated Net Income; *plus*

(5) major maintenance expense as reflected in Consolidated Net Income; *plus*

(6) charges associated with fees and expenses, including professional fees, incurred in connection with (x) the Term Commitments and Term Loans on any Borrowing Date or the incurrence of other Indebtedness or the modification of or preparation in connection therewith of Indebtedness of the Borrower or any of its Restricted Subsidiaries and (y) any acquisition, Investment, asset sale, disposition or issuance of Equity Interests, in each case, to the extent such charges were deducted in computing such Consolidated Net Income, and charges or expenses recognized as a result of repayment of Indebtedness; *plus*

(7) the upfront costs of any obligations under Swap Agreements or Cash Management Obligations, to the extent such costs were deducted in computing Consolidated Net Income; *plus*

(8) Restructuring Costs to the extent such costs were deducted in computing Consolidated Net Income for such period; *plus*

(9) any costs or expenses attributable to the implementation of cost savings initiatives, operating expense reductions and similar initiatives and business optimization to the extent that such costs or expenses were deducted in computing Consolidated Net Income for such period; *plus*

(10) acquisition-related costs in a business combination to the extent such costs were deducted in computing Consolidated Net Income for such period; *plus*

(11) management, consulting, monitoring, advisory or other fees and related expenses and indemnities paid or accrued to the Designated Holders and any transferees thereof in an aggregate amount for all such fees not to exceed $20,000,000 for such period; *plus*

(12) cash received during such period related to mark-to-market activities; *less*

(13) cash paid during such period related to mark-to-market activities;

provided, however, that for purposes of this definition, any mark-to-market earnings or losses shall be excluded from the calculation of Consolidated Cash Flow to the extent taken into account in calculating Consolidated Net Income for such period.

"Consolidated Interest Expense": for any period, total cash interest expense (including that attributable to Capital Lease Obligations) of the Borrower and its Restricted Subsidiaries for such period with respect to all outstanding Indebtedness of the Borrower and its Restricted Subsidiaries, and dividends paid in cash in respect of any preferred Capital Stock of the Borrower and its Restricted Subsidiaries (including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing and net costs under obligations under Swap Agreements or Cash Management Obligations in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP but excluding any dividend paid by a Restricted Subsidiary to the Borrower or any other Restricted Subsidiary), net of interest income during such period, in each case determined on a consolidated basis in accordance with GAAP.

"Consolidated Net Income": with respect to any specified Person for any period, the aggregate of the Net Income of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, determined in accordance with GAAP; provided that:

(1) the Net Income of any Person that is not a Restricted Subsidiary or that is accounted for by the equity method of accounting will be included only to the extent of the amount of dividends or similar distributions (including pursuant to other intercompany payments) paid in cash (or to the extent subsequently converted into cash) to the specified Person or a Restricted Subsidiary of the Person; and

(2) any non-cash impairment charges incurred subsequent to the Effective Date will be excluded.

"Consolidated Senior Secured Leverage Ratio": as of any date, the ratio of (i) Total Debt to the extent constituting senior secured Indebtedness of such Person and its Restricted Subsidiaries as of the date of such transaction, after giving effect to all incurrences and repayments of Indebtedness on or about such date, to (ii) Consolidated Cash Flow of such Person for the most recent four consecutive full fiscal quarters for which internal financial statements are available ending on or prior to such date, with such *pro forma* and other adjustments as are consistent with the *pro forma* and other adjustment provisions set forth in the definition of "Fixed Charge Coverage Ratio."

"Contractual Obligation": as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Credit Facility" or "Credit Facilities": one or more debt facilities, indentures, credit agreements, note purchase agreements, commercial paper facilities, letter of credit facilities or similar facilities, in each case, with banks or other lenders or holders providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to such lenders or holders or others or to special purpose entities formed to borrow from such lenders or holders or others against such receivables), letters of credit or debt securities, in each case, as amended, restated, modified, renewed, refunded, replaced or refinanced, in each case, in whole or in part from time to time.

"Default": any of the events specified in Section 7.1, whether or not any requirement for the giving of notice, the expiration of applicable cure or grace periods, or both, has been satisfied.

"Designated Holders": Energy Capital Partners III, LP (together with its parallel funds and co-invest vehicles), Energy Capital Partners IV, LP (together with its parallel funds and co-invest vehicles), Access Industries Inc. (together with its parallel funds and co-invest vehicles), Canadian Pension Plan Investment Board (together with its parallel funds and co-invest vehicles) and the respective Affiliates of each of the foregoing (together with their respective parallel funds and co-invest vehicles).

"Designated Non-Cash Consideration": the Fair Market Value of non-cash consideration received by the Borrower or one of its Restricted Subsidiaries in connection with an Asset Sale that is so designated as Designated Non-Cash Consideration pursuant to an officer's certificate, setting forth the basis of such valuation.

"Direct Parents": Calpine CCFC GP, LLC and Calpine CCFC LP, LLC.

"Disqualified Capital Stock": that portion of any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case, at the option of the holder of the Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the date that is 91 days after the latest applicable Termination Date in effect at the time of the issuance of such Capital Stock (other than pursuant to a change of control provision substantially similar to that described under Section 2.14). Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Capital Stock solely because the holders of the Capital Stock have the right to require the Borrower to repurchase such Capital Stock upon the occurrence of a change of control or an asset sale will not constitute Disqualified Capital Stock if the terms of such Capital Stock provide that the Borrower may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption complies with Section 6.9. The amount of Disqualified Capital Stock deemed to be outstanding at any time for purposes of this Agreement shall be equal to the maximum amount that the Borrower and its Restricted Subsidiaries may become obligated to pay upon the maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Capital Stock, exclusive of accrued dividends.

"Disqualified Lender":

(a) any Person identified in writing from time to time as a competitor (or an affiliate of such competitor identified in writing) of the Borrower or its Subsidiaries;

(b) any Person that is engaged as a principal primarily in private equity, mezzanine financing or venture capital, and those banks, financial institutions, other institutional lenders and other Persons, in each case, identified in writing to the Administrative Agent on or prior to the Effective Date; and

(c) any reasonably identifiable (on the basis of its name or as identified in writing from time to time) affiliate of the entities described in the preceding clauses (a) and (b), other than, with respect to this clause (c), any *bona fide* debt fund affiliate thereof (except to the extent separately identified under clause (a) or (b) above) that is primarily engaged in, or that advises funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit or securities in the ordinary course and with respect to which such applicable person or entity described in the preceding clause (a) or (b) does not, directly or indirectly, possess the power to direct or cause the direction of the investment policies of such entity,

it being understood and agreed that no written notice delivered pursuant to clauses (a) and/or (c) above shall apply retroactively to disqualify any Person that has previously acquired an assignment or participation interest in any Loans.

"Dollars" and "$": dollars in lawful currency of the United States.

"Domestic Subsidiary": any Restricted Subsidiary of the Borrower that was formed under the laws of the United States or any state of the United States or the District of Columbia.

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

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

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

"Effective Date": the date when all the conditions set forth in Section 4.1 have been satisfied (or waived in accordance with Section 4.1), which shall be August 2, 2023.

"Effective Date Facilities": the Bosque Facility, the Jack A. Fusco facility (f/k/a the Brazos Valley facility), the Fore River facility, the Gaudalupe facility, the Magic Valley facility and the Westbrook facility (which includes the diesel generator facilities owned by Calpine Northeast Development LLC and located on land owned by the Westbrook facility owner and leased to Calpine Northeast Development LLC), each as designated on Schedule 1.1B.

"Environmental CapEx Debt": Indebtedness of the Borrower or any of its Restricted Subsidiaries incurred for the purpose of financing capital expenditures deemed necessary by the Borrower or its Restricted Subsidiaries to comply with Environmental Laws.

"Environmental Laws": any and all applicable foreign, Federal, state or local laws, rules, orders, regulations, statutes, ordinances, codes, decrees, legally binding requirements of any Governmental Authority or other Requirements of Law (including common law) regulating, relating to or imposing liability or standards of conduct concerning protection of the environment or of human health (to the extent related to exposure to Materials of Environmental Concern), as now or may at any time hereafter be in effect.

"Equity Interests": 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).

"ERISA": the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"Erroneous Payment": the meaning set forth in in Section 9.21(a).

"Erroneous Payment Deficiency Assignment": the meaning set forth in in Section 9.21(d)(i).

"Erroneous Payment Impacted Class": the meaning set forth in Section 9.21(d)(i).

"Erroneous Payment Return Deficiency": the meaning set forth in Section 9.21(d)(i).

"Erroneous Payment Subrogation Rights": the meaning set forth in Section 9.21(e).

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

"Event of Default": any of the events specified in Section 7.1, provided that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

"Exchange Act": the Securities Exchange Act of 1934, as amended, or any successor statute or statutes thereto.

"Excluded Assets" shall have the meaning given to such term in the Security Documents.

"Excluded Subsidiary": (a) any Foreign Subsidiary, (b) any Subsidiary of the Borrower that is (A) a Domestic Subsidiary of the Borrower substantially all of the assets of which consist of the Capital Stock of one or more Foreign Subsidiaries or (B) a Domestic Subsidiary of the Borrower substantially all of the assets of which consist of the Capital Stock of one or more Subsidiaries described in clause (A) hereof (whether such ownership is directly held or through another one or more such Subsidiaries), (c) any Immaterial Subsidiary, (d) any Subsidiary that is (i) prohibited by any applicable (x) contract not prohibited under this Agreement and binding on such Subsidiary at the time of acquisition of such Subsidiary and not entered into in contemplation thereof or (y) Requirement of Law (including, without limitation, as a result of applicable financial assistance, directors' duties or corporate benefit requirements) or (ii) required to obtain consent, approval, license or authorization of a Governmental Authority for the guarantee of the Obligations by such Subsidiary (unless such consent, approval, license or authorization has already been received); provided that there shall be no obligation to obtain such consent, (e) any Subsidiary with respect to which, the Administrative Agent and the Borrower agree that the cost or other consequences (including any adverse tax, regulatory or accounting consequences) of guaranteeing the Obligations shall be excessive in view of the benefits to be obtained by the Secured Parties therefrom, (f) any permitted special purpose entity, including any receivables entity, any securitization subsidiary and any captive insurance subsidiary, in each case, identified by the Borrower to the Administrative Agent in writing, (g) any Unrestricted Subsidiary, and (h) any non-Wholly-Owned Subsidiary that is a Restricted Subsidiary. Notwithstanding the foregoing, any Excluded Subsidiary may be designated by the Borrower as a Guarantor under this Agreement, in which case (including in case of Section 5.8(2)) upon such Subsidiary executing and delivering a counterpart of the Guaranty Agreement and the Pledge and Security Agreement, such Excluded Subsidiary shall cease to be an Excluded Subsidiary for the purposes of this Agreement and the other Loan Documents until such time, if any, as it becomes an Excluded Subsidiary thereafter in accordance with the terms hereof.

"Excluded Swap Obligation": with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof). If a Swap Obligation arises under a Master Agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

"Excluded Taxes": with respect to the Administrative Agent or any Lender (i) Taxes imposed on or measured by it's overall net income (however denominated), gross receipts Taxes (imposed in lieu of net income Taxes) and franchise Taxes (imposed in lieu of net income Taxes) imposed on the Administrative Agent or any Lender as a result of such Administrative Agent or Lender (A) being organized or having its principal office in the applicable taxing jurisdiction, or in the case of any Lender, having its applicable lending office in such jurisdiction, or (B) having any other present or former connection with the applicable taxing jurisdiction (other than any such connection arising solely from the Administrative Agent or such Lender having executed, delivered, become a party to, or performed its obligations or received a payment under, or enforced, and/or engaged in any activities contemplated with respect to this Agreement or any other Loan Document); (ii) any Taxes in the nature of the branch profits tax within the meaning of Section 884 of the Code imposed by any jurisdiction described in clause (i) above; (iii) other than in the case of an assignee pursuant to a request by the Borrower under Section 2.26, any U.S. federal withholding tax (A) except to the extent such withholding tax results from a change in a Requirement of Law after the recipient became a party hereto or (B) except to the extent that such recipient's assignor (if any) was entitled immediately prior to such assignment to receive additional amounts from any Loan Party with respect to such withholding tax pursuant to this Section 2.19(a); (iv) any withholding tax that is attributable to a Lender's failure to comply with Section 2.19(e); and (v) any United States federal withholding Taxes imposed pursuant to FATCA.

"Existing Credit Agreement": this Agreement as in effect immediately prior to the Effective Date.

"Extended Term Loans": the meaning set forth in Section 2.27(a).

"Extending Term Lender": the meaning set forth in Section 2.27(a).

"Extension": the meaning set forth in Section 2.27(a).

"Extension Offer": the meaning set forth in Section 2.27(a).

"Facilities": the Effective Date Facilities and any other power or energy generating facilities acquired or constructed after the Effective Date described in the definition of "Permitted Business."

"Fair Market Value": the value that would be paid by a willing buyer to a willing seller in a transaction, determined in good faith by a Responsible Officer or Board of Directors of the Borrower (unless otherwise provided in this Agreement).

"FATCA": Sections 1471 through 1474 of the Code as in existence on the date hereof (and any amended or successor version that is substantively comparable and not materially more onerous to comply with), any regulations thereunder or published administrative guidance implementing such Sections and any agreements entered into pursuant to current Section 1471(b) of the Code (or any amended or successor version described above) and any fiscal or regulatory legislation, rules or official administrative pronouncements adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

"Federal Funds Effective Rate": for any day, the greater of (a) the rate calculated by the Federal Reserve Bank of New York based on such day's Federal funds transactions by depositary institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the Federal funds effective rate and (b) 0%.

"Federal Reserve Board": the Board of Governors of the Federal Reserve System of the United States.

"Fees": collectively, (i) the fees pursuant to that certain amended and restated fee letter dated July 25, 2023 among the Borrower, the Joint Lead Arrangers and Co-Managers, (ii) the fees referred to in Section 2.22 or 9.5 and (iii) any other fees payable by any Loan Party pursuant to this Agreement or any other Loan Document.

"Financial Officer": the chief financial officer, principal accounting officer, controller or treasurer of the Borrower.

"Fixed Amounts": as such term is defined in Section 1.4.

"Fixed Charge Coverage Ratio": with respect to any specified Person for any period, the ratio of the Consolidated Cash Flow of such Person and its Restricted Subsidiaries for such period to the Fixed Charges of such Person for such period.

In the event that any specified Person or any of its Restricted Subsidiaries incurs, assumes, guarantees, repays, repurchases, redeems, defeases or otherwise discharges any Indebtedness (other than ordinary working capital borrowings) or issues, repurchases or redeems preferred stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio or the Consolidated Senior Secured Leverage Ratio is being calculated and on or prior to the date on which the event for which the calculation of the Fixed Charge Coverage Ratio or the Consolidated Senior Secured Leverage Ratio is made (the "Calculation Date"), then the Fixed Charge Coverage Ratio and/or the Consolidated Senior Secured Leverage Ratio will be calculated giving *pro forma* effect to such incurrence, assumption, guarantee, repayment, repurchase, redemption, defeasance or other discharge of Indebtedness, or such issuance, repurchase or redemption of preferred stock, and the use of the proceeds therefrom (subject to clause (6) below) as if the same had occurred (i) in the case of the Fixed Charge Coverage Ratio, at the beginning of the applicable four-quarter reference period and (ii) in the case of the Consolidated Senior Secured Leverage Ratio, on the last day of the applicable four-quarter reference period.

In addition, for purposes of calculating the Fixed Charge Coverage Ratio and the Consolidated Senior Secured Leverage Ratio:

(1) acquisitions that have been made by the specified Person or any of its Restricted Subsidiaries, including through mergers or consolidations, or any Person or any of its Restricted Subsidiaries acquired by the specified Person or any of its Restricted Subsidiaries, and including any related financing transactions and including increases in ownership of Restricted Subsidiaries, during the four-quarter reference period or subsequent to such reference period and on or prior to the Calculation Date will be given *pro forma* effect (including, but not limited to, with respect to (i) any intercompany tolling arrangements which shall be on terms reflecting the market conditions at such time put into place and (ii) any expense and cost reduction that (x) has occurred or (y) in the reasonable judgment of a Financial Officer of the Borrower, is reasonably expected to occur within 24 months from the date of any such acquisition, in each case, as if they had occurred on the first day of the four-quarter reference period and Consolidated Cash Flow for such reference period will be calculated on a *pro forma* basis);

(2) the Consolidated Cash Flow attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses (and ownership interests therein) disposed of on or prior to the Calculation Date, will be excluded;

(3) the Fixed Charges attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded, but only to the extent that the obligations giving rise to such Fixed Charges will not be obligations of the specified Person or any of its Restricted Subsidiaries following the Calculation Date;

(4) if any Indebtedness that is being incurred on the Calculation Date bears a floating rate of interest, the interest expense on such Indebtedness will be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the entire period (taking into account any obligations under Swap Agreements or Cash Management Obligations applicable to such Indebtedness, but only for such period of time as equals the then remaining term of such obligations under Swap Agreements or Cash Management Obligations as of the Calculation Date); and

(5) adjustments consistent with Regulation S-X under the Securities Act of 1933, as amended, may, at the election of the Borrower, be given *pro forma* effect; and

(6) the identifiable cash proceeds of any Indebtedness being incurred substantially simultaneously therewith or as part of the same transaction or series of related transactions shall be disregarded for purposes of netting cash to calculate the Consolidated Senior Secured Leverage Ratio.

"Fixed Charges": with respect to any specified Person for any period, the sum, without duplication, of:

(1) Consolidated Interest Expense; *plus*

(2) any interest paid in cash on Indebtedness of a Person other than the Borrower and its Restricted Subsidiaries that is Guaranteed by such Person or one of its Restricted Subsidiaries or secured by a Lien on assets of such Person or one of its Restricted Subsidiaries, to the extent such Guarantee or Lien is called upon; *plus*

(3) the product of (A) all dividends, paid in cash, on any series of preferred stock of such Person or any of its Restricted Subsidiaries, other than dividends on Equity Interests payable solely in Equity Interests of the Borrower (other than Disqualified Capital Stock) or to the Borrower or a Restricted Subsidiary of the Borrower, times (B) a fraction, the numerator of which is one and the denominator of which is one minus the then current combined federal, state and local statutory income tax rate of such Person, expressed as a decimal, in each case, on a consolidated basis and in accordance with GAAP.

"Flood Insurance Laws": collectively, (i) the National Flood Insurance Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (ii) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto, (iii) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto, and (iv) all other applicable Laws relating to policies and procedures that address requirements placed on federally regulated lenders relating to flood matters, in each case, as now or hereafter in effect or any successor statute thereto.

"Floor": a rate of interest equal to 0.00% per annum.

"Foreign Subsidiary": any Subsidiary of the Borrower organized under the laws of any jurisdiction outside the United States, any state thereof or the District of Columbia.

"Funding Office": the office of the Administrative Agent specified in Section 9.2(a) or such other office as may be specified from time to time by the Administrative Agent as its funding office by written notice to the Borrower and the Lenders.

"GAAP": generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession.

"Governmental Authority": the government of the United States 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).

"Grantors": any Person that pledges any Collateral under the Security Documents to secure any Obligation.

"Guarantee": a guarantee other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner including, without limitation, by way of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Indebtedness (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take or pay or to maintain financial statement conditions or otherwise).

"Guarantor": each of (1) Jack A. Fusco Energy Center LLC (f/k/a Brazos Valley Energy LLC), Calpine Bosque Energy Center, LLC, Guadalupe Power Partners, LP, Magic Valley Energy Center, LLC, Calpine Northeast Development, LLC, Calpine Guadalupe GP, LLC, Calpine Guadalupe LP, LLC, Calpine Fore River Energy Center, LLC and Westbrook Energy Center, LLC and (2) any other Restricted Subsidiary of the Borrower that executes a counterpart of the Guaranty Agreement after the Original Closing Date in accordance with the provisions of this Agreement, and their respective successors and assigns, in each case, until the Guarantee of such Person has been released in accordance with the provisions of this Agreement or the Guaranty Agreement. As of the Effective Date, the Guarantors are Jack A. Fusco Energy Center LLC (f/k/a Brazos Valley Energy LLC), Calpine Bosque Energy Center, LLC, Guadalupe Power Partners, LP, Magic Valley Energy Center, LLC, Calpine Northeast Development, LLC, Calpine Guadalupe GP, LLC, Calpine Guadalupe LP, LLC, Calpine Fore River Energy Center, LLC and Westbrook Energy Center, LLC.

"Guaranty Agreement": that certain Amended and Restated Guaranty Agreement, dated as of the Effective Date (as amended, amended and restated, supplemented or otherwise modified from time to time), by and among the Borrower, the Guarantors, the Administrative Agent and the Collateral Agent.

"Guaranty Reimbursement Obligations": all obligations of the Loan Parties under Section 1 of the Guaranty Agreement.

"Hedge Bank": any Person in its capacity as a counterparty to a Swap Contract permitted under this Agreement that (a) is an Agent or a Lender or an Affiliate of an Agent or a Lender, (b) at the date of entering into such Swap Agreement was an Agent or a Lender or an Affiliate of an Agent or a Lender or (c) (i) is designated by the Borrower as a "Hedge Bank" by written notice to the Administrative Agent and (ii) such Person executes and delivers to the Administrative Agent a letter agreement in form and substance acceptable to the Administrative Agent pursuant to which such person (i) appoints the Collateral Agent as its agent under the applicable Loan Documents and (ii) agrees to be bound by the provisions of Sections 8.3, 8.7, 9.11 and 9.12 as if it were a Lender.

"Immaterial Subsidiary": any Domestic Subsidiary that is not a Material Domestic Subsidiary.

"Increased Amount Date": the meaning set forth in Section 2.25(a).

"Incremental Commitment": the meaning set forth in Section 2.25(a).

"Incremental Commitment Supplement": the meaning set forth in Section 2.25(a).

"Incremental Lender": the meaning set forth in Section 2.25(a).

"Incremental Term Loans": the meaning set forth in Section 2.25(a).

"Incremental Term Percentage": as to any Lender at any time, the percentage which such Lender's Incremental Commitment then constitutes of the aggregate of the Incremental Commitments in respect of any series of Incremental Term Loans (or, at any time after the making of such Incremental Term Loans, the percentage which the aggregate principal amount of such Lender's series of Incremental Term Loans then outstanding constitutes of the aggregate principal amount of all Incremental Term Loans of such series then outstanding).

"Incurrence-Based Amounts": as such term is defined in Section 1.4.

"Indebtedness": with respect to any specified Person, any indebtedness of such Person (excluding accrued expenses or trade payables), whether or not contingent (without duplication):

(1) in respect of borrowed money;

(2) evidenced by bonds, notes, debentures or similar instruments or letters of credit or reimbursement agreements in respect thereof;

(3) in respect of bankers' acceptances;

(4) representing Capital Lease Obligations or Attributable Debt in respect of sale and leaseback transactions;

(5) representing the balance deferred and unpaid of the purchase price of any property or services due more than six months after such property is acquired or such services are completed; or

(6) representing any obligations under Swap Agreements (except as expressly set forth below),

if and to the extent any of the preceding items (other than letters of credit, Attributable Debt or obligations under Swap Agreements) would appear as a liability upon a balance sheet of the specified Person prepared in accordance with GAAP. In addition, the term "Indebtedness" includes all Indebtedness of others secured by a Lien on any asset of the specified Person (whether or not such Indebtedness is assumed by the specified Person) and, to the extent not otherwise included, the Guarantee by the specified Person of any Indebtedness of any other Person.

The amount of any Indebtedness outstanding as of any date will be:

(1) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue discount;

(2) the principal amount of the Indebtedness, in the case of any other Indebtedness; and

(3) in respect of Indebtedness of other Persons secured by a Lien on the assets of the specified Person, the lesser of:

(A) the Fair Market Value of such asset at such date of determination, and

(B) the amount of such Indebtedness of such other Persons.

Notwithstanding the foregoing, "Indebtedness" shall not include:

(1) any obligations under Swap Agreements or Cash Management Obligations that are entered into for bona fide hedging or cash management purposes of the Borrower or its Restricted Subsidiaries (as determined in good faith by the Board of Directors or senior management of the Borrower, whether or not accounted for as a hedge in accordance with GAAP);

(2) in-kind obligations relating to energy balancing positions arising in the ordinary course of business and consistent with past practice;

(3) contingent obligations (including guarantees) incurred in the ordinary course of business or consistent with past practice; and

(4) post-closing purchase price adjustments and any earn-outs or similar obligations.

"indemnified liabilities": the meaning set forth in Section 9.5.

"Indemnitee": the meaning set forth in Section 9.5.

"Information Memorandum": that certain Presentation to Lenders related to this Agreement dated July 17, 2023.

"Insolvency": with respect to any Multiemployer Plan, the condition that such Multiemployer Plan is insolvent within the meaning of Section 4245 of ERISA.

"Insolvent": pertaining to a condition of Insolvency.

"Initial Term B Loans": the meaning set forth in Section 2.1(a).

"Intellectual Property": the collective reference to all rights, priorities and privileges relating to intellectual property of any Loan Party, whether arising under United States, multinational or foreign laws or otherwise, including copyrights, copyright licenses, patents, patent licenses, trademarks, trademark licenses, technology, know-how and processes, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

"Interest Payment Date": (a) as to any Base Rate Loan, the last Business Day of each March, June, September and December to occur while such Base Rate Loan is outstanding and the final maturity date of such Base Rate Loan, (b) as to any Term SOFR Loan having an Interest Period of three months or less, the last day of such Interest Period, (c) as to any Term SOFR Loan having an Interest Period longer than three months, each day that is three months, or a whole multiple thereof, after the first day of such Interest Period and the last day of such Interest Period and (d) as to any Term SOFR Loan, the date of any repayment or prepayment made in respect thereof.

"Interest Period": as to any Term SOFR Loan, (a) with respect to all Term Loans borrowed or converted on or after the Effective Date, initially, the period commencing on the borrowing or conversion date, as the case may be, with respect to such Term SOFR Loan and ending one, three or six months (or, if agreed to by all relevant Lenders, twelve months) thereafter, as selected by the Borrower in its notice of borrowing or notice of conversion, as the case may be, given with respect thereto; and (b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Term SOFR Loan and ending one, three or six months (or, if agreed to by all relevant Lenders, twelve months) thereafter, as selected by the Borrower by irrevocable notice to the Administrative Agent not later than 10:00 A.M., New York City time, on the date that is three (3) Business Days prior to the last day of the then current Interest Period with respect thereto; provided that, all of the foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) the Borrower may not select an Interest Period that would extend beyond the Termination Date; and

(iii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month; and

(iv) no tenor that has been removed from this definition pursuant to Section 2.11(e) shall be available for specification in any notice of borrowing or notice of conversion/continuation.

"Investment Grade Rating": a rating equal to or higher than Baa3 (or the equivalent) by Moody's or BBB- (or the equivalent) by S&P.

"Investments": with respect to any Person, all direct or indirect investments by such Person in other Persons (including Affiliates) in the forms of loans (including Guarantees or similar obligations), advances or capital contributions (excluding payroll, commission, travel and similar advances to officers and employees made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP. "Investment" shall exclude extensions of trade credit by the Borrower and its Restricted Subsidiaries in the ordinary course of business. If the Borrower or any Restricted Subsidiary of the Borrower sells or otherwise disposes of any Equity Interests of any direct or indirect Restricted Subsidiary of the Borrower such that, after giving effect to any such sale or disposition, such Person is no longer a Restricted Subsidiary of the Borrower, the Borrower will be deemed to have made an Investment on the date of any such sale or disposition equal to the Fair Market Value of the Borrower's Investments in such Restricted Subsidiary that were not sold or disposed of. Except as otherwise provided in this Agreement, the amount of an Investment shall be its Fair Market Value at the time the Investment is made and without giving effect to subsequent changes in value.

"Joint Bookrunners": collectively, Citibank, N.A., BMO Capital Markets Corp., Barclays Bank PLC, BNP Paribas Securities Corp., Mizuho Bank, Ltd., MUFG Bank, Ltd., Royal Bank of Canada, Sumitomo Mitsui Banking Corporation, ING Capital LLC, Morgan Stanley Senior Funding, Inc. and BofA Securities, Inc.

"Joint Lead Arrangers": collectively, Citibank, N.A., BMO Capital Markets Corp., Barclays Bank PLC, BNP Paribas Securities Corp., Mizuho Bank, Ltd., MUFG Bank, Ltd., Royal Bank of Canada, Sumitomo Mitsui Banking Corporation, ING Capital LLC, Morgan Stanley Senior Funding, Inc. and BofA Securities, Inc.

"Legal Holiday": a Saturday, a Sunday or a day on which banking institutions in the City of New York or at a place of payment are authorized by law, regulation or executive order to remain closed. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday.

"Lenders": the meaning set forth in the preamble to this Agreement (including, for the avoidance of doubt, the Refinancing Term Loan Lenders), including any Person that shall have become a party to this Agreement as a Lender pursuant to an Assignment and Acceptance or pursuant to Section 2.25, other than any Person that ceases to be a party hereto as a Lender pursuant to an Assignment and Acceptance or pursuant to Section 2.26.

"Lien": with respect to any asset, any mortgage, lien, pledge, charge, security interest 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 and any lease that constitutes a security interest.

"Loan": any Term Loan.

"Loan Documents": this Agreement, Amendment No. 1, Amendment No. 2, Amendment No. 3, any Agency Assignment Agreement, the Guaranty Agreement, the Security Documents, each Note, each Incremental Commitment Supplement and any amendment, waiver, supplement or other modification to any of the foregoing.

"Loan Parties": the Borrower and the Guarantors.

"Material Adverse Effect": a material adverse effect on (a) the business, financial condition, results of operations or properties of the Borrower and its Subsidiaries taken as a whole, (b) the ability of the Loan Parties, taken as a whole, to perform their payment obligations under the Loan Documents, (c) the validity or enforceability of the Loan Documents taken as a whole or (d) the material rights and remedies available to, or conferred upon, the Lenders, the Administrative Agent and the Collateral Agent under the Loan Documents, taken as a whole (it being understood that any event or condition described in Section 7.1(f) or (g) that would not give rise to a Default or an Event of Default thereunder shall not constitute a Material Adverse Effect under preceding clause (c) or (d)).

"Material Domestic Subsidiary": any Domestic Subsidiary having Total Assets that constitute more than 5% of Total Assets.

"Materials of Environmental Concern": any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products, or asbestos, or polychlorinated biphenyls or any other chemicals, substances, materials, wastes, pollutants or contaminants in any form, regulated under any Environmental Law.

"Master Agreement": the meaning set forth in the definition of "Swap Agreement."

"Maximum Incremental Facilities Amount": at any date of determination, (a) the sum of (i) $50,000,000, (ii) an additional aggregate principal amount equal to the greater of (x) $100.0 million and (y) 5.0% of Total Assets, (iii) the aggregate principal amount of all voluntary prepayments or purchases of Term Loans (at the price paid in the case of such purchases at below par) made after the Effective Date (other than to the extent funded with long-term Indebtedness (other than revolving Indebtedness)) and (iv) an additional aggregate principal amount of Indebtedness if (in the case of this clause (iv) only), (x) the Fixed Charge Coverage Ratio for the Borrower's most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred would have been at least 2.0 to 1.0, determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if the additional Indebtedness had been incurred, at the beginning of such four-quarter period and (y) after giving effect to the incurrence of such Indebtedness and the application of the proceeds from such Indebtedness, the Consolidated Senior Secured Leverage Ratio of the Borrower was not greater than 4:75:1.00 (it being understood that the Borrower shall be deemed to have used amounts under clause (iv) to the maximum extent permitted thereunder prior to utilization of amounts under any of clauses (i), (ii) or (iii) and any such amounts incurred under any of such clauses (i), (ii) or (iii) shall not be included in any calculation of amounts incurred under such clause (iv), provided that the identifiable cash proceeds of any Indebtedness being incurred substantially simultaneously therewith or as part of the same transaction or series of related transactions shall be disregarded for purposes of netting cash to calculate the Consolidated Senior Secured Leverage Ratio), minus (b) the aggregate principal amount of Indebtedness theretofore issued or incurred (including any unused commitments obtained) pursuant to clause (i) or (xvii) of the definition of Permitted Debt and outstanding on such date.

"Minimum Extension Condition": the meaning set forth in Section 2.27(b).

"Moody's": Moody's Investors Service, Inc. or its successor.

"Mortgaged Property": collectively, the owned real properties of the Borrower or applicable Guarantor described in Schedule 1.1B and designated as Mortgaged Property thereon, as to which the Collateral Agent for the benefit of the Secured Parties is or shall be granted a Lien pursuant to the Mortgages and the other owned real properties of the Borrower or any Guarantor, as to which the Collateral Agent for the benefit of the Secured Parties is or shall be granted a Lien pursuant to the Mortgages or this Agreement.

"Mortgages": collectively, each of the mortgages and deeds of trust made by any Loan Party in favor of, or for the benefit of, the Collateral Agent for the benefit of the Secured Parties referred to therein, as each may be amended, restated, supplemented or otherwise modified from time to time.

"Multiemployer Plan": a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which the Borrower or any Commonly Controlled Entity makes or is obligated to make contributions or during the preceding five plan years, has made or been obligated to make contributions.

"Net Income": with respect to any specified Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends, excluding, however:

(1) any gain (or loss), together with any related provision for taxes on such gain (or loss), realized in connection with: (A) any Asset Sale; or (B) the disposition of any securities by such Person or any of its Restricted Subsidiaries or the extinguishment of any Indebtedness of such Person or any of its Restricted Subsidiaries; and

(2) any extraordinary gain (or loss), together with any related provision for taxes on such extraordinary gain (or loss).

"Net Proceeds": the aggregate cash proceeds received by the Borrower or any of its Restricted Subsidiaries in respect of any Asset Sale (including, without limitation, any cash received upon the sale or other disposition of any non-cash consideration received in any Asset Sale), net of (i) the principal amount, premium or penalty, if any, interest and other amounts on Indebtedness that is secured by the asset subject to such Asset Sale, (ii) the fees, expenses and costs relating to such Asset Sale, including, without limitation, legal, accounting and investment banking fees, costs and expenses, and sales commissions, and any relocation expenses incurred as a result of the Asset Sale, (iii) taxes paid or payable as a result of the Asset Sale, in each case, after taking into account any available tax credits or deductions and any tax sharing arrangements, and (iv) amounts reserved for adjustment in respect of (x) the sale price of such asset or assets established in accordance with GAAP and (y) any liabilities associated with such asset or assets and retained by the Borrower or any Restricted Subsidiaries after such Asset Sale.

"Non-Excluded Taxes": all Taxes, other than Excluded Taxes.

"Non-Recourse": with respect to any specified Person and the Indebtedness of such Person:

(1) neither the Borrower nor any of its Restricted Subsidiaries (A) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness) for the Indebtedness of such Person other than a pledge of the Equity Interests of such Person or Indebtedness otherwise permitted hereunder, (B) is directly or indirectly liable as a guarantor or otherwise of the Indebtedness of such Person, or (C) constitutes the lender with respect to the Indebtedness of such Person; and

(2) in the case of an Unrestricted Subsidiary, no default on the Indebtedness of such Person (including any rights that the holders of the Indebtedness may have to take enforcement action against an Unrestricted Subsidiary) would permit upon notice, lapse of time or both any holder of Indebtedness of the Borrower or any of its Restricted Subsidiaries to declare a default on such Indebtedness of the Borrower or any of its Restricted Subsidiaries or cause the payment of such Indebtedness of the Borrower nor any of its Restricted Subsidiaries to be accelerated or payable prior to its stated maturity.

"Notes": the collective reference to any promissory note evidencing Term B Loans or any Incremental Term Loans.

"obligations": any principal, interest, penalties, fees, expenses, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.

"Obligations": the unpaid principal of and interest on the Term Loans and all other obligations and liabilities of the Borrower to the Administrative Agent, to the Collateral Agent, to any Arrangers or to any Lender, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, any other Loan Document or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including all fees, charges and disbursements of counsel to the Administrative Agent, to the Collateral Agent, to any Arranger or to any Lender, including Erroneous Payment Subrogation Rights, that are required to be paid by the Borrower pursuant hereto) or otherwise (including interest accruing after the maturity of the Term Loans and interest, fees and other amounts accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower or a Guarantor, whether or not a claim for post filing or post-petition interest, fees or other amounts is allowed in such proceeding).

"Offer Document": the meaning set forth in Exhibit I.

"Original Closing Date": December 15, 2017.

"Other Taxes": all present or future stamp or documentary Taxes or any other excise, property or similar Taxes arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

"Parent": any direct or indirect parent company of the Borrower.

"Parity Secured Debt":

(1) Indebtedness incurred pursuant to clause (i) of the definition of "Permitted Debt";

(2) Indebtedness incurred pursuant to clause (xv) of the definition of Permitted Debt; provided that after giving effect to such incurrence and the application of the proceeds from, and the creation of Liens to secure, such Indebtedness, the Consolidated Senior Secured Leverage Ratio of the Borrower was not greater than 4.75 to 1.0;

(3) Indebtedness incurred pursuant to clause (xvi) of the definition of Permitted Debt;

(4) Indebtedness incurred pursuant to clause (xvii) of the definition of Permitted Debt;

(5) the Obligations under this Agreement, including pursuant to Section 2.25;

(6) Permitted Refinancing Indebtedness incurred by the Borrower or a Guarantor;

(7) Permitted Refinancing Indebtedness, the net proceeds of which are used to refinance Parity Secured Debt; and

(8) any other Indebtedness incurred by the Borrower or any Guarantor if (A) when it was incurred, the incurrence of such Indebtedness by the Borrower or such Guarantor was permitted by this Agreement and (B) on the day such Indebtedness was incurred, after giving effect to such incurrence and the application of the proceeds from, and the creation of Liens to secure, such Indebtedness, the Consolidated Senior Secured Leverage Ratio of the Borrower was not greater than 4.75 to 1.0;

provided, in each case (except in the case of the Term Loans), that the Secured Debt Representative on behalf of the holders of any such Indebtedness shall have become party to the Parity Secured Intercreditor Agreement.

"Parity Secured Intercreditor Agreement": the intercreditor agreement in form and substance as may be satisfactory to the Administrative Agent and the Borrower.

"Parity Secured Obligations": collectively, the Parity Secured Debt and all obligations in respect of Parity Secured Debt.

"Participant": the meaning set forth in Section 9.6(c).

"Participant Register": the meaning set forth in Section 9.6(c)(ii).

"Partnership Interest Pledge Agreement": that certain non-recourse Partnership Interest Pledge Agreement, dated as of the Original Closing Date, among the Direct Parents and the Collateral Agent.

"Patriot Act": the USA Patriot Act, Title III of Pub. L. 107-56, signed into law on October 26, 2001, as amended.

"Payment Default": the meaning set forth in Section 7.1(e)(i)(A).

"Payment Recipient": the meaning set forth in Section 9.15(a).

"PBGC": the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA (or any successor).

"Perfection Certificate": the meaning set forth in the Pledge and Security Agreement.

"Periodic Term SOFR Determination Day": the meaning set forth in the definition of "Term SOFR".

"Permitted Business": the ownership, construction, operation and maintenance of the Effective Date Facilities and any other power and energy generating facilities located in the United States, together with any related assets or facilities, including gas pipelines supplying natural gas to such generating facilities, electric transmission lines carrying energy generated from such generating facilities, and any related gas or electric interconnection facilities, as well as the engagement in commodity transactions in connection with such business operations, or any business that is similar, reasonably related, incidental, complimentary or ancillary to any of the foregoing.

"Permitted Counterparty Lien": a Lien in favor of a counterparty under a PPA; provided that the following conditions are satisfied:

(1) the counterparty is not an Affiliate of the Borrower;

(2) the Lien does not secure any Indebtedness and (a) is granted solely to secure the performance obligations of the Borrower or the applicable Restricted Subsidiary under the PPA and/or any obligation of the Borrower or the applicable Restricted Subsidiary to make a termination payment under the PPA upon the occurrence of the event described in clause (3)(c)(i) below or the termination by the counterparty upon the occurrence of any of the events described in clause (3)(c)(ii) below, or (b) creates rights designed to enable the counterparty to assume operational control of the relevant Facility or Facilities (*e.g.*, step-in rights) or otherwise continue performance of the Borrower's or the applicable Restricted Subsidiary's obligations under the PPA;

(3) the counterparty can exercise its rights with respect to the Lien only (a) for so long as the counterparty remains current with respect to all of its payment obligations under the PPA and is not otherwise in a continuing default under the PPA, (b) if the counterparty continues to acknowledge the existence of the Liens securing the Parity Secured Obligations (unless and until Liens securing the Parity Secured Obligations are eliminated in connection with a foreclosure of the Permitted Counterparty Liens as contemplated by clause (4) of this definition) and (c) if either (i) the Borrower or the applicable Restricted Subsidiary has terminated, rejected or repudiated the PPA (including, without limitation, any rejection or similar act by or on behalf of the Borrower or the applicable Restricted Subsidiary in connection with any bankruptcy proceeding) or (ii) the Borrower or the applicable Restricted Subsidiary has intentionally breached its obligations under the PPA; provided that the following actions will be considered an intentional breach by the Borrower or the applicable Restricted Subsidiary under the PPA:

(A) the Borrower or the applicable Restricted Subsidiary provides or delivers capacity or energy to a third party if the Borrower or the applicable Restricted Subsidiary is required under the PPA to provide or deliver such capacity or energy to the counterparty;

(B) the Borrower or the applicable Restricted Subsidiary fails to operate or attempt to operate one or more of the relevant Facilities at a time when the Borrower or the applicable Restricted Subsidiary was required under the PPA to operate or attempt to operate such Facility or Facilities and such operation or attempted operation is not prevented by force majeure, forced outage or other events or circumstances outside the reasonable control of the Person responsible therefor;

(C) any failure by the Borrower or the applicable Restricted Subsidiary to comply with any provisions of the PPA designed to enable the counterparty to assume operational control of the relevant Facility or Facilities (*e.g.*, step-in rights) or otherwise take actions necessary to continue performance of the Borrower's or the applicable Restricted Subsidiary's obligations under the PPA, in each case to the extent the Borrower or the applicable Restricted Subsidiary is then capable of complying with such provisions; or

(D) any failure by the Borrower or the applicable Restricted Subsidiary to pay to the counterparty any amount due and payable in accordance with the terms and conditions of the PPA; and

(4) the counterparty's exercise of its rights with respect to the Lien is limited to (a) the taking of actions pursuant to any provisions of the PPA designed to enable the counterparty to assume operational control of the relevant Facility or Facilities (*e.g.*, step-in rights) or otherwise necessary to continue performance of the Borrower's or the applicable Restricted Subsidiary's obligations under the PPA or (b) the recovery of any termination payment due under the PPA upon the occurrence of the event described in clause (3)(c)(i) above or the termination by the counterparty upon the occurrence of any of the events described in clause (3)(c)(ii) above.

"Permitted Debt": the meaning set forth in Section 6.1(b).

"Permitted Investments":

(1) any Investment in the Borrower or in a Restricted Subsidiary of the Borrower;

(2) any Investment in cash and Cash Equivalents;

(3) any Investment by the Borrower or any Restricted Subsidiary of the Borrower in a Person, if as a result of such Investment:

(A) such Person becomes a Restricted Subsidiary of the Borrower; or

(B) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Borrower or a Restricted Subsidiary of the Borrower;

(4) any Investment made as a result of the receipt of non-cash consideration from an Asset Sale that was made pursuant to and in compliance with Section 6.8 or as a result of a sale or other disposition of any asset that does not constitute an Asset Sale;

(5) Investments made as a result of the sale of Equity Interests of any Person that is a Subsidiary of the Borrower such that, after giving effect to any such sale, such Person is no longer a Subsidiary of the Borrower and, if the sale of such Equity Interests constitutes an Asset Sale, the Net Proceeds received from such Asset Sale are applied and/or reinvested as set forth in Section 6.8;

(6) any acquisition of assets or Equity Interests solely in exchange for the issuance of Equity Interests of the Borrower (other than Disqualified Capital Stock) or any Parent;

(7) any Investments received in compromise or resolution of (A) obligations of trade creditors or customers that were incurred in the ordinary course of business of the Borrower or any of its Restricted Subsidiaries, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer; or (B) litigation, arbitration or other disputes with Persons who are not Affiliates;

(8) Investments represented by obligations under Swap Agreements or Cash Management Obligations;

(9) loans or advances to officers, directors or employees made in the ordinary course of business up to an aggregate principal amount not to exceed $10.0 million at any one time;

(10) any Investment acquired by the Borrower or any of its Restricted Subsidiaries on account of any claim against, or interest in, any other Person (A) acquired in good faith in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of such other Person or (B) as a result of a bona fide foreclosure by the Borrower or any of its Restricted Subsidiaries with respect to any claim against any other Person;

(11) repurchases of the Term Loans pursuant to Section 2.28 or Section 9.6(f), *pari passu* Indebtedness (whether in right of payment or security) or junior lien Indebtedness;

(12) receivables owing to the Borrower or a Restricted Subsidiary of the Borrower, if 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 Borrower or such Restricted Subsidiary deems reasonable under the circumstances;

(13) any Investments in the form of, or pursuant to, working interests, royalty interests, mineral leases, processing agreements, farm-out agreements, contracts for the sale, transportation or exchange of oil and natural gas, unitization agreements, pooling agreements, area of mutual interest agreements, production sharing agreements or other similar or customary agreements, transactions, properties, interests or arrangements, and Investments and expenditures in connection therewith or pursuant thereto, in each case, made or entered into in the ordinary course of business;

(14) [Reserved];

(15) other Investments so long as, at the time thereof, the aggregate Fair Market Value (measured on the date each such Investment was made and without giving effect to subsequent changes in value) of such Investments, taken together with all other Investments made pursuant to this clause (15) and outstanding at such time, does not to exceed the greater of (x) $40.0 million and (y) 2.0% of Total Assets; and

(16) Investments existing on the Effective Date.

For purposes of determining compliance with Section 6.9, in the event that a Permitted Investment meets the criteria of more than one of the types of Permitted Investments described in the above clauses, the Borrower, in its sole discretion, may order and classify, and from time to time may reorder and reclassify, such Permitted Investment if it would be permitted at the time of any such reclassification.

"Permitted Liens":

(1) Liens on Collateral securing all Parity Secured Obligations which, if any Parity Secured Debt other than the Obligations under this Agreement are outstanding, shall be subject at all times to the Parity Secured Intercreditor Agreement;

(2) Liens securing an aggregate principal amount of Indebtedness under Credit Facilities not to exceed the greater of (x) amount permitted to be incurred pursuant to Section 6.1(b)(i) and (y) an amount that would not cause the Consolidated Senior Secured Leverage Ratio, after giving effect to such incurrence, to exceed 4.75 to 1.0;

(3) Liens (x) on property of a Person existing at the time such Person is merged with or into or consolidated with the Borrower or any Restricted Subsidiary of the Borrower or (y) on property (including Capital Stock) existing at the time of acquisition of such property by the Borrower or any Restricted Subsidiary of the Borrower; provided that such Liens were in existence prior to the contemplation of such merger or consolidation and do not extend to any assets other than those of the Person merged into or consolidated with the Borrower or the Restricted Subsidiary or the property acquired;

(4) Liens securing Indebtedness (including Capital Lease Obligations) permitted to be incurred pursuant to Section 6.1(b)(iii) covering only the assets acquired with or financed by such Indebtedness plus repairs, improvements, additions and accessions to such assets and proceeds or distributions thereof;

(5) Liens securing obligations under sale leaseback transactions permitted by Section 6.4 covering only the assets subject to such transaction plus repairs, improvements, additions and accessions to such assets and proceeds or distributions thereof;

(6) Liens in favor of the Borrower or any of the Guarantors;

(7) Liens for taxes, assessments or governmental charges or claims that (x) are not yet delinquent or that are being contested in good faith by appropriate proceedings; provided that any reserve or other appropriate provision as is required in conformity with GAAP has been made therefor or (y) are immaterial;

(8) Liens imposed by law, such as carriers', warehousemen's, landlord's and mechanics', materialmen's, repairmen's, landlords' or other similar Liens, in each case, incurred in the ordinary course of business, securing obligations that are not overdue by more than 90 days or that are being contested in good faith by appropriate proceedings and in respect of which, if applicable, the Borrower or applicable Restricted Subsidiary shall have set aside on its books reserves in accordance with GAAP;

(9) survey exceptions, encumbrances, easements or reservations, including those for licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines, mineral reservations and rights and leases, zoning restrictions and other restrictions (including defects or irregularities in title and similar encumbrances that are not material to the operations of the Borrower and its Restricted Subsidiaries taken as a whole) as to the use of real property that were not incurred in connection with Indebtedness and that (A) exist on the Effective Date and are recorded on such date, (B) are permitted under the terms of the Loan Documents or (C) do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(10) Liens to secure any Permitted Refinancing Indebtedness permitted to be incurred under this Agreement if such Permitted Refinancing Indebtedness is incurred by one or more of the same obligors on the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded; provided, however, that:

(A) the new Lien shall be limited to all or part of the same categories of property and assets that secured or, under the written agreements pursuant to which the original Lien arose, could secure the original Lien (plus repairs, improvements, additions and accessions to such property or proceeds or distributions thereof); and

(B) the Indebtedness secured by the new Lien is not increased to any amount greater than the sum of (i) the outstanding principal amount or, if greater, committed amount of the Permitted Refinancing Indebtedness, (ii) an amount necessary to pay any interest, fees and expenses, including premiums, related to such refinancings, refunding, extension, renewal or replacement and (iii) any protective advances with respect to the property and assets that secure such Permitted Refinancing Indebtedness;

(11) financing statements (including precautionary statements) filed in connection with a Capital Lease Obligation or an operating lease, in each case, not prohibited hereunder; provided that no such financing statement extends to, covers or refers to as collateral any property or assets of the Borrower or a Restricted Subsidiary of the Borrower, other than the property or assets which are subject to such Capital Lease Obligation or such operating lease;

(12) Liens arising out of or in connection with (x) any judgment that does not constitute an Event of Default or (y) in connection with any litigation or other legal proceeding as to which an appeal to contest or review is timely commenced in good faith by appropriate proceedings and as to which adequate reserves have been established in accordance with GAAP; provided that (in the case of this clause (y)) any right to levy, seizure, attachment, sequestration, foreclosure or garnishment of any property and assets of the Borrower or a Restricted Subsidiary thereof arising out of or in connection with any such Lien has been and continues to be enjoined or effectively stayed;

(13) inchoate statutory Liens arising under ERISA;

(14) Liens (A) on cash and short-term investments (i) deposited by the Borrower or any of its Restricted Subsidiaries in margin accounts with or on behalf of futures contract brokers or paid over to other counterparties or (ii) pledged or deposited as collateral to a contract counterparty or issuer of surety bonds or letters of credit by the Borrower or any of its Restricted Subsidiaries, in the case of clause (i) or (ii), to secure obligations with respect to (a) contracts for commercial and trading activities in the ordinary course of business and contracts (including without limitation, physical delivery, option (whether cash or financial), exchange, swap and futures contracts) for the purchase, transmission, distribution, sale, lease or hedge of any energy-related commodity or service or (b) interest rate, commodity price, or currency rate management contracts or derivatives and (B) encumbering assets other than accounts or receivables arising out of contracts or agreements relating to the generation, distribution or transmission of energy; provided that all such agreements or contracts are entered into in the ordinary course of business;

(15) Liens arising by virtue of any statutory or common law provision relating to banker's liens, rights of setoff or similar rights, contractual rights of setoff or netting arrangements entered into in the ordinary course of business and similar rights with respect to deposit accounts, commodity accounts and/or securities accounts;

(16) pledges and deposits to secure the payment of worker's compensation, unemployment insurance, social security benefits or obligations under similar laws, or to secure the payment or performance of statutory or public obligations (including environmental, municipal and public utility commission obligations and requirements), reimbursement or indemnity obligations arising out of surety, performance, or other similar bonds, and other obligations of a like nature, in each case incurred in the ordinary course of business;

(17) Liens existing on the Effective Date;

(18) Liens not in respect of Indebtedness consisting of the interest of the lessor under any operating lease entered into in the ordinary course of business and not otherwise prohibited by this Agreement;

(19) Liens securing obligations under Swap Agreements and Cash Management Obligations permitted under this Agreement;

(20) Liens securing obligations with respect to contracts (other than for Indebtedness) for commercial and trading activities for the purchase, distribution, sale, lease or hedge of any energy-related commodity or service (including contracts and derivative financial instruments entered into with respect to electric energy or capacity, emissions allowances, fuel and other commodities);

(21) 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 Borrower or any of its Restricted Subsidiaries;

(22) any restrictions on any Equity Interest or undivided interests, as the case may be, of a Person providing for a breach, termination or default under any joint venture, stockholder, membership, limited liability company, partnership, owners', participation or other similar agreement between such Person and one or more other holders of Equity Interests or undivided interests of such Person, as the case may be, if a security interest or Lien is created on such Equity Interest or undivided interest, as the case may be, as a result thereof;

(23) any customary provisions limiting the disposition or distribution of assets or property (including without limitation Equity Interests) or any related restrictions thereon in joint venture, partnership, membership, stockholder and limited liability company agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements, including owners', participation or similar agreements governing projects owned through an undivided interest; provided, however, that any such limitation is applicable only to the assets that are the subjects of such agreements;

(24) Liens granted by a Person in favor of a commercial trading counterparty pursuant to a netting agreement, which Liens encumber rights under agreements that are subject to such netting agreement and which Liens secure such Person's obligations to such counterparty under such netting agreement; provided that any such agreements and netting agreements are entered into in the ordinary course of business; and provided, further, that the Liens are incurred in the ordinary course of business and when granted, do not secure obligations which are past due;

(25) [reserved];

(26) Permitted Counterparty Liens, which Liens shall rank *pari passu* to the Liens securing Parity Secured Obligations (although the Obligations securing such Permitted Counterparty Liens shall not constitute Parity Secured Obligations under this Agreement);

(27) Liens on the Equity Interests of Unrestricted Subsidiaries;

(28) [Reserved];

(29) [Reserved]; and

(30) Liens securing obligations that at the time of incurrence of any such Lien do not in the aggregate with any of Liens created pursuant to this clause (30) and outstanding at such time exceed the greater of (x) $40.0 million and (y) 2.0% of Total Assets.

For purposes of determining compliance with Section 6.2, in the event that a Permitted Lien meets the criteria of more than one of the types of Permitted Liens described in the above clauses, the Borrower, in its sole discretion, may order and classify, and from time to time may reorder and reclassify, such Permitted Lien if it would be permitted at the time of any such reclassification.

"Permitted Refinancing Indebtedness": any Indebtedness of the Borrower or any of its Restricted Subsidiaries issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund, other Indebtedness of the Borrower or any of its Restricted Subsidiaries (other than intercompany Indebtedness); provided that:

(1) the principal amount (or accreted value, if higher) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness extended, refinanced, renewed, replaced, defeased or refunded (plus (i) an amount equal to the any unutilized commitment relating to the Indebtedness being refinanced or otherwise then outstanding under the financing arrangement being refinanced to the extent the unutilized commitment being refinanced could be drawn in compliance with this Agreement immediately prior to such refinancing and (ii) all accrued interest on the Indebtedness and the amount of all expenses, costs and fees and premiums incurred in connection therewith);

(2) such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded;

(3) if the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is subordinated in right of payment to the Term Loans, such Permitted Refinancing Indebtedness is subordinated in right of payment to the Term Loans on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded, as reasonably determined by the Borrower or such Restricted Subsidiary;

(4) such Indebtedness is incurred by any of the Borrower or a Guarantor or any of the Restricted Subsidiaries of the Borrower who is the obligor on the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded; and

(5) (x) if incurred by the Borrower, such Indebtedness may be guaranteed by the Guarantors and (y) if incurred by a Guarantor, such Indebtedness may be guaranteed by the Borrower and the other Guarantors.

"Person": any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, joint venture, limited liability company, Governmental Authority or other entity of whatever nature.

"Plan": at a particular time, any employee benefit plan, other than a Multiemployer Plan, that is covered by Section 302 or Title IV of ERISA or Section 412 of the Code, and in respect of which the Borrower or a Commonly Controlled Entity is (or, if such plan were terminated at such time, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Platform": the meaning set forth in Section 9.2(b).

"Pledge and Security Agreement": that certain Amended and Restated Pledge and Security Agreement, dated as of the Effective Date (as amended, amended and restated, supplemented or otherwise modified from time to time), by and among the Borrower, the other Grantors from time to time party thereto and the Collateral Agent.

"Pledged Stock": as defined in the Pledge and Security Agreement.

"PPA": an agreement (including a tolling agreement, fuel conversion services agreement or other similar agreement) entered into by the Borrower or any of its Restricted Subsidiaries for the sale of capacity or energy (and services ancillary or related thereto) from one or more of the Facilities.

"Prime Rate": the rate of interest per annum last quoted by The Wall Street Journal as the "Prime Rate" in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Any change in the Prime Rate shall take effect at the opening of business on the day such change is publicly announced or quoted as being effective. The Prime Rate is a reference rate and does not necessarily represent the lowest rate actually charged to any customer. The Administrative Agent may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

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

"Public Lender": the meaning set forth in Section 9.15.

"PUHCA 2005": the meaning set forth in Section 3.19.

"Qualified ECP Guarantor": in respect of any Swap Obligation, each Loan Party that has total assets exceeding $10.0 million at the time the relevant Guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation is incurred or such other person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Quarterly Payment Date": the last Business Day of each March, June, September and December of each year.

"Rating Event" the rating on the Term Loans is lowered by both of S&P and Moody's on any day within the 60-day period (which 60-day period will be extended so long as the rating of the Term Loans is under publicly announced consideration for a possible downgrade by either of such rating agencies) after the earlier of (1) the occurrence of a Change of Control and (2) public disclosure by the Borrower of the occurrence of a Change of Control or the Borrower's intention to effect a Change of Control; provided, however, that a Rating Event otherwise arising by virtue of a particular reduction in rating will not be deemed to have occurred in respect of a particular Change of Control (and thus will not be deemed a Rating Event for purposes of the definition of Change of Control triggering event) if such rating agencies making the reduction in rating to which this definition would otherwise apply do not announce or publicly confirm or inform the Administrative Agent in writing at the Borrower's or the Administrative Agent's request that the reduction was the result, in whole or in part, of any event or circumstance comprised of or arising as a result of, or in respect of, the applicable Change of Control (whether or not the applicable Change of Control has occurred at the time of the Rating Event).

"Refinancing": the meaning set forth in the recital hereto

"Refinancing Credit Facility": the meaning set forth in Section 9.1(b) and shall include the Refinancing Term Loan Facility.

"Refinancing Term Loan Commitment": the meaning provided for such term in Amendment No. 3. The aggregate amount of Refinancing Term Loan Commitments as of the Effective Date is $1,250,000,000.

"Refinancing Term Loan Facility": the facility under which the Refinancing Term B Loans are made available on the Effective Date pursuant to Amendment No. 3.

"Refinancing Term Loan Lender": at any time, any Lender that has a Refinancing Term Loan Commitment or a Refinancing Term B Loan at such time.

"Refinancing Term B Loan": a Loan made pursuant to Section 2.1(b).

"Refinancing Term B Termination Date": July 31, 2030.

"Register": the meaning set forth in Section 9.6(b)(iv).

"Regulation U": Regulation U of the Board of Governors as in effect from time to time.

"Related Persons": with respect to any Indemnitee, any Affiliate of such Indemnitee and any officer, director, employee, representative or agent of such Indemnitee or Affiliate thereof, in each case that has provided any services in connection with the transactions contemplated under this Agreement and the other Loan Documents.

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

"Reportable Event": any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than those events as to which the thirty (30) day notice period is waived under any regulation promulgated by the PBGC.

"Repricing Transaction": the prepayment (excluding, for the avoidance of doubt, (x) regularly scheduled amortization payments and (y) any prepayments under Section 2.14) or refinancing of all or a portion of the Refinancing Term B Loans with the incurrence by any Loan Party of any long-term senior secured syndicated term loan bank debt financing (excluding intercompany loans and obligations among the Borrower and its Subsidiaries) having an effective weighted average yield (with the comparative determinations to be made by the Administrative Agent consistent with generally accepted financial practices, after giving effect to, among other factors, margin, interest rate floors, upfront or similar fee or "original issue discount" shared with all lenders of such loans or Refinancing Term B Loans, as the case may be, but excluding the effect of any arrangement, structuring, syndication or other fees payable in connection therewith whether or not shared with all lenders of such loan or Refinancing Term B Loans, as the case may be, and without taking into account any fluctuations in Term SOFR) that is less than the weighted average yield (as determined by the Administrative Agent on the same basis) of the Refinancing Term B Loans, including without limitation, as may be effected through any amendment to this Agreement relating to the interest rate for, or weighted average yield of, the Refinancing Term B Loans, but excluding any prepayment or amendment in connection with any Change of Control or Transformative Acquisition.

"Required Incremental Lenders": at any time for any series of Incremental Term Loans, Lenders holding more than 50% of the aggregate unpaid principal amount of such series of Incremental Term Loans then outstanding.

"Required Lenders": at any time, Lenders holding more than 50% of the aggregate unpaid principal amount of the Term Loans then outstanding.

"Required Refinancing Term B Lenders": at any time, Lenders holding more than 50% of the aggregate unpaid principal amount of the Refinancing Term B Loans then outstanding.

"Required Term B Lenders": at any time, Lenders holding more than 50% of the aggregate unpaid principal amount of the Term B Loans then outstanding.

"Requirement of Law": as to any Person, the certificate of incorporation and by-laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

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

"Responsible Officer": the chief executive officer, the president, any executive vice president or a Financial Officer of the Borrower, but in any event, with respect to financial matters, a Financial Officer of the Borrower.

"Restricted Payment": the meaning set forth in Section 6.9.

"Restricted Subsidiary": of a Person means any Subsidiary of the referent Person that is not an Unrestricted Subsidiary.

"Restructuring Costs": costs incurred by the Borrower or any of its Restricted Subsidiaries in connection with the reorganization or restructuring of its and/or any of its Restricted Subsidiaries' businesses, operations and/or structure in respect of (a) the implementation of operational initiatives, (b) plant closures, plant "moth-balling" or consolidation, relocation or elimination of offices operations and/or termination of leases, (c) related severance costs and other costs incurred in connection with the termination, relocation and training of employees and (d) legal, consulting, employee retention and other advisor fees incurred in connection with the foregoing.

"S&P": S&P Global Ratings (a division of S&P Global Inc.), or its successor.

"Sanctioned Country": at any time, a country, region or territory which is itself the subject or target of any Sanctions (as of the Effective Date, Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine, the so-called Luhansk People's Republic, the so-called Donetsk People's Republic and the nongovernment controlled Zaporizhzhia and Kherson regions of Ukraine).

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

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

"SEC": the Securities and Exchange Commission, any successor thereto and any analogous Governmental Authority.

"Secured Cash Management Agreement": a Cash Management Agreement between a Loan Party and a Cash Management Bank.

"Secured Debt Representative": with respect to any series of Parity Secured Debt, the trustee, administrative agent, collateral agent, or similar agent under the indenture, credit agreement or other agreement pursuant to which such Parity Secured Debt is incurred.

"Secured Parties": collectively, the Administrative Agent, the Collateral Agent, the Arrangers, the Lenders, the Hedge Bank in respect of Secured Swap Agreements and the Cash Management Banks in respect of Secured Cash Management Agreements.

"Secured Obligations": collectively, (a) the Obligations, (b) the due and punctual payment and performance of all obligations of Borrower and the other Loan Parties under each Secured Swap Agreement entered into with any counterparty that is a Hedge Bank and (c) the due and punctual payment and performance of all obligations of Borrower and the other Loan Parties (including overdrafts and related liabilities) under each Secured Cash Management Agreement entered into with any counterparty that is a Cash Management Bank; provided that Excluded Swap Obligations shall not be a Secured Obligation of any Guarantor that is not a Qualified ECP Guarantor.

"Secured Swap Agreement": a Swap Agreement between a Loan Party and a Hedge Bank permitted under this Agreement.

"Security Documents": the Pledge and Security Agreement, the Mortgages, the Partnership Interest Pledge Agreement, and all other security agreements, pledge agreements, control agreements, collateral assignments, mortgages, deed of trusts or other grants or transfers for security or agreements related thereto executed and delivered by the Borrower or any Guarantor creating (or purporting to create) a Lien upon Collateral in favor of the Collateral Agent to secure the Secured Obligations, in each case, as amended, modified, renewed, restated or replaced, in whole or in part, from time to time.

"Significant Subsidiary": any Restricted Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Exchange Act, as such Regulation is in effect on the date of this Agreement.

"SOFR": a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

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

"SOFR Borrowing": as to any Borrowing, the Term SOFR Loans comprising such Borrowing.

"Solvent": when used with respect to any Person and its Subsidiaries, means that, as of any date of determination, (a) the amount of the "present fair saleable value" of the assets of such Person and its Subsidiaries on a consolidated basis will, as of such date, exceed the amount of all "liabilities of such Person and its Subsidiaries on a consolidated basis, contingent or otherwise", as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (b) the present fair saleable value of the assets of such Person and its Subsidiaries will, as of such date, be greater than the amount that will be required to pay the probable liability of such Person and its Subsidiaries on a consolidated basis on its debts as such debts become absolute and matured, (c) such Person and its Subsidiaries on a consolidated basis will not have, as of such date, an unreasonably small amount of capital with which to conduct their business, and (d) such Person and its Subsidiaries will be able to pay their debts as they mature. For purposes of this definition, (i) "debt" means liability on a "claim", and (ii) "claim" means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

"Stated Maturity": (i) in the case of the Refinancing Term B Loans, the Refinancing Term B Termination Date and (ii) in the case of Incremental Term Loans of any series, the final maturity date for such series of Incremental Term Loans; provided that, with respect to any tranche of Extended Term Loans, the Stated Maturity with respect thereto shall instead be the final maturity date as specified in the applicable Extension Offer accepted by the respective Lender.

"Subsidiary": with respect to any specified Person:

(1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, 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).

"Swap Agreements": any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions (whether or not any such agreement is governed by or subject to any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement or any other similar master agreement (any such master agreement, together with any related schedules, a "Master Agreement")); provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or any of its Subsidiaries shall be a "Swap Agreement."

"Swap Obligation": with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"Taxes": all present or future taxes, levies, imposts, duties, deductions, charges, assessments, fees, withholdings or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term B Commitment": with respect to each Lender, the obligation of such Lender, if any, to make Initial Term B Loans in an aggregate principal amount not to exceed the amount set forth opposite its name on Schedule 1.1A annexed to the Existing Credit Agreement under the heading "Term B Commitment Amounts".

"Term B Lender": at any time, (a) on or prior to the Original Closing Date, any Lender that had an Initial Term B Commitment at such time and (b) at any time after the Original Closing Date, any Lender that holds Initial Term B Loans at such time.

"Term B Loans": an Initial Term B Loan or a Refinancing Term B Loan, as applicable.

"Term B-5 Term Loan": the term loans outstanding under the Credit Agreement, dated as of May 28, 2015 (as amended by that certain Amendment No. 1, dated as of December 21, 2016, as amended by that certain Amendment No. 2, dated as of December 11, 2017, as amended by that certain Amendment No. 3, dated as of December 20, 2019, as amended by that certain Amendment No. 4, dated as of December 16, 2020 and as amended by that certain Amendment No. 5 dated July 1, 2023.

"Term B Percentage": as to any Lender at any time, the percentage which such Lender's Refinancing Term Loan Commitment then constitutes of the aggregate Refinancing Term Loan Commitments (or, at any time after the making of the Refinancing Terms B Loans on the Effective Date, the percentage which the aggregate principal amount of such Lender's Refinancing Term B Loans then outstanding constitutes of the aggregate principal amount of all Refinancing Term B Loans then outstanding).

"Term Commitments": Term B Commitments, Refinancing Term Loan Commitments and Incremental Commitments.

"Term Loans": collectively, the Term B Loans, the Refinancing Term B Loans and, if applicable, the Incremental Term Loans.

"Term Percentage": as to any Lender at any time, the percentage which such Lender's Term Commitment then constitutes of the aggregate Term Commitments (or, at any time after the making of the Terms Loans on the Effective Date, the percentage which the aggregate principal amount of such Lender's Term Loans then outstanding constitutes of the aggregate principal amount of all Term Loans then outstanding).

"Term SOFR":

(a) for any calculation with respect to a Term SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the "Periodic Term SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to a Base Rate Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the "Base Rate Term SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Base Rate Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Base Rate Term SOFR Determination Day;

provided, further, that if Term SOFR determined as provided above (including pursuant to the proviso under clause (a) or clause (b) above) shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

"Term SOFR Administrator": CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

"Term SOFR Loan": a Loan that bears interest at a rate based on Term SOFR other than pursuant to clause (c) of the definition of "Base Rate".

"Term SOFR Reference Rate": the forward-looking term rate based on SOFR.

"Termination Date": the earlier to occur of (a) the Stated Maturity and (b) the acceleration of any Term Loans. In the event that one or more Extensions are effected in accordance with Section 2.27, then the Termination Date of each tranche of Term Loans shall be determined based on the respective Stated Maturity applicable thereto (except in cases where clause (b) of the preceding sentence is applicable).

"Title Insurance Company": Stewart Title Insurance Company, or such other title insurance company as shall be reasonably acceptable to the Administrative Agent.

"Total Assets": the total assets of the Borrower and its Restricted Subsidiaries on a consolidated basis, as shown on the Borrower's most recent internally available balance sheet, as may be expressly stated.

"Total Debt": as of any date of determination, the remainder of (A) the aggregate principal amount of Indebtedness of the Borrower and its Restricted Subsidiaries outstanding on such date, determined on a consolidated basis, but only to the extent required to be recorded on a balance sheet, in accordance with GAAP, consisting of Indebtedness for borrowed money, Capital Lease Obligations and debt obligations evidenced by promissory notes or similar instruments, less (B) the aggregate amount of all cash and Cash Equivalents (whether or not restricted) held by the Borrower and its Restricted Subsidiaries as of such date.

"tranche": the meaning set forth in Section 2.27(a).

"Transferee": any Assignee or Participant.

"Transformative Acquisition": any acquisition or Investment by the Borrower or any of its Restricted Subsidiaries that (i) is not permitted by the terms of the Loan Documents immediately prior to the consummation of such acquisition or Investment or (ii) if permitted by the terms of this Agreement immediately prior to the consummation of such acquisition or Investment, would not provide the Borrower and its Restricted Subsidiaries with adequate flexibility under this Agreement for the continuation and/or expansion of their combined operations following such consummation, as determined by the Borrower acting in good faith.

"UK Financial Institution": any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority": the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Unadjusted Benchmark Replacement": the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"United States": the United States of America.

"Unrestricted Subsidiary": any Subsidiary of the Borrower or any successor to the Borrower that is designated by the Board of Directors of the Borrower as an Unrestricted Subsidiary pursuant to a board resolution (and any Subsidiary thereof), but only to the extent that such Subsidiary:

(1) has no Indebtedness other than Indebtedness that is Non-Recourse to the Borrower and its Restricted Subsidiaries;

(2) is not party to any agreement, contract, arrangement or understanding with the Borrower or any Restricted Subsidiary of the Borrower unless the terms of any such agreement, contract, arrangement or understanding are no less favorable to the Borrower or such Restricted Subsidiary in any material respect than those that might be obtained at the time from Persons who are not Affiliates of the Borrower; and

(3) is a Person with respect to which neither the Borrower nor any of its Restricted Subsidiaries has any direct or indirect obligation (A) to subscribe for additional Equity Interests or (B) to maintain or preserve such Person's financial condition or to cause such Person to achieve any specified levels of operating results.

Any designation of a Subsidiary of the Borrower as an Unrestricted Subsidiary will be evidenced to the Administrative Agent by delivering to the Administrative Agent a certified copy of the resolution of the Board of Directors of the Borrower giving effect to such designation and an officer's certificate of a Responsible Officer certifying that such designation complied with the preceding conditions and was permitted by Section 6.9. If, at any time, any Unrestricted Subsidiary would fail to meet the preceding requirements as an Unrestricted Subsidiary, it will thereafter cease to be an Unrestricted Subsidiary for purposes of this Agreement and any Indebtedness of such Subsidiary will be deemed to be incurred by a Restricted Subsidiary of the Borrower as of such date and, if such Indebtedness is not permitted to be incurred as of such date in Section 6.1 the Borrower will be in default of such covenant. The Board of Directors of the Borrower may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary of the Borrower; provided that such designation will be deemed to be an incurrence of Indebtedness by a Restricted Subsidiary of the Borrower of any outstanding Indebtedness of such Unrestricted Subsidiary and such designation will only be permitted if (1) such Indebtedness is permitted under Section 6.1, calculated on a *pro forma* basis as if such designation had occurred at the beginning of the four-quarter reference period; and (2) no Default or Event of Default would be in existence following such designation.

"Upgrades": the development and implementation of the FD 3 upgrade to the combustion turbines of any Facility and all activities directly related thereto.

"U.S. Government Securities Business Day": any day except for (a) Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"Voting Stock": of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

"Weighted Average Life to Maturity": when applied to any Indebtedness at any date, the number of years obtained by dividing:

(1) the sum of the products obtained by multiplying (A) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect of the Indebtedness, by (B) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by

(2) the then outstanding principal amount of such Indebtedness.

"Wholly-Owned Domestic Subsidiary": a Domestic Subsidiary that is a Wholly-Owned Subsidiary of any Person.

"Wholly-Owned Subsidiary": of any Person means a Restricted Subsidiary of such Person, 100% of the outstanding Equity Interests of which (other than directors' qualifying shares) shall at the time be owned by such Person or by one or more Wholly-Owned Subsidiaries of such Person.

"Write-Down and Conversion Powers": with respect to any (a) EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.2. Other Definitional Provisions.

(a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Loan Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Loan Documents, and any certificate or other document made or delivered pursuant hereto or thereto, (i) the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation," (ii) the word "incur" shall be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words "incurred" and "incurrence" shall have correlative meanings) and (iii) 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, Capital Stock, securities, revenues, accounts, leasehold interests and contract rights.

(c) The words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms. Whenever the context may required, any pronoun shall include the corresponding masculine, feminine and neuter forms. References to agreements or other Contractual Obligations shall, unless otherwise specified, be deemed to refer to such agreements or Contractual Obligations as amended, supplemented, restated or otherwise modified from time to time to the extent permitted herein.

Except as otherwise provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP; provided that if the Borrower, by notice to the Administrative Agent, shall request an amendment to any provision hereof to eliminate the effect of any change occurring after the Effective Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent at the direction of the Required Lenders, by notice to the Borrower, shall request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

1.3. Delivery of Notices or Receivables. Any reference to a delivery or notice date that is not a Business Day shall be deemed to mean the next succeeding day that is a Business Day.

1.4 Fixed Amounts and Incurrence-Based Amounts. Notwithstanding anything to the contrary herein, with respect to any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement that does not require compliance with a financial ratio or test (including, without limitation, the Consolidated Senior Secured Leverage Ratio and the Fixed Charge Coverage Ratio) (any such amounts, the "Fixed Amounts") substantially concurrently with any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement that requires compliance with any such financial ratio or test (any such amounts, the "**Incurrence-Based Amounts**"), it is understood and agreed that any Fixed Amount (and any cash proceeds thereof) shall be disregarded in the calculation of the financial ratio or test applicable to the relevant Incurrence-Based Amount in connection with such substantially concurrent incurrence.

1.5 Rates. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Base Rate, the Term SOFR Reference Rate or Term SOFR or any other Benchmark, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Base Rate, the Term SOFR Reference Rate, Term SOFR, or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Base Rate, the Term SOFR Reference Rate, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Base Rate, the Term SOFR Reference Rate, Term SOFR, or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

SECTION 2

Amount and Terms of Loans and Commitments

2.1. Term B Commitments.

(a) Subject to the terms and conditions hereof, each Term B Lender severally agrees to make a term loan (an "Initial Term B Loan") to the Borrower on the Original Closing Date in an amount equal to the amount of the Term B Commitment of such Lender. The Term B Loans may from time to time be Term SOFR Loans or Base Rate Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.2 and 2.15. The Term B Commitments automatically terminated upon the borrowing of the Term B Loans on the Original Closing Date.

(b) Subject to the terms and conditions hereof, each Refinancing Term Loan Lender severally agrees to make a Refinancing Term B Loan to the Borrower on the Effective Date in an amount equal to the amount of the Refinancing Term Loan Commitment of such Lender. The Refinancing Term B Loans may from time to time be Term SOFR Loans or Base Rate Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.2 and 2.15. The Refinancing Term Loan Commitments shall automatically terminate upon the borrowing of the Refinancing Term B Loans on the Effective Date.

2.2. Procedure for Term Loan Borrowing. The Borrower shall give the Administrative Agent irrevocable notice substantially in the form of Exhibit B hereto (which notice must be received by the Administrative Agent prior to 12:00 Noon, New York City time, (a) three (3) U.S. Government Securities Business Days prior to the requested Borrowing Date (or such shorter period as may be agreed to by the Administrative Agent), in the case of Term SOFR Loans or (b) on the requested Borrowing Date, in the case of Base Rate Loans, in either case, requesting that the applicable Lenders make the applicable Term Loans on the Effective Date (or, in the case of Incremental Term Loans, the funding date thereon) and specifying the amount to be borrowed for each such Term Loans); provided, however, with respect to Incremental Term Loans, the Administrative Agent may agree in its reasonable discretion that any such notice may be revocable by the Borrower and may shorten the time periods set forth above for incurring such Incremental Term Loans. Upon receipt of such notice the Administrative Agent shall promptly notify each applicable Lender thereof. Not later than 12:00 Noon, New York City time, on the Effective Date (or, in the case of Incremental Term Loans, the funding date thereon), each Lender shall make available to the Administrative Agent at the Funding Office an amount in immediately available funds equal to the Term Loan or Term Loans to be made by such Lender. The Administrative Agent shall make the proceeds of such Term Loan or Term Loans available to the Borrower on the Borrowing Date by wire transfer in immediately available funds to a bank account designated in writing by the Borrower to the Administrative Agent.

2.3. [Reserved].

2.4. [Reserved].

2.5. [Reserved].

2.6. [Reserved].

2.7. [Reserved].

2.8. Repayment of Loans; Evidence of Debt.

(a) On each Quarterly Payment Date, beginning with the Quarterly Payment Date on December 31, 2023, the Borrower shall repay to the Administrative Agent for the ratable account of the Refinancing Term Loan Lenders an aggregate principal amount of Refinancing Term B Loans then outstanding equal to 0.25% of the aggregate initial principal amounts of all Refinancing Term B Loans theretofore borrowed by the Borrower pursuant to Section 2.1 on the Effective Date (which amounts shall be reduced as a result of the application of prepayments or repayments (which, for the avoidance of doubt, shall not include repayments pursuant to this Section 2.8)). The remaining unpaid principal amount of the Refinancing Term B Loans and all other Obligations under or in respect of the Refinancing Term B Loans shall be due and payable in full, if not earlier in accordance with this Agreement, on the Termination Date for the Refinancing Term B Loans. The Borrower hereby further agrees to pay interest on the unpaid principal amount of the Term B Loans from time to time outstanding from the date hereof until payment in full thereof at the rates per annum, and on the dates, set forth in Section 2.9.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing Indebtedness of the Borrower to such Lender resulting from each Term Loan of such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(c) The Administrative Agent shall, in respect of this Agreement, record in the Register, with separate sub-accounts for each Lender, (i) the amount and Borrowing Date of each Term Loan made hereunder, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) both the amount of any payment received by the Administrative Agent hereunder from the Borrower and each Lender's Term B Percentage or Incremental Term Percentage, as applicable, thereof.

(d) The entries made in the Register and the accounts of each Lender maintained pursuant to Sections 2.8(b) and (c) shall, to the extent permitted by applicable law, be prima facie evidence of the existence and amounts of the obligations of the Borrower therein recorded absent manifest error; provided, however, that the failure of any Lender or the Administrative Agent to maintain the Register or any such account, or any error therein, shall not in any manner affect the obligation of the Borrower to repay (with applicable interest) the Term Loans made to the Borrower by such Lender in accordance with the terms of this Agreement.

(e) If so requested after the Effective Date by any Lender by written notice to the Borrower (with a copy to the Administrative Agent), the Borrower will execute and deliver to such Lender, promptly after the Borrower's receipt of such notice, a Note to evidence such Lender's Term Loans in form and substance reasonably satisfactory to the Administrative Agent and the Borrower.

2.9. Interest Rates and Payment Dates.

(a) Each Term SOFR Loan shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to Term SOFR determined for such Interest Period *plus* the Applicable Margin.

(b) Each Base Rate Loan shall bear interest at a rate per annum equal to the Base Rate from time to time *plus* the Applicable Margin.

(c) Notwithstanding the foregoing, upon the occurrence and during the continuance of an Event of Default under Section 7.1(a) or (b) or at any time after the date on which any principal amount of any Term Loan is due and payable (whether on the maturity date therefor, upon acceleration or otherwise), and, in each case, for so long as such overdue Obligation remains unpaid, the Borrower shall pay, but only to the extent permitted by law, interest (after as well as before judgment) on such unpaid overdue amounts at a rate per annum equal to (a) in the case of overdue principal on any Term Loan, the rate of interest that otherwise would be applicable to such Term Loan plus 2% per annum and (b) in the case of overdue interest, fees, and other monetary Obligations, the rate then applicable to Base Rate Loans *plus* 2% per annum.

(d) Interest shall be payable in arrears on each Interest Payment Date; provided that interest accruing pursuant to paragraph (c) of this Section 2.9 shall be payable from time to time on demand.

(e) The provisions of this Section 2.9 (and the interest rates applicable to various extensions of credit hereunder) shall be subject to modification as expressly provided in Section 2.27.

(f) Term SOFR Conforming Changes. In connection with the use or administration of Term SOFR, the Administrative Agent will have the right, in consultation with the Borrower, to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Administrative Agent will promptly notify the Borrower and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of Term SOFR.

2.10. Computation of Interest and Fees.

(a) Interest and fees payable pursuant hereto shall be calculated on the basis of a 360-day year for the actual days elapsed, except that, with respect to Base Rate Loans, the interest thereon shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed. The Administrative Agent shall as soon as practicable notify the Borrower and the Lenders of each determination of Term SOFR. Any change in the interest rate on a Term Loan resulting from a change in the Base Rate shall become effective as of the opening of business on the day on which such change becomes effective. The Administrative Agent shall as soon as practicable notify the Borrower and the Lenders of the effective date and the amount of each such change in interest rate.

(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error. The Administrative Agent shall, at the request of the Borrower, deliver to the Borrower a statement showing the quotations used by the Administrative Agent in determining any interest rate hereunder.

2.11. Inability to Determine Interest Rate; Benchmark Replacement Setting.

(a) If prior to the first day of any Interest Period:

(i) the Administrative Agent shall have reasonably determined (which determination shall be conclusive and binding upon the Borrower) that, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining Term SOFR for such Interest Period, or

(ii) the Administrative Agent shall have received notice from the Required Lenders that Term SOFR determined or to be determined for such Interest Period in good faith by such Required Lenders will not adequately and fairly reflect the cost to such Lenders (as conclusively certified by such Lenders) of making or maintaining their affected Term Loans during such Interest Period,

(b) the Administrative Agent shall give telecopy or telephonic notice thereof to the Borrower and the relevant Lenders as soon as practicable thereafter. If such notice is given, (x) any Term SOFR Loans hereunder requested to be made on the first day of such Interest Period shall be made as Base Rate Loans, (y) any Term Loans hereunder that were to have been converted on the first day of such Interest Period to Term SOFR Loans shall be continued as Base Rate Loans and (z) any outstanding Term SOFR Loans hereunder shall be converted, on the last day of the then-current Interest Period, to Base Rate Loans; provided that if the circumstances giving rise to such notice shall cease or otherwise become inapplicable to such Required Lenders, then such Required Lenders shall promptly give notice of such change in circumstances to the Administrative Agent and the Borrower. Until such notice has been withdrawn by the Administrative Agent, no further Term SOFR Loans hereunder shall be made or continued as such, nor shall the Borrower have the right to convert Term Loans hereunder to Term SOFR Loans.

(c) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event, the Administrative Agent and the Borrower may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date that the Administrative Agent has posted such proposed amendment to all affected Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 2.11(c) will occur prior to the applicable Benchmark Transition Start Date.

(d) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(e) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will promptly notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.11(e) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.11, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.11.

(f) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Administrative Agent may in its reasonable discretion modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may in its reasonable discretion modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(g) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, (i) the Borrower may revoke any pending request for a SOFR Borrowing of, conversion to or continuation of Term SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans and (ii) any outstanding affected Term SOFR Loans will be deemed to have been converted to Base Rate Loans at the end of the applicable Interest Period. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate.[Reserved].

2.13. Optional Prepayment of Loans; Repricing Transaction.

(a) Subject to the provisos below, the Borrower may at any time and from time to time prepay either the Term B Loans or any series of Incremental Term Loans, in whole or in part, without premium or penalty, upon irrevocable notice (except as otherwise permitted below) delivered to the Administrative Agent prior to 10:00 A.M., New York City time, one (1) Business Day prior to the date of prepayment, which notice shall specify the date and amount of prepayment and whether the prepayment is (i) of Term SOFR Loans or Base Rate Loans or a combination thereof, and if a combination thereof, the amount allocable to each and (ii) whether the repayment is of the Term B Loans or Incremental Term Loans of a given series or a combination thereof, and if a combination thereof, the amount allocable to each. Upon receipt of any such notice of prepayment, the Administrative Agent shall notify each relevant Lender thereof on the date of receipt of such notice. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein, together with (except in the case of prepayments of Term Loans maintained as Base Rate Loans) accrued interest to such date on the amount prepaid. Partial prepayments shall be in an aggregate principal amount of $1,000,000 or a whole multiple of $100,000 in excess thereof (or, if less, the then outstanding principal amount of Term B Loans or any series of Incremental Term Loans, as applicable). The application of any prepayment pursuant to this Section 2.13(a) shall be made, first, to Base Rate Loans of the respective Lenders (and of the respective tranche, if there are multiple tranches) and, second, to Term SOFR Loans of the respective Lenders (and of the respective tranche, if there are multiple tranches). Any prepayments of Term Loans pursuant to this Section 2.13(a) shall be applied to the remaining scheduled installments of the Term B Loans or any series of Incremental Term Loan, as applicable, as directed by the Borrower. A notice of prepayment of all outstanding Term B Loans or any series of Incremental Term Loans, as applicable, pursuant to this Section 2.13(a) may state that such notice is conditioned upon the effectiveness of other credit facilities the proceeds of which will be used to refinance in full this Agreement, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied.

(b) At the time of the effectiveness of any Repricing Transaction that (x) results in any prepayment of Refinancing Term B Loans, or (y) effects any amendment of this Agreement resulting in a Repricing Transaction with respect to Refinancing Term B Loans and (in either case) is consummated prior to February 2, 2024, the Borrower agrees to pay to the Administrative Agent, for the ratable account of each applicable Refinancing Term Loan Lender, a fee in an amount equal to, without duplication, (I) in the case of preceding clause (x), a prepayment premium of 1% of the principal amount of the Refinancing Term B Loans being prepaid and (II) in the case of preceding clause (y), a payment equal to 1% of the aggregate amount of the applicable Refinancing Term B Loans outstanding immediately prior to such amendment and subject to such Repricing Transaction.

2.14. Prepayment Offers.

(a) Upon the occurrence of a Change of Control Triggering Event, the Borrower shall make an offer to prepay the entire principal amount of all outstanding Term Loans (the "Change of Control Prepayment Offer") at 101% of the aggregate principal amount thereof and the Borrower shall notify the Administrative Agent in writing of the Change of Control Prepayment Offer in writing within thirty (30) days after the date of such Change of Control Triggering Event. Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the amount of such prepayment and include the payment date, which shall be no earlier than thirty (30) days and no later than sixty (60) days from the date of such notice is mailed (the "Change of Control Payment Date"). The Administrative Agent will promptly notify each relevant Lender of the contents of any such prepayment notice and of such Lender's *pro rata* share of the prepayment. Any Lender may elect, by delivering not less than three (3) U.S. Government Securities Business Days prior to the Change of Control Payment Date, a written notice (such notice, an "Acceptance Notice") that any change of control prepayment be made with respect to all or any portion of the Term Loans held by such Lender pursuant to this Section 2.14(a). If a Lender fails to deliver an Acceptance Notice within the time frame specified above, any such failure will be deemed a rejection of the Change of Control Prepayment Offer as to all outstanding Term Loans of such Lender. Any prepayment of Term Loans pursuant to this Section 2.14(a) shall be applied to the remaining scheduled installments of such Term Loans as directed by the Borrower.

(b) If, pursuant to Section 6.8, the Borrower shall be required to commence an Asset Sale Offer, the Borrower shall notify the Administrative Agent in writing of the Asset Sale Offer in writing within thirty (30) days after the date of such Asset Sale. Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the amount of such prepayment and include the payment date, which shall be no earlier than thirty (30) days and no later than sixty (60) days from the date of such notice is mailed (the "Asset Sale Payment Date"). The Administrative Agent will promptly notify each relevant Lender of the contents of any such prepayment notice and of such Lender's *pro rata* share of the prepayment. Any Lender may elect, by delivering not less than three (3) Business Days prior to the Asset Sale Payment Date, a written notice (such notice, a "Acceptance Notice") that any prepayment be made with respect to all or any portion of the Term Loans held by such Lender pursuant to this Section 2.14(b). If a Lender fails to deliver an Acceptance Notice within the time frame specified above, any such failure will be deemed a rejection of the Asset Sale Offer as to all outstanding Term Loans of such Lender. Any prepayment of Term Loans pursuant to this Section 2.14(b) shall be applied to the remaining scheduled installments of such Term Loans as directed by the Borrower.

2.15. Conversion and Continuation Options.

(a) The Borrower may elect from time to time to convert Term SOFR Loans to Base Rate Loans by giving the Administrative Agent prior irrevocable notice, in substantially the form attached hereto as Exhibit F, of such election no later than 12:00 Noon, New York City time, on the Business Day preceding the proposed conversion date, provided that any such conversion of Term SOFR Loans may only be made on the last day of an Interest Period with respect thereto. The Borrower may elect from time to time to convert Base Rate Loans to Term SOFR Loans by giving the Administrative Agent prior irrevocable notice of such election no later than 12:00 Noon, New York City time, on the third (3rd) U.S. Government Securities Business Day preceding the proposed conversion date (which notice shall specify the length of the initial Interest Period therefor), provided that no Base Rate Loan may be converted into a Term SOFR Loan when any Event of Default has occurred and is continuing and the Required Lenders have determined in its or their sole discretion, by written notice to the Administrative Agent and the Borrower, not to permit such conversions. Upon receipt of any such notice, the Administrative Agent shall promptly notify each relevant Lender thereof.

(b) Any Term SOFR Loan may be continued as such upon the expiration of the then current Interest Period with respect thereto by the Borrower giving irrevocable notice to the Administrative Agent, in substantially the form attached hereto as Exhibit F, in accordance with the applicable provisions of the term "Interest Period" set forth in Section 1.1, of the length of the next Interest Period to be applicable to such Term Loans, provided that no Term SOFR Loan may be continued as such when any Event of Default has occurred and is continuing and the Required Lenders have determined in its or their sole discretion, by written notice to the Administrative Agent and the Borrower, not to permit such continuations; and provided, further, that if the Borrower shall fail to give any required notice as described above in this paragraph or if such continuation is not permitted pursuant to the preceding proviso such Term SOFR Loans shall be automatically converted to Base Rate Loans on the last day of such then expiring Interest Period. Upon receipt of any such notice, the Administrative Agent shall promptly notify each relevant Lender thereof.

2.16. Limitations on Term SOFR Tranches. Notwithstanding anything to the contrary in this Agreement, all borrowings, conversions and continuations of Term SOFR Loans and all selections of Interest Periods shall be in such amounts and be made pursuant to such elections so that, (i) after giving effect thereto, the aggregate principal amount of the Term SOFR Loans comprising each tranche of Term SOFR Loans shall be equal to $5,000,000 or a whole multiple of $500,000 in excess thereof and (ii) no more than ten different Interest Periods for any tranche of Term Loans be outstanding at any one time (unless a greater number of Interest Periods is permitted by the Administrative Agent).

2.17. Pro Rata Treatment, etc.

(a) Except as otherwise provided herein (including Section 2.27), each Borrowing by the Borrower from the Lenders hereunder shall be made *pro rata* according to the Term B Percentages or applicable Incremental Term Percentages, as applicable, of the relevant Lenders.

(b) Except as otherwise provided herein (including Sections 2.14, 2.27, 2.28 and 9.6(f)), each payment (including each prepayment) by the Borrower on account of principal or interest on each tranche of Term Loans shall be made *pro rata* according to the respective outstanding principal amounts of the Term B Loans or any series of Incremental Term Loans, as applicable, then held by the applicable Lenders.

(c) All payments by the Borrower hereunder and under any Notes shall be made in Dollars in immediately available funds at the Funding Office of the Administrative Agent by 2:00 P.M., New York City time, on the date on which such payment shall be due, provided that if any payment hereunder would become due and payable on a day other than a Business Day such payment shall become due and payable on the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension. Interest in respect of any Term Loan hereunder shall accrue from and including the date of such Term Loan to but excluding the date on which such Term Loan is paid in full.

(d) Unless the Administrative Agent shall have been notified in writing by any Lender prior to a Borrowing that such Lender will not make the amount that would constitute its share of such Borrowing available to the Administrative Agent, the Administrative Agent may assume that such Lender is making such amount available to the Administrative Agent and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower a corresponding amount. If such amount is not made available to the Administrative Agent by the required time on the Borrowing Date therefor, such Lender shall pay to the Administrative Agent on demand, such amount with interest thereon, at a rate per annum equal to the greater of (i) the Federal Funds Effective Rate and (ii) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, for the period until such Lender makes such amount immediately available to the Administrative Agent. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this paragraph shall be conclusive in the absence of manifest error. If such Lender's share of such borrowing is not made available to the Administrative Agent by such Lender within three (3) Business Days after such Borrowing Date, the Administrative Agent shall also be entitled to recover such amount with interest thereon at the rate per annum applicable to Base Rate Loans under this Agreement, on demand, from the Borrower, such recovery to be without prejudice to the rights of the Borrower against any such Lender.

(e) Unless the Administrative Agent shall have been notified in writing by the Borrower prior to the date of any payment due to be made by the Borrower hereunder that the Borrower will not make such payment to the Administrative Agent, the Administrative Agent may assume that the Borrower is making such payment, and the Administrative Agent may, but shall not be required to, in reliance upon such assumption, make available to the applicable Lenders their respective *pro rata* shares of a corresponding amount. If such payment is not made to the Administrative Agent by the Borrower within three (3) Business Days after such due date, the Administrative Agent shall be entitled to recover, on demand, from each Lender to which any amount which was made available pursuant to the preceding sentence, such amount with interest thereon at the rate per annum equal to the daily average Federal Funds Effective Rate. Nothing herein shall be deemed to limit the rights of the Administrative Agent or any Lender against the Borrower.

(f) Notwithstanding anything to the contrary contained in this Section 2.17 or elsewhere in this Agreement, the Borrower may extend the final maturity of any tranche of Term Loans in connection with an Extension that is permitted under Section 2.27 without being obligated to effect such extensions on a *pro rata* basis among the relevant Lenders. Furthermore, the Borrower may take all actions contemplated by Section 2.27 in connection with any Extension (including modifying pricing and repayments or prepayments), and in each case such actions shall be permitted, and the differing payments contemplated therein shall be permitted without giving rise to any violation of this Section 2.17 or any other provision of this Agreement.

2.18. Requirements of Law.

(a) If the adoption of or any change in any Requirement of Law or in the interpretation or application thereof or compliance by any Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority, in each case, made subsequent to the Effective Date (including, but not limited to, the Dodd-Frank Wall Street Reform and Consumer Protection Act and, in each case, all requests, rules, guidelines or directives thereunder or issued in connection therewith):

(i) shall subject any Lender to any Tax of any kind whatsoever with respect to this Agreement or any Term SOFR Loan made by it (except for Non-Excluded Taxes or Other Taxes required to be indemnified under Section 2.19 and any Excluded Taxes);

(ii) shall impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, deposits or other liabilities in or for the account of, advances, loans or other extensions of credit by, or any other acquisition of funds by, any office of such Lender; or

(iii) shall impose on any such Lender any other condition;

and the result of any of the foregoing is to increase the cost to such Lender, by an amount that such Lender deems to be material, of making, converting into, continuing or maintaining Term SOFR Loans, or to reduce any amount receivable hereunder in respect thereof, then, in any such case, the Borrower shall promptly pay such Lender, upon its demand, any additional amounts necessary to compensate such Lender for such increased cost or reduced amount receivable. If any Lender becomes entitled to claim any additional amounts pursuant to this paragraph, it shall promptly notify the Borrower (with a copy to the Administrative Agent) of the event by reason of which it has become so entitled.

(b) If any Lender shall have determined that the adoption of or any change in any Requirement of Law regarding capital adequacy or in the interpretation or application thereof or compliance by such Lender or any corporation controlling such Lender with any request or directive regarding capital adequacy (whether or not having the force of law) from any Governmental Authority made subsequent to the Effective Date shall have the effect of reducing the rate of return on such Lender's or such corporation's capital as a consequence of its obligations hereunder to a level below that which such Lender or such corporation could have achieved but for such adoption, change or compliance (taking into consideration such Lender's or such corporation's policies with respect to capital adequacy) by an amount deemed by such Lender to be material, then from time to time, after submission by such Lender to the Borrower (with a copy to the Administrative Agent) of a written request therefor, the Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or such corporation for such reduction.

(c) A certificate as to any additional amounts payable pursuant to this Section 2.18 submitted by any Lender to the Borrower (with a copy to the Administrative Agent) shall be conclusive in the absence of manifest error. Notwithstanding anything to the contrary in this Section 2.18, the Borrower shall not be required to compensate any Lender pursuant to this Section 2.18 for any amounts incurred more than 180 days prior to the date that such Lender notifies the Borrower of such Lender's intention to claim compensation therefor; provided that, if the circumstances giving rise to such claim have a retroactive effect, then such 180 days period shall be extended to include the period of such retroactive effect. The obligations of the Borrower pursuant to this Section 2.18 shall survive the termination of this Agreement and the payment of the Term Loans and all other amounts payable hereunder.

2.19. Taxes.

(a) Unless required by applicable law (as determined in good faith by the applicable withholding agent), all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall be made free and clear of, and without deduction or withholding for or on account of, any Taxes. If any Taxes are required by law to be withheld by the applicable withholding agent from any amounts payable to the Administrative Agent or any Lender hereunder, or under any other Loan Document: (x) to the extent such Taxes are Non-Excluded Taxes or Other Taxes, the amounts so payable by the applicable Loan Party to the Administrative Agent or such Lender shall be increased to the extent necessary so that after all required deductions (including deductions applicable to additional sums payable under this Section 2.19) have been made, such Lender (or, in the case of payments made to the Administrative Agent for its own account, the Administrative Agent) receives an amount equal to the sum it would have received had no such withholding or deductions been made, (y) the applicable withholding agent shall make such deductions, and (z) the applicable withholding agent shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

Notwithstanding anything to the contrary contained in this Section 2.19(a) or Section 2.19(b), unless the Administrative Agent or a Lender gives notice to the applicable Loan Party that it is obligated to pay an amount under Section 2.19(a) or Section 2.19(b) within 180 days of the later of (x) the date the applicable party incurs the Taxes or (y) the date the applicable party has knowledge of its incurrence of the Taxes, then such party shall only be entitled to be compensated for such amount by the applicable Loan Party pursuant to Section 2.19(a) or Section 2.19(b) to the extent the Taxes are incurred or suffered on or after the date which occurs 180 days prior to such party giving notice to the applicable Loan Party that it is obligated to pay the respective amounts pursuant to Section 2.19(a) or Section 2.19(b), but if the circumstances giving rise to such claim have a retroactive effect (*e.g.*, in connection with the audit of a prior tax year), then such 180 day period shall be extended to include such period of retroactive effect.

(b) In addition, the relevant Loan Party shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Whenever any Non-Excluded Taxes or Other Taxes are payable by a Loan Party, as promptly as possible thereafter such Loan Party shall send to the Administrative Agent for its own account or for the account of the relevant Lender, as the case may be, a certified copy of an original official receipt received, if any, by the Borrower or other documentary evidence showing payment thereof.

(d) The Borrower shall indemnify the Administrative Agent and the Lenders (within 30 days after demand therefor) for the full amount of any Non-Excluded Taxes or Other Taxes (including Non-Excluded Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.19), and for any reasonable expenses arising therefrom or with respect thereto, that may become payable by the Administrative Agent or any Lender, whether or not such Non-Excluded Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; provided that the Borrower shall not be obligated to indemnify the Administrative Agent or any Lender for any penalties, interest or expenses relating to Non-Excluded Taxes or Other Taxes to the extent that such penalties, interest or expenses are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such party's gross negligence or willful misconduct. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Each Lender shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with any documentation prescribed by law, or reasonably requested by the Borrower or the Administrative Agent, certifying as to any entitlement of such Lender to an exemption from, or reduction in, any withholding Tax with respect to any payments to be made to such Lender under the Loan Documents. Each such Lender shall, whenever a lapse in time or change in circumstances renders such documentation expired, obsolete or inaccurate in any material respect, deliver promptly to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the applicable withholding agent) or promptly notify the Borrower and the Administrative Agent of its legal ineligibility to do so. Unless the applicable withholding agent has received forms or other documents satisfactory to it indicating that payments under any Loan Document to or for a Lender are not subject to withholding tax or are subject to such Tax at a rate reduced by an applicable tax treaty, the Borrower, Administrative Agent or other applicable withholding agent shall withhold amounts required to be withheld by applicable law from such payments at the applicable statutory rate. Each Lender hereby authorizes the Administrative Agent to deliver to the Borrower and to any successor Administrative Agent any documentation provided by the Lender to the Administrative Agent pursuant to this Section 2.19(e).

Without limiting the generality of the foregoing:

(i) Each Lender that is a "United States person" (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly signed original copies of Internal Revenue Service Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal backup withholding.

(ii) Each Lender that is not a "United States person" (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement whichever of the following is applicable:

(A) two duly completed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or any successor forms) claiming eligibility for the benefits of an income tax treaty to which the United States of America is a party,

(B) two duly completed copies of Internal Revenue Service Form W-8ECI (or any successor forms),

(C) in the case of a Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate, in substantially the form of Exhibit E (any such certificate a "United States Tax Compliance Certificate"), or any other form approved by the Administrative Agent, to the effect that such Lender is not (A) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code, and that no payments in connection with the Loan Documents are effectively connected with such Lender's conduct of a U.S. trade or business and (y) two duly completed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or any successor forms),

(D) to the extent a Lender is not the beneficial owner (for example, where the Lender is a partnership, or is a Lender that has granted a participation), Internal Revenue Service Form W-8IMY (or any successor forms) of the Lender, accompanied by a Form W-8ECI, W-8BEN, W-8BEN-E, United States Tax Compliance Certificate, Form W-9, Form W-8IMY (or other successor forms) or any other required information from each beneficial owner, as applicable (provided that, if the Lender is a partnership (and not a participating Lender) and one or more direct or indirect partners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate shall be provided by such Lender on behalf of such direct or indirect partner(s)), or

(E) any other form prescribed by applicable requirements of U.S. federal income tax law as a basis for claiming exemption from or a reduction in U.S. federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable Requirements of Law to permit the Borrower and the Administrative Agent to determine the withholding or deduction required to be made.

(iii) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Sections 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their FATCA obligations, to determine whether such Lender has or has not complied with such Lender's FATCA obligations and to determine the amount, if any, to deduct or withhold from such payment. Solely for purposes of this clause (iii), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Notwithstanding any other provision of this clause (e), a Lender shall not be required to deliver any documentation that such Lender is not legally eligible to deliver.

(f) If the Administrative Agent or any Lender determines, in its sole discretion, that it has received a refund of any Non-Excluded Taxes or Other Taxes as to which it has been indemnified by a Loan Party or with respect to which a Loan Party has paid additional amounts pursuant to this Section 2.19, it shall pay over such refund to the applicable Loan Party (but only to the extent of indemnity payments made, or additional amounts paid, by the such Loan Party under this Section 2.19 with respect to the Non-Excluded Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of the Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund, net of any Taxes payable by the Administrative Agent or such Lender); provided that the applicable Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender, as the case may be, is required to repay such refund to such Governmental Authority. This paragraph shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Borrower or any other Person.

(g) The agreements in this Section 2.19 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder or any other Loan Document and any assignment of rights by, or replacement of, any Lender.

(h) For the avoidance of doubt, any payments made by the Administrative Agent to any Lender shall be treated as payments made by the applicable Loan Party.

2.20. [Reserved].

2.21. Change of Lending Office. Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 2.18 or 2.19(a) with respect to such Lender, it will, if requested by the Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to designate another lending office for any Term Loans affected by such event with the object of avoiding the consequences of such event; provided that such designation is made on terms that, in the good faith judgment of such Lender, cause such Lender and its lending office(s) to suffer no economic, legal or regulatory disadvantage, and provided, further, that nothing in this Section shall affect or postpone any of the obligations of the Borrower or the rights of any Lender pursuant to Section 2.18 or 2.19(a).

2.22. Fees.

(a) The Borrower agrees to pay to the Administrative Agent the administrative agent fees in the amounts and on the dates as set forth in any written agreements from time to time between the Administrative Agent and the Borrower.

(b) The Borrower agrees to pay on the Effective Date to the Administrative Agent for the pro rata benefit of each Lender an upfront fee in an amount equal to 0.75% of the aggregate principal amount of the Refinancing Term B Loans incurred on the Effective Date; provided that such upfront fee may be structured as original issue discount as agreed between the Borrower and the Administrative Agent.

2.23. [Reserved].

2.24. Nature of Fees. All Fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent (for the respective accounts of the Administrative Agent and the Lenders), as provided herein. Once paid, none of the Fees shall be refundable under any circumstances.

2.25. Incremental Term Loans.

(a) At any time after the Effective Date, the Borrower may by written notice to the Administrative Agent elect to request the establishment of one or more incremental term loan commitments (any such incremental term loan commitment, an "Incremental Commitment") to make one or more additional term loans (any such additional term loan, an "Incremental Term Loan"); provided that (1) the total aggregate principal amount for all such Incremental Commitments shall not (as of any date of incurrence thereof) exceed the Maximum Incremental Facilities Amount at such time and (2) the total aggregate principal amount for each Incremental Commitment (and the Incremental Term Loans made thereunder) shall not be less than $25,000,000 (or such lesser amount as may be (x) approved by the Administrative Agent or (y) remaining pursuant to foregoing clause (1). Each such notice shall specify the date (each, an "Increased Amount Date") on which the Borrower proposes that any Incremental Commitment shall be effective, which shall be a date not less than five (5) Business Days (or such shorter period as the Administrative Agent may agree to) after the date on which such notice is delivered to the Administrative Agent. The Borrower may invite any Lender, any Affiliate of any Lender and/or any Approved Fund, and/or any other Person reasonably satisfactory to the Administrative Agent, to provide an Incremental Commitment (any such Person, an "Incremental Lender"). Any proposed Incremental Lender offered or approached to provide all or a portion of any Incremental Commitment may elect or decline, in its sole discretion, to provide such Incremental Commitment. Any Incremental Commitment shall become effective as of such Increased Amount Date; provided that:

(i) all the conditions in Section 4.2 shall have been met; provided that in connection with an acquisition or investment permitted hereunder or an irrevocable redemption of other Indebtedness permitted hereunder, if agreed to by the respective Incremental Lenders, the Borrower shall only be required to (i) comply with Section 4.2(a), (ii) make customary "Sungard" representations and warranties and (iii) comply with a requirement that no Event of Default under Sections 7.1(a), (b), (i) or (j) shall have occurred and be continuing on the date on which the definitive agreement for such acquisition or investment is entered into or on the date which the respective irrevocable redemption notice is delivered.

(ii) the proceeds of any Incremental Term Loans shall be used for the working capital and general corporate purposes (including acquisitions, investments and Restricted Payments permitted under this Agreement) of the Borrower and its Restricted Subsidiaries;

(iii) each Incremental Commitment (and the Incremental Term Loans made thereunder) shall constitute Obligations and Parity Secured Obligations for all purposes under the Loan Documents and shall be secured and guaranteed with the other Term Loans hereunder on a pari passu basis;

(iv) in the case of each series of Incremental Term Loans (the terms of which shall be set forth in an amendment (an "Incremental Commitment Supplement") to this Agreement in form and substance reasonably satisfactory to the Administrative Agent and the Borrower):

(A) such Incremental Term Loan will mature and amortize in a manner reasonably acceptable to the Incremental Lenders making such Incremental Term Loan and the Borrower, but will not in any event have a shorter Weighted Average Life to Maturity than the remaining Weighted Average Life to Maturity of the initial Refinancing Term B Loans made on the Effective Date or a final maturity date earlier than that of such initial Refinancing Term B Loans;

(B) the Applicable Margin, pricing grid, if applicable, and fees for such Incremental Term Loan shall be determined by the applicable Incremental Lenders and the Borrower and set forth in the applicable Incremental Commitment Supplement;

(C) any Incremental Lender making any Incremental Term Loan shall be entitled to the same voting rights as the existing Lenders and each Incremental Term Loan shall receive proceeds of prepayments on the same basis as the Refinancing Term B Loans and, in the case of mandatory prepayment offers required pursuant to Section 2.14, such prepayments offers shall be on made pro rata on the basis of the original aggregate funded amount thereof among the Refinancing Term B Loans and the Incremental Term Loans (except, in each case, to the extent that the respective Incremental Lenders elect a lesser prepayment);

(D) each series of Incremental Commitments shall be effected pursuant to an Incremental Commitment Supplement executed and delivered by the Borrower, the Administrative Agent and the applicable Incremental Lenders (which Incremental Commitment Supplement may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of this Section 2.25); and

(E) the Borrower shall deliver or cause to be delivered any customary legal opinions or other customary documents (including, without limitation, a resolution duly adopted by the board of directors (or equivalent governing body) of each Loan Party authorizing such Incremental Term Loan and/or Incremental Commitment) reasonably requested by the Administrative Agent in connection with any such transaction.

(b) (i) Unless otherwise specifically provided herein, all references in the Loan Documents to Term Loans shall be deemed, unless the context otherwise requires, to include references to Incremental Term Loans that are Term Loans made pursuant to this Agreement; provided that such Incremental Term Loan either shall be designated as a separate tranche of Term Loans for all purposes of this Agreement or may be added to a then existing tranche of Term Loans (and thereafter, for all purposes of the Loan Documents, be treated as part of such existing tranche of Term Loans).

(ii) The Incremental Lenders shall be included in any determination of the Required Lenders and, unless otherwise agreed or provided for in this Agreement, the Incremental Lenders will not constitute a separate voting class for any purposes under this Agreement.

(iii) The Incremental Term Loans may be drawn on a delayed draw basis if agreed by the Incremental Lenders providing such Incremental Term Loans.

(c) On any Increased Amount Date on which any Incremental Commitment becomes effective, subject to the foregoing terms and conditions, each Incremental Lender with an Incremental Commitment shall make, or be obligated to make, an Incremental Term Loan to the Borrower in an amount equal to its Incremental Commitment and shall become a Lender hereunder with respect to such Incremental Commitment and the Incremental made pursuant thereto.

(d) The Lenders hereby irrevocably authorize the Administrative Agent and the Collateral Agent to enter into amendments to this Agreement and the other Loan Documents with the Borrower and the other applicable Loan Parties as may be necessary in order to effectuate the terms of this Section 2.25 (including, without limitation, as applicable, (1) to permit the Incremental Term Loans to share ratably in the benefits of this Agreement and the other Loan Documents and (2) to include the Incremental Commitments or outstanding Incremental Term Loans in any determination of Required Lenders). Without limiting the foregoing, in connection with any Incremental Term Loan, the respective Loan Parties shall (at their expense) amend (and the Collateral Agent is hereby directed to amend) any Mortgage that has a maturity date prior to the then latest Stated Maturity so that such maturity date is extended to the then latest Stated Maturity (or such later date as may be advised by local counsel to the Collateral Agent).

2.26. Replacement of Lenders. The Borrower shall be permitted to replace any Lender that (a) requests reimbursement for amounts owing pursuant to Section 2.18 or 2.19, (b) refuses to extend its Term Loans pursuant to an Extension Offer pursuant to Section 2.27 or (c) does not consent to any proposed amendment, supplement, modification, consent or waiver of any provision of this Agreement or any other Loan Document that requires the consent of each of the Lenders or each of the Lenders affected thereby (so long as the consent of the Required Lenders has been obtained), in each case with a replacement financial institution; provided that (i) prior to any such replacement pursuant to preceding clause (a), such Lender shall have taken no action under Section 2.21 so as to eliminate the continued need for payment of amounts owing pursuant to Section 2.18 or 2.19, (ii) the replacement financial institution shall purchase, at par, all Term Loans outstanding and other amounts related thereto owing to such replaced Lender on or prior to the date of replacement, (iii) [reserved], (iv) the replacement financial institution (if other than a then existing Lender or an affiliate thereof or an Approved Fund) shall be reasonably satisfactory to the Administrative Agent, (v) the replaced Lender shall be obligated to make such replacement in accordance with the provisions of Section 9.6 (provided that the Borrower shall be obligated to pay the registration and processing fee referred to therein), (vi) until such time as such replacement shall be consummated, the Borrower shall pay all additional amounts (if any) required pursuant to Section 2.18 or 2.19, as the case may be, and (vii) any such replacement shall not be deemed to be a waiver of any rights that the Borrower, the Administrative Agent or any other Lender shall have against the replaced Lender.

2.27. Extensions of Loans and Commitments.

(a) Notwithstanding anything to the contrary in this Agreement, pursuant to one or more offers (each, an "Extension Offer") made from time to time by the Borrower to any or all Lenders holding Term B Loans or Incremental Term Loans of a given series with a like Stated Maturity, the Borrower may from time to time extend the maturity date of such Term Loans and otherwise modify the terms of such Term Loans pursuant to the terms of the relevant Extension Offer (including, without limitation, by increasing the interest rate or fees payable in respect of such Term Loans (and related outstandings), in each case, without the consent of any other Lenders) (an "Extension," and each group of Term Loans so extended, as well as the original Term Loans (not so extended), being a "tranche"; any Extended Term Loans shall constitute a separate tranche of Term Loans from the tranche of Term Loans from which they were converted), so long as the following terms are satisfied: (i) no Event of Default shall have occurred and be continuing at the time that any offering document in respect of an Extension Offer is delivered to the relevant Lenders, (ii) except as to interest rates, fees. amortization and final maturity, the Term Loans of any Lender (an "Extending Term Lender") extended pursuant to an Extension (an "Extended Term Loan") shall be a Term Loan with the same terms as the original Term Loans; provided that at no time shall there be Term Loans hereunder (including Extended Term Loans and any original Term Loans) which have more than three different Stated Maturities (unless a greater number is permitted by the Administrative Agent), (iii) if the aggregate principal amount of Term Loans in respect of which Lenders shall have accepted the relevant Extension Offer shall exceed the maximum aggregate principal amount of Term Loans offered to be extended by the Borrower pursuant to such Extension Offer, then the Term Loans of such Lenders shall be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings of record) with respect to which such Lenders have accepted such Extension Offer, (viii) all documentation in respect of such Extension shall be consistent with the foregoing, and all written communications by the Borrower generally directed to the Lenders in connection therewith shall be in form and substance consistent with the foregoing and otherwise reasonably satisfactory to the Administrative Agent, and (ix) any applicable Minimum Extension Condition shall be satisfied.

(b) With respect to all Extensions consummated by the Borrower pursuant to this Section 2.27, (i) such Extensions shall not constitute voluntary or mandatory payments or prepayments for purposes of Section 2.13 or 2.14 and (ii) no Extension Offer is required to be in any minimum amount or any minimum increment, provided that the Borrower may at its election specify as a condition (a "Minimum Extension Condition") to consummating any such Extension that a minimum amount (to be determined and specified in the relevant Extension Offer in the Borrower's discretion) of Term Loans of any or all applicable tranches be tendered. The Administrative Agent and the Lenders hereby consent to the Extensions and the other transactions contemplated by this Section 2.27(b) (including, for the avoidance of doubt, payment of any interest or fees in respect of any Extended Term Loans on such terms as may be set forth in the relevant Extension Offer) and hereby waive the requirements of any provision of this Agreement (including, without limitation, Sections 2.13, 2.14, 2.17 and 9.7(a)) or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 2.27.

(c) The Lenders hereby irrevocably authorize the Administrative Agent to enter into amendments to this Agreement and the other Loan Documents with the Borrower and the other applicable Loan Parties as may be necessary in order to establish new tranches or sub-tranches in respect of Term Loans so extended and such technical amendments as may be necessary in connection with the establishment of such new tranches or sub-tranches, in each case on terms consistent with this Section 2.27. Notwithstanding the foregoing, the Administrative Agent shall have the right (but not the obligation) to seek the advice or concurrence of the Required Lenders with respect to any matter contemplated by this Section 2.27(c) and, if the Administrative Agent seeks such advice or concurrence, the Administrative Agent shall be permitted to enter into such amendments with the Borrower in accordance with any instructions actually received by such Required Lenders and shall also be entitled to refrain from entering into such amendments with the Borrower unless and until it shall have received such advice or concurrence; provided, however, that whether or not there has been a request by the Administrative Agent for any such advice or concurrence, all such amendments entered into with the Borrower by the Administrative Agent hereunder shall be binding and conclusive on the Lenders. Without limiting the foregoing, in connection with any Extensions, the respective Loan Parties shall (at their expense) amend (and the Collateral Agent is hereby directed to amend) any Mortgage that has a maturity date prior to the then latest Stated Maturity so that such maturity date is extended to the then latest Stated Maturity (or such later date as may be advised by local counsel to the Collateral Agent).

(d) In connection with any Extension, the Borrower shall provide the Administrative Agent at least five (5) Business Days' (or such shorter period as may be agreed by the Administrative Agent) prior written notice thereof, and shall agree to such procedures, if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.27.

2.28. Dutch Auction Buy Backs. Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, the Borrower may conduct reverse Dutch auctions from time to time after the Effective Date in order to purchase either Term B Loans or any Incremental Term Loans of any particular tranche(s) (as determined by the Borrower in its sole discretion) (each, an "Auction") (each such Auction to be managed exclusively by Administrative Agent or another investment bank or commercial bank of recognized standing selected by the Borrower (in such capacity, the "Auction Manager")), so long as the following conditions are satisfied: (i) each Auction shall be conducted in accordance with the procedures, terms and conditions set forth in this Section 2.28 and Exhibit I, (ii) no Event of Default shall have occurred and be continuing on the date of the delivery of each Auction Notice in connection with any Auction, (iii) the minimum principal amount (calculated on the face amount thereof) of each and all tranches of Term Loans that the Borrower offers to purchase in any such Auction shall be no less than $25,000,000 (across all such tranches) or an integral multiple of $1,000,000 in excess thereof (or such lesser amount and such lesser integral multiple as may be reasonably acceptable to the Auction Manager) and (iv) the aggregate principal amount (calculated on the face amount thereof) of all Term Loans of the applicable tranche or tranches so purchased by the Borrower shall automatically be cancelled and retired by the Borrower on the settlement date of the relevant purchase (and may not be resold). The Borrower must terminate an Auction if it fails to satisfy one or more of the conditions set forth above which are required to be met at the time which otherwise would have been the time of purchase of Term Loans pursuant to the respective Auction. If the Borrower commences any Auction (and all relevant requirements set forth above which are required to be satisfied at the time of the commencement of the respective Auction have in fact been satisfied), and if at such time of commencement the Borrower reasonably believes that all required conditions set forth above which are required to be satisfied at the time of the purchase of Term Loans pursuant to such Auction shall be satisfied, then the Borrower shall have no liability to any Lender for any termination of the respective Auction as a result of its failure to satisfy one or more of the conditions set forth above which are required to be met at the time which otherwise would have been the time of purchase of Term Loans pursuant to the respective Auction, and any such failure shall not result in any Default or Event of Default hereunder. With respect to all purchases of Term Loans of the applicable tranche or tranches made by the Borrower pursuant to this Section 2.28, (x) the Borrower shall pay on the settlement date of each such purchase all accrued and unpaid interest (except to the extent otherwise set forth in the relevant Offer Documents), if any, on the purchased Term Loans of the applicable tranche or tranches up to the settlement date of such purchase and (y) such purchases (and the payments made by the Borrower and the cancellation of the purchased Loans, in each case in connection therewith) shall not constitute voluntary or mandatory payments or prepayments for purposes of Section 2.13 or 2.14. Each Lender acknowledges and agrees that in connection with each Auction, (i) the Borrower may purchase or acquire Term Loans hereunder from Lenders from time to time, subject to this Section 2.28, (ii) the Borrower then may have, and later may come into possession of, information regarding the Term Loans or the Loan Parties hereunder that is not known to such Lender and that may be material to a decision by such Lender to enter into an assignment of such Term Loans hereunder ("Excluded Information"), (iii) such Lender has independently and without reliance on the Borrower or any of its Subsidiaries or Affiliates made such Lender's own analysis and determined to enter into an assignment of such Term Loans and to consummate the transactions contemplated thereby notwithstanding such Lender's lack of knowledge of the Excluded Information and (iv) the Borrower and its Subsidiaries shall have no liability to such Lender, and such Lender hereby waives and releases, to the extent permitted by law, any claims such Lender may have against the Borrower and its Subsidiaries, under applicable laws or otherwise, with respect to the nondisclosure of the Excluded Information. Each Lender further acknowledges that the Excluded Information may not be available to the Administrative Agent, the Auction Manager or the other Lenders hereunder. Each Lender which tenders (or does not tender) Term Loans pursuant to an Auction agrees to the provisions of the two preceding sentences, and agrees that they shall control, notwithstanding any inconsistent provision hereof or in any Assignment and Acceptance. The Administrative Agent and the Lenders hereby consent to the Auctions and the other transactions contemplated by this Section 2.28 and hereby waive the requirements of any provision of this Agreement or any other Loan Document that may otherwise prohibit any Auction or any other transaction contemplated by this Section 2.28. The Auction Manager acting in its capacity as such hereunder shall be entitled to the benefits of the provisions of Section 8 and Section 9.5 *mutatis mutandis* as if each reference therein to the "Administrative Agent" or an "Agent" were a reference to the Auction Manager, and the Administrative Agent shall cooperate with the Auction Manager as reasonably requested by the Auction Manager in order to enable it to perform its responsibilities and duties in connection with each Auction.

SECTION 3

Representations and Warranties

In order to induce the Lenders to enter into this Agreement and to make Term Loans, the Borrower represents and warrants on the Effective Date to the Administrative Agent and to each Lender as follows:

3.1. Existence; Compliance with Law. Each Loan Party (a) is duly organized, validly existing and (to the extent such concept is applicable) in good standing under the laws of the jurisdiction of its organization, (b) has the power and authority, and the legal right, to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign corporation or other organization and (to the extent such concept is applicable) in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification and (d) is in compliance with all Requirements of Law, except, in the case of each of the foregoing clauses (a) through (d), to the extent that the failure to comply therewith would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.2. Power; Authorizations; Enforceable Obligations. Each Loan Party has the power and authority, and the legal right, to make, deliver and perform the Loan Documents to which it is a party and, in the case of the Borrower, to obtain extensions of credit hereunder. Each Loan Party has taken all necessary organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrower, to authorize the extensions of credit on the terms and conditions of this Agreement. No consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority is required in connection with the extensions of credit hereunder or with the execution, delivery, performance, validity or enforceability of this Agreement or any of the Loan Documents, except (i) that have been obtained or made and are in full force and effect, (ii) the filings made in respect of the Security Documents and (iii) to the extent that the failure to obtain any such consent, authorization, filing, notice or other act would not, in the aggregate, reasonably be expected to have a Material Adverse Effect. Each Loan Document has been duly executed and delivered on behalf of each Loan Party party thereto. This Agreement constitutes, and each other Loan Document upon execution will constitute, a legal, valid and binding obligation of each Loan Party party thereto, enforceable against each such Loan Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

3.3. No Legal Bar. The execution, delivery and performance of this Agreement and the other Loan Documents, the borrowings hereunder and the use of the proceeds thereof (x) will not violate any Requirement of Law applicable to any Loan Party or any Contractual Obligation of any Loan Party that (in either case) would reasonably be expected to have a Material Adverse Effect and (y) will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any Requirement of Law or any such material Contractual Obligation (other than the Liens created by the Security Documents and other Permitted Liens).

3.4. Accuracy of Information. No statement or information contained in this Agreement, any other Loan Document, the Information Memorandum or any other document, certificate or statement furnished by or on behalf of any Loan Party to the Administrative Agent or the Lenders, or any of them, for use in connection with the transactions contemplated by this Agreement or the other Loan Documents, contained as of the Effective Date, taken as a whole and in light of the circumstances in which made, any untrue statement of a material fact or omitted to state a material fact necessary to make the statements contained herein or therein not materially misleading.

3.5. No Material Adverse Effect. Since December 31, 2022, there has been no development or event that has had or would reasonably be expected to have a Material Adverse Effect.

3.6. Subsidiaries. Schedule 3.6 annexed hereto sets forth the name and jurisdiction of organization of each Restricted Subsidiary of the Borrower as of the Effective Date and, as to each such Restricted Subsidiary, the percentage of each class of Capital Stock owned by any Loan Party as of the Effective Date, and (b) as of the Effective Date, there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options or restricted stock granted to employees or directors and directors' qualifying shares) of any nature relating to any Capital Stock of any of the Guarantors directly owned by the Loan Parties that are included in the Collateral, except as created by the Loan Documents or permitted under Section 6.2.

3.7. Title to Assets; Liens. The Loan Parties have title in fee simple to, or a valid leasehold or easement interest in, all their material real property (including, without limitation, the material real property to be encumbered by a Mortgage), taken as a whole, and good and marketable title to, or a valid leasehold or easement interest in, all their other material property, taken as a whole, in each case, except for those which the failure to have such good title or such leasehold or easement interest would not be reasonably expected to have a Material Adverse Effect, and none of such property is subject to any Lien except Permitted Liens.

3.8. Intellectual Property. Each Loan Party owns, or is licensed to use, all Intellectual Property material to the conduct of its business, and the conduct of the business of each Loan Party does not infringe upon the intellectual property rights of any other Person, in each case except where the failure to do so would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.9. Use of Proceeds. The proceeds of the Refinancing Term B Loans shall be utilized, together with cash on hand, (i) to repay all the Initial Term B Loans outstanding under the Existing Credit Agreement, (ii) to pay fees and expenses related thereto (including without limitation, any breakage fees) and related to this Agreement and the transactions contemplated hereby, (iii) to pay any swap breakage costs (if any) resulting from such repayments and (iv) for general corporate purposes (including a partial prepayment of the Term B-5 Term Loan). The proceeds of Incremental Term Loans shall be used for the purposes described in Section 2.25.

3.10. Litigation. Except as disclosed in writing to the Administrative Agent and the Lenders prior to the Effective Date or otherwise disclosed on the Calpine Platform prior to the Effective Date, no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of the Borrower, threatened in writing by or against any Loan Party or against any of their respective properties or revenues that, in the aggregate, would reasonably be expected to have a Material Adverse Effect.

3.11. Federal Reserve Regulations. No part of the proceeds of any Term Loan will be used (a) for "buying" or "carrying" any "margin stock" within the respective meanings of each of the quoted terms under Regulation U as now in effect for any purpose that violates the provisions of the Regulations of the Board of Governors or (b) for any purpose that violates the provisions of the Regulations of the Board of Governors. Neither the Borrower nor any of its Restricted Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any "margin stock."

3.12. Solvency. On the Effective Date, the Borrower and its Subsidiaries, taken as a whole, are, and after giving effect to the incurrence of all Indebtedness and obligations being incurred in connection herewith on the Effective Date will be, Solvent.

3.13. Taxes. Each Loan Party has filed or caused to be filed all federal and state income Tax and other Tax returns that are required to be filed, except if the failures to make any such filing would not, in the aggregate, reasonably be expected to have a Material Adverse Effect, and has paid all Taxes (including in its capacity as withholding agent) shown to be due and payable on said returns or on any assessments made against it or any of its property and all other Taxes, fees or other charges imposed on it or any of its property by any Governmental Authority (other than any (x) the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the relevant Loan Party, or (y) those where the failure to pay, in the aggregate, would not reasonably be expected to have a Material Adverse Effect). There are no proposed Tax assessments or other claims against, and no Tax audits with respect to, any Loan Party that would reasonably be expected to, in the aggregate, have a Material Adverse Effect.

3.14. ERISA. Except as, in the aggregate, does not or would not reasonably be expected to result in a Material Adverse Effect: neither a Reportable Event nor a failure to satisfy the minimum funding standard of Section 430 of the Code or Section 303 of ERISA, whether or not waived, with respect to a Plan has occurred during the five year period prior to the date on which this representation is made or deemed made with respect to any Plan, and each Plan has complied in all respects with the applicable provisions of ERISA and the Code; no termination of a Plan has occurred, and no Lien in favor of the PBGC or a Plan has arisen, during such five-year period; the present value of all accrued benefits under each Plan (based on those assumptions used to fund such Plans) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Plan allocable to such accrued benefits; neither the Borrower nor any Commonly Controlled Entity has had a complete or partial withdrawal (including under Section 4062(e) of ERISA) from any Plan or Multiemployer Plan; to the knowledge of the Borrower, neither the Borrower nor any Commonly Controlled Entity would become subject to any liability under ERISA if the Borrower or any such Commonly Controlled Entity were to withdraw completely from all Multiemployer Plans as of the valuation date most closely preceding the date on which this representation is made or deemed made; and to the knowledge of the Borrower, no Multiemployer Plan is Insolvent.

3.15. Environmental Matters; Hazardous Material. There have been no matters with respect to Environmental Laws or Materials of Environmental Concern which, in the aggregate, would reasonably be expected to have a Material Adverse Effect.

3.16. Investment Company Act; Other Regulations. No Loan Party is an "investment company", or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended.

3.17. Labor Matters. Except as, in the aggregate, would not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against any Loan Party pending or, to the knowledge of the Borrower, threatened; (b) hours worked by and payment made to employees of each Loan Party have not been in violation of the Fair Labor Standards Act or any other applicable Requirement of Law dealing with such matters; and (c) all payments due from any Loan Party on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the relevant Loan Party.

3.18. Security Documents.

(a) After the execution and delivery thereof, the Pledge and Security Agreement and the Partnership Interest Pledge Agreement are effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof. In the case of the Pledged Stock described in the Pledge and Security Agreement and the Partnership Interest Pledge Agreement, when stock certificates (if any) representing such Pledged Stock are delivered to the Collateral Agent, and in the case of the Collateral described in the Pledge and Security Agreement and the Partnership Interest Pledge Agreement, when financing statements and other filings specified on Schedule 5 of the Perfection Certificate in appropriate form are filed in the offices specified on Schedule 6 of the Perfection Certificate, the Pledge and Security Agreement and the Partnership Interest Pledge Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and the proceeds thereof to the extent security interests can be so perfected (by delivery or filing UCC financing statements as applicable) on such Collateral, as security for the Secured Obligations, in each such case prior and superior in right to any other Person (except Permitted Liens).

(b) After the execution and delivery thereof, each of the Mortgages, is or will be effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable Lien on the Mortgaged Properties described therein and proceeds thereof, and each such Mortgage shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in the Mortgaged Properties and the proceeds thereof, as security for the Secured Obligations, in each case prior and superior in right to any other Person other than Permitted Liens. Schedule 1.1B lists, as of the Effective Date, each parcel of owned real property and each leasehold interest in real property located in the United States and held by the Borrower or any of its Guarantors that has a value, in the reasonable opinion of the Borrower, in excess of $40,000,000.

3.19. Energy Regulation. The Borrower and its Restricted Subsidiaries are in compliance with the Public Utility Holding Company Act of 2005 and the implementing regulations of the Federal Energy Regulatory Commission, as amended from time to time (together, "PUHCA 2005"), and consummation of the transactions contemplated by this Agreement and the other Loan Documents will not cause the Borrower or its Restricted Subsidiaries to cease to be in compliance with PUHCA 2005, except where any such non-compliance would not reasonably be expected to have a Material Adverse Effect.

3.20. Anti-Corruption Laws and Sanctions. No Loan Party is a Sanctioned Person. Neither the Borrower's incurrence of any Term Loans on any Borrowing Date nor its use of the proceeds thereof will violate any Anti-Corruption Law or applicable Sanctions.

3.21. Beneficial Ownership Certification. As of the Effective Date, the information included in the Beneficial Ownership Certification delivered pursuant to Section 4.1(i) is true and correct in all respects.

SECTION 4

Conditions Precedent

4.1. Conditions to the Effective Date. The occurrence of the Effective Date is subject to the satisfaction or waiver of the following conditions precedent:

(a) Amendment No. 3. The Administrative Agent shall have received (i) counterparts of Amendment No. 3 executed and delivered by the Borrower, the Administrative Agent, the Collateral Agent and each Refinancing Term Loan Lender and (ii) Schedules to this Agreement.

(b) Lien Searches. The Administrative Agent shall have received the results of a recent lien search in each jurisdiction where a Loan Party is organized, and such search shall reveal no liens on any of the assets of the Loan Parties except for liens permitted by Section 6.2 or discharged on or prior to the Effective Date pursuant to documentation reasonably satisfactory to the Administrative Agent.

(c) Corporate Documents and Proceedings. The Administrative Agent shall have received (i) a certificate of each Loan Party, dated the Effective Date, substantially in the form attached hereto as Exhibit A-1 or A-2 (as applicable), with appropriate insertions and attachments, including the certificate of incorporation of each Loan Party that is a corporation certified by the relevant authority of the jurisdiction of organization of such Loan Party, and (ii) a long form good standing certificate for each Loan Party from its jurisdiction of organization.

(d) No Material Adverse Effect. Since December 31, 2022, there has been no development or event that has had or would reasonably be expected to have a Material Adverse Effect.

(e) Legal Opinion. The Administrative Agent shall have received an executed legal opinion from White & Case LLP, counsel to the Borrower and the Guarantors, in form and substance reasonably satisfactory to the Arrangers.

(f) [Reserved].

(g) Payment of Fees; Expenses. The Arrangers and the Administrative Agent shall have received all fees required to be paid, and all reasonable costs and expenses required to be paid and for which invoices have been presented (including the reasonable fees and expenses of legal counsel), on or before the Effective Date.

(h) Refinancing. The Refinancing shall have been consummated, or shall be consummated substantially simultaneously with the initial borrowing of the Refinancing Term B Loans, and, in connection therewith, the Borrower shall have paid, or caused to be paid, to the Administrative Agent, for the ratable benefit of each Initial Term B Lender, all accrued and unpaid interest, to but not including the Effective Date, in respect of the Initial Term B Loans.

(i) KYC Information. Upon the request of any Lender made at least ten (10) Business Days prior to the Effective Date, the Borrower shall have provided to such Lender (i) the documentation and other information so requested in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including the PATRIOT Act, in each case at least three (3) Business Days prior to the Effective Date, and (ii) a Beneficial Ownership Certification in relation to the Borrower to the extent that the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation.

(j) Loan Documents. The Administrative Agent and the Collateral Agent shall have received executed counterparts of the Loan Documents listed in Schedule 4.2, each in form reasonably satisfactory to the Administrative Agent and the Collateral Agent.

(k) Flood Insurance. The Administrative Agent shall have received a completed "Life-of-Loan" Federal Emergency Management Agency standard flood hazard determination with respect to each Mortgaged Property, and to the extent any Building or Mobile Home (as such terms are defined by the Flood Insurance Laws) on the Mortgaged Property is located in a special flood hazard area, (i) a notice about special flood hazard area status and flood disaster assistance duly executed by the Borrower, and (ii) evidence of flood insurance as required by Section 5.4.

4.2. Conditions to Each Borrowing of Term Loans. The occurrence of the Effective Date and the making of Term Loans hereunder are subject to the satisfaction or waiver of the following conditions precedent (except to the extent otherwise provided in Section 2.25):

(a) Notice. The Administrative Agent shall have received the applicable notice of borrowing, in substantially the form attached as Exhibit J, from the Borrower.

(b) Representations and Warranties. All representations and warranties contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the date of each Borrowing of Term Loans hereunder with the same effect as if made on and as of such date (unless stated to relate to a specific earlier date, in which case, such representations and warranties shall be true and correct in all material respects as of such earlier date) (it being understood that any representation or warranty that is qualified as to materiality or Material Adverse Effect shall be correct in all respects).

(c) No Default or Event of Default. (i) In the case of any Borrowing of Term Loans (other than Incremental Term Loans), no Default or Event of Default shall have occurred and be continuing on such Borrowing Date or after giving effect to the making of such Term Loans on such Borrowing Date and (ii) in the case of any Borrowing of Incremental Term Loans, no Event of Default shall have occurred and be continuing on such Borrowing Date or after giving effect to the making of such Incremental Term Loans on such Borrowing Date.

SECTION 5

Affirmative Covenants

The Borrower hereby agrees that, so long as any Term Loan or other amount is owing to any Lender or the Administrative Agent hereunder or under any other Loan Document (other than contingent indemnification obligations for which no claim has been asserted) or the Term Commitments are outstanding, the Borrower shall and shall cause each of its Restricted Subsidiaries to:

5.1. Financial Statements, Etc. Whether or not required by the SEC's rules and regulations, the Borrower will furnish to the Administrative Agent (for distribution to the Lenders) unaudited quarterly financial statements of the Borrower for the first three fiscal quarters of each fiscal year of the Borrower (which statements have been certified by a Responsible Officer of the Borrower) beginning with the fiscal quarter ended December 31, 2023, and audited annual financial statements of the Borrower (which annual financial statements shall include a report thereon from the Borrower's certified independent accountants), in each case prepared in accordance with GAAP (in absence of footnote disclosures and year-end audit adjustments as it pertains to quarterly financial statements) and, in each case, within (x) 105 days after the end of the fiscal year of the Borrower, in the case of audited annual financial statements and (y) 60 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, in the case of unaudited quarterly financial statements of the Borrower.

5.2. Compliance Certificate.

(a) The Borrower shall deliver to the Administrative Agent, within 105 days after the end of each fiscal year of the Borrower, an officers' certificate of a Responsible Officer of the Borrower stating that a review of the activities of the Borrower and its Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Responsible Officer with a view to determining whether any Default or Event of Default has occurred and is continuing under this Agreement, and further stating, as to such Responsible Officer signing such certificate, that to the best of his or her knowledge no Default or Event of Default has occurred and is continuing under this Agreement (or, if a Default or Event of Default has occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Borrower is taking or proposes to take with respect thereto).

(b) The Borrower will deliver to the Administrative Agent, promptly upon any Responsible Officer becoming aware of any Default or Event of Default, an officers' certificate of a Responsible Officer of the Borrower specifying such Default or Event of Default and what action the Borrower is taking or proposes to take with respect thereto.

5.3. Maintenance of Existence. Preserve, renew and keep in full force and effect its organizational existence and (ii) take all reasonable action to maintain all rights, privileges and franchises reasonably necessary in the normal conduct of its business, except, in each case, (x) as otherwise permitted by Section 6.3 or 6.8 or (y) to the extent that failure to do so would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.4. Maintenance of Insurance.

(a) The Borrower and the Grantors will maintain insurance policies (or self-insurance) on all its material property in at least such amounts and against at least such risks as are usually insured against by companies of a similar size engaged in the same or a similar business and, from and after the Original Closing Date, will name the Collateral Agent as an additional insured and (in the case of Collateral) lender's loss payee as its interests may appear, to the extent required by the Security Documents. Upon the request of the Collateral Agent, the Borrower and the Grantors will furnish to the Collateral Agent full information as to their property and liability insurance carriers; and

(b) If at any time any Building or Mobile Home (each as defined by the Flood Insurance Laws) located on a Mortgaged Property subject to a Mortgage is located in an area identified by the Federal Emergency Management Agency (or any successor agent) as a special flood hazard area, then the Borrower shall, or shall cause the applicable Loan Party to, (i) maintain with a financially sound and reputable insurer flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) if requested by the Administrative Agent, deliver to the Administrative Agent evidence of such compliance.

5.5. [Reserved].

5.6. [Reserved].

5.7. [Reserved].

5.8. Additional Guarantees. If (1) the Borrower acquires or creates another Wholly-Owned Domestic Subsidiary after the Original Closing Date (that does not constitute an Excluded Subsidiary) or (2) any Wholly-Owned Domestic Subsidiary of the Borrower ceases to constitute an Excluded Subsidiary, then such Wholly-Owned Domestic Subsidiary will become a Guarantor under the Guaranty Agreement within 90 days thereof (as such date may be extended by the Administrative Agent).

5.9. After-Acquired Collateral.

(a) With respect to any property acquired after the Original Closing Date by the Borrower or any Guarantor (other than (x) property constituting an "Excluded Asset" under (and as defined in) the Pledge and Security Agreement and (y) any property described in clauses (b)-(d) of this Section 5.9) as to which the Collateral Agent, for the benefit of the Secured Parties, does not have a perfected Lien, the Borrower and each applicable Guarantor shall promptly:

(i) execute and deliver to the Collateral Agent such amendments to the Pledge and Security Agreement or such other documents as the Collateral Agent deems necessary or advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a security interest in such property; and

(ii) take all actions necessary or advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected first priority security interest in such property (subject to Permitted Liens), including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Pledge and Security Agreement or by law or as may be reasonably requested by the Collateral Agent.

(b) With respect to any fee interest in any real property having a fair market value (together with improvements thereof) of at least $40,000,000 acquired after the Original Closing Date by the Borrower or any Guarantor (other than any such real property subject to a Permitted Lien which precludes the granting of a Mortgage thereon), within 180 days after the creation or acquisition thereof (as such date may be extended by the Administrative Agent), the Borrower or the applicable Guarantor shall deliver to the Collateral Agent the items set forth in Section 5.10(b) hereof.

(c) With respect to any new Wholly-Owned Domestic Subsidiary (other than an Excluded Subsidiary) created or acquired after the Original Closing Date by the Borrower or any Guarantor (which, for the purposes of this paragraph (c), shall include any existing Wholly-Owned Domestic Subsidiary that ceases to be an Excluded Subsidiary), within 90 days after the creation or acquisition thereof (as such date may be extended by the Administrative Agent), the Borrower and each applicable Guarantor shall:

(i) execute and deliver to the Collateral Agent such amendments to the Pledge and Security Agreement as the Collateral Agent reasonably deems necessary or advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected first priority security interest in the Capital Stock of such new Wholly-Owned Domestic Subsidiary that is owned by the Borrower or any Guarantor (subject to Permitted Liens unless constituting an Excluded Asset),

(ii) deliver to the Collateral Agent the certificates representing such Capital Stock (unless constituting an Excluded Asset), together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the Borrower or the relevant Guarantor,

(iii) cause such new Wholly-Owned Domestic Subsidiary (A) to become a party to the Pledge and Security Agreement, (B) to take such actions reasonably necessary or advisable to grant to the Collateral Agent for the benefit of the Secured Parties a perfected first priority security interest in the Collateral described in the Pledge and Security Agreement with respect to such new Wholly-Owned Domestic Subsidiary (subject to Permitted Liens and the terms of the Pledge and Security Agreement), including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Pledge and Security Agreement or by law or as may be reasonably requested by the Collateral Agent and (C) to deliver to the Collateral Agent a customary closing certificate of such Wholly-Owned Domestic Subsidiary, with appropriate insertions and attachments, and

(iv) if requested by the Collateral Agent, deliver to the Collateral Agent customary legal opinions relating to the matters described above.

(d) With respect to any new direct Foreign Subsidiary created or acquired after the Original Closing Date by the Borrower or any Guarantor, the Borrower or the applicable Guarantor shall promptly:

(i) execute and deliver to the Collateral Agent such amendments to the Pledge and Security Agreement as the Collateral Agent deems reasonably necessary or advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected first priority security interest in the Capital Stock of such new Foreign Subsidiary that is owned by the Borrower or such Guarantor (provided that in no event shall more than 65% of the total outstanding voting Capital Stock of any such new Foreign Subsidiary be required to be so pledged and then only so long as such Capital Stock does not constitute an Excluded Asset), and

(ii) if commercially reasonable, deliver to the Collateral Agent the certificates representing such Capital Stock (unless constituting an Excluded Asset), together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the Borrower or the relevant Guarantor, and take such other action as may be necessary or, in the opinion of the Collateral Agent, desirable to perfect the Collateral Agent's security interest therein.

5.10. Post-Closing Matters.

(a) Within ninety (90) days after the Effective Date (or such longer period as Administrative Agent may agree in its reasonable discretion), the Collateral Agent shall have received evidence of property and liability insurance policies (or self-insurance) on all of the Borrower's material property in at least such amounts and against at least such risks as are usually insured against by companies of a similar size engaged in the same or a similar business and, from and after the Effective Date, endorsements naming the Collateral Agent as an additional insured and loss payee as its interests may appear, to the extent required by the Security Documents; and

(b) Within 90 days after the Original Closing Date (or such longer period as the Administrative Agent may agree in its reasonable discretion), the Collateral Agent shall have received:

(1) counterparts of a Mortgage with respect to each real property designated as a Mortgaged Property listed on Schedule 1.1B hereto, duly executed and delivered by the record owner of such property in form suitable for filing or recording in the filing or recording office in the jurisdiction in which such property is located or as the Collateral Agent may reasonably deem necessary or desirable in order to create a valid and subsisting perfected first-priority Lien (subject only to Permitted Liens) on the property and/or rights described therein in favor of the Collateral Agent for the benefit of the Secured Parties, and evidence that all filing and recording taxes and fees have been paid or otherwise provided for in a manner reasonably satisfactory to the Collateral Agent (it being understood that if a mortgage tax will be owed on the entire amount of the indebtedness evidenced hereby, then the amount of such mortgage tax shall be calculated based on the lesser of (x) the amount of the Indebtedness allocated to the applicable Mortgaged Property and (y) 110% of the fair market value of the Mortgaged Property at the time the Mortgage is entered into, which in the case of clause (x) will result in a limitation of the debt secured by the Mortgage to such amount);

(2) fully paid policies of title insurance (or marked-up title insurance commitments having the effect of policies of title insurance) on each Mortgaged Property naming the Collateral Agent as the insured party for its benefit and that of the Secured Parties and respective successors and assigns (the "Title Insurance Policies") issued by the Title Insurance Company, such Title Insurance Policies to be in form and substance and in an amount reasonably acceptable to the Collateral Agent, insuring the Mortgages to be valid subsisting first-priority Liens (subject to Permitted Liens) on the property described therein, free and clear of all Liens other than Permitted Liens, each of which shall (i) to the extent reasonably necessary, include such reinsurance arrangements or coinsurance as shall be reasonably acceptable to the Collateral Agent, (ii) contain a "tie-in" endorsement, if available under applicable law and (iii) have been supplemented by such endorsements as shall be reasonably requested by the Collateral Agent (including, if reasonably requested by the Collateral Agent, endorsements on matters relating to usury, first loss, zoning, contiguity, revolving credit, doing business, access, variable rate, survey, environmental lien, subdivision, mortgage recording tax, separate tax lot and so-called comprehensive coverage over covenants and restrictions);

(3) either (a) a new survey with respect to the plant site located on each Mortgaged Property prepared by a surveyor selected by the Borrower and reasonably acceptable to the Collateral Agent, certified to the Administrative Agent, the Collateral Agent and the Title Insurance Company issuing the title insurance policy for such Mortgaged Property pursuant to clause (2) above, and complying with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," each in form and substance reasonably acceptable to the Collateral Agent; or (b) an existing survey of the plant site located on each Mortgaged Property together with an "affidavit of no-change", in each case sufficient to provide coverage under the Title Insurance Policies referred to in clause (2) above that does not contain a general survey exception for survey matters with respect to the plant site and which contains survey-related endorsements with respect to the plant site reasonably acceptable to the Collateral Agent;

(4) customary legal opinions, addressed to the Administrative Agent, the Collateral Agent and the Lenders (a) in the state in which the applicable Mortgaged Property is located with respect to the enforceability and perfection of such Mortgage and any related fixture filing and any other customary matters reasonably requested by the Collateral Agent and (b) in the state in which the mortgagor is organized or formed, with respect to due authorization, execution and delivery of such Mortgage and other customary matters reasonably requested by the Collateral Agent;

(5) with respect to each Mortgaged Property, a completed "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination, and to the extent any Building or Mobile Home (as defined by the Flood Insurance Laws) on the Mortgaged Property is located in an area identified by the Federal Emergency Management Agency (or any successor agent) as a special flood hazard area, (i) a notice about special flood hazard area status and flood disaster assistance duly executed by the Borrower and (ii) evidence of flood insurance as required by Section 5.4 hereof; and

(6) with respect to the Magic Valley Facility, a collateral assignment of (a) that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated as of August 14, 2003, between Calpine Construction Finance Company, L.P., Malcom S. Morris, and Magic Valley Pipeline L.P., recorded on August 20, 2003 as document number 1233814 and (b) that certain Option Agreement, dated as of August 14, 2003, as evidenced by that certain Memorandum of Option Agreement, made effective as of August 14, 2003, in each case in form and substance satisfactory to the Collateral Agent.

(c) *Mortgage Amendments*. Within 180 days after the Effective Date (or such longer period as the Administrative Agent may agree in its reasonable discretion), the Borrower shall, or shall cause the applicable Guarantor to, enter into an amendment to such of the Mortgages encumbering the Mortgaged Properties as the Administrative Agent may reasonably request based on the advice of local counsel in the jurisdiction in which each Mortgaged Property is located, in form reasonably acceptable to the Administrative Agent, together, in each case, if reasonably requested by the Administrative Agent, with opinions of local counsel with respect thereto and a date-down endorsement to the existing lender's title insurance policy (or where such endorsement is not available, a modification endorsement or a title search). For the avoidance of doubt, the requirements under this Section 5.10(c) have been satisfied with respect to Mortgages encumbering Mortgaged Properties in Texas and Massachusetts.

SECTION 6

Negative Covenants

The Borrower agrees that, so long as any Term Loan or other amount is owing to any Lender or the Administrative Agent hereunder or under any other Loan Document (other than contingent indemnification obligations for which no claim has been asserted) or the Term Commitments are outstanding:

6.1. Limitation on Incurrence of Indebtedness and Issuance of Preferred Stock.

(a) The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "incur") any Indebtedness, and the Borrower will not issue any Disqualified Capital Stock and will not permit any of its Restricted Subsidiaries to issue any shares of preferred stock; provided, however, that the Borrower may incur Indebtedness or issue Disqualified Capital Stock, and the Guarantors may incur Indebtedness or issue preferred stock, if the Fixed Charge Coverage Ratio for the Borrower's most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Capital Stock or preferred stock is issued would have been at least 2.0 to 1.0, determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if the additional Indebtedness had been incurred or the Disqualified Capital Stock or preferred stock had been issued, as the case may be, at the beginning of such four-quarter period.

(b) The provisions of Section 6.1(a) will not prohibit the incurrence of any of the following items of Indebtedness (collectively, "Permitted Debt"):

(i) the incurrence by the Borrower and its Restricted Subsidiaries and the guarantee by the Borrower and its Restricted Subsidiaries of Indebtedness and letters of credit under Credit Facilities in an aggregate principal amount at any one time outstanding under this Section 6.1(b)(i) (with letters of credit being deemed to have a principal amount equal to the maximum potential liability of the Borrower and its Restricted Subsidiaries thereunder) not to exceed $50.0 million less the amount incurred pursuant to clause (a)(i) of the definition of "Maximum Incremental Facilities Amount" (but only to the extent that such amount is then outstanding);

(ii) the incurrence by the Borrower and its Restricted Subsidiaries of Indebtedness represented by the Term Loans (including Incremental Term Loans) and the related guarantees and the incurrence by any Restricted Subsidiary of the Borrower of any other guarantee of the Term Loans (including Incremental Term Loans) and other Obligations;

(iii) the incurrence by the Borrower or any of its Restricted Subsidiaries of Indebtedness represented by Capital Lease Obligations, mortgage financings or purchase money obligations, in each case, incurred for the purpose of financing all or any part of the purchase price or cost of design, construction, installation or improvement of property, plant or equipment used or useful in the business of the Borrower or any of its Restricted Subsidiaries or within 180 days thereafter; provided that at the time of incurrence of any such Indebtedness, the aggregate amount of Indebtedness outstanding under this Section 6.1(b)(iii), including all Permitted Refinancing Indebtedness incurred to refund, refinance or replace any Indebtedness incurred pursuant to this Section 6.1(b)(iii), does not exceed the greater of (x) $100.0 million and (y) 5.0% of Total Assets;

(iv) Indebtedness, Disqualified Capital Stock or preferred stock of Persons or assets that are acquired by the Borrower or any of its Restricted Subsidiaries or merged into the Borrower or any of its Restricted Subsidiaries in accordance with the terms of this Agreement; provided that such Indebtedness, Disqualified Capital Stock or preferred stock is not incurred in contemplation of such acquisition or merger; and provided further that after giving effect to such acquisition or merger, either (a) the Borrower would be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 6.1(a) or (b) the Fixed Charge Coverage Ratio would be no less than that immediately prior to such acquisition or merger;

(v) the incurrence by the Borrower or any of its Restricted Subsidiaries of Permitted Refinancing Indebtedness in exchange for, or the net proceeds of which are used to refund, refinance or replace, Indebtedness (other than intercompany Indebtedness) that was permitted by this Agreement to be incurred under Section 6.1(a) or clauses (ii), (iii), (iv), (v), (xiii), (xiv), (xv) or (xvii) of this Section 6.1(b);

(vi) the incurrence by the Borrower or any of its Restricted Subsidiaries of intercompany Indebtedness between or among the Borrower or any of its Restricted Subsidiaries; provided, however, that:

(A) if the Borrower or any Guarantor is the obligor on such Indebtedness and the payee is not the Borrower or a Guarantor, such Indebtedness must be expressly subordinated to the prior payment in full in cash of all Obligations, in the case of the Borrower, or the guarantee, in the case of a Guarantor; and

(B) (i) any subsequent issuance or transfer of Equity Interests that results in any such Indebtedness being held by a Person other than the Borrower or any of its Restricted Subsidiaries and (ii) any sale or other transfer of any such Indebtedness to a Person that is not either the Borrower or a Restricted Subsidiary of the Borrower (except transfers to the applicable Secured Debt Representative to secure Parity Secured Obligations) will be deemed, in each case, to constitute an incurrence of such Indebtedness by the Borrower or such Restricted Subsidiary, as the case may be, that was not permitted by this Section 6.1(b)(vi);

(vii) the Guarantee by the Borrower or any of its Restricted Subsidiaries of Indebtedness that was permitted by this Agreement to be incurred by another provision of this Section 6.1(b);

(viii) the issuance by any of the Borrower's Restricted Subsidiaries to the Borrower or to any of its Restricted Subsidiaries of shares of preferred stock; provided, however, that:

(A) any subsequent issuance or transfer of Equity Interests that results in any such preferred stock being held by a Person other than the Borrower or its Restricted Subsidiary; and

(B) any sale or other transfer of any such preferred stock to a Person that is not either the Borrower or a Restricted Subsidiary of the Borrower

will be deemed, in each case, to constitute an issuance of such preferred stock by such Restricted Subsidiary that was not permitted by this Section 6.1(b)(viii);

(ix) the incurrence by the Borrower or any of its Restricted Subsidiaries of obligations under Swap Agreements or Cash Management Obligations in the ordinary course of business or consistent with past practice;

(x) the incurrence by the Borrower or any of its Restricted Subsidiaries of Indebtedness in respect of workers' compensation claims, self-insurance obligations, bankers' acceptances, performance, surety and similar bonds provided by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(xi) the incurrence by the Borrower or any of its Restricted Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Indebtedness is covered within five Business Days;

(xii) the incurrence of Indebtedness arising from agreements of the Borrower or any of its Restricted Subsidiaries providing for indemnification, adjustment of purchase price or similar obligations, in each case, incurred or assumed in connection with the disposition or acquisition of any business, assets or Equity Interests of a Subsidiary; provided that the maximum aggregate liability in respect of all such Indebtedness in respect of a disposition shall at no time exceed the gross proceeds (including the Fair Market Value of non-cash proceeds) actually received by the Borrower and/or such Restricted Subsidiary in connection with such disposition;

(xiii) Indebtedness of the Borrower or any of its Restricted Subsidiaries consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business or consistent with past practice;

(xiv) Indebtedness of the Borrower and its Restricted Subsidiaries existing on the Effective Date;

(xv) (a) Environmental CapEx Debt or (b) Indebtedness in respect of Upgrades; provided, in each case, that prior to the incurrence of any such Indebtedness, the Borrower shall deliver to the Administrative Agent an officer's certificate of a Responsible Officer designating such Indebtedness as Environmental CapEx Debt or Indebtedness in respect of Upgrades, as applicable;

(xvi) the incurrence by the Borrower or any of its Restricted Subsidiaries of additional Indebtedness in an aggregate principal amount (or accreted value, as applicable) at any time outstanding pursuant to this Section 6.1(b)(xvi), including all Permitted Refinancing Indebtedness incurred to refund, refinance or replace any Indebtedness incurred pursuant to this clause (xvii), not to exceed the greater of (x) $100.0 million and (y) 5.0% of Total Assets (which may, but need not, be incurred under a Credit Facility); and

(xvii) the incurrence by the Borrower or any of its Restricted Subsidiaries of additional Indebtedness in an aggregate principal amount (or accreted value, as applicable) at any time outstanding pursuant to this Section 6.1(b)(xvii), including all Permitted Refinancing Indebtedness incurred to refund, refinance or replace any Indebtedness incurred pursuant to this clause (xvii), not to exceed the greater of (x) $100.0 million and (y) 5.0% of Total Assets (which may, but need not, be incurred under a Credit Facility) less the amount incurred pursuant to clause (a)(ii) of the definition of "Maximum Incremental Facilities Amount" (but only to the extent such amount is then outstanding).

(c) The Borrower shall not, and shall not permit any Guarantor to, incur any Indebtedness (including Permitted Debt) that is contractually subordinated in right of payment to any other Indebtedness of the Borrower or that Guarantor unless such Indebtedness is also contractually subordinated in right of payment to the Obligations or the applicable guarantee on substantially identical terms; provided, however, that no Indebtedness of the Borrower will be deemed to be contractually subordinated in right of payment to any other Indebtedness of the Borrower solely by virtue of being unsecured or by virtue of being secured on a junior basis.

(d) For purposes of determining compliance with this Section 6.1, in the event that an item of proposed Indebtedness meets the criteria of more than one of the categories of Permitted Debt described in clauses (i) through (xvii) of Section 6.1(b), or is entitled to be incurred pursuant to Section 6.1(a), the Borrower will be permitted to classify such item of Indebtedness on the date of its incurrence, or later reclassify from time to time all or a portion of such item of Indebtedness, in any manner that complies with this Section 6.1. The accrual of interest, the accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, and the payment of dividends on Disqualified Capital Stock or preferred stock in the form of additional shares of the same class of Disqualified Capital Stock or preferred stock will not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Capital Stock or preferred stock for purposes of this Section 6.1; provided, in each such case, that the amount thereof is included in (and to the extent required by) Fixed Charges of the Borrower as accrued. Notwithstanding any other provision of this Section 6.1, the maximum amount of Indebtedness that the Borrower or any of its Restricted Subsidiaries may incur pursuant to this Section 6.1 shall not be deemed to be exceeded solely as a result of fluctuations in exchange rates or currency values.

6.2. Limitation on Liens. The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, assume or otherwise cause or suffer to exist or become effective any Lien of any kind on any asset now owned or hereafter acquired, except Permitted Liens.

6.3. Merger, Consolidation, or Sale of Assets.

(a) The Borrower shall not, directly or indirectly, (1) consolidate or merge with or into another Person (whether or not the Borrower is the surviving corporation); or (2) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Borrower and its Restricted Subsidiaries taken as a whole, in one or more related transactions, to another Person, unless:

(i) either:

(A) the Borrower is the surviving corporation; or

(B) the Person formed by or surviving any such consolidation or merger (if other than an Borrower) or to which such sale, assignment, transfer, conveyance or other disposition has been made is either (i) a corporation organized or existing under the laws of the United States, any state of the United States or the District of Columbia or (ii) a partnership or limited liability company organized or existing under the laws of the United States, any state of the United States or the District of Columbia;

(ii) the Person formed by or surviving any such consolidation or merger (if other than the Borrower) or the Person to which such sale, assignment, transfer, conveyance or other disposition has been made assumes all the obligations of the Borrower under this Agreement and the Security Documents pursuant to a supplemental documentation reasonably satisfactory to the Administrative Agent;

(iii) immediately after such transaction, no Event of Default exists; and

(iv) the Borrower or the Person formed by or surviving any such consolidation or merger (if other than the Borrower) or to which such sale, assignment, transfer, conveyance or other disposition has been made will, on the date of such transaction after giving *pro forma* effect thereto and to any related financing transactions as if the same had occurred at the beginning of the applicable four-quarter period, either (i) have a *pro forma* Fixed Charge Coverage Ratio that is at least equal to the actual Fixed Charge Coverage Ratio of the Borrower as of such date or (ii) be permitted to incur at least $1.00 of additional Indebtedness pursuant to Section 6.1(a).

(b) In addition, the Borrower may not, directly or indirectly, lease all or substantially all of its properties or assets, in one or more related transactions, to any other Person.

(c) Notwithstanding the foregoing:

(i) any Restricted Subsidiary of the Borrower may consolidate with, merge into or transfer all or part of its properties and assets to the Borrower or any other Restricted Subsidiary of the Borrower; and

(ii) the Borrower may merge with an Affiliate solely for the purpose of reincorporating the Borrower or reforming in another jurisdiction.

(d) Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets of the Borrower in accordance with this Section 6.3, the successor entity formed by such consolidation or into or with which the Borrower is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, lease, conveyance or other disposition, the provisions of this Agreement referring to the Borrower shall refer instead to the successor entity and not to the Borrower), and may exercise every right and power of the Borrower under this Agreement with the same effect as if such successor Person had been named as the Borrower herein; provided that the predecessor Borrower shall not be relieved from the obligation to pay the principal of and interest on the Notes except in the case of a sale, assignment, transfer, conveyance or other disposition of all of the Borrower's assets that meets the requirements of this Section 6.3.

6.4. Limitation on Sale and Leaseback Transactions.

(a) The Borrower will not, and will not permit any of its Restricted Subsidiaries to, enter into any sale and leaseback transaction; provided that the Borrower or any of its Restricted Subsidiaries may enter into a sale and leaseback transaction if:

(i) the Borrower or the Restricted Subsidiary, as applicable, could have incurred Indebtedness in an amount equal to the Attributable Debt relating to such sale and leaseback transaction under Section 6.1;

(ii) the gross cash proceeds of that sale and leaseback transaction are at least equal to the Fair Market Value of the property that is the subject of that sale and leaseback transaction; and

(iii) if such sale and leaseback transaction constitutes an Asset Sale, the transfer of assets in that sale and leaseback transaction is permitted by, and the Borrower applies (or reinvests) the proceeds of such transaction in compliance with, Section 6.8.

(b) Section 6.4(a) shall not apply to a sale and leaseback transaction entered into between the Borrower and a Restricted Subsidiary of the Borrower or between Restricted Subsidiaries of the Borrower.

6.5. Business Activities. The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, engage in any business other than Permitted Businesses, except to such extent as would not be material to the Borrower and its Subsidiaries taken as a whole.

6.6. Designation of Restricted and Unrestricted Subsidiaries. The Board of Directors of the Borrower may designate any Restricted Subsidiary of the Borrower to be an Unrestricted Subsidiary if that designation would not cause an Event of Default. If a Restricted Subsidiary of the Borrower is designated as an Unrestricted Subsidiary, the aggregate Fair Market Value of all outstanding Investments owned by the Borrower and its Restricted Subsidiaries in the Subsidiary properly designated will be deemed to be an Investment made as of the time of the designation and will utilize the amount available for Restricted Payments under Section 6.9 or Permitted Investments, as determined by the Borrower. That designation will only be permitted if the Investment would be permitted at that time and if the Restricted Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. The Board of Directors of the Borrower may redesignate any Unrestricted Subsidiary to be a Restricted Subsidiary.

6.7. Transactions with Affiliates.

(a) The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Borrower (each, an "Affiliate Transaction") involving aggregate payments in excess of $10.0 million, unless:

(i) the Affiliate Transaction is on terms that are no less favorable (as reasonably determined by the Borrower) to the Borrower or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Borrower or such Restricted Subsidiary with an unrelated Person; and

(ii) the Borrower delivers to the Administrative Agent:

(A) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $25.0 million, either (x) a resolution of the Board of Directors of the Borrower set forth in an officer's certificate of a Responsible Officer certifying that such Affiliate Transaction complies with this Section 6.7 and that such Affiliate Transaction has been approved by a majority of the members of the Board of Directors of the Borrower or (y) an opinion described in clause (B) below; and

(B) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $50.0 million, an opinion as to the fairness to the Borrower or such Restricted Subsidiary of such Affiliate Transaction from a financial point of view issued by an accounting, appraisal or investment banking firm of national standing.

(b) The following items will not be deemed to be Affiliate Transactions and, therefore, will not be subject to the provisions of Section 6.7(a):

(i) any employment agreement or director's engagement agreement, employee benefit plan, officer and director indemnification agreement or any similar arrangement entered into by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business or approved by the relevant Board of Directors;

(ii) transactions between or among the Borrower and/or its Restricted Subsidiaries;

(iii) transactions with a Person that is an Affiliate of the Borrower solely because the Borrower owns, directly or through a Restricted Subsidiary, an Equity Interest in, or controls, such Person;

(iv) payment of reasonable directors' fees and expenses and indemnities to Persons who are not otherwise Affiliates of the Borrower;

(v) any issuance of Equity Interests (other than Disqualified Capital Stock) of the Borrower to Affiliates of the Borrower;

(vi) Restricted Payments that do not violate the provisions of Section 6.9 or a Permitted Investment;

(vii) loans or advances to directors, officers and employees in the ordinary course of business not to exceed $10.0 million in the aggregate outstanding at any one time;

(viii) any agreement, instrument or arrangement as in effect as of the Effective Date and any transactions contemplated thereby and any amendment thereto or replacement thereof, so long as any such amendment or replacement agreement that at the time such amendment or agreement is executed is not materially less favorable taken as a whole than those that would have been obtained in a comparable transaction by the Borrower or such Restricted Subsidiary with an unrelated Person;

(ix) any *pro rata* distribution (including a rights offering) to all holders of a class of Equity Interests or Indebtedness of the Borrower or any of its Restricted Subsidiaries, including Persons who are Affiliates of the Borrower or any of its Restricted Subsidiaries;

(x) any transaction involving sales of electric capacity, energy, ancillary services, transmission services and products, steam, emissions credits, fuel, fuel transportation, shared services agreements, operation and maintenance agreements and fuel storage in the ordinary course of business on terms that are not materially less favorable (as reasonably determined by the Borrower) to the Borrower or the relevant Restricted Subsidiary of the Borrower than those that would have been obtained in a comparable transaction by the Borrower or such Restricted Subsidiary with an unrelated Person;

(xi) if the Borrower or any of its Restricted Subsidiaries enter into a transaction involving sales of electric capacity, energy, ancillary services, transmission services and products, steam, emissions credits, fuel, fuel transportation and fuel storage with any Person that is not an Affiliate, any amendment to any agreement with an Affiliate with respect thereto that modifies such agreement solely with respect to the subject matter of the transaction with such non-Affiliate;

(xii) the trading and sharing of parts and components for equipment, tools and equipment among the Borrower and its Affiliates, in the ordinary course of business or consistent with past practices of the relevant Persons, including for purposes of spare or replacement;

(xiii) transactions with customers, clients, suppliers, joint venture partners or purchasers or sellers of goods or services (including pursuant to joint venture agreements) otherwise in compliance with the terms of this Agreement that are fair to the Borrower and its Restricted Subsidiaries, in the determination of a senior financial officer of the Borrower, or are on terms not materially less favorable taken as a whole would reasonably have been obtained at such time from an unaffiliated party;

(xiv) transactions in which the Borrower or any Restricted Subsidiary of the Borrower, as the case may be, delivers to the Administrative Agent a letter from an accounting, appraisal or investment banking firm of national standing stating that such transaction is fair to the Borrower or such Restricted Subsidiary from a financial point of view or meets the requirements of Section 6.7(a)(i); and

(xv) transactions relating to corporate services agreements, administrative services agreements, operating, service and maintenance agreements, and intercompany tolling agreements, in each case, among the Borrower and/or one or more of its Restricted Subsidiaries and Calpine Corporation and/or one or more of its subsidiaries.

6.8. Asset Sales.

(a) The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, consummate an Asset Sale unless:

(i) the Borrower (or its Restricted Subsidiary, as the case may be) receive consideration at the time of the Asset Sale at least equal to the Fair Market Value of the assets or Equity Interests issued or sold or otherwise disposed of; and

(ii) at least 75% of the consideration received in the Asset Sale by the Borrower or such Restricted Subsidiary is in the form of cash or Cash Equivalents or Designated Non-Cash Consideration to the extent that all Designated Non-Cash Consideration at such time does not exceed the greater of $50.0 million and 2.5% of Total Assets (with the Fair Market Value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value). For purposes of this provision, each of the following will be deemed to be cash:

(A) any liabilities, as shown on the Borrower's most recent consolidated balance sheet, of the Borrower or any Restricted Subsidiary (other than contingent liabilities and liabilities that are by their terms subordinated to the Obligations or any guarantee thereof) and assumed by the transferee of any such assets pursuant to a customary novation agreement that releases the Borrower or such Restricted Subsidiary from further liability;

(B) any securities, notes or other obligations received by the Borrower or any such Restricted Subsidiary from such transferee that are converted (by sale or other disposition) by the Borrower or such Restricted Subsidiary into cash, to the extent of the cash received in that conversion within 180 days; and

(C) reasonable reserves for indemnity obligations and purchase price adjustments funded in cash or held back by the purchaser.

(b) Within 365 days after the receipt of any Net Proceeds from an Asset Sale or, if the Borrower or any of its Restricted Subsidiaries has entered into a binding commitment or commitments with respect to any of the actions described in Section 6.8(b)(iii)(A) through (iii)(C) below, within the later of (x) 365 days after the receipt of any Net Proceeds from an Asset Sale or (y) 365 days after the entering into such commitment or commitments, the Borrower (or the applicable Restricted Subsidiary, as the case may be) may apply such Net Proceeds:

(i) in the case of a sale of assets of a Restricted Subsidiary of the Borrower that is not a Guarantor, to repay Indebtedness of that Restricted Subsidiary and correspondingly reduce commitments with respect thereto;

(ii) in the case of a sale of assets pledged to secure Indebtedness (including Capital Lease Obligations), other than Parity Secured Debt, to repay the Indebtedness secured by those assets;

(iii) in the case of any Asset Sale:

(A) to acquire all or substantially all of the assets of (or any division, business unit or line of business of), or all or a majority of the Voting Stock of, a Person engaged in a Permitted Business, provided that such Person becomes a Restricted Subsidiary;

(B) to make a capital expenditure (including, without limitation, a maintenance capital expenditure or expense); or

(C) to acquire other assets that are not classified as current assets under GAAP and that are used or useful in a Permitted Business;

(iv) to collateralize the reimbursement obligations of the Borrower or any of its Restricted Subsidiaries in connection with surety or performance bonds or letters of credit or bankers' acceptances issued in the ordinary course of business; or

(v) any combination of the foregoing.

(c) As to any Net Proceeds from any Asset Sale, pending final application of such Net Proceeds in accordance with this Section 6.8, the Borrower or any of its Restricted Subsidiaries may temporarily reduce revolving credit borrowings or otherwise use the Net Proceeds in any manner that is not prohibited by this Agreement.

(d) Any Net Proceeds from Asset Sales that are not applied or invested as provided in Section 6.8(b) will constitute "Excess Proceeds." When the aggregate amount of Excess Proceeds exceeds $40.0 million, the Borrower shall make an Asset Sale Offer pursuant to Section 2.14(b) to all Lenders and an offer to all holders of other Parity Secured Debt that is *pari passu* with the Term Loans containing provisions similar to those set forth in this Agreement with respect to offers to purchase or redeem with the proceeds of sales of assets, an aggregate principal amount of Term Loans and such other Parity Secured Debt that may be purchased (or repaid, prepaid or redeemed) on a pro rata basis equal to the aggregate Excess Proceeds (an "Asset Sale Offer"). The offer price for the Term Loans in any Asset Sale Offer will be equal to 100% of the principal amount plus accrued and unpaid interest to the date of purchase, and will be payable in cash. If any Excess Proceeds remain after consummation of an Asset Sale Offer, the Borrower may use those Excess Proceeds for any purpose not otherwise prohibited by this Agreement. If the aggregate principal amount of Term Loans and other Parity Secured Debt tendered into such Asset Sale Offer or other offer exceeds the amount of Excess Proceeds, the Borrower will select the Term Loans and such other Parity Secured Debt to be purchased on a *pro rata* basis. Upon completion of each Asset Sale Offer, the amount of Excess Proceeds will be reset at zero.

6.9. Limitation on Restricted Payments.

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

(i) declare or pay any dividend or make any other payment or distribution on account of the Borrower or any of its Restricted Subsidiaries' Equity Interests (including, without limitation, any payment in connection with any merger or consolidation involving the Borrower or any of its Restricted Subsidiaries) or to the direct or indirect holders of the Borrower's or any of its Restricted Subsidiaries' Equity Interests in their capacity as such (other than dividends or distributions payable in Equity Interests (other than Disqualified Capital Stock) of the Borrower or any of its Restricted Subsidiaries);

(ii) purchase, redeem or otherwise acquire or retire for value (including, without limitation, in connection with any merger or consolidation involving the Borrower) any Equity Interests of the Borrower or Parent;

(iii) make any payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value any Indebtedness of the Borrower or of any Guarantor that is subordinated in right of payment to the Term Loans or any guarantee thereof (excluding any intercompany Indebtedness, intercompany receivables or intercompany advances between or among any of the Borrower and any of its Restricted Subsidiaries), except a payment of interest or principal at the Stated Maturity thereof; or

(iv) make any Investment that is not a Permitted Investment.

(all such payments and other actions set forth in these clauses (i) through (iv) above being collectively referred to as "Restricted Payments").

(b) The foregoing provisions of Section 6.9(a) shall not prohibit:

(i) the payment of any dividend or distribution or the consummation of any irrevocable redemption within 60 days after the date of declaration of the dividend or distribution or giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend, distribution or redemption payment would have complied with the provisions of this Agreement;

(ii) the making of any Restricted Payment in exchange for Equity Interests of the Borrower, or out of the net cash proceeds of the substantially concurrent sale (other than to a Subsidiary of any Borrower) of Equity Interests of the Borrower (other than Disqualified Capital Stock) and, to the extent contributed to the Borrower, Equity Interests of Parent, or out of the cash proceeds of the substantially concurrent contribution of common equity capital or surplus to the Borrower;

(iii) the defeasance, redemption, repurchase or other acquisition or retirement for value of Indebtedness or Disqualified Capital Stock of the Borrower or any Guarantor that is subordinated to the Obligations or to any guarantee thereof with the net cash proceeds from a substantially concurrent incurrence of Permitted Refinancing Indebtedness;

(iv) the payment of any dividend (or, in the case of any partnership or limited liability company, any similar distribution) by a Restricted Subsidiary of the Borrower to the holders of any series of its Equity Interests on a *pro rata* basis;

(v) (A) the repurchase, redemption or other acquisition or retirement for value of any Equity Interests of any Parent, the Borrower or any Restricted Subsidiaries of the Borrower in connection with any management equity subscription agreement, stock option agreement, shareholders' agreement, severance agreement, employee benefit plan or agreement or similar agreement, (B) the repurchase for value of any Equity Interests of any Parent, the Borrower or any Restricted Subsidiaries of the Borrower in the open market to satisfy stock options issued by Parent, the Borrower or any Restricted Subsidiaries of the Borrower that are outstanding; provided that the aggregate price paid for all such repurchased, redeemed, acquired or retired Equity Interests after the Effective Date may not exceed (x) $10.0 million in any calendar year (or the *pro rata* portion thereof for the calendar year 2023) or (y) $40.0 million in the aggregate since the Effective Date; provided, however, that if the aggregate amount applied pursuant to this Section 6.9(b)(v) shall be less than $10.0 million in any calendar year or the *pro rata* portion thereof for the calendar year 2023 (before giving effect to any carryover), then the amount of such shortfall may be added to the amount that may be applied under this Section 6.9(b)(v) in any subsequent calendar year, subject at all times to the preceding clause (y);

(vi) the repurchase of Equity Interests deemed to occur upon the exercise of stock options to the extent such Equity Interests represent a portion of the exercise price of those stock options and repurchases of Equity Interests in connection with the withholding of a portion of the Equity Interests granted or awarded to a director or an employee to pay for the taxes payable by such director or employee upon such grant or award;

(vii) the purchase by the Borrower of fractional shares upon conversion of any securities of the Borrower into Equity Interests of the Borrower;

(viii) the declaration and payment of dividends to holders of any class or series of Disqualified Capital Stock of the Borrower or any preferred stock of its Restricted Subsidiaries issued on or after the Effective Date in accordance with the Fixed Charge Coverage Ratio test contained in Section 6.1;

(ix) upon the occurrence of (i) a Change of Control Triggering Event and after the completion of the Change of Control Prepayment Offer pursuant to Section 2.14(a) or (ii) an Asset Sale to the extent an Asset Sale Offer is required in accordance with this Agreement and after the completion of the Asset Sale Offer pursuant to Section 2.14(b) (including, in each case, the repayment of all Term Loans of accepting Lenders), any purchase, defeasance, retirement, redemption or other acquisition of Equity Interests or Indebtedness that is contractually subordinated to the Obligations or any guarantee thereof required under the terms of such Capital Stock or Indebtedness as a result of such Change of Control Triggering Event or Asset Sale, as applicable;

(x) the declaration and payment of dividends or distributions to any Parent, the proceeds of which are used in a manner contemplated by Section 3.9(iv);

(xi) the transactions with any Person (including any Affiliate of the Borrower) set forth in clauses (i) and (iv) of Section 6.7 and the funding of any obligations in connection therewith;

(xii) the issuance of Equity Interests of the Borrower (other than Disqualified Capital Stock) for other Equity Interests of the Borrower in connection with any rights offering and payments for the redemption of fractional shares in connection with any rights offering;

(xiii) the declaration and payment of dividends or distributions to, or the making of loans to any Parent:

(A) with respect to any taxable period for which the Borrower is a partnership or disregarded entity for U.S. federal income Tax purposes that is wholly-owned (directly or indirectly) by a C corporation for U.S. federal and/or applicable state or local income Tax purposes, in amounts required for such Parent to pay federal, state and/or local income Taxes to the extent such income Taxes are attributable to the income of the Borrower and/or its Restricted Subsidiaries and, to the extent of the amount actually received from Unrestricted Subsidiaries, in amounts required to pay such Taxes to the extent attributable to the income of the Unrestricted Subsidiaries; provided, however, that in each case the amount of such payments in any taxable year does not exceed the amount that the Borrower and/or its applicable Restricted Subsidiaries (and, to the extent described above, its applicable Unrestricted Subsidiaries) would have been required to pay in respect of such federal, state and/or local income Taxes, as applicable, for such taxable year had the Borrower and/or such Restricted Subsidiaries (and/or such Unrestricted Subsidiaries, as applicable) paid such Taxes as a stand-alone taxpayer, less any such federal, state and/or local income Taxes, as applicable, actually payable directly by the Borrower and/or its Restricted Subsidiaries (and/or its Unrestricted Subsidiaries, as applicable); and

(B) in an aggregate amount not to exceed $1.5 million per annum (such amount to be adjusted upwards annually, beginning on January 1, 2024, by 5% on a compounded basis) to pay reasonable accounting, legal and administrative expenses of any Parent when due;

(xiv) Investments in Unrestricted Subsidiaries not to exceed the greater of (x) $100.0 million and (y) 5.0% of Total Assets since the Effective Date;

(xv) [reserved];

(xvi) additional Restricted Payments in an aggregate amount not to exceed $10.0 million in any calendar year (or the *pro rata* portion thereof for the calendar year 2023); provided, however, that if the aggregate amount applied pursuant to this Section 6.9(b)(xvi) shall be less than $10.0 million in any calendar year or the *pro rata* portion thereof for the calendar year 2023 (before giving effect to any carryover), then the amount of such shortfall may be added to the amount that may be applied under this Section 6.9(b)(xvi) in any subsequent calendar year;

(xvii) additional Restricted Payments so long as at the time of such Restricted Payment, the amount of such Restricted Payments together with all other Restricted Payments made pursuant to Section 6.9(b)(xvii) does not to exceed the greater of (x) $75.0 million and (y) 3.5% of Total Assets; and

(xviii) the dividend of the Equity Interests or Indebtedness of any Unrestricted Subsidiary; and

(xix) the payment or making of any cash Restricted Payment; provided that no Default or Event of Default has occurred and is continuing or would occur as a consequence of such cash dividend.

The amount of all Restricted Payments (other than cash) will be the Fair Market Value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by the Borrower or its Restricted Subsidiaries, as the case may be, pursuant to the Restricted Payment. The Fair Market Value of any assets or securities that are required to be valued by this Section 6.9 will be determined by the Board of Directors of the Borrower; provided that if the Fair Market Value of such assets or securities involves an aggregate amount in excess of $50.0 million, the Borrower shall deliver to the Administrative Agent a resolution of the Board of Directors of the Borrower set forth in an officer's certificate of a Responsible Officer certifying that such valuation has been approved by a majority of the members of the Board of Directors of the Borrower.

For purposes of determining compliance with this Section 6.9, in the event that a Restricted Payment meets the criteria of more than one of the types of Restricted Payments described in the above clauses, the Borrower, in its sole discretion, may order and classify, and from time to time may reorder and reclassify, such Restricted Payment if it would be permitted at the time of any such reclassification.

6.10. Changes in Covenants When Term Loans Rated Investment Grade.

(a) If on any date following the Effective Date:

(i) the rating assigned to the Term Loans by either S&P or Moody's is an Investment Grade Rating and

(ii) no Default or Event of Default shall have occurred and be continuing,

then, beginning on that day and subject to the provisions of the following paragraph, the covenants contained in Sections 6.1, 6.3(a)(iv), 6.4(a)(i), 6.4(a)(iii), 6.5, 6.6, 6.7, 6.8 (and 2.14(b)) and 6.9 will be suspended.

(b) Notwithstanding the provisions of Section 6.10(a), if the ratings assigned by both such rating agencies with respect to the Term Loans should subsequently decline to below an Investment Grade Rating, the foregoing covenants will be reinstituted as of and from the date that both such ratings are below Investment Grade Ratings, unless and until such Term Loans subsequently attain an Investment Grade Rating from either S&P or Moody's (in which event the suspended covenants will again be suspended for such time that the Term Loans maintain an Investment Grade Rating from either S&P or Moody's); provided, however, that no Default, Event of Default or breach of any kind will be deemed to exist under this Agreement, the Security Documents or the related Guarantees with respect to the suspended covenants, and none of the Borrower or any of its Subsidiaries will bear any liability for any actions taken or events occurring after such Term Loans attain an Investment Grade Rating from either S&P or Moody's and before any reinstatement of the suspended covenants as provided above, or any actions taken at any time pursuant to any contractual obligation arising prior to the reinstatement, regardless of whether those actions or events would have been permitted if the applicable suspended covenant had remained in effect during such period.

SECTION 7

Events of Default

7.1. Events of Default. Each of the following is an "Event of Default":

(a) default for 30 days in the payment when due of interest on the Term Loans;

(b) default in payment when due (at maturity, upon redemption or otherwise) of the principal of, or premium, if any, on, the Term Loans;

(c) failure by Borrower to comply with the provisions of Section 2.14 or 6.3;

(d) failure by any Loan Party for 60 days after notice from the Administrative Agent or the Required Lenders to comply with any of the other agreements in this Agreement or the Security Documents required by this Agreement;

(e) (i) default under any other mortgage, indenture, agreement or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness of any Loan Party (or the payment of which is guaranteed by any Loan Party), whether such Indebtedness or Guarantee now exists, or is created after the Effective Date, if that default:

(A) is caused by a failure to pay principal of such Indebtedness at its stated final maturity (after giving effect to any applicable grace period provided in such Indebtedness) (a "Payment Default"); or

(B) results in the acceleration of such Indebtedness prior to its express maturity, and 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 $100,000,000 or more; provided that this Section 7.1(e)(i) shall not apply to Indebtedness that becomes due solely as a result of the voluntary sale or transfer of property or assets to the extent such sale or transfer is permitted by the terms of such Indebtedness; or

(ii) [Reserved];

(f) any of the Security Documents shall cease, for any reason, to be in full force and effect (other than in accordance with its terms) with respect to Collateral with a book value greater than $50,000,000, or any Loan Party shall so assert, or any Lien (affecting Collateral with a book value greater than $50,000,000) created by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby (other than, in each case, pursuant to a failure of the Administrative Agent, the Collateral Agent, any other agent appointed by the Administrative Agent, the Collateral Agent or the Lenders to take any action within the sole control of such Person that is expressly required by the Loan Documents to be taken by such Person) (it being understood that the release of Collateral from the Security Documents or the discharge of a Guarantor therefrom in accordance with the terms hereof and thereof shall not be construed (x) as any of the Security Documents ceasing to be in full force and effect or (y) as any of the Liens created thereunder ceasing to be enforceable or of the same priority and effect purported to be created thereby);

(g) except as permitted by this Agreement, the Guaranty Agreement or the Pledge and Security Agreement, any Guaranty Reimbursement Obligation of a Significant Subsidiary ceases, for any reason, to be in full force and effect (other than in accordance with its terms), or any Significant Subsidiary that is a Guarantor denies or disaffirms in writing its obligations under its Guaranty Reimbursement Obligation;

(h) [Reserved];

(i) the Borrower or any Guarantor that is a Significant Subsidiary or any group of Guarantors that, taken together, would constitute a Significant Subsidiary, pursuant to or within the meaning of any Bankruptcy Law:

(i) commences a voluntary case,

(ii) consents to the entry of an order for relief against it in an involuntary case,

(iii) consents to the appointment of a custodian of it or for all or substantially all of its property,

(iv) makes a general assignment for the benefit of its creditors, or

(v) generally is not paying its debt as they become due; or

(j) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(i) is for relief against the Borrower or any Guarantor that is a Significant Subsidiary or any group of Guarantors that, taken together, would constitute a Significant Subsidiary, in an involuntary case;

(ii) appoints a custodian of the Borrower or any Guarantor that is a Significant Subsidiary or any group of Guarantors of the Borrower that, taken together, would constitute a Significant Subsidiary, or for all or substantially all of the property of the Borrower or any Guarantor that is a Significant Subsidiary or any group of Guarantors that, taken together, would constitute a Significant Subsidiary; or

(iii) orders the liquidation of the Borrower or any Guarantor that is a Significant Subsidiary or any group of Guarantors that, taken together, would constitute a Significant Subsidiary;

and the order or decree remains unstayed and in effect for 60 consecutive days.

In the case of an Event of Default specified in clause (i) or (j) of this Section 7.1 with respect to the Borrower, all outstanding Term Loans will become due and payable immediately without further action or notice. If any other Event of Default occurs and is continuing, the Required Lenders may declare all the Term Loans to be due and payable immediately. Upon any such declaration, the Term Loans shall become due and payable immediately. The Required Lenders by written notice to the Administrative Agent may, on behalf of all of the Lenders, rescind an acceleration and its consequences, if the rescission would not conflict with any judgment or decree and if all existing Events of Default (except nonpayment of principal, interest or premium that has become due solely because of the acceleration) have been cured or waived.

SECTION 8

The Agents

8.1. Appointment. Each Lender hereby irrevocably designates and appoints the Administrative Agent as the agent of such Lender under this Agreement and the other Loan Documents, and each such Lender irrevocably authorizes the Administrative Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Each Lender hereby irrevocably designates and appoints the Collateral Agent as the agent of such Lender under this Agreement and the other Loan Documents, and each such Lender irrevocably authorizes the Collateral Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Collateral Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, none of the Administrative Agent and the Collateral Agent shall have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent or the Collateral Agent.

8.2. Delegation of Duties. Each of the Administrative Agent and the Collateral Agent may execute any of their duties under this Agreement and the other Loan Documents by or through agents or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. None of the Administrative Agent and the Collateral Agent shall be responsible for the negligence or misconduct of any agents or attorneys in fact selected by it with reasonable care.

8.3. Exculpatory Provisions. Neither any Agent nor any of their respective officers, directors, employees, agents, attorneys in fact or affiliates shall be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Loan Document (except to the extent that any of the foregoing are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted from its or such Person's own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Agents under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for the creation, perfection or priority of any Lien purported to be created by the Security Documents, the value or sufficiency of the Collateral or for any failure of any Loan Party a party thereto to perform its obligations hereunder or thereunder. The Agents shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party.

8.4. Reliance by the Administrative Agent. Each Agent shall be entitled to rely, and shall be fully protected in relying, upon any instrument, writing, resolution, notice, consent, certificate, affidavit, letter, telecopy, email message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including counsel to the Borrower), independent accountants and other experts reasonably selected by such Agent. The Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless the Administrative Agent shall first receive such advice or concurrence of the Required Lenders (or, if so specified by this Agreement, all Lenders) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Agents shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders (or, if so specified by this Agreement or any other Loan Document, all Lenders), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans.

8.5. Notice of Default. The Administrative Agent and the Collateral Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless it has received written notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that the Administrative Agent receives such a notice, it shall give notice thereof to the Lenders. The Administrative Agent and the Collateral Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement or any other Loan Document, all Lenders); provided that unless and until the Administrative Agent and the Collateral Agent shall have received such directions, the Administrative Agent and the Collateral Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as such Agent shall deem advisable in the best interests of the Lenders.

8.6. Non-Reliance on Arrangers, Agents and Other Lenders. Each Lender expressly acknowledges that neither the Arrangers, the Agents nor any of their respective officers, directors, employees, agents, attorneys in fact or affiliates have made any representations or warranties to it and that no act by any Arranger or Agent hereafter taken, including any review of the affairs of a Loan Party or any affiliate of a Loan Party, shall be deemed to constitute any representation or warranty by any Arranger or Agent to any Lender. Each Lender represents to the Arrangers and Agents that it has, independently and without reliance upon any Arranger, Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates and made its own decision to make its Term Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon any Arranger, Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, neither the Administrative Agent nor the Collateral Agent shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or any affiliate of a Loan Party that may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys in fact or affiliates.

8.7. Indemnification. The Lenders agree to indemnify the Agents in their capacity as such (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), ratably according to their respective Term Percentage in effect on the date on which indemnification is sought under this Section 8.7 (or, if indemnification is sought after the date upon which the Term B Commitments or any series of Incremental Commitments shall have terminated and the Term B Loans or any series of Incremental Term Loans shall have been paid in full, ratably in accordance with such Term Percentage or Incremental Term Percentage immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Term Loans) be imposed on, incurred by or asserted against such Agent, in any way relating to or arising out of, the Term B Commitments, the Refinancing Term Loan Commitments, any Incremental Commitment, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such Agent's gross negligence or willful misconduct. The agreements in this Section 8.7 shall survive the payment of the Term Loans and all other amounts payable hereunder.

8.8. Agent in Its Individual Capacity. Each Agent and its affiliates may make loans to, accept deposits from and generally engage in any kind of business with any Loan Party as though such Agent were not an Agent. With respect to its Term Loans made or renewed by it, each Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not an Agent, and the terms "Lender" and "Lenders" shall include each Agent in its individual capacity.

8.9. Successor Administrative Agent. Each Agent may resign as Administrative Agent or Collateral Agent, as applicable upon ten (10) days' notice to the Lenders and the Borrower. If the Administrative Agent or the Collateral Agent shall resign as Administrative Agent or Collateral Agent under this Agreement and the other Loan Documents, then the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders, which successor agent shall be subject to approval by the Borrower (which approval shall not be unreasonably withheld or delayed), whereupon such successor agent shall succeed to the rights, powers and duties of in the case of (x) successor Administrative Agent, the Administrative Agent, and the term "Administrative Agent" shall mean such successor agent effective upon such appointment and approval, and the former Administrative Agent's rights, powers and duties as an Administrative Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Agreement or any holders of the Term Loans and (y) a successor Collateral Agent, the Collateral Agent, and the term "Collateral Agent" shall mean such successor agent effective upon such appointment and approval, and the former Collateral Agent's rights, powers and duties as a Collateral Agent shall be terminated, without any other or further act or deed on the part of such former Collateral Agent or any of the parties to this Agreement or any holders of the Term Loans. If no successor agent has accepted appointment as an Administrative Agent or Collateral Agent, as applicable, by the date that is thirty (30) days following the retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective, and the Lenders shall assume and perform all of the duties of such Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above (except that in the case of any collateral security held by the Collateral Agent on behalf of the Lenders under any of the Loan Documents, the retiring Collateral Agent shall continue to hold such collateral security as nominee or sub-agent for perfection until such time as a successor Collateral Agent is appointed). After the retiring Agent's resignation, the provisions of this Section 8 and Section 9.5 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was an Agent (or nominee or sub-agent pursuant to the immediately preceding sentence) under this Agreement and the other Loan Documents.

Notwithstanding the foregoing, the Lenders hereby agree if Credit Suisse AG, Cayman Islands Branch resigns as Administrative Agent and/or Collateral Agent and the Borrower appoints Citibank, N.A. (or any of its affiliates) as a successor Administrative Agent and/or Collateral Agent, then the Required Lenders shall be deemed to have consented to such appointment by their execution of this Agreement, and in connection therewith, (x) the Lenders authorize and approve the Agency Assignment Agreement (if any) entered into by Credit Suisse AG, Cayman Islands Branch, Citibank, N.A. (or any of its affiliates) and the Borrower and agree to be bound by the terms and provisions of such Agency Assignment Agreement and (y) the Lenders authorize Credit Suisse AG, Cayman Islands Branch as resigning Administrative Agent and/or Collateral Agent and Citibank, N.A. as successor Administrative Agent and/or Collateral Agent to execute such documents and take such actions as the may deem appropriate or desirable to effect, evidence or implement the resignation, succession and assignment, including without limitation to file any Uniform Commercial Code assignments or amendments with respect to the Uniform Commercial Code financing statements in respect of the Collateral, together with any amendments, assignments and/or notices of assignment with respect to the Security Documents and the Collateral (including but not limited to intellectual property Collateral and real property). In connection with the foregoing, the Borrower shall and shall cause the other Loan Parties and Grantors to execute such documents and take such other actions as Credit Suisse AG, Cayman Islands Branch or Citibank, N.A., may reasonably request.

8.10. Collateral Security. The Collateral Agent will hold, administer and manage any Collateral pledged from time to time under the Security Documents either in its own name or as Collateral Agent, but each Lender shall hold a direct, undivided *pro rata* beneficial interest therein, on the basis of its proportionate interest in the secured obligations, by reason of and as evidenced by this Agreement and the other Loan Documents, subject to the priority of payments referenced in Section 7.2 of the Pledge and Security Agreement and subject to the terms of any applicable intercreditor agreement.

8.11. Enforcement by the Administrative Agent and Collateral Agent. All rights of action under this Agreement and the other Loan Documents and under the Obligations and all rights to the Collateral hereunder and under the Security Documents may be enforced by the Administrative Agent and the Collateral Agent and any suit or proceeding instituted by the Administrative Agent or the Collateral Agent in furtherance of such enforcement shall be brought in its name as Administrative Agent or Collateral Agent without the necessity of joining as plaintiffs or defendants any other Lenders, and the recovery of any judgment shall be for the benefit of Lenders subject to the expenses of the Administrative Agent and the Collateral Agent.

8.12. Withholding Tax. To the extent required by any applicable law, the Administrative Agent may deduct or withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective), such Lender shall indemnify and hold harmless the Agents (to the extent that the Administrative Agent has not already been reimbursed by the Borrower pursuant to Sections 2.18 and 2.19 and without limiting or expanding the obligation of the Borrower to do so) fully for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, together with all expenses incurred, including legal expenses and any out-of-pocket expenses, whether or not such Tax was correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this Section 8.12. The agreements in this Section 8.12 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of this Agreement and the repayment, satisfaction or discharge of all other Obligations.

8.13. Intercreditor Agreements. The Administrative Agent and Collateral Agent are hereby authorized to enter into the Parity Secured Intercreditor Agreement, and the parties hereto acknowledge that the Parity Secured Intercreditor Agreement is binding upon them. Each Lender (a) hereby agrees that it will be bound by and will take no actions contrary to the provisions of the Parity Secured Intercreditor Agreements and (b) hereby authorizes and instructs the Administrative Agent and Collateral Agent to enter into the Parity Secured Intercreditor Agreement. In addition, but in conformance with the terms hereof, each Lender hereby authorizes the Administrative Agent and the Collateral Agent to enter into any amendments to the Parity Secured Intercreditor Agreements to the extent required to give effect to the establishment of intercreditor rights and privileges as contemplated and required by Section 6.2 of this Agreement. Each Lender waives any conflict of interest, now contemplated or arising hereafter, in connection therewith and agrees not to assert against any Agent or any of its affiliates any claims, causes of action, damages or liabilities of whatever kind or nature relating thereto.

SECTION 9

Miscellaneous

9.1. Amendments and Waivers.

(a) None of this Agreement, any Note, any other Loan Document, nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 9.1. Except to the extent otherwise provided in (or permitted by) the Parity Secured Intercreditor Agreement and/or the Guaranty Agreement and the Pledge and Security Agreement, the Required Lenders and each Loan Party party to the relevant Loan Document may, or, with the written consent of the Required Lenders, the Administrative Agent and each Loan Party party to the relevant Loan Document may, from time to time, (I) enter into written amendments, supplements or modifications hereto or to the other Loan Documents for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of the Lenders or of the Loan Parties hereunder or thereunder or (II) waive, on such terms and conditions as the Required Lenders or the Administrative Agent, as the case may be, may specify in such instrument, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; provided, however, that no such waiver and no such amendment, supplement or modification shall (A)(i) forgive the principal amount or extend the final scheduled date of maturity of any Term Loan, (ii) reduce the stated rate of any interest or fee payable hereunder (except in connection with the waiver of applicability of any post-default increase in interest rates (which waiver shall be effective with the consent of the Required Term B Lenders, Required Refinancing Term B Lenders or Required Incremental Lenders with respect to Term B Loans or the applicable tranche of Incremental Term Loans, respectively)) or extend the scheduled date of any payment thereof, (iii) increase the amount or extend the expiration date of any Lender's Term Commitment or Incremental Commitment (it being understood that a waiver of any Event of Default or Default shall not be deemed to be an increase in the amount of any Lender's Term Commitment or Incremental Commitment), or (iv) release all or substantially all of the Collateral for the Obligations or release all or substantially all of the Guarantors (except, in either case, as expressly permitted by the Loan Documents), in each case without the written consent of each Lender directly affected thereby, (B) [Reserved]; (C) without the consent of all the Lenders, (i) amend, modify or waive any provision of this Section 9.1(a) or any other provision of any Section hereof expressly requiring the consent of all the Lenders (except, in either case, for technical amendments with respect to additional extensions of credit pursuant to this Agreement which afford protections to such additional extensions of credit of the type provided to the Term Commitments on the Effective Date), or (ii) reduce the percentage specified in or otherwise change the definition of Required Lenders (it being understood that, with the consent of the Required Lenders, the Required Term B Lenders or Required Refinancing Term B Lenders, as applicable, or as otherwise permitted hereunder, additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders on substantially the same basis as the extensions of Term Commitments are included on the Effective Date), or (iii) change Section 2.17 in a manner that would alter the *pro rata* sharing of payments required thereby (other than as permitted thereby or by Section 9.1(b)), (D) amend, modify or waive any provision of Section 8 or any other provision of this Agreement or the other Loan Documents, which affects, the rights, duties or obligations of the Administrative Agent without the written consent of the Administrative Agent, (E) require consent of any Person to an amendment to this Agreement made pursuant to Section 2.27 other than the Borrower and each Lender participating in the respective Extension and (F) reduce the percentage specified in or otherwise change the definition of Required Term B Lenders, Required Refinancing Term B Lenders or Required Incremental Lenders without the consent of the Required Term B Lenders, Required Refinancing Term B Lenders or Required Incremental Lenders, as applicable (other than as permitted by clause (C)(ii) above). Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Loan Parties, the Lenders, the Administrative Agent and all future holders of the Loans. In the case of any waiver, the Loan Parties, the Lenders and the Administrative Agent shall be restored to their former position and rights hereunder and under any other Loan Documents, and any Default or Event of Default waived shall be deemed to have not occurred or to be cured and not continuing, as the parties may agree; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon.

(b) Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the written consent of the Borrower and the institutions providing each Refinancing Credit Facility (as defined below) (a) to add one or more additional credit facilities to this Agreement for the purpose of refinancing or replacing any and all of the Term Loans and Term Commitments hereunder (each a "Refinancing Credit Facility") and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents and the accrued interest and fees in respect thereof and (b) to include appropriately the Lenders holding such credit facilities in any determination of the Required Term B Lenders, Required Refinancing Term B Lenders or Required Incremental Lenders, as applicable; provided that (i) no Default or Event of Default then exists or would result therefrom, (ii) any Refinancing Credit Facility does not mature prior to the earliest maturity date of the Term Loans being refinanced and (iii) the other terms and conditions of such Refinancing Credit Facility (excluding pricing and optional prepayment and redemption terms) are substantially identical to, or (taken as a whole) are no more favorable to the Lenders providing such Refinancing Credit Facility than, those applicable to the Term Loans being refinanced (except for covenants or other provisions applicable only to periods after the latest Termination Date of the Term Loans existing at the time of such refinancing).

(c) Notwithstanding anything to the contrary contained in this Section 9.1, if the Administrative Agent and the Borrower shall have jointly identified an obvious error or any error or omission of a technical or immaterial nature, in each case, in any provision of the Loan Documents, then the Administrative Agent and the Borrower shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Loan Document. Notwithstanding anything to the contrary in this Agreement or the other Loan Documents, the Administrative Agent and the Collateral Agent are each hereby irrevocably authorized by each Lender (and each such Lender expressly consents), without any further action or the consent of any other party to any Loan Document, to make any technical amendments to the Guaranty Agreement and the Security Documents to correct any cross-references therein to any provision of this Agreement that may be necessary in order to properly reflect the amendments made to this Agreement.

(d) Notwithstanding the foregoing, this Agreement and the other Loan Documents may be amended (or amended and restated) as provided in Sections 2.25 and 2.27.

9.2. Notices.

(a) All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when received, addressed as follows in the case of the Loan Parties and the Administrative Agent, and as set forth in the administrative questionnaire delivered to the Administrative Agent in the case of the Lenders, or to such other address as may be hereafter notified by the respective parties hereto and any future Lenders:

The Borrower and the Guarantors:

Calpine Construction Finance Company, LP
717 Texas Avenue, Suite 11.051D
Houston, TX 77002
Attention: Chief Legal Officer
Telephone: 832-325-5065
Facsimile: 832-325-5066

If to the Administrative Agent:

Credit Suisse AG, Cayman Islands Branch
Eleven Madison Avenue, 23rd Floor
New York, NY 10010
Attention: Loan Operations – Agency Manager
Telephone: 919-994-6369
Facsimile: 212-322-2291
E-mail: agency.loanops@credit-suisse.com

with copies (which shall not constitute notice) to:

Cahill Gordon & Reindel LLP
32 Old Slip
New York, NY 10005
Attention: William J. Miller, Esq. and Michael W. Reddy, Esq.
E-mail: WMiller@cahill.com and MReddy@cahill.com

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications (including e-mail and Internet or intranet websites or other information platform (the "Platform")) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Sections 2.2, 2.8(e), 2.11, 2.13, 2.14, 2.15, 2.25 and 2.27(d) unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) [Reserved].

(d) Each of the Loan Parties understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution, except to the extent caused by the willful misconduct or gross negligence of the Administrative Agent, as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(e) The Platform and any Approved Electronic Communications are provided "as is" and "as available." None of the Agents or any of their respective officers, directors, employees, agents, advisors or representatives warrant the accuracy, adequacy, or completeness of the Approved Electronic Communications or the Platform and each expressly disclaims liability for errors or omissions in the Platform and the Approved Electronic Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects is made by any of the Agents or any of their respective officers, directors, employees, agents, advisors or representatives in connection with the Platform or the Approved Electronic Communications.

(f) Each of the Loan Parties, the Lenders and the Agents agree that Administrative Agent may, but shall not be obligated to, store any Approved Electronic Communications on the Platform in accordance with the Administrative Agent's customary document retention procedures and policies.

9.3. No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of the Administrative Agent or any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

9.4. Survival of Representations and Warranties. All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Term Loans and the other extensions of credit hereunder.

9.5. Payment of Expenses and Taxes. The Borrower agrees (a) to pay or reimburse each of the Administrative Agent and the Collateral Agent for all its reasonable out-of-pocket costs and expenses reasonably incurred in connection with (i) the development, negotiation, preparation, execution and delivery of this Agreement and any other documents prepared in connection herewith or therewith, including any amendment, supplement or modification to any of the foregoing and (ii) the consummation and administration of the transactions contemplated hereby and thereby, and the reasonable fees and disbursements of one counsel to the Administrative Agent, the Collateral Agent and the Arrangers, taken as a whole (and, to the extent necessary, one local counsel in each relevant jurisdiction for all such entities, taken as a whole and, solely in the case of an actual or potential conflict of interest, one additional local counsel in each relevant jurisdiction to the affected entities similarly situated, taken as a whole), and security interest filing and recording fees and expenses, (b) to pay or reimburse the Administrative Agent, the Collateral Agent and each Lender for all its reasonable costs and expenses reasonably incurred in connection with the enforcement or preservation of any rights under this Agreement, the other Loan Documents and any such other documents following the occurrence and during the continuance of an Event of Default, including without limitation, the reasonable fees and disbursements of one counsel to the Administrative Agent, the Collateral Agent and the Lenders and each of their respective affiliates, taken as a whole (and, to the extent reasonably necessary, one local counsel in each relevant jurisdiction for all such entities, taken as a whole, and, solely in the case of an actual or potential conflict of interest, one additional local counsel in each relevant jurisdiction to the affected entities similarly situated, taken as a whole), (c) to pay, and indemnify and hold harmless each Lender, each Arranger, the Collateral Agent and the Administrative Agent from, any and all recording and filing fees and any and all liabilities with respect to, or resulting from any delay in paying, stamp, excise and other taxes, if any, which may be payable or determined to be payable in connection with the execution and delivery of, or consummation or administration of any of the transactions contemplated by, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Agreement, the other Loan Documents and any such other documents (without duplication to payments made pursuant to Section 2.19) and (d) to pay, and indemnify and hold harmless each Lender, each Arranger, the Collateral Agent, the Administrative Agent and each of their respective Affiliates, directors, officers, employees, representatives, partners and agents (each, an "Indemnitee") from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance, preservation of rights and administration of this Agreement, the other Loan Documents or the use of the proceeds of the Term Loans or any of the foregoing relating to the violation of, noncompliance with or liability under, any Environmental Law applicable to the operations of the Loan Parties or any of their respective properties and the reasonable fees and expenses of one legal counsel for the Indemnitees taken as a whole in connection with claims, actions or proceedings by any Indemnitee against any Loan Party under any Loan Document (all the foregoing in this clause (d), collectively, the "indemnified liabilities"); provided that the Borrower shall have no obligation hereunder to any Indemnitee with respect to indemnified liabilities to the extent (x) determined by the final judgment of a court of competent jurisdiction to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnitee or any of such Indemnitee's Related Persons, (y) resulting from a material breach by such Indemnitee or any of such Indemnitee's Related Persons of its material obligations under this Agreement or the other Loan Documents or (z) related to any dispute solely among Indemnitees other than any claims against any Indemnitee in its capacity or in fulfilling its role as an Agent, an Arranger or any similar role under this Agreement and the other Loan Documents and other than any claims involving any act or omission on the part of the Borrower or its Subsidiaries; provided, further, that the Borrower shall in no event be responsible for consequential, indirect, special or punitive damages to any Indemnitee pursuant to this Section 9.5 except such consequential, indirect, special or punitive damages required to be paid by such Indemnitee in respect of any indemnified liabilities. Without limiting the foregoing, and to the extent permitted by applicable law, the Borrower agrees not to assert and to cause its Subsidiaries not to assert, and hereby waives and agrees to cause its Subsidiaries to waive, all rights for contribution or any other rights of recovery with respect to all claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature, under or related to Environmental Laws, that any of them might have by statute or otherwise against any Indemnitee related to the indemnified liabilities. To the extent permitted by applicable law, no Loan Party nor any of their respective Subsidiaries shall assert, and each Loan Party hereby waives, on behalf of itself and its Subsidiaries, any claim against each Lender, each Arranger, each Agent and their respective affiliates, directors, officers, employees, attorneys, representatives, agents or sub-agents, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Loan Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Term Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each Loan Party hereby waives, releases and agrees, on behalf of themselves and each of their respective Subsidiaries, not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor. All amounts due under this Section 9.5 shall be payable not later than 10 days after written demand therefor. Statements payable by the Borrower pursuant to this Section 9.5 shall be submitted to the Treasurer of the Borrower (Telecopy No. 713-353-9137), at the address of the Borrower set forth in Section 9.2 (with copies (which shall not constitute notice) to the Associate General Counsel of the Borrower at the respective addresses set forth in Section 9.2), or to such other Person or address as may be hereafter designated by the Borrower in a written notice to the Administrative Agent. The agreements in this Section shall survive repayment of the Term Loans and all other amounts payable hereunder.

9.6. Successors and Assigns; Participations.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted, except that (i) unless otherwise permitted by Section 6.3, the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 9.6.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees (other than a Disqualified Lender) (each, an "Assignee") all or a portion of its rights and obligations under this Agreement (including all or a portion of its Term Commitments and the respective tranche of Term Loans at the time owing to it) with the prior written consent of:

(A) the Borrower (such consent not to be unreasonably withheld, delayed or conditioned); provided that no consent of the Borrower shall be required for an assignment to a Lender, an affiliate of a Lender, an Approved Fund (as defined below) or, if an Event of Default under Section 7.1(a), (b), (i) (in the case of the Borrower only) or (j) (in the case of the Borrower only) has occurred and is continuing, any other Person; and

(B) the Administrative Agent (such consent not to be unreasonably withheld, delayed or conditioned), provided that no consent of the Administrative Agent shall be required for an assignment to a Lender, an affiliate of a Lender or an Approved Fund.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender, an affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Term Loans of the respective tranche, the amount of the Term Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than $5,000,000 unless each of the Borrower and the Administrative Agent otherwise consent, provided that (1) no such consent of the Borrower shall be required if an Event of Default under Section 7(a), Section 7.1(b), Section 7.1(i) (in the case of Borrower only) or Section 7(j) (in the case of the Borrower only) has occurred and is continuing and (2) such amounts shall be aggregated in respect of each Lender and its affiliates or Approved Funds, if any;

(B) (1) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of $3,500 (although the Borrower shall not be responsible for the payment of the recordation fee unless the Borrower has chosen to replace a Lender pursuant to Section 2.26) and (2) the assigning Lender shall have paid in full any amounts owing by it to the Administrative Agent;

(C) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an administrative questionnaire in which the Assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower and its Affiliates and their related parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws; and

(D) except as provided in Section 2.28 or in Section 9.6(f), none of the Loan Parties, their respective Affiliates or any natural person shall be an Assignee hereunder.

For the purposes of this Section 9.6, "Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an affiliate of a Lender or (c) an entity or an affiliate of an entity that administers or manages a Lender.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) below, from and after the effective date specified in each Assignment and Acceptance, the Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.18, 2.19 and 9.5 for the period of time in which it was a Lender hereunder. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.6 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Term Commitments of, and principal amount (and interest amounts) of the Term Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice. Any assignment of any Term Loan shall be effective only upon appropriate entries with respect thereto being made in the Register.

(v) Upon its receipt of an Assignment and Acceptance (executed via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually)), by a transferor Lender and an Assignee, as the case may be (and, in the case of an Assignee that is not then a Lender, by the Administrative Agent and the Borrower to the extent required under paragraph (c) above), together with payment to the Administrative Agent by the transferor Lender or the Assignee of a recordation and processing fee of $3,500 (which fee may be waived or reduced in the reasonable discretion of the Administrative Agent), the Administrative Agent shall (i) promptly accept such Assignment and Acceptance, (ii) on the effective date of such transfer determined pursuant thereto record the information contained therein in the Register and (iii) give notice of such acceptance and recordation to the transferor Lender, the Assignee and the Borrower.

(vi) Notwithstanding anything to the contrary contained in Section 9.6(b), no consent of the Administrative Agent (and no processing and recordation fee or administrative questionnaire) shall be required to be obtained, paid or delivered (as the case may be) for any assignment of Term Loans in any principal amount as part of a purchase of such Term Loans in accordance with Section 2.28.

(c) Any Lender may, without the consent of the Borrower or the Administrative Agent, sell participations to one or more banks or other entities (other than any Disqualified Lender) (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Term Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement and any other Loan Document or to otherwise exercise its voting righting rights under this Agreement and any other Loan Document; provided that such agreement may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that (1) requires the consent of each Lender directly affected thereby pursuant to the proviso to the second sentence of Section 9.1(a) and (2) directly affects such Participant. Subject to paragraph (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.18 and 2.19 (subject to the requirements and limitations of such sections and Section 2.26) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section (it being understood that the documentation required under Section 2.19(e) shall be delivered solely to the participating Lender). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.7(b) as though it were a Lender, provided such Participant shall be subject to Section 9.7(a) as though it were a Lender.

(i) A Participant shall not be entitled to receive any greater payment under Section 2.18 or 2.19 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent that any entitlement to a greater payment results from a change in any Requirement of Law arising after such Participant became a Participant.

(ii) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts (and related interest amounts) of each participant's interest in the Term Loans or other obligations under this Agreement (the "Participant Register"). The entries in the Participant Register shall be conclusive, absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary; provided that no Lender shall have the obligation to disclose all or a portion of the Participant Register (including the identity of the Participant or any information relating to a Participant's interest in any Loans or other obligations under any Loan Document) to any Person expect to the extent that such disclosure is necessary to establish that any Loans are in registered form for U.S. federal income tax purposes.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or Assignee for such Lender as a party hereto.

(e) Subject to Section 9.15, the Borrower authorizes each Lender to disclose to any Transferee and any prospective Transferee (in each case which agrees to comply with the provisions of Section 9.15 or confidentiality requirements no less restrictive on such prospective transferee than those set forth in Section 9.15) any and all financial information in such Lender's possession concerning the Borrower and its Affiliates which has been delivered to such Lender by or on behalf of the Borrower pursuant to this Agreement or any other Loan Document or which has been delivered to such Lender by or on behalf of the Borrower in connection with such Lender's credit evaluation of the Borrower and its Affiliates prior to becoming a party to this Agreement.

(f) Notwithstanding anything to the contrary contained herein, any Lender may assign all or any portion of its Loans hereunder to the Borrower or any of its Subsidiaries or Affiliates; provided that:

(i) upon the effectiveness of any such assignment (or contribution of Term Loans to the capital of the Borrower by an Affiliate thereof which shall occur substantially concurrently with the assignment to an Affiliate of the Borrower), such Term Loans shall be retired, and shall be deemed cancelled and not outstanding for all purposes under this Agreement; and

(ii) no Default or Event of Default shall exist or be continuing.

Each Lender acknowledges and agrees that in connection with each Assignment and Acceptance pursuant to this Section 9.6(f), (i) the Borrower then may have, and later may come into possession of Excluded Information, (ii) such Lender has independently and without reliance on the Borrower or any of its Subsidiaries or Affiliates made such Lender's own analysis and determined to enter into an assignment of such Term Loans and to consummate the transactions contemplated thereby notwithstanding such Lender's lack of knowledge of the Excluded Information and (iii) the Borrower and its Subsidiaries shall have no liability to such Lender, and such Lender hereby waives and releases, to the extent permitted by law, any claims such Lender may have against the Borrower and its Subsidiaries, under applicable laws or otherwise, with respect to the nondisclosure of the Excluded Information. Each Lender further acknowledges that the Excluded Information may not be available to the Administrative Agent or the other Lenders hereunder. Each Lender which assigns Term Loans pursuant to this Section 9.6(f) agrees to the provisions of the two preceding sentences, and agrees that they shall control, notwithstanding any inconsistent provision hereof or in any Assignment and Acceptance.

(g) The Borrower, on behalf of itself and its Affiliates and the Lenders, expressly acknowledges that the Administrative Agent (in its capacity as such or as an arranger, bookrunner or other agent hereunder) shall not have any obligation to monitor whether assignments or participations are made to Disqualified Lenders and none of the Borrower, the Lenders or any of their respective Affiliates will bring any claim to such effect. The Administrative Agent shall have the right to disclose the list of Disqualified Lenders to any Lender requesting the same.

9.7. Adjustments; Setoff.

(a) Except to the extent that this Agreement, any other Loan Document or a court order expressly provides or permits for payments to be allocated to a particular Lender or to the Lenders, if any Lender (a "Benefited Lender") shall receive any payment of all or part of the Obligations owing to it (other than in connection with an assignment or participation made pursuant to Section 9.6 or in connection with an Auction that is permitted under Section 2.28), or receive any collateral in respect thereof (whether voluntarily or involuntarily, by setoff, pursuant to events or proceedings of the nature referred to in Section 7.1(i) or (j), or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of the Obligations owing to such other Lender, such Benefited Lender shall purchase for cash from the other Lenders a participating interest in such portion of the Obligations owing to each such other Lender, or shall provide such other Lenders with the benefits of any such collateral, as shall be necessary to cause such Benefited Lender to share the excess payment or benefits of such collateral ratably with each of the Lenders; provided that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefited Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest. Notwithstanding anything to the contrary contained in this Section 9.7(a), no purchase or assignment of Term Loans in connection with an Auction that is permitted under Section 2.28 or Section 9.6(f) (and no payment made or cancellation of such Term Loans in connection therewith) and no extension of Term Loans that is permitted under Section 2.27 shall constitute a payment of any of such Term Loans for purposes of this Section 9.7.

(b) In addition to any rights and remedies of the Lenders provided by law and subject to the terms of the Pledge and Security Agreement, each Lender shall have the right, without notice to the Borrower, any such notice being expressly waived by the Borrower to the extent permitted by applicable law, upon any Obligations becoming due and payable by the Borrower (whether at the stated maturity, by acceleration or otherwise), to apply to the payment of such Obligations, by setoff or otherwise, any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender, any affiliate thereof or any of their respective branches or agencies to or for the credit or the account of the Borrower. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such application made by such Lender, provided that the failure to give such notice shall not affect the validity of such application.

9.8. Counterparts; Electronic Execution. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. The words "execution," "signed," "signature," and words of like import in this Agreement and the other Loan Documents including any Assignment and Assumption shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

9.9. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

9.10. Integration. This Agreement and the other Loan Documents represent the entire agreement of the Borrower, the Administrative Agent and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents.

9.11. GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

9.12. Submission To Jurisdiction; Waivers.

(a) Subject to clause (b)(iii) of this Section 9.12, each party hereto hereby irrevocably and unconditionally submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the exclusive general jurisdiction of the courts of the State of New York, the courts of the United States for the Southern District of New York, and appellate courts from any thereof, in each case that are located in the Borough of Manhattan, The City of New York;

(b) The Borrower hereby irrevocably and unconditionally:

(i) agrees that any such action or proceeding shall be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(ii) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the Borrower at its address set forth in Section 9.2 or at such other address of which the Administrative Agent shall have been notified pursuant thereto;

(iii) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right of any Agent, any Arranger or any Lender to sue in any other jurisdiction; and

(iv) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

9.13. Acknowledgements. The Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) notwithstanding the provisions of this Agreement or any of the other Loan Documents and the Arrangers shall have no powers, duties, responsibilities or liabilities with respect to this Agreement and the other Loan Documents;

(c) the Agents, the Arrangers, the Lenders and their Affiliates may have economic interests that conflict with those of the Borrower; and

(d) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Borrower and the Lenders.

9.14. Releases of Guarantees and Liens.

(a) Notwithstanding anything to the contrary contained herein or in any other Loan Document, each of the Administrative Agent and the Collateral Agent is hereby irrevocably authorized by each Lender (and each such Lender hereby expressly consents) (without requirement of notice to or consent of any Lender except as expressly required by Section 9.1(a)) to take any action reasonably requested by the Borrower having the effect of releasing any Collateral or Guarantor from its guarantee obligations (i) that has been consented to in accordance with Section 9.1(a) or in connection with any sale, transfer or other disposition of any Collateral or Guarantor to a Person that is not a Loan Party, including as a result of any investments of Collateral in non-Guarantor Subsidiaries to the extent not prohibited by the Loan Documents, (ii) to the extent any such release is permitted at such time pursuant to the applicable Security Document or (iii) under the circumstances described in paragraphs (b) or (c) below (and, upon the consummation of any such transaction in preceding clause (i), (ii) or (iii), such Collateral shall be automatically released from, and be disposed of free and clear of, all Liens under the Security Documents and/or such Guarantor shall be automatically released from its obligations under the Loan Documents).

(b) At such time as the Term Loans and the other Obligations under the Loan Documents (other than obligations under or in respect of Swap Agreements or Cash Management Agreements) shall have been paid in full and all Commitments of the Lenders have expired or terminated, the Collateral shall be released from the Liens created by the Security Documents, and the Security Documents and all obligations (other than those expressly stated to survive such termination) of the Administrative Agent, the Collateral Agent and each Loan Party under the Security Documents shall terminate, all without delivery of any instrument or performance of any act by any Person.

(c) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Lenders hereby agree, and each of the Administrative Agent and the Collateral Agent is hereby irrevocably authorized by each Lender (without requirement of notice to or consent of any Lender) to take any action required by the Borrower having the effect of releasing a Guarantor from its guarantee obligations under the Guaranty Agreement and as a Grantor under the Security Documents if (i) such Guarantor becomes an Excluded Subsidiary or ceases to be a Restricted Subsidiary, (ii) all or substantially all of the assets of such Guarantor have been sold or otherwise disposed of (including by way of merger or consolidation) to a Person that is not a Borrower or a Guarantor in a transaction permitted (or not prohibited) by this Agreement or (iii) such Guarantor has been liquidated or dissolved in a transaction permitted (or not prohibited) by this Agreement .

(d) In connection with any release of Collateral of the type described above in clause (a) or (c) notwithstanding anything to the contrary contained herein or in any other Loan Document, each of the Administrative Agent and the Collateral Agent is hereby irrevocably authorized by each Lender (and each such Lender hereby expressly consents) (without requirement of notice to or consent of any Lender except as expressly required by Section 9.1(a)) to take any action with respect to the Collateral requested by the Borrower to the extent necessary to permit such release or other transaction, including without limitation, directing the Collateral Agent to execute agreements with respect to any Collateral, upon the delivery to the Administrative Agent and Collateral Agent of a certificate signed by an officer of the Borrower stating that such action and the release of the Collateral or other transaction, as applicable, is permitted by each Loan Document.

9.15. Confidentiality. Each Agent, each Arranger and each Lender agrees to keep confidential all non-public information provided to it by any Loan Party, the Administrative Agent or any Lender pursuant to or in connection with this Agreement; provided that nothing herein shall prevent any Agent, any Arranger or any Lender from disclosing any such information (a) to the Administrative Agent, any other Lender or any affiliate thereof (so long as such affiliate agrees to be bound by the provisions of this Section 9.15), (b) subject to an agreement to comply with provisions no less restrictive than this Section 9.15, to any actual or prospective Transferee or any direct or indirect counterparty to any Swap Agreement (or any professional advisor to such counterparty), (c) to its employees, directors, officers, agents, attorneys, accountants, partners and other professional advisors or those of any of its affiliates, (d) upon the request or demand, or in accordance with the requirements (including reporting requirements), of any Governmental Authority having jurisdiction over such Lender, provided that to the extent permitted by law, such Lender shall promptly notify the applicable Loan Party of such disclosure (except with respect to any audit or examination conducted by bank accountants or any governmental bank authority exercising examination or regulatory authority), (e) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Requirement of Law or other legal process, provided that to the extent permitted by law, such Lender shall promptly notify the applicable Loan Party of such disclosure (except with respect to any audit or examination conducted by bank accountants or any governmental bank authority exercising examination or regulatory authority), (f) if requested or required to do so in connection with any litigation or similar proceeding; provided that to the extent permitted by law, such Lender shall promptly notify the applicable Loan Party of such disclosure, (g) to the extent such information has been independently developed by such Lender or that has been publicly disclosed other than in breach of this Agreement, (h) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender, or (i) in connection with the exercise of any remedy hereunder or under any other Loan Document.

Each Lender acknowledges that all information, including requests for waivers and amendments, furnished by the Borrower or the Administrative Agent pursuant to, or in the course of administering this Agreement or the other Loan Documents, will be syndicate-level information, which may (except as provided in the following paragraph) contain material non-public information concerning the Borrower and its Affiliates and their related parties or their respective securities. Accordingly, each Lender confirms to the Borrower and the Administrative Agent that (i) it has developed compliance procedures regarding the use of material non-public information, (ii) it has identified in its administrative questionnaire a credit contact who may receive information that may contain material non-public information in accordance with its compliance procedures and applicable law, including Federal and state securities laws and (iii) it will handle such material non-public information in accordance with those procedures and applicable law, including Federal and state securities laws.

The Borrower acknowledges that certain of the Lenders may be "public-side" Lenders (Lenders that do not wish to receive material non-public information with respect to the Borrower, its subsidiaries or their securities) (each, a "Public Lender") and, if documents required to be delivered pursuant to Section 5.1 or 5.2 or otherwise are being distributed through the Platform, the Borrower agrees to designate those documents or other information that are suitable for delivery to the Public Lenders as such. Any document that the Borrower has indicated contains non-public information shall not be posted on that portion of the Platform designated for such Public Lenders. If the Borrower has not indicated whether a document delivered pursuant to Section 5.1 or 5.2 contains non-public information, the Administrative Agent reserves the right to post such document or notice solely on that portion of the Platform designated for Lenders who wish to receive material nonpublic information with respect to the Borrower, its Subsidiaries and their securities. The Borrower acknowledges and agrees that copies of the Loan Documents may be distributed to Public Lenders (unless the Borrower promptly notifies the Administrative Agent that any such document contains material non-public information with respect to the Borrower or its securities).

9.16. WAIVERS OF JURY TRIAL. THE BORROWER, THE ADMINISTRATIVE AGENT, THE COLLATERAL AGENT AND THE LENDERS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

9.17. U.S.A. PATRIOT Act; Beneficial Ownership Regulation. Each Lender that is subject to the requirements of the PATRIOT Act and the Beneficial Ownership Regulation hereby notifies each Loan Party that pursuant to the requirements of the PATRIOT Act and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the PATRIOT Act and the Beneficial Ownership Regulation. The Borrower shall, and shall cause each of its Subsidiaries to, provide, to the extent commercially reasonable, such information and take such actions as are reasonably requested by each Lender and the Administrative Agent to maintain compliance with the PATRIOT Act and the Beneficial Ownership Regulation.

9.18. No Fiduciary Duty. Each Agent, each Lender, the Arrangers and their respective Affiliates (collectively, solely for purposes of this paragraph, the "Lenders") may have economic interests that conflict with those of the Borrower, its stockholders and/or its affiliates. The Borrower agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and the Borrower, its stockholders or its affiliates, on the other. The Borrower acknowledges and agrees that (i) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Lenders, on the one hand, and the Borrower, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Lender has assumed an advisory or fiduciary responsibility in favor of the Borrower, its stockholders or its affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise the Borrower, its stockholders or its affiliates on other matters) or any other obligation to the Borrower except the obligations expressly set forth in the Loan Documents and (y) each Lender is acting solely as principal and not as the agent or fiduciary of the Borrower, its management, stockholders, creditors or any other Person. The Borrower acknowledges and agrees that the Borrower has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. The Borrower agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Borrower, in connection with such transaction or the process leading thereto. None of the Arrangers identified on the cover page or signature pages of this Agreement shall have any rights, powers, obligations, liabilities, responsibilities or duties under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as a Lender hereunder. Without limiting any other provision of this Article, none of such Arrangers in their respective capacities as such shall have or be deemed to have any fiduciary relationship with any Lender, the Administrative Agent or any other Person by reason of this Agreement or any other Loan Document.

9.19. Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of the Administrative Agent, the Co-Managers, the Joint Lead Arrangers, the Joint Bookrunners, the Co-Managers and each of their Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Term Loans or the Term Commitments,

(ii) the prohibited transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable so as to exempt from the prohibitions of Section 406 of ERISA and Section 4975 of the Code such Lender's entrance into, participation in, administration of and performance of the Term Loans, the Term Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Term Loans, the Term Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Term Loans, the Term Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Term Loans, the Term Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its reasonable discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, Administrative Agent, the Co-Managers, the Joint Lead Arrangers, the Joint Bookrunners, the Co-Managers and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, none of the Administrative Agent, the Co-Managers, the Joint Lead Arrangers, the Joint Bookrunners or any of their Affiliates is a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Term Loans, the Term Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent, the Co-Managers, the Joint Lead Arrangers, the Joint Bookrunners under this Agreement, any Loan Document or any documents related hereto or thereto).

9.20. Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

9.21. Erroneous Payments.

(a) If the Administrative Agent (x) notifies a Lender or any Person who has received funds on behalf of a Lender (any such Lender or other recipient (and each of their respective successors and assigns), a "Payment Recipient") that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from the Administrative Agent) received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and (y) demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent pending its return or repayment as contemplated below in this Section 9.21 and held in trust for the benefit of the Administrative Agent, and such Lender shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter (or such later date as the Administrative Agent may, in its sole discretion, specify in writing), return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the Administrative Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender or any Person who has received funds on behalf of a Lender (and each of their respective successors and assigns), agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

(i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepay ment or repayment; and

(ii) such Lender shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify the Administrative Agent of its receipt of such payment, prepayment or repay-ment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 9.21(b).

For the avoidance of doubt, the failure to deliver a notice to the Administrative Agent pursuant to this Section 9.21(b) shall not have any effect on a Payment Recipient's obligations pursuant to Section 9.21(a) or on whether or not an Erroneous Payment has been made.

(c) Each Lender hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender under any Loan Document with respect to any payment of principal, interest, fees or other amounts, against any amount that the Administrative Agent has demanded to be returned under Section 9.21(a).

(d) (i) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor in accordance with immediately preceding clause (a), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "Erroneous Payment Return Deficiency"), upon the Administrative Agent's notice to such Lender at any time, then effective immediately (with the consideration therefor being acknowledged by the parties hereto), (A) such Lender shall be deemed to have assigned its Loans of the relevant Class with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Class") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans of the Erroneous Payment Impacted Class, the "Erroneous Payment Deficiency Assignment") (on a cashless basis and such amount calculated at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance)), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Assumption (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to a Platform as to which the Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent (but the failure of such Person to deliver any such Notes shall not affect the effectiveness of the foregoing assignment), (B) the Administrative Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (C) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement which shall survive as to such assigning Lender, (D) the Administrative Agent and the Borrower shall each be deemed to have waived any consents required under this Agreement to any such Erroneous Payment Deficiency Assignment, and (E) the Administrative Agent will reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment.

(ii) Subject to Section 9.06 (but excluding, in all events, any assignment consent or approval requirements (whether from the Borrower or otherwise)), the Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency owing by the applicable Lender (x) shall be reduced by the proceeds of prepayments or repayments of principal and interest, or other distribution in respect of principal and interest, received by the Administrative Agent on or with respect to any such Loans acquired from such Lender pursuant to an Erroneous Payment Deficiency Assignment (to the extent that any such Loans are then owned by the Administrative Agent) and (y) may, in the sole discretion of the Administrative Agent, be reduced by any amount specified by the Administrative Agent in writing to the applicable Lender from time to time.

(e) The parties hereto agree that (x) irrespective of whether the Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender to the rights and interests of such Lender, as the case may be) under the Loan Documents with respect to such amount (the "Erroneous Payment Subrogation Rights") (provided that the Loan Parties' Obligations under the Loan Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such Obligations in respect of Loans that have been assigned to the Administrative Agent under an Erroneous Payment Deficiency Assignment) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party; provided that this Section 9.21 shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrower relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Administrative Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on "discharge for value" or any similar doctrine.

(g) Each party's obligations, agreements and waivers under this Section 9.21 shall survive the resignation or re-placement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender and/or the repayment, satisfaction or dis-charge of all Obligations (or any portion thereof) under any Loan Document.

9.22. Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States.

(b) As used in this Section 9.22, the following terms have the following meanings:

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

"Covered Entity" means any of the following:

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

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

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

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

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

9.23. Secured Cash Management Agreements and Secured Swap Agreements.

No Cash Management Bank or Hedge Bank that obtains the benefit of the provisions of Section 7.2 of the Pledge and Security Agreement, or the Guaranty Agreement or any Collateral by virtue of the provisions hereof or any Security Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) (or to notice of or to consent to any amendment, waiver or modification of the provisions hereof or of the Guaranty Agreement or any Security Document) other than in its capacity as Administrative Agent, Collateral Agent or a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision to the contrary, neither the Administrative Agent nor the Collateral Agent shall be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations arising under Secured Cash Management Agreements or Secured Swap Agreements except to the extent expressly provided herein and unless the Administrative Agent and the Collateral Agent has received a written notice of such Secured Obligations, together with such supporting documentation as the Administrative Agent or the Collateral Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

Exhibit 10.4

Execution Version

AMENDMENT NO. 4
TO
CREDIT AGREEMENT

This AMENDMENT NO. 4 to Credit Agreement, dated as of June 6, 2024 (this "*Amendment*"), is entered into among CALPINE CONSTRUCTION FINANCE COMPANY, L.P., a Delaware limited partnership (the "*Borrower*"), the Guarantors, CITIBANK, N.A. ("*Citibank*") as the initial New Lender (as defined below) and CITIBANK, N.A. (as successor to CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH), as administrative agent (in such capacity and including any successors in such capacity, the "*Administrative Agent*"), and amends the Credit Agreement, dated as of December 15, 2017 (as amended by that certain Amendment No. 1, dated as of January 29, 2020, that certain Amendment No. 2, dated as of July 1, 2023, that certain Amendment No. 3, dated as of August 2, 2023, and as may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time through the date hereof, the "*Credit Agreement*") entered into among the Borrower, the institutions from time to time party thereto as Lenders (the "*Lenders*"), the Administrative Agent and the Collateral Agent. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Credit Agreement.

W I T N E S S E T H:

WHEREAS, the Borrower has requested that the Lenders amend the Credit Agreement to effect the changes described below; and

WHEREAS, the Borrower has requested that Citigroup Global Markets Inc., BofA Securities, Inc., Banco Santander, S.A., New York Branch, Barclays Bank PLC, BMO Capital Markets Corp., BNP Paribas Securities Corp., Crédit Agricole Corporate and Investment Bank, Goldman Sachs Bank USA, JPMorgan Chase Bank, N.A., Mizuho Bank, Ltd., Morgan Stanley Senior Funding, Inc., MUFG Bank, Ltd., Natixis, New York Branch, Royal Bank of Canada and Sumitomo Mitsui Banking Corporation act as Lead Arrangers (the "*Lead Arrangers*") in connection with this Amendment;

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto hereby agree as follows:

Section 1. Amendments to the Credit Agreement

The Credit Agreement is, effective as of the Amendment No. 4 Effective Date (as defined below), hereby amended to:

(a) delete the words "(y) in the case of Refinancing Term B Loans maintained as (i) Base Rate Loans, 1.25% and (ii) Term SOFR Loans, 2.25%" in the definition of "*Applicable Margin*" set forth in Section 1.1 of the Credit Agreement and replace such words with "(y) in the case of Refinancing Term B Loans (1) prior to the Amendment No. 4 Effective Date, maintained as (i) Base Rate Loans, 1.25% and (ii) Term SOFR Loans, 2.25% and (2) on or after the Amendment No. 4 Effective Date, maintained as (i) Base Rate Loans, 1.00% and (ii) Term SOFR Loans, 2.00%.; and

(b) Add the following defined term to Section 1.1 of the Credit Agreement:

""Amendment No. 4 Effective Date": June 6, 2024."

(c) delete the first sentence of Section 2.8(a)

(d) delete the reference to "prior to February 2, 2024" in Section 2.13(b) of the Credit Agreement and replace such reference with "prior to December 6, 2024."

Section 2. Conditions Precedent to the Effectiveness of this Amendment

This Amendment shall become effective as of the date first written above when, and only when, each of the following conditions precedent shall have been satisfied or waived (the "*Amendment No. 4 Effective Date*"):

(a) *Executed Counterparts*. The Administrative Agent shall have received this Amendment, duly executed by the Borrower, the Guarantors, the initial New Lender and the Administrative Agent;

(b) *Executed Consents*. The Administrative Agent shall have received a consent ("*Consent*") in the form of Exhibit A to this Amendment, duly executed by each Lender (each such Lender a "*Consenting Lender*") (including each replacement financial institution that becomes a Lender pursuant to Section 2.26 of the Credit Agreement, but excluding any Non-Consenting Lender (as defined below)) by 5:00 p.m., New York City time on May 30, 2024 (the "*Consent Deadline*");

(c) *No Default or Event of Defaul*t. After giving effect to this Amendment, no Default or Event of Default shall have occurred and be continuing, either on the date hereof or on the Amendment No. 4 Effective Date;

(d) *Representations and Warranties*. The representations and warranties of the Borrower contained in Section 3 of the Credit Agreement and Section 3 of this Amendment or any other Loan Document shall be true and correct in all material respects (and in all respects if qualified by materiality) on and as of the Amendment No. 4 Effective Date, as if made on and as of such date and except to the extent that such representations and warranties specifically relate to a specific date, in which case such representations and warranties shall be true and correct in all material respects (and in all respects if qualified by materiality) as of such specific date; *provided*, *however*, that references therein to the "Credit Agreement" shall be deemed to refer to the Credit Agreement as amended hereby and after giving effect to the consents and waivers set forth herein;

(e) *Officer's Certificate*. The Borrower shall have provided a certificate signed by a Responsible Officer of the Borrower certifying as to the satisfaction of the conditions set forth in paragraphs (c) and (d) of this Section 2; and

(f) *Fees and Expenses Paid*. The Borrower shall have paid all reasonable and documented out-of-pocket costs and expenses of the Lead Arrangers and the Administrative Agent in connection with the preparation, reproduction, execution and delivery of this Amendment (including, without limitation, the reasonable and documented fees and out-of-pocket expenses of counsel for the Lead Arrangers and the Administrative Agent with respect thereto) and all other fees then due and payable to any Lead Arranger and the Administrative Agent in connection with this Amendment.

Section 3. Representations and Warranties

On and as of the Amendment No. 4 Effective Date, after giving effect to this Amendment, the Borrower hereby represents and warrants to the Administrative Agent and each Lender (including the initial New Lender) as follows:

(a) this Amendment has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with its terms and the Credit Agreement, as amended by this Amendment, constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar laws of general applicability relating to or limiting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law;

(b) each of the representations and warranties contained in Section 3 (Representations and Warranties) of the Credit Agreement and each other Loan Document is true and correct in all material respects (and in all respects if qualified by materiality) on and as of the Amendment No. 4 Effective Date, as if made on and as of such date and except to the extent that such representations and warranties specifically relate to a specific date, in which case such representations and warranties shall be true and correct in all material respects (and in all respects if qualified by materiality) as of such specific date; *provided*, *however*, that references therein to the "*Credit Agreement*" shall be deemed to refer to the Credit Agreement as amended hereby and after giving effect to the consents and waivers set forth herein; and

(c) no Default or Event of Default has occurred and is continuing.

Section 4. New Lenders, Non-Consenting Lenders and Reduced Lenders.

If any Lender under the Credit Agreement (each a "*Non-Consenting Lender*") declines or fails to consent to this Amendment by failing to return an executed Consent to the Administrative Agent prior to the Consent Deadline, then pursuant to and in compliance with the terms of Section 2.26 of the Credit Agreement, such Lender may be replaced and its commitments and/or obligations (or a portion thereof) purchased and assumed by either a new lender (a *"New Lender*") or an existing Lender which is willing to increase its Term Loans. For the avoidance of doubt, each Non-Consenting Lender will be deemed to have executed an Assignment and Acceptance for all of its then outstanding Term Loans. The Borrower may elect, by giving written notice to the Administrative Agent and the applicable Consenting Lender, to cause such Consenting Lender (such Lender, a "Reduced Lender") to assign all or a portion (in an amount as determined by the Borrower and Administrative Agent) outstanding Term Loans (such Term Loans, the "Reduced Term Loans") to the New Lender in accordance with the provisions of Section 9.6(b) of the Credit Agreement; provided that (1) on the date of such assignment, the New Lender shall pay to the Reduced Lender an amount equal to the principal of the Reduced Term Loans of such Reduced Lender and (2) on the date of such assignment, the Borrower shall pay all accrued interest on the Reduced Term Loans of such Reduced Lender and any amounts payable to such Reduced Lender pursuant to Sections 2.18 or 2.19 of the Credit Agreement or otherwise as if it were a prepayment. For the avoidance of doubt, each Reduced Lender will be deemed to have executed an Assignment and Acceptance for its Reduced Term Loans.

Section 5. Fees and Expenses; Indemnity; No Fiduciary Duty

The Borrower agrees to pay, in accordance with the terms of Section 9.5 of the Credit Agreement, all reasonable out-of-pocket costs and expenses of the Administrative Agent in connection with the preparation, reproduction, execution and delivery of this Amendment (including, without limitation, the reasonable and documented fees and out-of-pocket expenses of counsel for the Administrative Agent with respect thereto). Sections 9.5 and 9.18 of the Credit Agreement are incorporated by reference herein as if such Sections appeared herein, and shall apply to the activities of the Lead Arrangers in connection with this Amendment, *mutatis mutandis*.

Section 6. Reference to the Effect on the Loan Documents

(a) As of the Amendment No. 4 Effective Date, each reference in the Credit Agreement to "*this Agreement*," "*hereunder*," "*hereof*," "*herein*," or words of like import, and each reference in the other Loan Documents to the Credit Agreement (including, without limitation, by means of words like "*thereunder*," "*thereof*" and words of like import), shall mean and be a reference to the Credit Agreement as amended hereby, and this Amendment and the Credit Agreement shall be read together and construed as a single instrument. Each of the table of contents and lists of Exhibits and Schedules of the Credit Agreement shall be amended to reflect the changes made in this Amendment as of the Amendment No. 4 Effective Date.

(b) Except as expressly amended hereby or specifically waived above, all of the terms and provisions of the Credit Agreement and all other Loan Documents are and shall remain in full force and effect and are hereby ratified and confirmed.

(c) The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of the Lenders, the Borrower, the Lead Arrangers or the Administrative Agent under any of the Loan Documents, nor constitute a waiver or amendment of any other provision of any of the Loan Documents or for any purpose except as expressly set forth herein. The parties hereto acknowledge and agree that the amendment of the Credit Agreement pursuant to this Amendment and all other Loan Documents amended and/or executed and delivered in connection herewith shall not constitute a novation of the Credit Agreement and the other Loan Documents as in effect prior to the Amendment No. 4 Effective Date.

(d) This Amendment is a Loan Document.

(e) For the avoidance of doubt, the Interest Period for the Refinancing Term B Loans shall remain unchanged and shall end on June 28, 2024.

Section 7. Reaffirmation

Each Loan Party hereby expressly acknowledges the terms of this Amendment and reaffirms, as of the date hereof, (i) the covenants and agreements contained in each Loan Document to which it is a party, including, in each case, such covenants and agreements as in effect immediately after giving effect to this Amendment and the transactions contemplated hereby and (ii) its guarantee of the Obligations under the Guaranty Agreement and its grant of Liens on the Collateral to secure the Obligations pursuant to the Security Documents.

Section 8. Execution in Counterparts

This Amendment may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are attached to the same document. Delivery of an executed counterpart by telecopy shall be effective as delivery of a manually executed counterpart of this Amendment.

Section 9. Governing Law

THIS AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

Section 10. Section Titles

The section titles contained in this Amendment are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto, except when used to reference a section. Any reference to the number of a clause, sub-clause or subsection of any Loan Document immediately followed by a reference in parenthesis to the title of the section of such Loan Document containing such clause, sub-clause or subsection is a reference to such clause, sub-clause or subsection and not to the entire section; *provided*, *however*, that, in case of direct conflict between the reference to the title and the reference to the number of such section, the reference to the title shall govern absent manifest error. If any reference to the number of a section (but not to any clause, sub-clause or subsection thereof) of any Loan Document is followed immediately by a reference in parenthesis to the title of a section of any Loan Document, the title reference shall govern in case of direct conflict absent manifest error.

Section 11. Notices

All communications and notices hereunder shall be given as provided in the Credit Agreement.

Section 12. Severability

The fact that any term or provision of this Amendment is held invalid, illegal or unenforceable as to any person in any situation in any jurisdiction shall not affect the validity, enforceability or legality of the remaining terms or provisions hereof or the validity, enforceability or legality of such offending term or provision in any other situation or jurisdiction or as applied to any person.

Section 13. Successors

The terms of this Amendment shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

Section 14. Jurisdiction; Waiver of Jury Trial

The jurisdiction and waiver of right to trial by jury provisions in Sections 9.12 and 9.16 of the Credit Agreement are incorporated herein by reference *mutatis mutandis*.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers and general partners thereunto duly authorized, as of the date first written above.

CALPINE CONSTRUCTION FINANCE COMPANY, L.P., as the Borrower

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

JACK A. FUSCO ENERGY CENTER LLC (F/K/A BRAZOS VALLEY ENERGY LLC), as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

CALPINE BOSQUE ENERGY CENTER, LLC, as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

GUADALUPE POWER PARTNERS, LP, as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

MAGIC VALLEY ENERGY CENTER, LLC, as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

CALPINE NORTHEAST DEVELOPMENT, LLC, as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

CALPINE GUADALUPE GP, LLC, as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

CALPINE GUADALUPE LP, LLC, as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

CALPINE FORE RIVER ENERGY CENTER, LLC, as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

WESTBROOK ENERGY CENTER, LLC, as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

CITIBANK, N.A., as initial New Lender

By: /s/ Agha Murtaza
Name: Agha Murtaza
Title: Managing Director and Vice President

[Signature Page to Amendment No. 4]

CITIBANK, N.A., as Administrative Agent

By: /s/ Agha Murtaza
Name: Agha Murtaza
Title: Managing Director and Vice President

[Signature Page to Amendment No. 4]

[Lender Consents for Amendment No. 4 on file with Administrative Agent]

Exhibit A

CONSENT TO AMENDMENT NO. 4

CONSENT (this "*Consent*") TO AMENDMENT NO. 4 ("*Amendment*") to the Credit Agreement, dated as of December 15, 2017 (as amended by that certain Amendment No. 1, dated as of January 29, 2020, that certain Amendment No. 2, dated as of July 1, 2023, that certain Amendment No. 3, dated as of August 2, 2023, and as may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "*Credit Agreement*") entered into among the Borrower, the institutions from time to time party thereto as Lenders (the "*Lenders*"), the Administrative Agent and the Collateral Agent. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Amendment.

Consent:

The undersigned Lender (including any New Lender) hereby irrevocably and unconditionally approves of and consents to the Amendment with respect to all Term Loans held by such Lender (including with respect to Section 4 of the Amendment).

Name of Lender: _____

by _____
Name:
Title:

For any Institution requiring a second signature line:

by _____
Name:
Title:

Exhibit 10.5

Execution Version

2024 INCREMENTAL TERM LOAN COMMITMENT SUPPLEMENT

2024 INCREMENTAL TERM LOAN COMMITMENT SUPPLEMENT, dated as of September 16, 2024 (this "**Agreement**"), by and among the Incremental Lender party hereto (the "**2024 Incremental Term Loan Lender**"), CALPINE CONSTRUCTION FINANCE COMPANY, L.P., a Delaware limited partnership (the "**Borrower**"), the other Loan Parties party hereto and CITIBANK, N.A. as Administrative Agent (in such capacity and including any successors in such capacity, the "**Administrative Agent**") and as Collateral Agent (in such capacity and including any successors in such capacity, the "**Collateral Agent**").

RECITALS:

WHEREAS, reference is hereby made to the Credit Agreement, dated as of December 15, 2017 (as amended by Amendment No. 1, dated as of January 29, 2020, as further amended by Amendment No. 2, dated as of July 1, 2023, as further amended by Amendment No. 3, dated as of August 2, 2023 and as further amended by Amendment No. 4, dated as of June 6, 2024, and as may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof, the "**Credit Agreement**"), among the Borrower, each lender from time to time party thereto, the Administrative Agent and the Collateral Agent (capitalized terms used but not defined herein having the meaning provided in the Credit Agreement);

WHEREAS, subject to the terms and conditions of the Credit Agreement, the Borrower may establish Incremental Commitments with new and/or existing Lenders;

WHEREAS, subject to the terms and conditions of the Credit Agreement, the 2024 Incremental Term Loan Lender shall become a Lender pursuant to one or more joinder agreements;

WHEREAS, the Borrower has requested that the initial 2024 Incremental Term Loan Lender party hereto extend credit to the Borrower in the form of 2024 Incremental Term Loans in an aggregate principal amount of $631,250,000 and that such 2024 Incremental Term Loans shall be added to, and become part of, the existing tranche of Refinancing Term B Loans as permitted by the Credit Agreement; and

NOW, THEREFORE, in consideration of the premises and agreements, provisions and covenants herein contained, the parties hereto agree as follows:

Section 1. New Term Loan B Commitments and New Refinancing Term B Loans.

(a) Subject to the terms and conditions set forth herein, (i) the 2024 Incremental Term Loan Lender party hereto as of the date hereof agrees to make 2024 Incremental Term Loans on the 2024 Incremental Term Loan Effective Date (as defined below) in an aggregate principal amount equal to the 2024 Incremental Term Loan Commitments and (ii) upon the making of the 2024 Incremental Term Loans, such 2024 Incremental Term Loans shall be added to, and constitute part of, the existing tranche of Refinancing Term B Loans as permitted by the Credit Agreement. The Borrower may, in its sole discretion, reduce the aggregate amount of the 2024 Incremental Term Loan Commitments, in full or in part, prior to the incurrence thereof and such 2024 Incremental Term Loan Commitments shall terminate in full upon the making of the 2024 Incremental Term Loans pursuant thereto.

(b) The Borrower agrees to pay to the 2024 Incremental Term Loan Lender party to this Agreement on the 2024 Incremental Term Loan Effective Date, as fee compensation for the funding of such 2024 Incremental Term Loan Lender's 2024 Incremental Term Loan, a funding fee (the "**2024 Incremental Term Loan Funding Fee**") in an amount equal to 0.50% of the stated principal amount of such 2024 Incremental Term Loan Lender's 2024 Incremental Term Loans funded on the 2024 Incremental Term Loan Effective Date; provided that such 2024 Incremental Term Loan Funding Fee may be structured as original issue discount as agreed between the Borrower and the 2024 Incremental Term Loan Lender.

Section 2. Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

"**Hermiston Contribution**": the transactions pursuant to that certain Contribution Agreement, dated September 16, 2024 among CCFC Preferred Holdings, LLC; Calpine CCFC LP, LLC; Calpine CCFC GP, LLC and Calpine Construction Finance Company, L.P. by which the Borrower or a Subsidiary of the Borrower shall acquire Hermiston Power LLC ("**Hermiston**").

"**2024 Incremental Term Loan Lead Arrangers**": Citigroup Global Markets Inc., BMO Capital Markets Corp., MUFG Bank, Ltd., Barclays Bank PLC, BNP Paribas Securities Corp., BofA Securities, Inc., Goldman Sachs & Co. LLC, JPMorgan Chase Bank, N.A., Mizuho Bank, Ltd., Sumitomo Mitsui Banking Corporation, Crédit Agricole Corporate and Investment Bank, Banco Santander, S.A., Royal Bank of Canada, Natixis, New York Branch, Morgan Stanley Senior Funding, Inc. and ING Capital LLC.

"**2024 Incremental Term Loan Commitments**": the Term Loan B Commitments being issued under this Agreement. The initial aggregate principal amount of the 2024 Incremental Term Loan Commitments is $631,250,000.

"**2024 Incremental Term Loan Effective Date**": the date on which the conditions to effectiveness set forth in Section 4 of this Agreement have been satisfied.

"**2024 Incremental Term Loans**": the Refinancing Term B Loans being made under this Agreement.

Section 3. Terms and Conditions. Pursuant to Section 2.25 of the Credit Agreement, the 2024 Incremental Term Loans shall have the following terms:

(a) **2024 Incremental Term Loans.** The 2024 Incremental Term Loans made pursuant to this Agreement shall be added to, and constitute part of, the existing tranche of Refinancing Term B Loans under the Credit Agreement.

(b) **Applicable Rate**. The Applicable Margin, Base Rate and Term SOFR Reference Rate with respect to the 2024 Incremental Term Loans shall be the Applicable Margin, Base Rate, and Term SOFR Reference Rate, respectively for Refinancing Term B Loans.

(c) **Mandatory Prepayments**. The 2024 Incremental Term Loans shall be subject to mandatory prepayments on the same basis as Refinancing Term B Loans as set forth in Section 2.8 of the Credit Agreement.

(d) **Optional Prepayments**. The 2024 Incremental Term Loans may be optionally prepaid on the same basis as Refinancing Term B Loans as set forth in Section 2.13 of the Credit Agreement.

(e) **Repricing Transaction**. At the time of effectiveness of any Repricing Transaction that (x) results in any prepayment of Refinancing Term B Loans, or (y) effects any amendment of the Credit Agreement resulting in a Repricing Transaction with respect to Refinancing Term B Loans and (in either case) is consummated prior March 16, 2025, the Borrower agrees to pay to the Administrative Agent, for the ratable account of each applicable Lender holding Refinancing B Term Loans, a fee in an amount equal to, without duplication, (I) in the case of preceding clause (x), a prepayment premium of 1% of the principal amount of the Refinancing Term B Loans being prepaid and (II) in the case of preceding clause (y), a payment equal to 1% of the aggregate amount of the applicable Refinancing Term B Loans outstanding immediately prior to such amendment and subject to such Repricing Transaction.

(f) **Maturity Date**. The Termination Date for the 2024 Incremental Term Loans shall be July 31, 2030. The Borrower shall repay the 2024 Incremental Term Loans in accordance with Section 2.8 of the Credit Agreement (it being understood and agreed that, for the avoidance of doubt, there are no interim amortization payments on the 2024 Incremental Term Loans).

(g) **Interest Period**. Pursuant to Sections 1(a) and 3(a) hereof and for the avoidance of doubt, the initial Interest Period for 2024 Incremental Term Loans shall end on September 30, 2024.

(h) **Credit Agreement Governs**. Except as set forth in this Agreement, the 2024 Incremental Term Loans shall have identical terms as the existing tranche of Refinancing Term B Loans and shall otherwise be subject to the provisions, including any provisions restricting the rights, or regarding the obligations, of the Loan Parties or any provisions regarding the rights of the Term Lenders, of the Credit Agreement and the other Loan Documents and, from and after the date that the 2024 Incremental Term Loan Commitments are terminated and permanently reduced to $0 (including as a result of borrowing the full amount of the 2024 Incremental Term Loan Commitments), each reference to a "Refinancing Term B Loan" or "Refinancing Term B Loans" in the Credit Agreement, as in effect on the 2024 Incremental Term Loan Effective Date, shall be deemed to include the 2024 Incremental Term Loans, each reference to an "Incremental Lender" in the Credit Agreement, as in effect on the 2024 Incremental Term Loan Effective Date, shall be deemed to include the 2024 Incremental Term Loan Lender, each reference to a "Lender" in the Credit Agreement, as in effect on the 2024 Incremental Term Loan Effective Date, shall be deemed to include the 2024 Incremental Term Loan Lender and related terms will have correlative meanings *mutatis mutandis* (in each case, unless the context otherwise requires).

Section 4. Conditions to Effectiveness. This Agreement and the obligations of the 2024 Incremental Term Loan Lender to make 2024 Incremental Term Loans shall become effective on the 2024 Incremental Term Loan Effective Date, being the date when:

(a) This Agreement shall have been executed and delivered by the Borrower, the other Loan Parties, the 2024 Incremental Term Loan Lender party hereto and the Administrative Agent.

(b) The Administrative Agent shall have received the following, each of which shall be originals or .pdf copies or other fascimiles (followed promptly by originals) unless otherwise specified, and each executed by a Responsible Officer of the signing Loan Party:

(1) opinions from White & Case LLP, counsel for the Borrower and the Guarantors, dated the 2024 Incremental Term Loan Effective Date and addressed to the Administrative Agent, Collateral Agent and the 2024 Incremental Term Loan Lender, in each case in form and substance customary for senior secured credit facilities in transactions of this kind, including without limitation, with respect to enforceability and due authorization, execution and delivery of the Joinder (as defined below) and the Mortgage Amendments (as defined below), each in form and substance reasonably satisfactory to the Administrative Agent;

(2) a certificate of the Loan Parties, dated the 2024 Incremental Term Loan Effective Date, certifying (a) a copy of the resolutions of the Authorized Agent (as defined therein) of each Loan Party (or a duly authorized committee thereof) authorizing the execution, delivery and performance of this Agreement (and any agreements relating hereto) to which it is a party, (b) true and complete copies of the organizational documents of each Loan Party as of the 2024 Incremental Term Loan Effective Date and (c) good standing certificates (to the extent such concept exists in the relevant jurisdiction of organization) of each Loan Party (or, in the case of clause (b), in lieu of attaching such organizational documents, shall include a certification by a Responsible Officer of each Loan Party certifying that there have been no changes to the corresponding documents delivered to the Administrative Agent on the Effective Date or such later date on which such organizational documents were most recently delivered to the Administrative Agent);

(3) a certificate signed by a Responsible Officer of the Borrower certifying as to the satisfaction of the conditions set forth in paragraphs (d) and (e) of this Section 4;

(4) to the extent reasonably requested by the Administrative Agent in writing not less than five (5) days prior to the date hereof, the Administrative Agent shall have received, not later than three (3) calendar days prior to the 2024 Incremental Term Loan Effective Date, all documentation and other information with respect to the Borrower required by regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act; and

(5) a notice of borrowing in substantially the form attached as Exhibit B-2 to the Credit Agreement relating to the funding of the 2024 Incremental Term Loans on the 2024 Incremental Term Loan Effective Date.

(c) The Hermiston Contribution shall have been consummated in accordance with the Contribution Agreement, dated September 16, 2024 among CCFC Preferred Holdings, LLC; Calpine CCFC LP, LLC; Calpine CCFC GP, LLC and Calpine Construction Finance Company, L.P. or shall be consummated substantially concurrently with the funding of the 2024 Incremental Term Loans.

(d) All representations and warranties contained in this Agreement, the Credit Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the 2024 Incremental Term Loan Effective Date with the same effect as if made on and as of such date (unless stated to relate to a specific earlier date, in which case, such representations and warranties shall be true and correct in all material respects as of such earlier date) (it being understood that any representation or warranty that is qualified as to materiality or Material Adverse Effect shall be correct in all respects).

(e) No Default or Event of Default shall have occurred and be continuing on the 2024 Incremental Term Loan Effective Date or after giving effect to the making of the 2024 Incremental Term Loans on the 2024 Incremental Term Loan Effective Date.

(f) Payment of all reasonable fees and expenses due to the 2024 Incremental Term Loan Lead Arrangers (as agreed to in writing between such Persons and the Borrower) (including, without limitation, the reasonable fees and out-of-pocket expenses of Cahill Gordon & Reindel LLP, counsel to the Administrative Agent and the 2024 Incremental Term Loan Lead Arrangers) to the extent invoiced at least two Business Days prior to the 2024 Incremental Term Loan Effective Date and fees payable to 2024 Incremental Term Loan Lender pursuant to Section 1 hereof, in each case required to be paid on the 2024 Incremental Term Loan Loan Effective Date from the proceeds of the 2024 Incremental Term Loans made on the 2024 Incremental Term Loan Effective Date.

(g) On the 2024 Incremental Term Loan Effective Date, Hermiston shall have executed and delivered to the Collateral Agent a joinder agreement (the "**Security Agreement Joinder**") to the Pledge and Security Agreement , which Security Agreement Joinder will contain supplements to each of the schedules to the Pledge and Security Agreement (including a Perfection Certificate), and shall have delivered to the Collateral Agent in connection therewith:

(1) financing statements (Form UCC-1 or the equivalent) authorized by Hermiston and in recordable form for filing under the UCC and filings with the United States Patent and Trademark Office and United States Copyright Office, if applicable, or other appropriate filing offices of each U.S. national or state jurisdiction as may be required to perfect the security interests in the Collateral purported to be created by the Pledge and Security Agreement;

(2) all of the Pledged Equity Interests (as defined in the Pledge and Security Agreement), if any, owned by Hermiston together with executed and undated endorsements for transfer, in each case, in the case of Pledged Equity Interests constituting certificated securities and all other documents and instruments represented by the Collateral Agent and required to perfect the security interest of the Collateral Agent in the Collateral (except to the extent expressly not required by the Pledge and Security Agreement); and

(3) results of a recent lien search listing all effective financing statements and all tax and judgement liens that name Hermiston as debtor and that are filed in its jurisdiction of organization or jurisdiction of its chief executive office, and such search shall reveal no liens on any of the assets of Hermiston except for liens permitted by Section 6.2 of the Credit Agreement or discharged on or prior to the 2024 Incremental Term Loan Effective Date pursuant to documentation reasonably satisfactory to the Administrative Agent.

provided that to the extent any lien search or, if applicable, insurance certificate, endorsement or any security interest in any Collateral is not able to be provided and/or perfected on the 2024 Incremental Term Loan Effective Date, other than Collateral constituting assets pursuant to which a security interest can be perfected by the filing of a financing statement under the Uniform Commercial Code in the jurisdiction of organization of Hermiston or by possession of stock certificates, in each case, after the Loan Parties' use of commercially reasonable efforts to do so without undue burden or expense, then the provision and/or delivery of any such lien search or, if applicable, insurance certificate, endorsement and/or the provision and/or perfection of a security interest in such Collateral shall not constitute a condition precedent to the availability of 2024 Incremental Term Loans on the 2024 Incremental Term Loan Effective Date, but instead shall be required to be provided and/or perfected in accordance with Section 5.9 of the Credit Agreement; and

(h) On the 2024 Incremental Term Loan Effective Date, Hermiston shall have executed and delivered a joinder agreement to the Guaranty Agreement (the "**Guaranty Agreement Joinder**", and together with the Security Agreement Joinder, the "**Joinder**") substantially in the form of Exhibit A thereto.

(i) Flood Documentation. With respect to each existing Mortgaged Property, Collateral Agent shall have received a completed life-of-loan FEMA Standard Flood Hazard Determinations, and, if the area in which any improvements located on the Mortgaged Property is designated a special flood hazard area in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agent), a signed notice by the Borrower, and evidence reasonably satisfactory to the Collateral Agent of the insurance required pursuant to Section 5.4(b) of the Credit Agreement;

Other than the conditions set forth in this Section 4, there are no other conditions (express or implied) to the 2024 Incremental Term Loan Effective Date. For purposes of determining compliance with the conditions specified in this Section 4, the 2024 Incremental Term Loan Lender shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to the 2024 Incremental Term Loan Lender unless the Administrative Agent and the Borrower shall have received notice from the 2024 Incremental Term Loan Lender prior to the 2024 Incremental Term Loan Effective Date specifying its objection thereto.

Section 5. Post-Closing Real Estate Deliverables**.**

1. Within 120 days after the 2024 Incremental Term Loan Effective Date (or such later period as the Administrative Agent may agree in its sole discretion), the Borrower shall deliver or cause to be delivered to the Collateral Agent each of the following, in each case in form and substance reasonably acceptable to the Administrative Agent:

(a) Mortgage Amendments. With respect to each existing Mortgage, an amendment thereto (each, a "**Mortgage Amendment**"), suitable for filing or recording in the jurisdiction in which such property is located;

(b) Title Insurance. With respect to each existing Mortgage, a title date down endorsement or other similar endorsement reasonably acceptable to the Administrative Agent with respect to each such Mortgaged Property, or, where such an endorsement is not available, a nothing further certificate or title search reasonably acceptable to the Administrative Agent;

(c) Local Counsel Opinions. With respect to each Mortgage Amendment, legal opinions, addressed to the Collateral Agent and the Secured Parties, in the state in which the applicable Mortgaged Property is located with respect to the enforceability and perfection of such Mortgage Amendment and other customary matters reasonably requested by the Collateral Agent; and

(d) Evidence of payment by the Borrower of all title insurance premiums, mortgage recording taxes, fees, charges, costs and expenses required for the recording of the Mortgage and Mortgage Amendments and the issuance of the title insurance endorsements or certificates contemplated above.

2. With respect to the Hermiston Energy Center located at 78910 Simplot Road, Hermiston, OR 97838, within 180 days after the 2024 Incremental Term Loan Effective Date (or such later period as the Administrative Agent may agree in its sole discretion), the Borrower shall deliver or cause to be delivered each of the documents set forth in Section 5.10(b)(1) through Section 5.10(b)(5) of the Credit Agreement. Borrower shall also provide evidence of payment of all title insurance premiums, mortgage recording taxes, fees, charges, costs and expenses required for the recording of the Mortgage and the issuance of the title insurance policy.

Section 6. Counterparts.

This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are attached to the same document. Delivery of an executed counterpart by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 7. Governing Law and Waiver of Right to Trial by Jury.

THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. The jurisdiction and waiver of right to trial by jury provisions in Section 9.12 and 9.16 of the Credit Agreement are incorporated herein by reference *mutatis mutandis*.

Section 8. Headings.

The headings of this Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

Section 9. Reaffirmation.

Each Loan Party hereby expressly acknowledges the terms of this Agreement and reaffirms, as of the date hereof, (i) the covenants and agreements contained in each Loan Document to which it is a party, including, in each case, such covenants and agreements as in effect immediately after giving effect to this Agreement and the transactions contemplated hereby and (ii) its guarantee of the Obligations (including, without limitation, in respect of the 2024 Incremental Term Loans) under the Guaranty Agreement, as applicable, and its grant of Liens on the Collateral to secure the Obligations (including, without limitation, in respect of the Refinancing Term B Loans) pursuant to the Security Documents. Nothing in this Agreement or in the Credit Agreement as amended by this Agreement shall be construed as a novation of the Credit Agreement or any other Loan Documents.

Section 10. Effect of Agreement; References to the Credit Agreement; Miscellaneous.

Except as expressly set forth herein, this Agreement shall not by implication or otherwise limit, impair, constitute a waiver of or otherwise affect the rights and remedies of the Lenders or the Agents under the Credit Agreement or any other Loan Document, and shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Credit Agreement or any other provision of the Credit Agreement or any other Loan Document, all of which are ratified and affirmed in all respects and shall continue in full force and effect. All references to the Credit Agreement in any document, instrument, agreement, or writing shall from and after the 2024 Incremental Term Loan Effective Date be deemed to refer to the Credit Agreement as amended hereby, and, as used in the Credit Agreement, the terms “Agreement,” “herein,” “hereafter,” “hereunder,” “hereto” and words of similar import shall mean, from and after the 2024 Incremental Term Loan Effective Date, the Credit Agreement as amended hereby.

Section 11. Signatures.

The words "execution," "signed," "signature," "delivery" and words of like import in or relating to this Agreement or any document to be signed in connection with this Agreement and the transactions contemplated hereby or thereby shall be deemed to include electronic signatures (including any .pdf file, any .jpeg file or any electronic signature complying with the U.S. federal ESIGN Act of 2000, including Orbit, Adobe Sign, DocuSign, or any other similar platform identified by the Borrower and reasonably available at no undue burden or expense to the Administrative Agent), deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act, and the parties hereto consent to conduct the transactions contemplated hereunder by electronic means.

Section 12. Lender Signatures.

Each Lender that executes a signature page to this Agreement shall be deemed to have approved this Agreement. Each Lender signatory to this Agreement agrees that such Lender shall not be entitled to receive a copy of any other Lender's signature page to this Agreement, but agrees that a copy of such signature page may be delivered to the Borrower and the Administrative Agent.

[Signature Pages Follow]

IN WITNESS WHEREOF, each of the undersigned has caused its duly authorized officer to execute and deliver this Agreement as of the date first written above.

CALPINE CONSTRUCTION FINANCE COMPANY, L.P., as the Borrower

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

HERMISTON POWER LLC, as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

CALPINE BOSQUE ENERGY CENTER, LLC, as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

WESTBROOK ENERGY CENTER, LLC, as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

GUADALUPE POWER PARTNERS, LP as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

[Signature Page To 2024 Incremental Term Loan Commitment Supplement]

MAGIC VALLEY ENERGY CENTER, LLC as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

CALPINE NORTHEAST DEVELOPMENT, LLC as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

CALPINE GUADALUPE GP, LLC as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

CALPINE GUADALUPE LP, LLC as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

CALPINE FORE RIVER ENERGY CENTER, LLC as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

JACK A. FUSCO ENERGY CENTER, LLC as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

CITIBANK, N.A., as Administrative Agent and 2024 Incremental Term Loan Lender

By: /s/ Agha Murtaza
Name: Agha Murtaza
Title: Managing Director and Vice President

[Signature Page To 2024 Incremental Term Loan Commitment Supplement]

Exhibit 10.6

Execution Version

AMENDMENT NO. 5 TO CREDIT AGREEMENT

This AMENDMENT NO. 5 to Credit Agreement, dated as of November 18, 2025 (this "**Agreement**"), is entered into by and among CALPINE CONSTRUCTION FINANCE COMPANY, L.P., a Delaware limited partnership (the "**Borrower**"), the Guarantors party hereto, each 2025 Refinancing Term Loan Lender party hereto and CITIBANK, N.A., as administrative agent (in such capacity and including any successors in such capacity, the "**Administrative Agent**") and as collateral agent (in such capacity and including any successors in such capacity, the "**Collateral Agent**"), and amends the Credit Agreement, dated as of December 15, 2017 (as amended by that certain Amendment No. 1, dated as of January 29, 2020, that certain Amendment No. 2, dated as of July 1, 2023, that certain Amendment No. 3, dated as of August 2, 2023, that certain Amendment No. 4, dated as of June 6, 2024, that certain 2024 Incremental Term Loan Commitment Supplement, dated as of September 16, 2024, and as may be further restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof, the "**Credit Agreement**" and, as amended by this Agreement, the "**Amended Credit Agreement**") entered into among the Borrower, the institutions from time to time party thereto as Lenders (the "**Lenders**"), the Administrative Agent and the Collateral Agent.

WHEREAS, the Borrower desires to obtain term loans under a new Refinancing Credit Facility pursuant to Section 9.1(b) of the Credit Agreement, the net cash proceeds of which shall be used to consummate the Refinancing (as defined in the Amended Credit Agreement);

WHEREAS, the 2025 Refinancing Term Loan Lender (as defined in the Amended Credit Agreement) has agreed to provide 2025 Refinancing Term B Loans (as defined in the Amended Credit Agreement) and the Borrower intends to refinance all outstanding Refinancing Term B Loans under the Credit Agreement (the "**Refinancing**"), and the Borrower will use the proceeds of the 2025 Refinancing Term Loan Facility (i) for general corporate purposes, which will include payment of a distribution in the amount of up to $225,000,000 to its parent entity (the "**Distribution**"), (ii) to repay the entire principal amount of the existing Refinancing Term B Loans and (iii) unless paid with existing cash on hand, pay fees and expenses in connection with the foregoing and in connection with the Refinancing.

WHEREAS, Citibank, N.A., BofA Securities, Inc., Banco Santander, S.A., Barclays Bank PLC, BMO Capital Markets Corp., BNP Paribas Securities Corp., Crédit Agricole Corporate and Investment Bank, Goldman Sachs Bank USA, JPMorgan Chase Bank, N.A., Mizuho Bank, Ltd., Morgan Stanley Senior Funding, Inc., MUFG Bank, Ltd., Natixis, New York Branch, Royal Bank of Canada and Sumitomo Mitsui Banking Corporation have agreed to act as joint lead arrangers and joint bookrunners in respect of the 2025 Refinancing Term B Loans (each in its capacity in such roles and titles, collectively, the "**Amendment No. 5 Joint Lead Arrangers**" and "**Amendment No. 5 Joint Bookrunners**");

WHEREAS, in accordance with Section 9.1(b) of the Credit Agreement, the Borrower, the Guarantors and the 2025 Refinancing Term Loan Lender have agreed to amend the Credit Agreement in connection with, and to facilitate the incurrence of, such 2025 Refinancing Term B Loans;

WHEREAS, the Lenders authorize and direct the Administrative Agent to acknowledge and enter into this Agreement;

NOW, THEREFORE, the parties hereto agree as follows:

Section 1. *Defined Terms; References.* Unless otherwise specifically defined herein, each term used herein which is defined in the Amended Credit Agreement has the meaning assigned to such term in the Amended Credit Agreement. The rules of construction and other interpretive provisions specified in Sections 1.2 and 1.3 of the Amended Credit Agreement shall apply to this Agreement, including terms defined in the preamble and recitals hereto.

Section 2. *Refinancing Transactions*.

(a) With effect from and including the Amendment No. 5 Effective Date (as defined below), the Person identified on the signature pages hereof as the "2025 Refinancing Term Loan Lender" (i) shall become party to the Amended Credit Agreement as a "Lender" and (ii) shall have a commitment in an aggregate principal amount equal to $2,100,000,000 (such commitment, the "**2025 Refinancing Term Loan Commitment**") and shall have all of the rights and obligations of a "Lender" under the Amended Credit Agreement and the other Loan Documents (as amended hereby).

(b) On the Amendment No. 5 Effective Date:

(i) the 2025 Refinancing Term Loan Lender shall make a 2025 Refinancing Term B Loan to the Borrower in accordance with this Section 2(b) and Section 2.1(b) of the Amended Credit Agreement by delivering to the Administrative Agent immediately available funds in an amount of $2,100,000,000; and

(ii) the Administrative Agent, on behalf of the Borrower, shall apply the entirety of the funds made available to the Administrative Agent pursuant to Section 2(b)(i) hereof to effect the Refinancing and to pay fees and expenses relating thereto (including, without limitation, any breakage fees) and any swap breakage costs (if any) resulting therefrom.

(c) The 2025 Refinancing Term B Loans made on the Amendment No. 5 Effective Date pursuant to Section 2(b) shall constitute Term SOFR Loans having an initial Interest Period ending on November 30, 2025.

Section 3. *Amendment; Borrowings on Amendment No. 5 Effective Date; Authorizations.*

(a) Each of the parties hereto agrees that, effective as of the Amendment No. 5 Effective Date, the Credit Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the underlined text (indicated textually in the same manner as the following example: underlined text) as set forth in the conformed copy of the Amended Credit Agreement attached as Exhibit A.

(b) With effect from the Amendment No. 5 Effective Date, (i) each 2025 Refinancing Term B Loan made on the Amendment No. 5 Effective Date in accordance with Section 2(b) hereof and 2.1(b) of the Amended Credit Agreement shall constitute, for all purposes of the Amended Credit Agreement, a 2025 Refinancing Term B Loan made pursuant to the Amended Credit Agreement and this Agreement; *provided* that, pursuant to this Agreement, each such 2025 Refinancing Term B Loan shall constitute a separate class of Term Loans from the "Refinancing Term B Loans" for all purposes of the Amended Credit Agreement, and (ii) for all purposes under the Loan Documents, the Refinancing Term B Loans shall be prepaid in full and shall no longer be outstanding. Any amount of the Refinancing Term B Loans that is subsequently repaid or prepaid may not be reborrowed.

(c) The 2025 Refinancing Term Loan Commitments provided for hereunder shall terminate on the Amendment No. 5 Effective Date immediately upon the borrowing of the 2025 Refinancing Term B Loans pursuant to Section 2(b) hereof and 2.1(b) of the Amended Credit Agreement.

(d) This Agreement constitutes a notice of prepayment to the Administrative Agent pursuant to Section 2.13(a) of the Credit Agreement and the Borrower shall be deemed to have complied with the requirement that such notice of prepayment be delivered to the Administrative Agent prior to 10:00 A.M., New York City time, one (1) Business Day prior to the date of such prepayment.

Section 4. *Conditions to Effectiveness.* This Agreement and the obligations of the 2025 Refinancing Term Loan Lender to make 2025 Refinancing Term B Loans shall become effective as of the first date (the "**Amendment No. 5 Effective Date**"), when:

(a) This Agreement shall have been executed and delivered by the Borrower, the other Loan Parties, the 2025 Refinancing Term Loan Lender, the Administrative Agent and the Collateral Agent.

(b) The Administrative Agent shall have received the following, each of which shall be originals or .pdf copies or other facsimiles (followed promptly by originals) unless otherwise specified, and each executed by a Responsible Officer of the signing Loan Party:

(1) an executed legal opinion from White & Case LLP, counsel for the Borrower and the Guarantors, dated the Amendment No. 5 Effective Date and addressed to the Administrative Agent, Collateral Agent, the 2025 Refinancing Term Loan Lender, and the Amendment No. 5 Joint Lead Arrangers in form and substance customary for senior secured credit facilities in transactions of this kind, and reasonably satisfactory to the Administrative Agent and Amendment No. 5 Joint Lead Arrangers;

(2) a certificate of the Loan Parties, dated the Amendment No. 5 Effective Date, certifying (a) a copy of the resolutions of the Authorized Agent (as defined therein) of each Loan Party (or a duly authorized committee thereof) authorizing the execution, delivery and performance of this Agreement (and any agreements relating hereto) to which it is a party, (b) true and complete copies of the organizational documents of each Loan Party as of the Amendment No. 5 Effective Date and (c) good standing certificates (to the extent such concept exists in the relevant jurisdiction of organization) of each Loan Party (or, in the case of clause (b), in lieu of attaching such organizational documents, shall include a certification by a Responsible Officer of each Loan Party certifying that there have been no changes to the corresponding documents delivered to the Administrative Agent on the Amendment No. 4 Effective Date or such later date on which such organizational documents were most recently delivered to the Administrative Agent);

(3) a certificate signed by a Responsible Officer of the Borrower certifying as to the satisfaction of the conditions set forth in paragraphs (c) and (d) of this Section 4;

(4) to the extent reasonably requested by the Administrative Agent in writing not less than five (5) days prior to the date hereof, the Administrative Agent shall have received, not later than three (3) calendar days prior to the Amendment No. 5 Effective Date, (i) all documentation and other information with respect to the Borrower required by regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act and (ii) a Beneficial Ownership Certification in relation to the Borrower to the extent that the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation; and

(5) a notice of borrowing in substantially the form attached as Exhibit B-2 to the Credit Agreement relating to the funding of the 2025 Refinancing Term B Loans on the Amendment No. 5 Effective Date.

(c) All representations and warranties contained in this Agreement, the Credit Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the Amendment No. 5 Effective Date with the same effect as if made on and as of such date (unless stated to relate to a specific earlier date, in which case, such representations and warranties shall be true and correct in all material respects as of such earlier date) (it being understood that any representation or warranty that is qualified as to materiality or Material Adverse Effect shall be correct in all respects).

(d) No Default or Event of Default shall have occurred and be continuing on the Amendment No. 5 Effective Date or after giving effect to the making of the 2025 Refinancing Term B Loans on the Amendment No. 5 Effective Date.

(e) The Administrative Agent shall have received the results of a recent lien search in each jurisdiction where a Loan Party is organized, and such search shall reveal no liens on any of the assets of the Loan Parties except for liens permitted by Section 6.2 of the Credit Agreement or discharged on or prior to the Amendment No. 5 Effective Date pursuant to documentation reasonably satisfactory to the Administrative Agent.

(f) Payment of all reasonable fees and expenses due to the Amendment No. 5 Lead Arrangers (as agreed to in writing between such Persons and the Borrower) (including, without limitation, the reasonable fees and out-of-pocket expenses of Cahill Gordon & Reindel LLP, counsel to the Administrative Agent and the Amendment No. 5 Lead Arrangers) to the extent invoiced at least two Business Days prior to the Amendment No. 5 Effective Date and fees payable to 2025 Refinancing Term Loan Lender as separately agreed, in each case required to be paid on the Amendment No. 5 Effective Date from the proceeds of the 2025 Refinancing Term B Loans made on the Amendment No. 5 Effective Date.

(g) With respect to each existing Mortgaged Property, Collateral Agent shall have received a completed life-of-loan FEMA Standard Flood Hazard Determinations, and, if the area in which any improvements located on the Mortgaged Property is designated a special flood hazard area in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agent), a signed notice by the Borrower, and evidence reasonably satisfactory to the Collateral Agent of the insurance required pursuant to Section 5.4(b) of the Credit Agreement.

(h) The Refinancing shall have been consummated, or shall be consummated substantially simultaneously with the initial borrowing of the 2025 Refinancing Term B Loans, and, in connection therewith, the Borrower shall have paid, or caused to be paid, to the Administrative Agent, for the ratable benefit of each Refinancing Term Loan Lender, all accrued and unpaid interest, to but not including the Amendment No. 5 Effective Date, in respect of the Refinancing Term B Loans.

Other than the conditions set forth in this Section 4, there are no other conditions (express or implied) to the Amendment No. 5 Effective Date. For purposes of determining compliance with the conditions specified in this Section 4, the 2025 Refinancing Term Loan Lender shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to the 2025 Refinancing Term Loan Lender unless the Administrative Agent and the Borrower shall have received notice from the 2025 Refinancing Term Loan Lender prior to the Amendment No. 5 Effective Date specifying its objection thereto.

Section 5. *Effect of Agreement; Reaffirmation; Etc.*

(a) Except as expressly set forth herein or in the Amended Credit Agreement, this Agreement (x) shall not by implication or otherwise limit, impair, constitute a waiver of or otherwise affect the rights and remedies of the Lenders or the Agents under the Credit Agreement or under any other Loan Document and (y) shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Credit Agreement or any other provision of the Credit Agreement or of any other Loan Document, all of which are ratified and affirmed in all respects and shall continue in full force and effect. Without limiting the foregoing, (i) each Loan Party and each Direct Parent hereby affirms acknowledges and agrees that (A) each Loan Document to which it is a party is hereby confirmed and ratified and shall remain in full force and effect according to its respective terms (in the case of the Credit Agreement, as amended hereby) after giving effect to this Agreement and (B) the Security Documents do, and all of the Collateral does, and in each case shall continue to, secure the payment of all Secured Obligations (including, for the avoidance of doubt, the 2025 Refinancing Term B Loans made on the Amendment No. 5 Effective Date) on the terms and conditions set forth in the Security Documents, and hereby ratifies and affirms the prior Liens and security interests granted by it pursuant to the Security Documents, all of which shall continue in full force and effect after giving effect to this Agreement and (ii) each Guarantor hereby confirms and ratifies its continuing unconditional obligations as Guarantor under each Guarantee to which it is a party with respect to all of the Secured Obligations (including, for the avoidance of doubt, the 2025 Refinancing Term B Loans made on the Amendment No. 5 Effective Date).

(b) Each Loan Party and each Direct Parent hereby acknowledges, confirms and agrees that any financing statement, fixture filing or other instrument similar in effect under any applicable law covering all or any part of the Collateral previously filed in favor of the Collateral Agent are in full force and effect as of the date hereof and each Loan Party and each Direct Parent hereby ratifies its authorization for the Collateral Agent to file in any relevant jurisdiction any such financing statement financing statement, fixture filing or other instrument relating to all or any part of the Collateral filed prior to or in connection with the Amendment No. 5 Effective Date.

(c) From and after the Amendment No. 5 Effective Date, each reference in the Credit Agreement to "this Agreement", "hereunder", "hereof", "herein", or words of like import, and each reference to the "Credit Agreement" in any other Loan Document shall be deemed a reference to the Amended Credit Agreement. From and after the Amendment No. 5 Effective Date, this Agreement shall constitute a "Loan Document" for all purposes of the Credit Agreement and the other Loan Documents (as amended by this Agreement).

(d) Nothing herein or in the Amended Credit Agreement shall be construed as a novation of the Credit Agreement or any other Loan Documents.

Section 5. *Representations of Loan Parties.* Each of the Loan Parties hereby represents and warrants that as of the Amendment No. 5 Effective Date:

(a) each of the representations and warranties contained in Section 3 (Representations and Warranties) of the Amended Credit Agreement and each other Loan Document is true and correct in all material respects (and in all respects if qualified by materiality) on and as of the Amendment No. 5 Effective Date, as if made on and as of such date and except to the extent that such representations and warranties specifically relate to a specific date, in which case such representations and warranties shall be true and correct in all material respects (and in all respects if qualified by materiality) as of such specific date; *provided*, *however*, that references therein to the "*Credit Agreement*" shall be deemed to refer to the Amended Credit Agreement and after giving effect to the consents and waivers set forth herein;

(b) no Default or Event of Default under the Credit Agreement has occurred or is continuing or would result from the transactions contemplated by this Agreement, including, without limitation, the borrowing of the 2025 Refinancing Term B Loans; and

(c) Each Loan Party party hereto and each Direct Parent has the corporate or other organizational power and authority to execute, deliver and carry out the terms and provisions of this Agreement, and the other Loan Documents to which it is a party and has taken all necessary corporate or other organizational action to authorize the execution and delivery of this Agreement and the performance of this Agreement, the Amended Credit Agreement and any other Loan Documents to which it is a party. This Agreement has been duly authorized, executed and delivered by each Loan Party party hereto and constitutes the legal, valid and binding obligations of each such Loan Party and each Direct Parent enforceable against it in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting the enforceability of creditors' rights generally and general principles of equity (whether considered in a proceeding in equity or law).

Section 6. *Governing Law.* THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

Section 7. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by facsimile or other electronic method of transmission, such as portable document format (.pdf) or software-based electronic signature facility (including "DocuSign"), shall have the same force and effect as delivery of an original executed counterpart of this Amendment and shall constitute an original signature for all record-keeping purposes. Any electronic signature shall have the same legal validity and enforceability as a manually executed signature to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any similar federal or state law, rule or regulation, as the same may be in effect from time to time, and the parties hereby waive any objection to the contrary.

Section 8. *Miscellaneous*. The jurisdiction and waiver of right to trial by jury provisions in Sections 9.12 and 9.16 and the indemnification, exculpation and no fiduciary duty provisions in Sections 8.7 and 9.18 of the Credit Agreement are incorporated herein by reference *mutatis mutandis*.

Section 9. *Effectiveness.* This Agreement, and the obligation of the 2025 Refinancing Term Loan Lender to make the 2025 Refinancing Term B Loans to be made by it pursuant to Section 2 of this Agreement, shall become effective on the date when each of the conditions set forth in Section 4 of this Agreement have been satisfied or waived.

Section 10. *Post-Closing Real Estate Deliverables.* Within 120 days after the Amendment No. 5 Effective Date (or such later period as the Administrative Agent may agree in its sole discretion), solely with respect to the existing Mortgage located in Oregon, the Borrower shall deliver or cause to be delivered to the Collateral Agent each of the following, in each case in form and substance reasonably acceptable to the Administrative Agent:

(i) *Mortgage Amendment*. With respect to the applicable existing Mortgage, an amendment thereto (a "Mortgage Amendment"), suitable for filing or recording in the jurisdiction in which such property is located;

(ii) *Title Insurance*. With respect to the applicable existing Mortgage, a title date down endorsement or other similar endorsement reasonably acceptable to the Administrative Agent or, where such endorsement is not available at commercially reasonable rates, a title search reasonably acceptable to Administrative Agent;

(iii) *Local Counsel Opinion*. With respect to the Mortgage Amendment, a legal opinion in the state in which the applicable Mortgaged Property is located with respect to the enforceability and perfection of such Mortgage Amendment and other customary matters reasonably requested by the Collateral Agent; and

(iv) Evidence of payment by the Borrower of all title insurance premiums, mortgage recording taxes, fees, charges, costs and expenses required for the recording of the Mortgage Amendment and the issuance of the title insurance endorsements contemplated above.

[SIGNATURE PAGES FOLLOW]

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.

CALPINE CONSTRUCTION FINANCE COMPANY, L.P., as the Borrower

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

HERMISTON POWER LLC, as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

THAD HILL ENERGY CENTER, LLC, as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

WESTBROOK ENERGY CENTER, LLC, as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

GUADALUPE POWER PARTNERS, LP as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

MAGIC VALLEY ENERGY CENTER, LLC as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

CALPINE NORTHEAST DEVELOPMENT, LLC as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

CALPINE GUADALUPE GP, LLC as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

CALPINE GUADALUPE LP, LLC as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

CALPINE FORE RIVER ENERGY CENTER, LLC as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

JACK A. FUSCO ENERGY CENTER, LLC as a Guarantor

By: /s/ Bryan Kimzey
Name: Bryan Kimzey
Title: Vice President

CITIBANK, N.A., as 2025 Refinancing Term Loan Lender

By: /s/ Agha Murtaza
Name: Agha Murtaza
Title: Vice President / Managing Director

[Signature Page to Amendment No. 5 to Credit Agreement]

Acknowledged by:

CITIBANK, N.A., as Administrative Agent and Collateral Agent

By: /s/ Agha Murtaza
Name: Agha Murtaza
Title: Vice President / Managing Director

[Signature Page to Amendment No. 5 to Credit Agreement]

2025 REFINANCING TERM LOAN LENDER CONSENTS ON FILE WITH ADMINISTRATIVE AGENT.

[Signature Page to Amendment No. 5 to Credit Agreement]

Exhibit A

[Amendments to Credit Agreement attached]

Exhibit A

(conformed through Amendment No. ~~4~~5)

AMENDED AND RESTATED CREDIT AGREEMENT
among

CALPINE CONSTRUCTION FINANCE COMPANY, L.P.,

as Borrower

and

THE LENDERS PARTY HERETO,

and

~~CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,~~

CITIBANK, N.A.,

as Administrative Agent and Collateral Agent,

Originally dated as of December 15, 2017,

as amended and restated as of August 2, 2023,

~~and~~ as further amended as of June 7, 2024,

and as further amended as of November 18, 2025

CITIBANK, N.A.

BMO Capital Markets Corp.

Barclays Bank PLC

BNP Paribas Securities Corp.

Mizuho Bank, Ltd.

Royal Bank of Canada

Sumitomo Mitsui Banking Corporation

ING Capital LLC

Morgan Stanley Senior Funding, Inc.

BofA Securities, Inc.

As Joint Lead Arrangers and Joint Bookrunners

Goldman Sachs Bank USA
Société Générale
Crédit Agricole Corporate and Investment Bank

JPMorgan Chase Bank, N.A.
Truist Securities, Inc.
Deutsche Bank Securities Inc.

Banco Santander, S.A.

As Co-Managers

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THIS AMENDED AND RESTATED CREDIT AGREEMENT, originally dated as of December 15, 2017 and as amended and restated as of August 2, 2023, among CALPINE CONSTRUCTION FINANCE COMPANY, L.P., a Delaware limited partnership (the "Borrower"), CITIBANK, N.A. (as successor to CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH), as administrative agent (in such capacity and including any successors in such capacity, the "Administrative Agent") and as collateral agent (in such capacity and including any successors in such capacity, the "Collateral Agent" and together with the Administrative Agent, the "Agents") and each of the financial institutions from time to time party hereto (collectively, the "Lenders").

W I T N E S S E T H:

WHEREAS, the Borrower has outstanding Initial Term B Loans under the Existing Credit Agreement (as defined below); and

WHEREAS, the Borrower intends to refinance all outstanding Initial Term B Loans under the Existing Credit Agreement (the "Refinancing"), to pay fees and expenses related thereto (including, without limitation, any breakage fees) and any swap breakage costs (if any) resulting therefrom with the extensions of credit and commitments under this Agreement on the Effective Date and for general corporate purposes (including a partial prepayment of the Term B-5 Term Loan);

NOW, THEREFORE, the parties hereto hereby agree as follows:

SECTION 1

Definitions

1.1. Defined Terms. As used in this Agreement, the following terms shall have the meanings specified below:

"2025 Refinancing Term Loan Commitment": the meaning provided for such term in Amendment No. 5. The aggregate amount of 2025 Refinancing Term Loan Commitments as of the Amendment No. 5 Effective Date is $2,100,000,000.

"2025 Refinancing Term Loan Facility": the facility under which the 2025 Refinancing Term B Loans are made available on the Amendment No. 5 Effective Date pursuant to Amendment No. 5.

"2025 Refinancing Term Loan Lender": at any time, any Lender that has a 2025 Refinancing Term Loan Commitment or a 2025 Refinancing Term B Loan at such time.

"2025 Refinancing Term B Loan": a Loan made pursuant to Section 2.1(b).

"2025 Refinancing Term B Termination Date": July 31, 2030.

"Administrative Agent": the meaning set forth in the preamble to this Agreement.

"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, for purposes of Section 6.7, a Person will be deemed to be an Affiliate of the Borrower if the Borrower has knowledge that such Person beneficially owns 10% or more of the Voting Stock of the Borrower. For purposes of this definition, the terms "controlling," "controlled by" and "under common control with" have correlative meanings.

"Agency Assignment Agreement": a resignation and appointment agreement in form and substance reasonably satisfactory to the Administrative Agent, the Collateral Agent and the Borrower.

"Agents": the meaning set forth in the preamble to this Agreement.

"Agreement": this Amended and Restated Credit Agreement, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"ALTA": American Land Title Association.

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

"Amendment No. 3": that certain Amendment No. 3 to this Agreement, dated as of August 2, 2023, among the Borrower, the other Loan Parties party thereto, the Administrative Agent, the Collateral Agent and the other parties thereto.

"Amendment No. 4 Effective Date": June 6, 2024.

"Amendment No. 5": that certain Amendment No. 5 to this Agreement, dated as of November 18, 2025, among the Borrower, the other Loan Parties party thereto, the Administrative Agent, the Collateral Agent and the Lenders and other parties thereto.

"Amendment No. 5 Effective Date": November 18, 2025.

"Anti-Corruption Laws": all laws, rules, and regulations of any jurisdiction applicable to the Borrower or any of its Restricted Subsidiaries from time to time concerning or relating to bribery or corruption.

"Applicable Margin": a percentage per annum equal to, (x) in the case of Initial Term B Loans maintained as (i) Base Rate Loans, 1.00% and (ii) Term SOFR Loans, 2.00% and (y) in the case of Refinancing Term B Loans (1) prior to the Amendment No. 4 Effective Date, maintained as (i) Base Rate Loans, 1.25% and (ii) Term SOFR Loans, 2.25% and (2) on or after the Amendment No. 4 Effective Date, maintained as (i) Base Rate Loans, 1.00% and (ii) Term SOFR Loans, 2.00% and (z) in the case of 2025 Refinancing Term B Loans maintained as (i) Base Rate Loans, 0.75% and (ii) Term SOFR Loans, 1.75%.

"Approved Electronic Communication": any notice, demand, communication, information, document or other material that any Loan Party provides to the Administrative Agent pursuant to any Loan Document or the transactions contemplated therein which is distributed to the Agents or to the Lenders by means of electronic communications pursuant to Section 9.2(b).

"Approved Fund": as defined in Section 9.6(b)(ii).

"Arranger": each of the Joint Lead Arrangers, Joint Bookrunners and Co-Managers.

"Asset Sale":

(1) the sale, lease, conveyance or other disposition of any assets; provided that the sale, conveyance or other disposition of all or substantially all of the assets of the Borrower and its Restricted Subsidiaries taken as a whole will be governed by the provisions of Section 2.14 and/or Section 6.3 and not Section 6.8; and

(2) the issuance of Equity Interests in any of the Borrower's Restricted Subsidiaries.

Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale:

(1) any single transaction or series of related transactions that involves assets having a Fair Market Value (calculated at the time of the relevant transaction) of less than the greater of (x) $40.0 million and (y) 2.0% of Total Assets;

(2) a transfer of assets between or among the Borrower and any of its Restricted Subsidiaries;

(3) an issuance of Equity Interests by a Restricted Subsidiary to the Borrower or any of its Restricted Subsidiaries;

(4) the sale or lease of products, services, accounts receivable or other assets (including power, capacity, fuel or emission credits or other environmental attributes) in the ordinary course of business (it being understood that a disposition of a quantity of power, capacity, fuel or emission credits, environmental attributes or other products, services or accounts receivable that is material to the Borrower and its Restricted Subsidiaries, as the case may be, shall not alone cause such disposition not to be in the ordinary course of business) and any sale or other disposition of damaged, worn out or obsolete assets or assets no longer used or useful or desirable in the Borrower or any of its Restricted Subsidiaries' business;

(5) the sale or other disposition of cash or Cash Equivalents;

(6) a Restricted Payment that either (x) does not violate Section 6.9 or (y) constitutes a Permitted Investment;

(7) (i) a disposition resulting from any condemnation or other taking, or temporary or permanent requisition, of any property, any interest therein or right appurtenant thereto, or any change of grade affecting any property, in each case, as the result of the exercise of any right of condemnation or eminent domain, including any sale or other transfer to a Governmental Authority in lieu of, or in anticipation of, any of the foregoing events; provided that if such disposition involves assets having a Fair Market Value in excess of $40.0 million, any cash proceeds received in connection therewith are treated as Net Proceeds of an Asset Sale and (ii) the proposed condemnation proceedings at the Magic Valley facility as previously disclosed by the Borrower to the Administrative Agent;

(8) any substantially concurrent purchase and sale or exchange of like property (or a combination thereof) for use in a Permitted Business;

(9) the creation of a Permitted Lien and dispositions in connection with Permitted Liens;

(10) a disposition of assets (other than any assets securing Parity Secured Debt or other secured Indebtedness permitted by this Agreement) in connection with a foreclosure, transfer or deed in lieu of foreclosure or other exercise of remedial action;

(11) any disposition of products, services or accounts receivable (including power, capacity, fuel or emission credits) or other obligation pursuant to the Power Purchase and Sale Agreement with South Texas Electric Cooperative, Inc., dated May 22, 1998, as in effect on the Effective Date;

(12) the sale, transfer, lapse, abandonment or other disposition of patents, trademarks and other intellectual property of Borrower and its Restricted Subsidiaries to the extent not economically desirable in the conduct of their business and so long as any such sale, lapse, abandonment or other disposition would not, in the aggregate, reasonably be expected to result in a Material Adverse Effect;

(13) any disposition of products, services or accounts receivable (including power, capacity, fuel or emission credits) or other obligation pursuant to the Power Purchase Agreement between The City of San Antonio, acting by and through City Public Service Board and Guadalupe Power Partners, LP, dated as of January 30, 2023, as in effect on the Effective Date;

(14) any disposition of the rights to the Purchase Option for the pipeline system more fully described in the Agreement to Construct, Lease, and Operate Natural Gas Pipeline Facilities between Tejas Gas Pipeline, L.P. and Jack A. Fusco Energy Center, LLC (f/k/a Brazos Valley Energy LLC), successor in interest to Brazos Valley Energy LP, dated June 26, 2001;

(15) any surrender or waiver of contractual rights and settlement or waiver of contractual or litigation claims in the ordinary course of business or consistent with past practice or industry practice;

(16) any disposition of up to 49.9% of (x) the Equity Interests of the Subsidiary that owns exclusively the Bosque Facility (as well as other assets with an aggregate value less than the greater of (x) $40.0 million and (y) 2.0% of Total Assets) and any assets or contracts related thereto or (y) an interest in the Bosque Facility and any assets or contracts related thereto;

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

(18) (i) the licensing or sublicensing of intellectual property or other general intangibles and (ii) licenses, leases or subleases of other property in the ordinary course of business which do not materially interfere with the business of the Borrower and its Restricted Subsidiaries (taken as a whole);

(19) the trading, exchange, swap or other sharing of parts and components, among the Borrower and its Affiliates, in the ordinary course of business or consistent with past or current best practices of the relevant Persons, including for purposes of spare or replacement parts or emergency repairs;

(20) any sale or disposition of the Equity Interests or Indebtedness of any Unrestricted Subsidiary;

(21) voluntary terminations or unwinding of Swap Agreements (including, without limitation, upon a Loan Party or Restricted Subsidiary exercising its early voluntary termination rights following the occurrence of an event of default or termination event (however described) in respect of a counterparty in accordance with the terms of the relevant Swap Agreement) and other contracts in the ordinary course of business or consistent with past practice or industry practice;

(22) sales, transfers or other dispositions of Investments in joint ventures or other non-wholly owned Persons to the extent required by, or made pursuant to, customary buy/sell arrangements between the applicable parties set forth in joint venture arrangements or similar binding arrangements; and

(23) any sale or disposition of assets in connection with a sale-leaseback transaction consummated within 365 days of the acquisition thereof or the substantial completion of construction of improvements thereto (but in any event no later than 540 days after the date of the acquisition thereof).

"Asset Sale Offer": the meaning set forth in Section 6.8(d).

"Assignee": as defined in Section 9.6(b)(i).

"Assignment and Acceptance": in the case of assignments of Term Loans, an assignment and acceptance entered into by a Lender and an Assignee and accepted by the Administrative Agent to the extent required pursuant to Section 9.6, substantially in the form of Exhibit C hereto.

"Attributable Debt": in respect of a sale and leaseback transaction means, at the time of determination, the present value of the obligation of the lessee for net rental payments during the remaining term of the lease included in such sale and leaseback transaction including any period for which such lease has been extended or may, at the option of the lessor, be extended. Such present value shall be calculated using a discount rate equal to the rate of interest implicit in such transaction, determined in accordance with GAAP; provided, however, that if such sale and leaseback transaction results in a Capital Lease Obligation, the amount of Indebtedness represented thereby will be determined in accordance with the definition of "Capital Lease Obligation."

"Auction": the meaning set forth in Section 2.28.

"Auction Manager": the meaning set forth in Section 2.28.

"Auction Notice": the meaning set forth in Exhibit I.

"Available Tenor": as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to Section 2.11(e).

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

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

"Bankruptcy Code": The Bankruptcy Reform Act of 1978, as heretofore and hereafter amended, and codified as 11 U.S.C. §§ 101 *et seq*.

"Bankruptcy Law": The Bankruptcy Code or any similar federal or state law for the relief of debtors.

"Base Rate": for any day, a rate per annum equal to the highest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus 0.50% and (c) Term SOFR for a one-month tenor in effect on such day plus 1.00%. Any change in the Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or Term SOFR shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or Term SOFR, respectively; provided, that if the Base Rate determined as provided above shall ever be less than 1.00%, then the Base Rate shall be deemed to be 1.00%

"Base Rate Loans": Term Loans the rate of interest applicable to which is based upon the Base Rate.

"Base Rate Term SOFR Determination Day": the meaning set forth in the definition of "Term SOFR."

"Benchmark": initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.11(b).

"Benchmark Replacement": with respect to any Benchmark Transition Event, the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then current Benchmark for Dollar-denominated syndicated credit facilities at such time and (ii) the related Benchmark Replacement Adjustment; provided that, if such, Benchmark Replacement as determined would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

"Benchmark Replacement Adjustment": with respect to any replacement of any then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

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

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

(b) in the case of clause (c) of the definition of "Benchmark Transition Event", the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

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

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

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

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

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

"Benchmark Transition Start Date": in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

"Benchmark Unavailability Period": the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.11 and (b) ending at the time that a Benchmark Replacement has replaced the then current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.11.

"Beneficial Ownership Certification": a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

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

"Beneficial Owner": has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act.

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

"Benefited Lender": the meaning set forth in Section 9.7(a).

"Board of Directors":

(1) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board;

(2) with respect to a partnership, the board of directors of the general partner of the partnership;

(3) with respect to a limited liability company, the managing member or members or any controlling committee of managing members or board of directors thereof; and

(4) with respect to any other Person, the board or committee of such Person serving a similar function.

"Board of Governors": the Board of Governors of the Federal Reserve System of the United States or any Governmental Authority which succeeds to the powers and functions thereof.

"Borrower": the meaning set forth in the preamble to this Agreement.

"Borrowing": the making of Term Loans by the Lenders on a Borrowing Date.

"Borrowing Date": the Business Day specified in a notice pursuant to Section 2.2 as a date on which the Borrower requests any Term Loans or Incremental Term Loans hereunder.

"Bosque Facility": the approximately 792 MW nameplate capacity natural gas-fired combined cycle electric generating facility located on a 280 acre site in Bosque County, Texas. The plant consists of three GE combustion turbines, three Alstom HRSGs, one GE steam turbine, one Alstom steam turbine, together with related water supply agreements, gas and power interconnections and interconnection agreements, equipment, supplies, permits, licenses, contracts and agreements.

"Business Day": any day that is not a Saturday, Sunday or other day that is a legal holiday under the laws of the State of New York or is a day on which banking institutions in such state are authorized or required by Law to close; provided, that, when used in connection with a Term SOFR Loan, the term "Business Day" shall exclude any day which is not a U.S. Government Securities Business Day.

"Calpine Platform": IntraLinks/IntraAgency, SyndTrak or other relevant website or other information platform of Calpine Corporation to which the Administrative Agent has access.

"Capital Lease Obligation": at the time any determination is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet in accordance with GAAP, and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such capital lease prior to the first date upon which such capital lease may be prepaid by the lessee without payment of a penalty; provided, however, that if any operating lease (whether in effect on the Effective Date or thereafter incurred) would be recharacterized as a capital lease due to changes in the accounting treatment of such operating leases under GAAP since December 31, 2018, then solely with respect to the accounting treatment of any such lease, GAAP shall be interpreted as it was in effect on December 31, 2018; provided, further, that any lease that is treated as an operating lease for purposes of GAAP as of December 31, 2018 shall not be treated as Indebtedness or as a Capital Lease Obligation and shall continue to be treated as an operating lease (and any future lease, if it were in effect on the Effective Date, that would be treated as an operating lease for purposes of GAAP as of December 31, 2018, shall be treated as an operating lease), in each case for purposes of this Agreement, notwithstanding any actual or proposed change in or application of GAAP after December 31, 2018.

"Capital Stock":

(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; 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.

"Cash Equivalents":

(1) United States dollars;

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

(3) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition thereof and, at the time of acquisition, having one of the highest ratings obtainable from either S&P or Moody's;

(4) deposit accounts with any Lender or bank that has a long-term debt rating of A+ or better by S&P and A1 or better by Moody's (an "Approved Bank");

(5) time deposits, certificates of deposit, acceptances or prime commercial paper issued by an Approved Bank at the time acquired or issued (as applicable and whichever is latest), in each case, having a maturity of not more than one year from the date of acquisition;

(6) repurchase obligations for underlying securities of the types described in preceding clauses (2), (3) and (5) entered into with an Approved Bank at the time acquired, issued or entered into (as applicable and whichever is latest), in each case, having a maturity of not more than one year from the date of acquisition;

(7) commercial paper with a rating of at least A-1 by S&P and at least P-1 by Moody's and, in each case, maturing within one year after the date of acquisition; and

(8) money market funds which invest primarily in Cash Equivalents of the kinds described in clauses (1) through (7) of this definition.

"Cash Management Agreement": with respect to a Loan Party, any agreement to which such Loan Party is a party as an obligor in respect of treasury management arrangements, depositary or other cash management services, including in connection with any automated clearing house transfer of funds or any similar transactions.

"Cash Management Bank": any Person in its capacity as a counterparty to a Cash Management Agreement that (a) is an Agent or a Lender or an Affiliate of an Agent or a Lender, (b) at the date of entering into such Cash Management Agreement was an Agent or a Lender or an Affiliate of an Agent or a Lender or (c) (i) is designated by the Borrower as a "Cash Management Bank" by written notice to the Administrative Agent and (ii) such Person executes and delivers to the Administrative Agent a letter agreement in form and substance acceptable to the Administrative Agent pursuant to which such person (i) appoints the Collateral Agent as its agent under the applicable Loan Documents and (ii) agrees to be bound by the provisions of Sections 8.3, 8.7, 9.11 and 9.12 as if it were a Lender.

"Cash Management Obligations": with respect to a Loan Party, any obligations of such Loan Party in respect of treasury management arrangements, depositary or other cash management services, including in connection with any automated clearing house transfer of funds or any similar transactions.

"CEC": Constellation Energy Corporation, a Pennsylvania corporation.

"Change of Control": (x) prior to the consummation of the Mergers, the occurrence of any of the following:

(1) ~~(1)~~ the direct or indirect sale, 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 properties or assets of the Borrower and its Subsidiaries taken as a whole to any "person" (as that term is used in Section 13(d) of the Exchange Act, but excluding any employee benefit plan of the Borrower or any of its Restricted Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) other than Calpine Corporation, any Subsidiary of Calpine Corporation, a Beneficial Owner of 50% or more of the Voting Stock of Calpine Corporation or any Pre-Mergers Designated Holder;

(2) ~~(2)~~ the adoption of a plan relating to the liquidation or dissolution of the Borrower other than (A) the consolidation with, merger into or transfer of all or part of the properties and assets of any Restricted Subsidiary of the Borrower to the Borrower or any other Restricted Subsidiary of the Borrower and (B) the merger of the Borrower with an Affiliate solely for the purpose of reincorporating the Borrower or reforming the Borrower in another jurisdiction; or

(3) ~~(3)~~ the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any "person" (as defined above) becomes the Beneficial Owner, directly or indirectly, of more than 50% of the Voting Stock of the Borrower, measured by voting power rather than number of shares, other than Calpine Corporation, a Subsidiary of Calpine Corporation, a Beneficial Owner of 50% or more of the Voting Stock of Calpine Corporation or a Pre-Mergers Designated Holder~~.~~;

and (y) from and after the consummation of the Mergers, the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any "person" (as that term is used in Section 13(d) of the Exchange Act, but excluding any employee benefit plan of CEC, the Borrower or any of their respective Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than one or more Post-Mergers Designated Holders, becomes the Beneficial Owner, directly or indirectly, of more than 50% of the Voting Stock of the Borrower, measured by voting power rather than number of shares.

"Change of Control Triggering Event": the occurrence of both a Change of Control and a Rating Event.

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

"Collateral": all properties and assets of the Loan Parties now owned or hereafter acquired in which Liens have been (or have been purported to be) granted to the Collateral Agent to secure the Secured Obligations.

"Collateral Agent": the meaning set forth in the preamble to this Agreement.

"Co-Managers": collectively, Goldman Sachs Bank USA, JPMorgan Chase Bank, N.A., Société Générale, Truist Securities, Inc., Natixis, New York Branch, Crédit Agricole Corporate and Investment Bank, Deutsche Bank Securities Inc. and Banco Santander, S.A.

"Commodity Exchange Act": the Commodity Exchange Act (7 U.S.C. § 1 *et seq*.), as amended from time to time, and any successor statute.

"Commonly Controlled Entity": an entity, whether or not incorporated, that is under common control with the Borrower within the meaning of Section 4001 of ERISA or is part of a controlled group that includes the Borrower and that is treated as a single employer under Section 414 of the Code.

"Conforming Changes": with respect to either the use or administration of Term SOFR or the use, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "Business Day," the definition of "U.S. Government Securities Business Day," the definition of "Interest Period" or any similar or analogous definition (or the addition of a concept of "interest period"), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.18 and other technical, administrative or operational matters) that the Administrative Agent (in consultation with the Borrower) decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent (in consultation with the Borrower) decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

"Consolidated Cash Flow": with respect to any specified Person for any period, the Consolidated Net Income of such Person for such period *plus*, without duplication:

(1) an amount equal to any extraordinary, exceptional, unusual or non-recurring loss plus any net loss realized by such Person or any of its Restricted Subsidiaries in connection with an asset sale or the disposition of any securities by such Person or any of its Restricted Subsidiaries or the extinguishment of any Indebtedness of such Person or any of its Restricted Subsidiaries, to the extent such losses were deducted in computing such Consolidated Net Income; *plus*

(2) provision for taxes based on income or profits of such Person and its Restricted Subsidiaries for such period, to the extent that such provision for taxes was deducted in computing such Consolidated Net Income; *plus*

(3) the Fixed Charges of such Person and its Restricted Subsidiaries for such period, to the extent that such Fixed Charges were deducted in computing such Consolidated Net Income; *plus*

(4) depreciation, depletion, amortization (including amortization of intangibles) and other non-cash expenses (provided that if any such non-cash expense represents an accrual of or reserve for cash expenses in any future period, the cash payment in respect thereof in such future period shall be subtracted from Consolidated Cash Flow in such future period to such extent) of such Person and its Restricted Subsidiaries for such period to the extent that such depreciation, amortization and other non-cash expenses were deducted in computing such Consolidated Net Income; plus

(5) major maintenance expense as reflected in Consolidated Net Income; *plus*

(6) charges associated with fees and expenses, including professional fees, incurred in connection with (x) the Term Commitments and Term Loans on any Borrowing Date or the incurrence of other Indebtedness or the modification of or preparation in connection therewith of Indebtedness of the Borrower or any of its Restricted Subsidiaries and (y) any acquisition, Investment, asset sale, disposition or issuance of Equity Interests, in each case, to the extent such charges were deducted in computing such Consolidated Net Income, and charges or expenses recognized as a result of repayment of Indebtedness; *plus*

(7) the upfront costs of any obligations under Swap Agreements or Cash Management Obligations, to the extent such costs were deducted in computing Consolidated Net Income; *plus*

(8) Restructuring Costs to the extent such costs were deducted in computing Consolidated Net Income for such period; *plus*

(9) any costs or expenses attributable to the implementation of cost savings initiatives, operating expense reductions and similar initiatives and business optimization to the extent that such costs or expenses were deducted in computing Consolidated Net Income for such period; *plus*

(10) acquisition-related costs in a business combination to the extent such costs were deducted in computing Consolidated Net Income for such period; *plus*

(11) management, consulting, monitoring, advisory or other fees and related expenses and indemnities paid or accrued to the Designated Holders and any transferees thereof in an aggregate amount for all such fees not to exceed $20,000,000 for such period; *plus*

(12) cash received during such period related to mark-to-market activities; *less*

(13) cash paid during such period related to mark-to-market activities;

provided, however, that for purposes of this definition, any mark-to-market earnings or losses shall be excluded from the calculation of Consolidated Cash Flow to the extent taken into account in calculating Consolidated Net Income for such period.

"Consolidated Interest Expense": for any period, total cash interest expense (including that attributable to Capital Lease Obligations) of the Borrower and its Restricted Subsidiaries for such period with respect to all outstanding Indebtedness of the Borrower and its Restricted Subsidiaries, and dividends paid in cash in respect of any preferred Capital Stock of the Borrower and its Restricted Subsidiaries (including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing and net costs under obligations under Swap Agreements or Cash Management Obligations in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP but excluding any dividend paid by a Restricted Subsidiary to the Borrower or any other Restricted Subsidiary), net of interest income during such period, in each case determined on a consolidated basis in accordance with GAAP.

"Consolidated Net Income": with respect to any specified Person for any period, the aggregate of the Net Income of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, determined in accordance with GAAP; provided that:

(1) the Net Income of any Person that is not a Restricted Subsidiary or that is accounted for by the equity method of accounting will be included only to the extent of the amount of dividends or similar distributions (including pursuant to other intercompany payments) paid in cash (or to the extent subsequently converted into cash) to the specified Person or a Restricted Subsidiary of the Person; and

(2) any non-cash impairment charges incurred subsequent to the Effective Date will be excluded.

"Consolidated Senior Secured Leverage Ratio": as of any date, the ratio of (i) Total Debt to the extent constituting senior secured Indebtedness of such Person and its Restricted Subsidiaries as of the date of such transaction, after giving effect to all incurrences and repayments of Indebtedness on or about such date, to (ii) Consolidated Cash Flow of such Person for the most recent four consecutive full fiscal quarters for which internal financial statements are available ending on or prior to such date, with such *pro forma* and other adjustments as are consistent with the *pro forma* and other adjustment provisions set forth in the definition of "Fixed Charge Coverage Ratio."

"Contractual Obligation": as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Credit Facility" or "Credit Facilities": one or more debt facilities, indentures, credit agreements, note purchase agreements, commercial paper facilities, letter of credit facilities or similar facilities, in each case, with banks or other lenders or holders providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to such lenders or holders or others or to special purpose entities formed to borrow from such lenders or holders or others against such receivables), letters of credit or debt securities, in each case, as amended, restated, modified, renewed, refunded, replaced or refinanced, in each case, in whole or in part from time to time.

"Default": any of the events specified in Section 7.1, whether or not any requirement for the giving of notice, the expiration of applicable cure or grace periods, or both, has been satisfied.

~~" Designated Holders": Energy Capital Partners III, LP (together with its parallel funds and co-invest vehicles), Energy Capital Partners IV, LP (together with its parallel funds and co-invest vehicles), Access Industries Inc. (together with its parallel funds and co-invest vehicles), Canadian Pension Plan Investment Board (together with its parallel funds and co-invest vehicles) and the respective Affiliates of each of the foregoing (together with their respective parallel funds and co-invest vehicles).~~

"Designated Non-Cash Consideration": the Fair Market Value of non-cash consideration received by the Borrower or one of its Restricted Subsidiaries in connection with an Asset Sale that is so designated as Designated Non-Cash Consideration pursuant to an officer's certificate, setting forth the basis of such valuation.

"Direct Parents": Calpine CCFC GP, LLC and Calpine CCFC LP, LLC.

"Disqualified Capital Stock": that portion of any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case, at the option of the holder of the Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the date that is 91 days after the latest applicable Termination Date in effect at the time of the issuance of such Capital Stock (other than pursuant to a change of control provision substantially similar to that described under Section 2.14). Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Capital Stock solely because the holders of the Capital Stock have the right to require the Borrower to repurchase such Capital Stock upon the occurrence of a change of control or an asset sale will not constitute Disqualified Capital Stock if the terms of such Capital Stock provide that the Borrower may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption complies with Section 6.9. The amount of Disqualified Capital Stock deemed to be outstanding at any time for purposes of this Agreement shall be equal to the maximum amount that the Borrower and its Restricted Subsidiaries may become obligated to pay upon the maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Capital Stock, exclusive of accrued dividends.

"Disqualified Lender":

(a) any Person identified in writing from time to time as a competitor (or an affiliate of such competitor identified in writing) of the Borrower or its Subsidiaries;

(b) any Person that is engaged as a principal primarily in private equity, mezzanine financing or venture capital, and those banks, financial institutions, other institutional lenders and other Persons, in each case, identified in writing to the Administrative Agent on or prior to the Effective Date; and

(c) any reasonably identifiable (on the basis of its name or as identified in writing from time to time) affiliate of the entities described in the preceding clauses (a) and (b), other than, with respect to this clause (c), any *bona fide* debt fund affiliate thereof (except to the extent separately identified under clause (a) or (b) above) that is primarily engaged in, or that advises funds or other investment vehicles that are engaged in, making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit or securities in the ordinary course and with respect to which such applicable person or entity described in the preceding clause (a) or (b) does not, directly or indirectly, possess the power to direct or cause the direction of the investment policies of such entity,

it being understood and agreed that no written notice delivered pursuant to clauses (a) and/or (c) above shall apply retroactively to disqualify any Person that has previously acquired an assignment or participation interest in any Loans.

"Dollars" and "$": dollars in lawful currency of the United States.

"Domestic Subsidiary": any Restricted Subsidiary of the Borrower that was formed under the laws of the United States or any state of the United States or the District of Columbia.

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

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

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

"Effective Date": the date when all the conditions set forth in Section 4.1 have been satisfied (or waived in accordance with Section 4.1), which shall be August 2, 2023.

"Effective Date Facilities": the Bosque Facility, the Jack A. Fusco facility (f/k/a the Brazos Valley facility), the Fore River facility, the Gaudalupe facility, the Magic Valley facility and the Westbrook facility (which includes the diesel generator facilities owned by Calpine Northeast Development LLC and located on land owned by the Westbrook facility owner and leased to Calpine Northeast Development LLC), each as designated on Schedule 1.1B.

"Environmental CapEx Debt": Indebtedness of the Borrower or any of its Restricted Subsidiaries incurred for the purpose of financing capital expenditures deemed necessary by the Borrower or its Restricted Subsidiaries to comply with Environmental Laws.

"Environmental Laws": any and all applicable foreign, Federal, state or local laws, rules, orders, regulations, statutes, ordinances, codes, decrees, legally binding requirements of any Governmental Authority or other Requirements of Law (including common law) regulating, relating to or imposing liability or standards of conduct concerning protection of the environment or of human health (to the extent related to exposure to Materials of Environmental Concern), as now or may at any time hereafter be in effect.

"Equity Interests": 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).

"ERISA": the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"Erroneous Payment": the meaning set forth in in Section 9.21(a).

"Erroneous Payment Deficiency Assignment": the meaning set forth in in Section 9.21(d)(i).

"Erroneous Payment Impacted Class": the meaning set forth in Section 9.21(d)(i).

"Erroneous Payment Return Deficiency": the meaning set forth in Section 9.21(d)(i).

"Erroneous Payment Subrogation Rights": the meaning set forth in Section 9.21(e).

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

"Event of Default": any of the events specified in Section 7.1, provided that any requirement for the giving of notice, the lapse of time, or both, has been satisfied.

"Exchange Act": the Securities Exchange Act of 1934, as amended, or any successor statute or statutes thereto.

"Excluded Assets" shall have the meaning given to such term in the Security Documents.

"Excluded Subsidiary": (a) any Foreign Subsidiary, (b) any Subsidiary of the Borrower that is (A) a Domestic Subsidiary of the Borrower substantially all of the assets of which consist of the Capital Stock of one or more Foreign Subsidiaries or (B) a Domestic Subsidiary of the Borrower substantially all of the assets of which consist of the Capital Stock of one or more Subsidiaries described in clause (A) hereof (whether such ownership is directly held or through another one or more such Subsidiaries), (c) any Immaterial Subsidiary, (d) any Subsidiary that is (i) prohibited by any applicable (x) contract not prohibited under this Agreement and binding on such Subsidiary at the time of acquisition of such Subsidiary and not entered into in contemplation thereof or (y) Requirement of Law (including, without limitation, as a result of applicable financial assistance, directors' duties or corporate benefit requirements) or (ii) required to obtain consent, approval, license or authorization of a Governmental Authority for the guarantee of the Obligations by such Subsidiary (unless such consent, approval, license or authorization has already been received); provided that there shall be no obligation to obtain such consent, (e) any Subsidiary with respect to which, the Administrative Agent and the Borrower agree that the cost or other consequences (including any adverse tax, regulatory or accounting consequences) of guaranteeing the Obligations shall be excessive in view of the benefits to be obtained by the Secured Parties therefrom, (f) any permitted special purpose entity, including any receivables entity, any securitization subsidiary and any captive insurance subsidiary, in each case, identified by the Borrower to the Administrative Agent in writing, (g) any Unrestricted Subsidiary, and (h) any non-Wholly-Owned Subsidiary that is a Restricted Subsidiary. Notwithstanding the foregoing, any Excluded Subsidiary may be designated by the Borrower as a Guarantor under this Agreement, in which case (including in case of Section 5.8(2)) upon such Subsidiary executing and delivering a counterpart of the Guaranty Agreement and the Pledge and Security Agreement, such Excluded Subsidiary shall cease to be an Excluded Subsidiary for the purposes of this Agreement and the other Loan Documents until such time, if any, as it becomes an Excluded Subsidiary thereafter in accordance with the terms hereof.

"Excluded Swap Obligation": with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof). If a Swap Obligation arises under a Master Agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

"Excluded Taxes": with respect to the Administrative Agent or any Lender (i) Taxes imposed on or measured by it's overall net income (however denominated), gross receipts Taxes (imposed in lieu of net income Taxes) and franchise Taxes (imposed in lieu of net income Taxes) imposed on the Administrative Agent or any Lender as a result of such Administrative Agent or Lender (A) being organized or having its principal office in the applicable taxing jurisdiction, or in the case of any Lender, having its applicable lending office in such jurisdiction, or (B) having any other present or former connection with the applicable taxing jurisdiction (other than any such connection arising solely from the Administrative Agent or such Lender having executed, delivered, become a party to, or performed its obligations or received a payment under, or enforced, and/or engaged in any activities contemplated with respect to this Agreement or any other Loan Document); (ii) any Taxes in the nature of the branch profits tax within the meaning of Section 884 of the Code imposed by any jurisdiction described in clause (i) above; (iii) other than in the case of an assignee pursuant to a request by the Borrower under Section 2.26, any U.S. federal withholding tax (A) except to the extent such withholding tax results from a change in a Requirement of Law after the recipient became a party hereto or (B) except to the extent that such recipient's assignor (if any) was entitled immediately prior to such assignment to receive additional amounts from any Loan Party with respect to such withholding tax pursuant to this Section 2.19(a); (iv) any withholding tax that is attributable to a Lender's failure to comply with Section 2.19(e); and (v) any United States federal withholding Taxes imposed pursuant to FATCA.

"Existing Credit Agreement": this Agreement as in effect immediately prior to the Effective Date.

"Extended Term Loans": the meaning set forth in Section 2.27(a).

"Extending Term Lender": the meaning set forth in Section 2.27(a).

"Extension": the meaning set forth in Section 2.27(a).

"Extension Offer": the meaning set forth in Section 2.27(a).

"Facilities": the Effective Date Facilities and any other power or energy generating facilities acquired or constructed after the Effective Date described in the definition of "Permitted Business."

"Fair Market Value": the value that would be paid by a willing buyer to a willing seller in a transaction, determined in good faith by a Responsible Officer or Board of Directors of the Borrower (unless otherwise provided in this Agreement).

"FATCA": Sections 1471 through 1474 of the Code as in existence on the date hereof (and any amended or successor version that is substantively comparable and not materially more onerous to comply with), any regulations thereunder or published administrative guidance implementing such Sections and any agreements entered into pursuant to current Section 1471(b) of the Code (or any amended or successor version described above) and any fiscal or regulatory legislation, rules or official administrative pronouncements adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

"Federal Funds Effective Rate": for any day, the greater of (a) the rate calculated by the Federal Reserve Bank of New York based on such day's Federal funds transactions by depositary institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the Federal funds effective rate and (b) 0%.

"Federal Reserve Board": the Board of Governors of the Federal Reserve System of the United States.

"Fees": collectively, (i) the fees pursuant to that certain amended and restated fee letter dated July 25, 2023 among the Borrower, the Joint Lead Arrangers and Co-Managers, (ii) the fees referred to in Section 2.22 or 9.5 and (iii) any other fees payable by any Loan Party pursuant to this Agreement or any other Loan Document.

"Financial Officer": the chief financial officer, principal accounting officer, controller or treasurer of the Borrower.

"Fixed Amounts": as such term is defined in Section 1.4.

"Fixed Charge Coverage Ratio": with respect to any specified Person for any period, the ratio of the Consolidated Cash Flow of such Person and its Restricted Subsidiaries for such period to the Fixed Charges of such Person for such period.

In the event that any specified Person or any of its Restricted Subsidiaries incurs, assumes, guarantees, repays, repurchases, redeems, defeases or otherwise discharges any Indebtedness (other than ordinary working capital borrowings) or issues, repurchases or redeems preferred stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio or the Consolidated Senior Secured Leverage Ratio is being calculated and on or prior to the date on which the event for which the calculation of the Fixed Charge Coverage Ratio or the Consolidated Senior Secured Leverage Ratio is made (the "Calculation Date"), then the Fixed Charge Coverage Ratio and/or the Consolidated Senior Secured Leverage Ratio will be calculated giving *pro forma* effect to such incurrence, assumption, guarantee, repayment, repurchase, redemption, defeasance or other discharge of Indebtedness, or such issuance, repurchase or redemption of preferred stock, and the use of the proceeds therefrom (subject to clause (6) below) as if the same had occurred (i) in the case of the Fixed Charge Coverage Ratio, at the beginning of the applicable four-quarter reference period and (ii) in the case of the Consolidated Senior Secured Leverage Ratio, on the last day of the applicable four-quarter reference period.

In addition, for purposes of calculating the Fixed Charge Coverage Ratio and the Consolidated Senior Secured Leverage Ratio:

(1) acquisitions that have been made by the specified Person or any of its Restricted Subsidiaries, including through mergers or consolidations, or any Person or any of its Restricted Subsidiaries acquired by the specified Person or any of its Restricted Subsidiaries, and including any related financing transactions and including increases in ownership of Restricted Subsidiaries, during the four-quarter reference period or subsequent to such reference period and on or prior to the Calculation Date will be given *pro forma* effect (including, but not limited to, with respect to (i) any intercompany tolling arrangements which shall be on terms reflecting the market conditions at such time put into place and (ii) any expense and cost reduction that (x) has occurred or (y) in the reasonable judgment of a Financial Officer of the Borrower, is reasonably expected to occur within 24 months from the date of any such acquisition, in each case, as if they had occurred on the first day of the four-quarter reference period and Consolidated Cash Flow for such reference period will be calculated on a *pro forma* basis);

(2) the Consolidated Cash Flow attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses (and ownership interests therein) disposed of on or prior to the Calculation Date, will be excluded;

(3) the Fixed Charges attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded, but only to the extent that the obligations giving rise to such Fixed Charges will not be obligations of the specified Person or any of its Restricted Subsidiaries following the Calculation Date;

(4) if any Indebtedness that is being incurred on the Calculation Date bears a floating rate of interest, the interest expense on such Indebtedness will be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the entire period (taking into account any obligations under Swap Agreements or Cash Management Obligations applicable to such Indebtedness, but only for such period of time as equals the then remaining term of such obligations under Swap Agreements or Cash Management Obligations as of the Calculation Date); and

(5) adjustments consistent with Regulation S-X under the Securities Act of 1933, as amended, may, at the election of the Borrower, be given *pro forma* effect; and

(6) the identifiable cash proceeds of any Indebtedness being incurred substantially simultaneously therewith or as part of the same transaction or series of related transactions shall be disregarded for purposes of netting cash to calculate the Consolidated Senior Secured Leverage Ratio.

"Fixed Charges": with respect to any specified Person for any period, the sum, without duplication, of:

(1) Consolidated Interest Expense; *plus*

(2) any interest paid in cash on Indebtedness of a Person other than the Borrower and its Restricted Subsidiaries that is Guaranteed by such Person or one of its Restricted Subsidiaries or secured by a Lien on assets of such Person or one of its Restricted Subsidiaries, to the extent such Guarantee or Lien is called upon; *plus*

(3) the product of (A) all dividends, paid in cash, on any series of preferred stock of such Person or any of its Restricted Subsidiaries, other than dividends on Equity Interests payable solely in Equity Interests of the Borrower (other than Disqualified Capital Stock) or to the Borrower or a Restricted Subsidiary of the Borrower, times (B) a fraction, the numerator of which is one and the denominator of which is one minus the then current combined federal, state and local statutory income tax rate of such Person, expressed as a decimal, in each case, on a consolidated basis and in accordance with GAAP.

"Flood Insurance Laws": collectively, (i) the National Flood Insurance Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (ii) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto, (iii) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto, and (iv) all other applicable Laws relating to policies and procedures that address requirements placed on federally regulated lenders relating to flood matters, in each case, as now or hereafter in effect or any successor statute thereto.

"Floor": a rate of interest equal to 0.00% per annum.

"Foreign Subsidiary": any Subsidiary of the Borrower organized under the laws of any jurisdiction outside the United States, any state thereof or the District of Columbia.

"Funding Office": the office of the Administrative Agent specified in Section 9.2(a) or such other office as may be specified from time to time by the Administrative Agent as its funding office by written notice to the Borrower and the Lenders.

"GAAP": generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession.

"Governmental Authority": the government of the United States 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).

"Grantors": any Person that pledges any Collateral under the Security Documents to secure any Obligation.

"Guarantee": a guarantee other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner including, without limitation, by way of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Indebtedness (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take or pay or to maintain financial statement conditions or otherwise).

"Guarantor": each of (1) Jack A. Fusco Energy Center LLC (f/k/a Brazos Valley Energy LLC), ~~Calpine Bosque~~Thad Hill Energy Center, LLC, Guadalupe Power Partners, LP, Magic Valley Energy Center, LLC, Calpine Northeast Development, LLC, Calpine Guadalupe GP, LLC, Calpine Guadalupe LP, LLC, Calpine Fore River Energy Center, LLC and Westbrook Energy Center, LLC and (2) any other Restricted Subsidiary of the Borrower that executes a counterpart of the Guaranty Agreement after the Original Closing Date in accordance with the provisions of this Agreement, and their respective successors and assigns, in each case, until the Guarantee of such Person has been released in accordance with the provisions of this Agreement or the Guaranty Agreement. As of the Effective Date, the Guarantors are Jack A. Fusco Energy Center LLC (f/k/a Brazos Valley Energy LLC), Calpine Bosque Energy Center, LLC, Guadalupe Power Partners, LP, Magic Valley Energy Center, LLC, Calpine Northeast Development, LLC, Calpine Guadalupe GP, LLC, Calpine Guadalupe LP, LLC, Calpine Fore River Energy Center, LLC and Westbrook Energy Center, LLC.

"Guaranty Agreement": that certain Amended and Restated Guaranty Agreement, dated as of the Effective Date (as amended, amended and restated, supplemented or otherwise modified from time to time), by and among the Borrower, the Guarantors, the Administrative Agent and the Collateral Agent.

"Guaranty Reimbursement Obligations": all obligations of the Loan Parties under Section 1 of the Guaranty Agreement.

"Hedge Bank": any Person in its capacity as a counterparty to a Swap Contract permitted under this Agreement that (a) is an Agent or a Lender or an Affiliate of an Agent or a Lender, (b) at the date of entering into such Swap Agreement was an Agent or a Lender or an Affiliate of an Agent or a Lender or (c) (i) is designated by the Borrower as a "Hedge Bank" by written notice to the Administrative Agent and (ii) such Person executes and delivers to the Administrative Agent a letter agreement in form and substance acceptable to the Administrative Agent pursuant to which such person (i) appoints the Collateral Agent as its agent under the applicable Loan Documents and (ii) agrees to be bound by the provisions of Sections 8.3, 8.7, 9.11 and 9.12 as if it were a Lender.

"Immaterial Subsidiary": any Domestic Subsidiary that is not a Material Domestic Subsidiary.

"Increased Amount Date": the meaning set forth in Section 2.25(a).

"Incremental Commitment": the meaning set forth in Section 2.25(a).

"Incremental Commitment Supplement": the meaning set forth in Section 2.25(a).

"Incremental Lender": the meaning set forth in Section 2.25(a).

"Incremental Term Loans": the meaning set forth in Section 2.25(a).

"Incremental Term Percentage": as to any Lender at any time, the percentage which such Lender's Incremental Commitment then constitutes of the aggregate of the Incremental Commitments in respect of any series of Incremental Term Loans (or, at any time after the making of such Incremental Term Loans, the percentage which the aggregate principal amount of such Lender's series of Incremental Term Loans then outstanding constitutes of the aggregate principal amount of all Incremental Term Loans of such series then outstanding).

"Incurrence-Based Amounts": as such term is defined in Section 1.4.

"Indebtedness": with respect to any specified Person, any indebtedness of such Person (excluding accrued expenses or trade payables), whether or not contingent (without duplication):

(1) in respect of borrowed money;

(2) evidenced by bonds, notes, debentures or similar instruments or letters of credit or reimbursement agreements in respect thereof;

(3) in respect of bankers' acceptances;

(4) representing Capital Lease Obligations or Attributable Debt in respect of sale and leaseback transactions;

(5) representing the balance deferred and unpaid of the purchase price of any property or services due more than six months after such property is acquired or such services are completed; or

(6) representing any obligations under Swap Agreements (except as expressly set forth below),

if and to the extent any of the preceding items (other than letters of credit, Attributable Debt or obligations under Swap Agreements) would appear as a liability upon a balance sheet of the specified Person prepared in accordance with GAAP. In addition, the term "Indebtedness" includes all Indebtedness of others secured by a Lien on any asset of the specified Person (whether or not such Indebtedness is assumed by the specified Person) and, to the extent not otherwise included, the Guarantee by the specified Person of any Indebtedness of any other Person.

The amount of any Indebtedness outstanding as of any date will be:

(1) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue discount;

(2) the principal amount of the Indebtedness, in the case of any other Indebtedness; and

(3) in respect of Indebtedness of other Persons secured by a Lien on the assets of the specified Person, the lesser of:

(A) the Fair Market Value of such asset at such date of determination, and

(B) the amount of such Indebtedness of such other Persons.

Notwithstanding the foregoing, "Indebtedness" shall not include:

(1) any obligations under Swap Agreements or Cash Management Obligations that are entered into for bona fide hedging or cash management purposes of the Borrower or its Restricted Subsidiaries (as determined in good faith by the Board of Directors or senior management of the Borrower, whether or not accounted for as a hedge in accordance with GAAP);

(2) in-kind obligations relating to energy balancing positions arising in the ordinary course of business and consistent with past practice;

(3) contingent obligations (including guarantees) incurred in the ordinary course of business or consistent with past practice; and

(4) post-closing purchase price adjustments and any earn-outs or similar obligations.

"indemnified liabilities": the meaning set forth in Section 9.5.

"Indemnitee": the meaning set forth in Section 9.5.

"Information Memorandum": that certain Presentation to Lenders related to this Agreement dated July 17, 2023.

"Insolvency": with respect to any Multiemployer Plan, the condition that such Multiemployer Plan is insolvent within the meaning of Section 4245 of ERISA.

"Insolvent": pertaining to a condition of Insolvency.

"Initial Term B Loans": the meaning set forth in Section 2.1(a).

"Intellectual Property": the collective reference to all rights, priorities and privileges relating to intellectual property of any Loan Party, whether arising under United States, multinational or foreign laws or otherwise, including copyrights, copyright licenses, patents, patent licenses, trademarks, trademark licenses, technology, know-how and processes, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

"Interest Payment Date": (a) as to any Base Rate Loan, the last Business Day of each March, June, September and December to occur while such Base Rate Loan is outstanding and the final maturity date of such Base Rate Loan, (b) as to any Term SOFR Loan having an Interest Period of three months or less, the last day of such Interest Period, (c) as to any Term SOFR Loan having an Interest Period longer than three months, each day that is three months, or a whole multiple thereof, after the first day of such Interest Period and the last day of such Interest Period and (d) as to any Term SOFR Loan, the date of any repayment or prepayment made in respect thereof.

"Interest Period": as to any Term SOFR Loan, (a) with respect to all Term Loans borrowed or converted on or after the Effective Date, initially, the period commencing on the borrowing or conversion date, as the case may be, with respect to such Term SOFR Loan and ending one, three or six months (or, if agreed to by all relevant Lenders, twelve months) thereafter, as selected by the Borrower in its notice of borrowing or notice of conversion, as the case may be, given with respect thereto; and (b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Term SOFR Loan and ending one, three or six months (or, if agreed to by all relevant Lenders, twelve months) thereafter, as selected by the Borrower by irrevocable notice to the Administrative Agent not later than 10:00 A.M., New York City time, on the date that is three (3) Business Days prior to the last day of the then current Interest Period with respect thereto; provided that, all of the foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) the Borrower may not select an Interest Period that would extend beyond the Termination Date; and

(iii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month; and

(iv) no tenor that has been removed from this definition pursuant to Section 2.11(e) shall be available for specification in any notice of borrowing or notice of conversion/continuation.

"Investment Grade Rating": a rating equal to or higher than Baa3 (or the equivalent) by Moody's or BBB- (or the equivalent) by S&P.

"Investments": with respect to any Person, all direct or indirect investments by such Person in other Persons (including Affiliates) in the forms of loans (including Guarantees or similar obligations), advances or capital contributions (excluding payroll, commission, travel and similar advances to officers and employees made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP. "Investment" shall exclude extensions of trade credit by the Borrower and its Restricted Subsidiaries in the ordinary course of business. If the Borrower or any Restricted Subsidiary of the Borrower sells or otherwise disposes of any Equity Interests of any direct or indirect Restricted Subsidiary of the Borrower such that, after giving effect to any such sale or disposition, such Person is no longer a Restricted Subsidiary of the Borrower, the Borrower will be deemed to have made an Investment on the date of any such sale or disposition equal to the Fair Market Value of the Borrower's Investments in such Restricted Subsidiary that were not sold or disposed of. Except as otherwise provided in this Agreement, the amount of an Investment shall be its Fair Market Value at the time the Investment is made and without giving effect to subsequent changes in value.

"Joint Bookrunners": collectively, Citibank, N.A., BMO Capital Markets Corp., Barclays Bank PLC, BNP Paribas Securities Corp., Mizuho Bank, Ltd., MUFG Bank, Ltd., Royal Bank of Canada, Sumitomo Mitsui Banking Corporation, ING Capital LLC, Morgan Stanley Senior Funding, Inc. and BofA Securities, Inc.

"Joint Lead Arrangers": collectively, Citibank, N.A., BMO Capital Markets Corp., Barclays Bank PLC, BNP Paribas Securities Corp., Mizuho Bank, Ltd., MUFG Bank, Ltd., Royal Bank of Canada, Sumitomo Mitsui Banking Corporation, ING Capital LLC, Morgan Stanley Senior Funding, Inc. and BofA Securities, Inc.

"Legal Holiday": a Saturday, a Sunday or a day on which banking institutions in the City of New York or at a place of payment are authorized by law, regulation or executive order to remain closed. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday.

"Lenders": the meaning set forth in the preamble to this Agreement (including, for the avoidance of doubt, the Refinancing Term Loan Lenders and the 2025 Refinancing Term Loan Lenders), including any Person that shall have become a party to this Agreement as a Lender pursuant to an Assignment and Acceptance or pursuant to Section 2.25, other than any Person that ceases to be a party hereto as a Lender pursuant to an Assignment and Acceptance or pursuant to Section 2.26.

"Lien": with respect to any asset, any mortgage, lien, pledge, charge, security interest 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 and any lease that constitutes a security interest.

"Loan": any Term Loan.

"Loan Documents": this Agreement, Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4, Amendment No. 5, any Agency Assignment Agreement, the Guaranty Agreement, the Security Documents, each Note, each Incremental Commitment Supplement and any amendment, waiver, supplement or other modification to any of the foregoing.

"Loan Parties": the Borrower and the Guarantors.

"Material Adverse Effect": a material adverse effect on (a) the business, financial condition, results of operations or properties of the Borrower and its Subsidiaries taken as a whole, (b) the ability of the Loan Parties, taken as a whole, to perform their payment obligations under the Loan Documents, (c) the validity or enforceability of the Loan Documents taken as a whole or (d) the material rights and remedies available to, or conferred upon, the Lenders, the Administrative Agent and the Collateral Agent under the Loan Documents, taken as a whole (it being understood that any event or condition described in Section 7.1(f) or (g) that would not give rise to a Default or an Event of Default thereunder shall not constitute a Material Adverse Effect under preceding clause (c) or (d)).

"Material Domestic Subsidiary": any Domestic Subsidiary having Total Assets that constitute more than 5% of Total Assets.

"Materials of Environmental Concern": any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products, or asbestos, or polychlorinated biphenyls or any other chemicals, substances, materials, wastes, pollutants or contaminants in any form, regulated under any Environmental Law.

"Master Agreement": the meaning set forth in the definition of "Swap Agreement."

"Maximum Incremental Facilities Amount": at any date of determination, (a) the sum of (i) $50,000,000, (ii) an additional aggregate principal amount equal to the greater of (x) $100.0 million and (y) 5.0% of Total Assets, (iii) the aggregate principal amount of all voluntary prepayments or purchases of Term Loans (at the price paid in the case of such purchases at below par) made after the Effective Date (other than to the extent funded with long-term Indebtedness (other than revolving Indebtedness)) and (iv) an additional aggregate principal amount of Indebtedness if (in the case of this clause (iv) only), (x) the Fixed Charge Coverage Ratio for the Borrower's most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred would have been at least 2.0 to 1.0, determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if the additional Indebtedness had been incurred, at the beginning of such four-quarter period and (y) after giving effect to the incurrence of such Indebtedness and the application of the proceeds from such Indebtedness, the Consolidated Senior Secured Leverage Ratio of the Borrower was not greater than 4:75:1.00 (it being understood that the Borrower shall be deemed to have used amounts under clause (iv) to the maximum extent permitted thereunder prior to utilization of amounts under any of clauses (i), (ii) or (iii) and any such amounts incurred under any of such clauses (i), (ii) or (iii) shall not be included in any calculation of amounts incurred under such clause (iv), provided that the identifiable cash proceeds of any Indebtedness being incurred substantially simultaneously therewith or as part of the same transaction or series of related transactions shall be disregarded for purposes of netting cash to calculate the Consolidated Senior Secured Leverage Ratio), minus (b) the aggregate principal amount of Indebtedness theretofore issued or incurred (including any unused commitments obtained) pursuant to clause (i) or (xvii) of the definition of Permitted Debt and outstanding on such date.

"Mergers": shall mean, collectively, (i) the merger of CPN CKS Corp., a Delaware corporation, with and into Calpine Corporation, with Calpine Corporation surviving as a wholly-owned Subsidiary of CPN CS Holdco Corp., a Delaware corporation, (ii) the merger of Cascade Transco, Inc., a Delaware corporation, with and into CPN CS Holdco Corp., with CPM CS Holdco Corp. surviving as a wholly-owned Subsidiary of CEC and (iii) the merger of CEC with and into Cascade Transco - 1, LLC, a Delaware limited liability company, with Cascade Transco - 1, LLC surviving as a wholly-owned Subsidiary of Constellation Energy Generation, LLC, a Pennsylvania limited liability company.

"Minimum Extension Condition": the meaning set forth in Section 2.27(b).

"Moody's": Moody's Investors Service, Inc. or its successor.

"Mortgaged Property": collectively, the owned real properties of the Borrower or applicable Guarantor described in Schedule 1.1B and designated as Mortgaged Property thereon, as to which the Collateral Agent for the benefit of the Secured Parties is or shall be granted a Lien pursuant to the Mortgages and the other owned real properties of the Borrower or any Guarantor, as to which the Collateral Agent for the benefit of the Secured Parties is or shall be granted a Lien pursuant to the Mortgages or this Agreement.

"Mortgages": collectively, each of the mortgages and deeds of trust made by any Loan Party in favor of, or for the benefit of, the Collateral Agent for the benefit of the Secured Parties referred to therein, as each may be amended, restated, supplemented or otherwise modified from time to time.

"Multiemployer Plan": a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which the Borrower or any Commonly Controlled Entity makes or is obligated to make contributions or during the preceding five plan years, has made or been obligated to make contributions.

"Net Income": with respect to any specified Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends, excluding, however:

(1) any gain (or loss), together with any related provision for taxes on such gain (or loss), realized in connection with: (A) any Asset Sale; or (B) the disposition of any securities by such Person or any of its Restricted Subsidiaries or the extinguishment of any Indebtedness of such Person or any of its Restricted Subsidiaries; and

(2) any extraordinary gain (or loss), together with any related provision for taxes on such extraordinary gain (or loss).

"Net Proceeds": the aggregate cash proceeds received by the Borrower or any of its Restricted Subsidiaries in respect of any Asset Sale (including, without limitation, any cash received upon the sale or other disposition of any non-cash consideration received in any Asset Sale), net of (i) the principal amount, premium or penalty, if any, interest and other amounts on Indebtedness that is secured by the asset subject to such Asset Sale, (ii) the fees, expenses and costs relating to such Asset Sale, including, without limitation, legal, accounting and investment banking fees, costs and expenses, and sales commissions, and any relocation expenses incurred as a result of the Asset Sale, (iii) taxes paid or payable as a result of the Asset Sale, in each case, after taking into account any available tax credits or deductions and any tax sharing arrangements, and (iv) amounts reserved for adjustment in respect of (x) the sale price of such asset or assets established in accordance with GAAP and (y) any liabilities associated with such asset or assets and retained by the Borrower or any Restricted Subsidiaries after such Asset Sale.

"Non-Excluded Taxes": all Taxes, other than Excluded Taxes.

"Non-Recourse": with respect to any specified Person and the Indebtedness of such Person:

(1) neither the Borrower nor any of its Restricted Subsidiaries (A) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness) for the Indebtedness of such Person other than a pledge of the Equity Interests of such Person or Indebtedness otherwise permitted hereunder, (B) is directly or indirectly liable as a guarantor or otherwise of the Indebtedness of such Person, or (C) constitutes the lender with respect to the Indebtedness of such Person; and

(2) in the case of an Unrestricted Subsidiary, no default on the Indebtedness of such Person (including any rights that the holders of the Indebtedness may have to take enforcement action against an Unrestricted Subsidiary) would permit upon notice, lapse of time or both any holder of Indebtedness of the Borrower or any of its Restricted Subsidiaries to declare a default on such Indebtedness of the Borrower or any of its Restricted Subsidiaries or cause the payment of such Indebtedness of the Borrower nor any of its Restricted Subsidiaries to be accelerated or payable prior to its stated maturity.

"Notes": the collective reference to any promissory note evidencing Term B Loans or any Incremental Term Loans.

"obligations": any principal, interest, penalties, fees, expenses, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.

"Obligations": the unpaid principal of and interest on the Term Loans and all other obligations and liabilities of the Borrower or any Guarantor to the Administrative Agent, to the Collateral Agent, to any Arrangers or to any Lender, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, any other Loan Document or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including all fees, charges and disbursements of counsel to the Administrative Agent, to the Collateral Agent, to any Arranger or to any Lender, including Erroneous Payment Subrogation Rights, that are required to be paid by the Borrower or any Guarantor pursuant hereto) or otherwise (including interest accruing after the maturity of the Term Loans and interest, fees and other amounts accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower or a Guarantor, whether or not a claim for post filing or post-petition interest, fees or other amounts is allowed in such proceeding).

"Offer Document": the meaning set forth in Exhibit I.

"Original Closing Date": December 15, 2017.

"Other Taxes": all present or future stamp or documentary Taxes or any other excise, property or similar Taxes arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

"Parent": any direct or indirect parent company of the Borrower.

"Parity Secured Debt":

(1) Indebtedness incurred pursuant to clause (i) of the definition of "Permitted Debt";

(2) Indebtedness incurred pursuant to clause (xv) of the definition of Permitted Debt; provided that after giving effect to such incurrence and the application of the proceeds from, and the creation of Liens to secure, such Indebtedness, the Consolidated Senior Secured Leverage Ratio of the Borrower was not greater than 4.75 to 1.0;

(3) Indebtedness incurred pursuant to clause (xvi) of the definition of Permitted Debt;

(4) Indebtedness incurred pursuant to clause (xvii) of the definition of Permitted Debt;

(5) the Obligations under this Agreement, including pursuant to Section 2.25;

(6) Permitted Refinancing Indebtedness incurred by the Borrower or a Guarantor;

(7) Permitted Refinancing Indebtedness, the net proceeds of which are used to refinance Parity Secured Debt; and

(8) any other Indebtedness incurred by the Borrower or any Guarantor if (A) when it was incurred, the incurrence of such Indebtedness by the Borrower or such Guarantor was permitted by this Agreement and (B) on the day such Indebtedness was incurred, after giving effect to such incurrence and the application of the proceeds from, and the creation of Liens to secure, such Indebtedness, the Consolidated Senior Secured Leverage Ratio of the Borrower was not greater than 4.75 to 1.0;

provided, in each case (except in the case of the Term Loans), that the Secured Debt Representative on behalf of the holders of any such Indebtedness shall have become party to the Parity Secured Intercreditor Agreement.

"Parity Secured Intercreditor Agreement": the intercreditor agreement in form and substance as may be satisfactory to the Administrative Agent and the Borrower.

"Parity Secured Obligations": collectively, the Parity Secured Debt and all obligations in respect of Parity Secured Debt.

"Participant": the meaning set forth in Section 9.6(c).

"Participant Register": the meaning set forth in Section 9.6(c)(ii).

"Partnership Interest Pledge Agreement": that certain non-recourse Partnership Interest Pledge Agreement, dated as of the Original Closing Date, among the Direct Parents and the Collateral Agent.

"Patriot Act": the USA Patriot Act, Title III of Pub. L. 107-56, signed into law on October 26, 2001, as amended.

"Payment Default": the meaning set forth in Section 7.1(e)(i)(A).

"Payment Recipient": the meaning set forth in Section 9.15(a).

"PBGC": the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA (or any successor).

"Perfection Certificate": the meaning set forth in the Pledge and Security Agreement.

"Periodic Term SOFR Determination Day": the meaning set forth in the definition of"Term SOFR".

"Permitted Business": the ownership, construction, operation and maintenance of the Effective Date Facilities and any other power and energy generating facilities located in the United States, together with any related assets or facilities, including gas pipelines supplying natural gas to such generating facilities, electric transmission lines carrying energy generated from such generating facilities, and any related gas or electric interconnection facilities, as well as the engagement in commodity transactions in connection with such business operations, or any business that is similar, reasonably related, incidental, complimentary or ancillary to any of the foregoing.

"Permitted Counterparty Lien": a Lien in favor of a counterparty under a PPA; provided that the following conditions are satisfied:

(1) the counterparty is not an Affiliate of the Borrower;

(2) the Lien does not secure any Indebtedness and (a) is granted solely to secure the performance obligations of the Borrower or the applicable Restricted Subsidiary under the PPA and/or any obligation of the Borrower or the applicable Restricted Subsidiary to make a termination payment under the PPA upon the occurrence of the event described in clause (3)(c)(i) below or the termination by the counterparty upon the occurrence of any of the events described in clause (3)(c)(ii) below, or (b) creates rights designed to enable the counterparty to assume operational control of the relevant Facility or Facilities (*e.g.*, step-in rights) or otherwise continue performance of the Borrower's or the applicable Restricted Subsidiary's obligations under the PPA;

(3) the counterparty can exercise its rights with respect to the Lien only (a) for so long as the counterparty remains current with respect to all of its payment obligations under the PPA and is not otherwise in a continuing default under the PPA, (b) if the counterparty continues to acknowledge the existence of the Liens securing the Parity Secured Obligations (unless and until Liens securing the Parity Secured Obligations are eliminated in connection with a foreclosure of the Permitted Counterparty Liens as contemplated by clause (4) of this definition) and (c) if either (i) the Borrower or the applicable Restricted Subsidiary has terminated, rejected or repudiated the PPA (including, without limitation, any rejection or similar act by or on behalf of the Borrower or the applicable Restricted Subsidiary in connection with any bankruptcy proceeding) or (ii) the Borrower or the applicable Restricted Subsidiary has intentionally breached its obligations under the PPA; provided that the following actions will be considered an intentional breach by the Borrower or the applicable Restricted Subsidiary under the PPA:

(A) the Borrower or the applicable Restricted Subsidiary provides or delivers capacity or energy to a third party if the Borrower or the applicable Restricted Subsidiary is required under the PPA to provide or deliver such capacity or energy to the counterparty;

(B) the Borrower or the applicable Restricted Subsidiary fails to operate or attempt to operate one or more of the relevant Facilities at a time when the Borrower or the applicable Restricted Subsidiary was required under the PPA to operate or attempt to operate such Facility or Facilities and such operation or attempted operation is not prevented by force majeure, forced outage or other events or circumstances outside the reasonable control of the Person responsible therefor;

(C) any failure by the Borrower or the applicable Restricted Subsidiary to comply with any provisions of the PPA designed to enable the counterparty to assume operational control of the relevant Facility or Facilities (*e.g.*, step-in rights) or otherwise take actions necessary to continue performance of the Borrower's or the applicable Restricted Subsidiary's obligations under the PPA, in each case to the extent the Borrower or the applicable Restricted Subsidiary is then capable of complying with such provisions; or

(D) any failure by the Borrower or the applicable Restricted Subsidiary to pay to the counterparty any amount due and payable in accordance with the terms and conditions of the PPA; and

(4) the counterparty's exercise of its rights with respect to the Lien is limited to (a) the taking of actions pursuant to any provisions of the PPA designed to enable the counterparty to assume operational control of the relevant Facility or Facilities (*e.g.*, step-in rights) or otherwise necessary to continue performance of the Borrower's or the applicable Restricted Subsidiary's obligations under the PPA or (b) the recovery of any termination payment due under the PPA upon the occurrence of the event described in clause (3)(c)(i) above or the termination by the counterparty upon the occurrence of any of the events described in clause (3)(c)(ii) above.

"Permitted Debt": the meaning set forth in Section 6.1(b).

"Permitted Investments":

(1) any Investment in the Borrower or in a Restricted Subsidiary of the Borrower;

(2) any Investment in cash and Cash Equivalents;

(3) any Investment by the Borrower or any Restricted Subsidiary of the Borrower in a Person, if as a result of such Investment:

(A) such Person becomes a Restricted Subsidiary of the Borrower; or

(B) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Borrower or a Restricted Subsidiary of the Borrower;

(4) any Investment made as a result of the receipt of non-cash consideration from an Asset Sale that was made pursuant to and in compliance with Section 6.8 or as a result of a sale or other disposition of any asset that does not constitute an Asset Sale;

(5) Investments made as a result of the sale of Equity Interests of any Person that is a Subsidiary of the Borrower such that, after giving effect to any such sale, such Person is no longer a Subsidiary of the Borrower and, if the sale of such Equity Interests constitutes an Asset Sale, the Net Proceeds received from such Asset Sale are applied and/or reinvested as set forth in Section 6.8;

(6) any acquisition of assets or Equity Interests solely in exchange for the issuance of Equity Interests of the Borrower (other than Disqualified Capital Stock) or any Parent;

(7) any Investments received in compromise or resolution of (A) obligations of trade creditors or customers that were incurred in the ordinary course of business of the Borrower or any of its Restricted Subsidiaries, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer; or (B) litigation, arbitration or other disputes with Persons who are not Affiliates;

(8) Investments represented by obligations under Swap Agreements or Cash Management Obligations;

(9) loans or advances to officers, directors or employees made in the ordinary course of business up to an aggregate principal amount not to exceed $10.0 million at any one time;

(10) any Investment acquired by the Borrower or any of its Restricted Subsidiaries on account of any claim against, or interest in, any other Person (A) acquired in good faith in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of such other Person or (B) as a result of a bona fide foreclosure by the Borrower or any of its Restricted Subsidiaries with respect to any claim against any other Person;

(11) repurchases of the Term Loans pursuant to Section 2.28 or Section 9.6(f), *pari passu* Indebtedness (whether in right of payment or security) or junior lien Indebtedness;

(12) receivables owing to the Borrower or a Restricted Subsidiary of the Borrower, if 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 Borrower or such Restricted Subsidiary deems reasonable under the circumstances;

(13) any Investments in the form of, or pursuant to, working interests, royalty interests, mineral leases, processing agreements, farm-out agreements, contracts for the sale, transportation or exchange of oil and natural gas, unitization agreements, pooling agreements, area of mutual interest agreements, production sharing agreements or other similar or customary agreements, transactions, properties, interests or arrangements, and Investments and expenditures in connection therewith or pursuant thereto, in each case, made or entered into in the ordinary course of business;

(14) [Reserved];

(15) other Investments so long as, at the time thereof, the aggregate Fair Market Value (measured on the date each such Investment was made and without giving effect to subsequent changes in value) of such Investments, taken together with all other Investments made pursuant to this clause (15) and outstanding at such time, does not to exceed the greater of (x) $40.0 million and (y) 2.0% of Total Assets; and

(16) Investments existing on the Effective Date.

For purposes of determining compliance with Section 6.9, in the event that a Permitted Investment meets the criteria of more than one of the types of Permitted Investments described in the above clauses, the Borrower, in its sole discretion, may order and classify, and from time to time may reorder and reclassify, such Permitted Investment if it would be permitted at the time of any such reclassification.

"Permitted Liens":

(1) Liens on Collateral securing all Parity Secured Obligations which, if any Parity Secured Debt other than the Obligations under this Agreement are outstanding, shall be subject at all times to the Parity Secured Intercreditor Agreement;

(2) Liens securing an aggregate principal amount of Indebtedness under Credit Facilities not to exceed the greater of (x) amount permitted to be incurred pursuant to Section 6.1(b)(i) and (y) an amount that would not cause the Consolidated Senior Secured Leverage Ratio, after giving effect to such incurrence, to exceed 4.75 to 1.0;

(3) Liens (x) on property of a Person existing at the time such Person is merged with or into or consolidated with the Borrower or any Restricted Subsidiary of the Borrower or (y) on property (including Capital Stock) existing at the time of acquisition of such property by the Borrower or any Restricted Subsidiary of the Borrower; provided that such Liens were in existence prior to the contemplation of such merger or consolidation and do not extend to any assets other than those of the Person merged into or consolidated with the Borrower or the Restricted Subsidiary or the property acquired;

(4) Liens securing Indebtedness (including Capital Lease Obligations) permitted to be incurred pursuant to Section 6.1(b)(iii) covering only the assets acquired with or financed by such Indebtedness plus repairs, improvements, additions and accessions to such assets and proceeds or distributions thereof;

(5) Liens securing obligations under sale leaseback transactions permitted by Section 6.4 covering only the assets subject to such transaction plus repairs, improvements, additions and accessions to such assets and proceeds or distributions thereof;

(6) Liens in favor of the Borrower or any of the Guarantors;

(7) Liens for taxes, assessments or governmental charges or claims that (x) are not yet delinquent or that are being contested in good faith by appropriate proceedings; provided that any reserve or other appropriate provision as is required in conformity with GAAP has been made therefor or (y) are immaterial;

(8) Liens imposed by law, such as carriers', warehousemen's, landlord's and mechanics', materialmen's, repairmen's, landlords' or other similar Liens, in each case, incurred in the ordinary course of business, securing obligations that are not overdue by more than 90 days or that are being contested in good faith by appropriate proceedings and in respect of which, if applicable, the Borrower or applicable Restricted Subsidiary shall have set aside on its books reserves in accordance with GAAP;

(9) survey exceptions, encumbrances, easements or reservations, including those for licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines, mineral reservations and rights and leases, zoning restrictions and other restrictions (including defects or irregularities in title and similar encumbrances that are not material to the operations of the Borrower and its Restricted Subsidiaries taken as a whole) as to the use of real property that were not incurred in connection with Indebtedness and that (A) exist on the Effective Date and are recorded on such date, (B) are permitted under the terms of the Loan Documents or (C) do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(10) Liens to secure any Permitted Refinancing Indebtedness permitted to be incurred under this Agreement if such Permitted Refinancing Indebtedness is incurred by one or more of the same obligors on the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded; provided, however, that:

(A) the new Lien shall be limited to all or part of the same categories of property and assets that secured or, under the written agreements pursuant to which the original Lien arose, could secure the original Lien (plus repairs, improvements, additions and accessions to such property or proceeds or distributions thereof); and

(B) the Indebtedness secured by the new Lien is not increased to any amount greater than the sum of (i) the outstanding principal amount or, if greater, committed amount of the Permitted Refinancing Indebtedness, (ii) an amount necessary to pay any interest, fees and expenses, including premiums, related to such refinancings, refunding, extension, renewal or replacement and (iii) any protective advances with respect to the property and assets that secure such Permitted Refinancing Indebtedness;

(11) financing statements (including precautionary statements) filed in connection with a Capital Lease Obligation or an operating lease, in each case, not prohibited hereunder; provided that no such financing statement extends to, covers or refers to as collateral any property or assets of the Borrower or a Restricted Subsidiary of the Borrower, other than the property or assets which are subject to such Capital Lease Obligation or such operating lease;

(12) Liens arising out of or in connection with (x) any judgment that does not constitute an Event of Default or (y) in connection with any litigation or other legal proceeding as to which an appeal to contest or review is timely commenced in good faith by appropriate proceedings and as to which adequate reserves have been established in accordance with GAAP; provided that (in the case of this clause (y)) any right to levy, seizure, attachment, sequestration, foreclosure or garnishment of any property and assets of the Borrower or a Restricted Subsidiary thereof arising out of or in connection with any such Lien has been and continues to be enjoined or effectively stayed;

(13) inchoate statutory Liens arising under ERISA;

(14) Liens (A) on cash and short-term investments (i) deposited by the Borrower or any of its Restricted Subsidiaries in margin accounts with or on behalf of futures contract brokers or paid over to other counterparties or (ii) pledged or deposited as collateral to a contract counterparty or issuer of surety bonds or letters of credit by the Borrower or any of its Restricted Subsidiaries, in the case of clause (i) or (ii), to secure obligations with respect to (a) contracts for commercial and trading activities in the ordinary course of business and contracts (including without limitation, physical delivery, option (whether cash or financial), exchange, swap and futures contracts) for the purchase, transmission, distribution, sale, lease or hedge of any energy-related commodity or service or (b) interest rate, commodity price, or currency rate management contracts or derivatives and (B) encumbering assets other than accounts or receivables arising out of contracts or agreements relating to the generation, distribution or transmission of energy; provided that all such agreements or contracts are entered into in the ordinary course of business;

(15) Liens arising by virtue of any statutory or common law provision relating to banker's liens, rights of setoff or similar rights, contractual rights of setoff or netting arrangements entered into in the ordinary course of business and similar rights with respect to deposit accounts, commodity accounts and/or securities accounts;

(16) pledges and deposits to secure the payment of worker's compensation, unemployment insurance, social security benefits or obligations under similar laws, or to secure the payment or performance of statutory or public obligations (including environmental, municipal and public utility commission obligations and requirements), reimbursement or indemnity obligations arising out of surety, performance, or other similar bonds, and other obligations of a like nature, in each case incurred in the ordinary course of business;

(17) Liens existing on the Effective Date;

(18) Liens not in respect of Indebtedness consisting of the interest of the lessor under any operating lease entered into in the ordinary course of business and not otherwise prohibited by this Agreement;

(19) Liens securing obligations under Swap Agreements and Cash Management Obligations permitted under this Agreement;

(20) Liens securing obligations with respect to contracts (other than for Indebtedness) for commercial and trading activities for the purchase, distribution, sale, lease or hedge of any energy-related commodity or service (including contracts and derivative financial instruments entered into with respect to electric energy or capacity, emissions allowances, fuel and other commodities);

(21) 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 Borrower or any of its Restricted Subsidiaries;

(22) any restrictions on any Equity Interest or undivided interests, as the case may be, of a Person providing for a breach, termination or default under any joint venture, stockholder, membership, limited liability company, partnership, owners', participation or other similar agreement between such Person and one or more other holders of Equity Interests or undivided interests of such Person, as the case may be, if a security interest or Lien is created on such Equity Interest or undivided interest, as the case may be, as a result thereof;

(23) any customary provisions limiting the disposition or distribution of assets or property (including without limitation Equity Interests) or any related restrictions thereon in joint venture, partnership, membership, stockholder and limited liability company agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements, including owners', participation or similar agreements governing projects owned through an undivided interest; provided, however, that any such limitation is applicable only to the assets that are the subjects of such agreements;

(24) Liens granted by a Person in favor of a commercial trading counterparty pursuant to a netting agreement, which Liens encumber rights under agreements that are subject to such netting agreement and which Liens secure such Person's obligations to such counterparty under such netting agreement; provided that any such agreements and netting agreements are entered into in the ordinary course of business; and provided, further, that the Liens are incurred in the ordinary course of business and when granted, do not secure obligations which are past due;

(25) [~~reserved~~Reserved];

(26) Permitted Counterparty Liens, which Liens shall rank *pari passu* to the Liens securing Parity Secured Obligations (although the Obligations securing such Permitted Counterparty Liens shall not constitute Parity Secured Obligations under this Agreement);

(27) Liens on the Equity Interests of Unrestricted Subsidiaries;

(28) [Reserved];

(29) [Reserved]; and

(30) Liens securing obligations that at the time of incurrence of any such Lien do not in the aggregate with any of Liens created pursuant to this clause (30) and outstanding at such time exceed the greater of (x) $40.0 million and (y) 2.0% of Total Assets.

For purposes of determining compliance with Section 6.2, in the event that a Permitted Lien meets the criteria of more than one of the types of Permitted Liens described in the above clauses, the Borrower, in its sole discretion, may order and classify, and from time to time may reorder and reclassify, such Permitted Lien if it would be permitted at the time of any such reclassification.

"Permitted Refinancing Indebtedness": any Indebtedness of the Borrower or any of its Restricted Subsidiaries issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund, other Indebtedness of the Borrower or any of its Restricted Subsidiaries (other than intercompany Indebtedness); provided that:

(1) the principal amount (or accreted value, if higher) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness extended, refinanced, renewed, replaced, defeased or refunded (plus (i) an amount equal to the any unutilized commitment relating to the Indebtedness being refinanced or otherwise then outstanding under the financing arrangement being refinanced to the extent the unutilized commitment being refinanced could be drawn in compliance with this Agreement immediately prior to such refinancing and (ii) all accrued interest on the Indebtedness and the amount of all expenses, costs and fees and premiums incurred in connection therewith);

(2) such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded;

(3) if the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is subordinated in right of payment to the Term Loans, such Permitted Refinancing Indebtedness is subordinated in right of payment to the Term Loans on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded, as reasonably determined by the Borrower or such Restricted Subsidiary;

(4) such Indebtedness is incurred by any of the Borrower or a Guarantor or any of the Restricted Subsidiaries of the Borrower who is the obligor on the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded; and

(5) (x) if incurred by the Borrower, such Indebtedness may be guaranteed by the Guarantors and (y) if incurred by a Guarantor, such Indebtedness may be guaranteed by the Borrower and the other Guarantors.

"Person": any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, joint venture, limited liability company, Governmental Authority or other entity of whatever nature.

"Plan": at a particular time, any employee benefit plan, other than a Multiemployer Plan, that is covered by Section 302 or Title IV of ERISA or Section 412 of the Code, and in respect of which the Borrower or a Commonly Controlled Entity is (or, if such plan were terminated at such time, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Platform": the meaning set forth in Section 9.2(b).

"Pledge and Security Agreement": that certain Amended and Restated Pledge and Security Agreement, dated as of the Effective Date (as amended, amended and restated, supplemented or otherwise modified from time to time), by and among the Borrower, the other Grantors from time to time party thereto and the Collateral Agent.

"Pledged Stock": as defined in the Pledge and Security Agreement.

"Post-Mergers Designated Holders": CEC and its Subsidiaries.

"PPA": an agreement (including a tolling agreement, fuel conversion services agreement or other similar agreement) entered into by the Borrower or any of its Restricted Subsidiaries for the sale of capacity or energy (and services ancillary or related thereto) from one or more of the Facilities.

"Pre-Mergers Designated Holders": Energy Capital Partners III, LP (together with its parallel funds and co-invest vehicles), Energy Capital Partners IV, LP (together with its parallel funds and co-invest vehicles), Access Industries Inc. (together with its parallel funds and co-invest vehicles), Canadian Pension Plan Investment Board (together with its parallel funds and co-invest vehicles) and the respective Affiliates of each of the foregoing (together with their respective parallel funds and co-invest vehicles).

"Prime Rate": the rate of interest per annum last quoted by The Wall Street Journal as the "Prime Rate" in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Any change in the Prime Rate shall take effect at the opening of business on the day such change is publicly announced or quoted as being effective. The Prime Rate is a reference rate and does not necessarily represent the lowest rate actually charged to any customer. The Administrative Agent may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

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

"Public Lender": the meaning set forth in Section 9.15.

"PUHCA 2005": the meaning set forth in Section 3.19.

"Qualified ECP Guarantor": in respect of any Swap Obligation, each Loan Party that has total assets exceeding $10.0 million at the time the relevant Guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation is incurred or such other person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Quarterly Payment Date": the last Business Day of each March, June, September and December of each year.

"Rating Event" the rating on the Term Loans is lowered by both of S&P and Moody's on any day within the 60-day period (which 60-day period will be extended so long as the rating of the Term Loans is under publicly announced consideration for a possible downgrade by either of such rating agencies) after the earlier of (1) the occurrence of a Change of Control and (2) public disclosure by the Borrower of the occurrence of a Change of Control or the Borrower's intention to effect a Change of Control; provided, however, that a Rating Event otherwise arising by virtue of a particular reduction in rating will not be deemed to have occurred in respect of a particular Change of Control (and thus will not be deemed a Rating Event for purposes of the definition of Change of Control triggering event) if such rating agencies making the reduction in rating to which this definition would otherwise apply do not announce or publicly confirm or inform the Administrative Agent in writing at the Borrower's or the Administrative Agent's request that the reduction was the result, in whole or in part, of any event or circumstance comprised of or arising as a result of, or in respect of, the applicable Change of Control (whether or not the applicable Change of Control has occurred at the time of the Rating Event).

"Refinancing": the meaning set forth in the recital hereto.

"Refinancing Credit Facility": the meaning set forth in Section 9.1(b) and shall include the Refinancing Term Loan Facility and the 2025 Refinancing Term Loan Facility.

"Refinancing Term Loan Commitment": the meaning provided for such term in Amendment No. 3. The aggregate amount of Refinancing Term Loan Commitments as of the Effective Date is $1,250,000,000.

"Refinancing Term Loan Facility": the facility under which the Refinancing Term B Loans are made available on the Effective Date pursuant to Amendment No. 3.

"Refinancing Term Loan Lender": at any time, any Lender that has a Refinancing Term Loan Commitment or a Refinancing Term B Loan at such time.

"Refinancing Term B Loan": a Loan made pursuant to Section 2.1(b).

"Refinancing Term B Termination Date": July 31, 2030.

"Register": the meaning set forth in Section 9.6(b)(iv).

"Regulation U": Regulation U of the Board of Governors as in effect from time to time.

"Related Persons": with respect to any Indemnitee, any Affiliate of such Indemnitee and any officer, director, employee, representative or agent of such Indemnitee or Affiliate thereof, in each case that has provided any services in connection with the transactions contemplated under this Agreement and the other Loan Documents.

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

"Reportable Event": any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than those events as to which the thirty (30) day notice period is waived under any regulation promulgated by the PBGC.

"Repricing Transaction": the prepayment (excluding, for the avoidance of doubt, (x) regularly scheduled amortization payments and (y) any prepayments under Section 2.14) or refinancing of all or a portion of the 2025 Refinancing Term B Loans with the incurrence by any Loan Party of any long-term senior secured syndicated term loan bank debt financing (excluding intercompany loans and obligations among the Borrower and its Subsidiaries) having an effective weighted average yield (with the comparative determinations to be made by the Administrative Agent consistent with generally accepted financial practices, after giving effect to, among other factors, margin, interest rate floors, upfront or similar fee or "original issue discount" shared with all lenders of such loans or 2025 Refinancing Term B Loans, as the case may be, but excluding the effect of any arrangement, structuring, syndication or other fees payable in connection therewith whether or not shared with all lenders of such loan or 2025 Refinancing Term B Loans, as the case may be, and without taking into account any fluctuations in Term SOFR) that is less than the weighted average yield (as determined by the Administrative Agent on the same basis) of the 2025 Refinancing Term B Loans, including without limitation, as may be effected through any amendment to this Agreement relating to the interest rate for, or weighted average yield of, the 2025 Refinancing Term B Loans, but excluding any prepayment or amendment in connection with any Change of Control or Transformative Acquisition.

"Required Incremental Lenders": at any time for any series of Incremental Term Loans, Lenders holding more than 50% of the aggregate unpaid principal amount of such series of Incremental Term Loans then outstanding.

"Required Lenders": at any time, Lenders holding more than 50% of the aggregate unpaid principal amount of the Term Loans then outstanding.

"Required Refinancing Term B Lenders": at any time, Lenders holding more than 50% of the aggregate unpaid principal amount of the 2025 Refinancing Term B Loans then outstanding.

"Required Term B Lenders": at any time, Lenders holding more than 50% of the aggregate unpaid principal amount of the Term B Loans then outstanding.

"Requirement of Law": as to any Person, the certificate of incorporation and by-laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

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

"Responsible Officer": the chief executive officer, the president, any executive vice president or a Financial Officer of the Borrower, but in any event, with respect to financial matters, a Financial Officer of the Borrower.

"Restricted Payment": the meaning set forth in Section 6.9.

"Restricted Subsidiary": of a Person means any Subsidiary of the referent Person that is not an Unrestricted Subsidiary.

"Restructuring Costs": costs incurred by the Borrower or any of its Restricted Subsidiaries in connection with the reorganization or restructuring of its and/or any of its Restricted Subsidiaries' businesses, operations and/or structure in respect of (a) the implementation of operational initiatives, (b) plant closures, plant "moth-balling" or consolidation, relocation or elimination of offices operations and/or termination of leases, (c) related severance costs and other costs incurred in connection with the termination, relocation and training of employees and (d) legal, consulting, employee retention and other advisor fees incurred in connection with the foregoing.

"S&P": S&P Global Ratings (a division of S&P Global Inc.), or its successor.

"Sanctioned Country": at any time, a country, region or territory which is itself the subject or target of any Sanctions (as of the Effective Date, Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine, the so-called Luhansk People's Republic, the so-called Donetsk People's Republic and the nongovernment controlled Zaporizhzhia and Kherson regions of Ukraine).

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

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

"SEC": the Securities and Exchange Commission, any successor thereto and any analogous Governmental Authority.

"Secured Cash Management Agreement": a Cash Management Agreement between a Loan Party and a Cash Management Bank.

"Secured Debt Representative": with respect to any series of Parity Secured Debt, the trustee, administrative agent, collateral agent, or similar agent under the indenture, credit agreement or other agreement pursuant to which such Parity Secured Debt is incurred.

"Secured Parties": collectively, the Administrative Agent, the Collateral Agent, the Arrangers, the Lenders, the Hedge Bank in respect of Secured Swap Agreements and the Cash Management Banks in respect of Secured Cash Management Agreements.

"Secured Obligations": collectively, (a) the Obligations, (b) the due and punctual payment and performance of all obligations of Borrower and the other Loan Parties under each Secured Swap Agreement entered into with any counterparty that is a Hedge Bank and (c) the due and punctual payment and performance of all obligations of Borrower and the other Loan Parties (including overdrafts and related liabilities) under each Secured Cash Management Agreement entered into with any counterparty that is a Cash Management Bank; provided that Excluded Swap Obligations shall not be a Secured Obligation of any Guarantor that is not a Qualified ECP Guarantor.

"Secured Swap Agreement": a Swap Agreement between a Loan Party and a Hedge Bank permitted under this Agreement.

"Security Documents": the Pledge and Security Agreement, the Mortgages, the Partnership Interest Pledge Agreement, and all other security agreements, pledge agreements, control agreements, collateral assignments, mortgages, deed of trusts or other grants or transfers for security or agreements related thereto executed and delivered by the Borrower or any Guarantor creating (or purporting to create) a Lien upon Collateral in favor of the Collateral Agent to secure the Secured Obligations, in each case, as amended, modified, renewed, restated or replaced, in whole or in part, from time to time.

"Significant Subsidiary": any Restricted Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Exchange Act, as such Regulation is in effect on the date of this Agreement.

"SOFR": a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

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

"SOFR Borrowing": as to any Borrowing, the Term SOFR Loans comprising such Borrowing.

"Solvent": when used with respect to any Person and its Subsidiaries, means that, as of any date of determination, (a) the amount of the "present fair saleable value" of the assets of such Person and its Subsidiaries on a consolidated basis will, as of such date, exceed the amount of all "liabilities of such Person and its Subsidiaries on a consolidated basis, contingent or otherwise", as of such date, as such quoted terms are determined in accordance with applicable federal and state laws governing determinations of the insolvency of debtors, (b) the present fair saleable value of the assets of such Person and its Subsidiaries will, as of such date, be greater than the amount that will be required to pay the probable liability of such Person and its Subsidiaries on a consolidated basis on its debts as such debts become absolute and matured, (c) such Person and its Subsidiaries on a consolidated basis will not have, as of such date, an unreasonably small amount of capital with which to conduct their business, and (d) such Person and its Subsidiaries will be able to pay their debts as they mature. For purposes of this definition, (i) "debt" means liability on a "claim", and (ii) "claim" means any (x) right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (y) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured or unmatured, disputed, undisputed, secured or unsecured.

"Stated Maturity": (i) in the case of the 2025 Refinancing Term B Loans, the 2025 Refinancing Term B Termination Date and (ii) in the case of Incremental Term Loans of any series, the final maturity date for such series of Incremental Term Loans; provided that, with respect to any tranche of Extended Term Loans, the Stated Maturity with respect thereto shall instead be the final maturity date as specified in the applicable Extension Offer accepted by the respective Lender.

"Subsidiary": with respect to any specified Person:

(1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, 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).

"Swap Agreements": any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions (whether or not any such agreement is governed by or subject to any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement or any other similar master agreement (any such master agreement, together with any related schedules, a "Master Agreement")); provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or any of its Subsidiaries shall be a "Swap Agreement."

"Swap Obligation": with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"Taxes": all present or future taxes, levies, imposts, duties, deductions, charges, assessments, fees, withholdings or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term B Commitment": with respect to each Lender, the obligation of such Lender, if any, to make Initial Term B Loans in an aggregate principal amount not to exceed the amount set forth opposite its name on Schedule 1.1A annexed to the Existing Credit Agreement under the heading "Term B Commitment Amounts".

"Term B Lender": at any time, (a) on or prior to the Original Closing Date, any Lender that had an Initial Term B Commitment at such time and (b) at any time after the Original Closing Date, any Lender that holds Initial Term B Loans at such time.

"Term B Loans": an Initial Term B Loan ~~or a~~, Refinancing Term B Loan or a 2025 Refinancing Term B Loan, as applicable.

"Term B-5 Term Loan": the term loans outstanding under the Credit Agreement, dated as of May 28, 2015 (as amended by that certain Amendment No. 1, dated as of December 21, 2016, as amended by that certain Amendment No. 2, dated as of December 11, 2017, as amended by that certain Amendment No. 3, dated as of December 20, 2019, as amended by that certain Amendment No. 4, dated as of December 16, 2020 and as amended by that certain Amendment No. 5 dated July 1, 2023.

"Term B Percentage": as to any Lender at any time, the percentage which such Lender's 2025 Refinancing Term Loan Commitment then constitutes of the aggregate 2025 Refinancing Term Loan Commitments (or, at any time after the making of the 2025 Refinancing Terms B Loans on the Amendment No. 5 Effective Date, the percentage which the aggregate principal amount of such Lender's 2025 Refinancing Term B Loans then outstanding constitutes of the aggregate principal amount of all 2025 Refinancing Term B Loans then outstanding).

"Term Commitments": Term B Commitments, Refinancing Term Loan Commitments, 2025 Refinancing Term Loan Commitments and Incremental Commitments.

"Term Loans": collectively, the Term B Loans, the Refinancing Term B Loans, the 2025 Refinancing Term B Loans and, if applicable, the Incremental Term Loans.

"Term Percentage": as to any Lender at any time, the percentage which such Lender's Term Commitment then constitutes of the aggregate Term Commitments (or, at any time after the making of the Terms Loans on the Effective Date, the percentage which the aggregate principal amount of such Lender's Term Loans then outstanding constitutes of the aggregate principal amount of all Term Loans then outstanding).

"Term SOFR":

(a) for any calculation with respect to a Term SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the "Periodic Term SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to a Base Rate Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the "Base Rate Term SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Base Rate Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Base Rate Term SOFR Determination Day;

provided, further, that if Term SOFR determined as provided above (including pursuant to the proviso under clause (a) or clause (b) above) shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

"Term SOFR Administrator": CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

"Term SOFR Loan": a Loan that bears interest at a rate based on Term SOFR other than pursuant to clause (c) of the definition of "Base Rate".

"Term SOFR Reference Rate": the forward-looking term rate based on SOFR.

"Termination Date": the earlier to occur of (a) the Stated Maturity and (b) the acceleration of any Term Loans. In the event that one or more Extensions are effected in accordance with Section 2.27, then the Termination Date of each tranche of Term Loans shall be determined based on the respective Stated Maturity applicable thereto (except in cases where clause (b) of the preceding sentence is applicable).

"Title Insurance Company": Stewart Title Insurance Company, or such other title insurance company as shall be reasonably acceptable to the Administrative Agent.

"Total Assets": the total assets of the Borrower and its Restricted Subsidiaries on a consolidated basis, as shown on the Borrower's most recent internally available balance sheet, as may be expressly stated.

"Total Debt": as of any date of determination, the remainder of (A) the aggregate principal amount of Indebtedness of the Borrower and its Restricted Subsidiaries outstanding on such date, determined on a consolidated basis, but only to the extent required to be recorded on a balance sheet, in accordance with GAAP, consisting of Indebtedness for borrowed money, Capital Lease Obligations and debt obligations evidenced by promissory notes or similar instruments, less (B) the aggregate amount of all cash and Cash Equivalents (whether or not restricted) held by the Borrower and its Restricted Subsidiaries as of such date.

"tranche": the meaning set forth in Section 2.27(a).

"Transferee": any Assignee or Participant.

"Transformative Acquisition": any acquisition or Investment by the Borrower or any of its Restricted Subsidiaries that (i) is not permitted by the terms of the Loan Documents immediately prior to the consummation of such acquisition or Investment or (ii) if permitted by the terms of this Agreement immediately prior to the consummation of such acquisition or Investment, would not provide the Borrower and its Restricted Subsidiaries with adequate flexibility under this Agreement for the continuation and/or expansion of their combined operations following such consummation, as determined by the Borrower acting in good faith.

"UK Financial Institution": any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority": the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Unadjusted Benchmark Replacement": the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

"United States": the United States of America.

"Unrestricted Subsidiary": any Subsidiary of the Borrower or any successor to the Borrower that is designated by the Board of Directors of the Borrower as an Unrestricted Subsidiary pursuant to a board resolution (and any Subsidiary thereof), but only to the extent that such Subsidiary:

(1) has no Indebtedness other than Indebtedness that is Non-Recourse to the Borrower and its Restricted Subsidiaries;

(2) is not party to any agreement, contract, arrangement or understanding with the Borrower or any Restricted Subsidiary of the Borrower unless the terms of any such agreement, contract, arrangement or understanding are no less favorable to the Borrower or such Restricted Subsidiary in any material respect than those that might be obtained at the time from Persons who are not Affiliates of the Borrower; and

(3) is a Person with respect to which neither the Borrower nor any of its Restricted Subsidiaries has any direct or indirect obligation (A) to subscribe for additional Equity Interests or (B) to maintain or preserve such Person's financial condition or to cause such Person to achieve any specified levels of operating results.

Any designation of a Subsidiary of the Borrower as an Unrestricted Subsidiary will be evidenced to the Administrative Agent by delivering to the Administrative Agent a certified copy of the resolution of the Board of Directors of the Borrower giving effect to such designation and an officer's certificate of a Responsible Officer certifying that such designation complied with the preceding conditions and was permitted by Section 6.9. If, at any time, any Unrestricted Subsidiary would fail to meet the preceding requirements as an Unrestricted Subsidiary, it will thereafter cease to be an Unrestricted Subsidiary for purposes of this Agreement and any Indebtedness of such Subsidiary will be deemed to be incurred by a Restricted Subsidiary of the Borrower as of such date and, if such Indebtedness is not permitted to be incurred as of such date in Section 6.1 the Borrower will be in default of such covenant. The Board of Directors of the Borrower may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary of the Borrower; provided that such designation will be deemed to be an incurrence of Indebtedness by a Restricted Subsidiary of the Borrower of any outstanding Indebtedness of such Unrestricted Subsidiary and such designation will only be permitted if (1) such Indebtedness is permitted under Section 6.1, calculated on a *pro forma* basis as if such designation had occurred at the beginning of the four-quarter reference period; and (2) no Default or Event of Default would be in existence following such designation.

"Upgrades": the development and implementation of the FD 3 upgrade to the combustion turbines of any Facility and all activities directly related thereto.

"U.S. Government Securities Business Day": any day except for (a) Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"Voting Stock": of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

"Weighted Average Life to Maturity": when applied to any Indebtedness at any date, the number of years obtained by dividing:

(1) the sum of the products obtained by multiplying (A) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect of the Indebtedness, by (B) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by

(2) the then outstanding principal amount of such Indebtedness.

"Wholly-Owned Domestic Subsidiary": a Domestic Subsidiary that is a Wholly-Owned Subsidiary of any Person.

"Wholly-Owned Subsidiary": of any Person means a Restricted Subsidiary of such Person, 100% of the outstanding Equity Interests of which (other than directors' qualifying shares) shall at the time be owned by such Person or by one or more Wholly-Owned Subsidiaries of such Person.

"Write-Down and Conversion Powers": with respect to any (a) EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.2. Other Definitional Provisions.

(a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in the other Loan Documents or any certificate or other document made or delivered pursuant hereto or thereto.

(b) As used herein and in the other Loan Documents, and any certificate or other document made or delivered pursuant hereto or thereto, (i) the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation," (ii) the word "incur" shall be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words "incurred" and "incurrence" shall have correlative meanings) and (iii) 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, Capital Stock, securities, revenues, accounts, leasehold interests and contract rights.

(c) The words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms. Whenever the context may required, any pronoun shall include the corresponding masculine, feminine and neuter forms. References to agreements or other Contractual Obligations shall, unless otherwise specified, be deemed to refer to such agreements or Contractual Obligations as amended, supplemented, restated or otherwise modified from time to time to the extent permitted herein.

Except as otherwise provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP; provided that if the Borrower, by notice to the Administrative Agent, shall request an amendment to any provision hereof to eliminate the effect of any change occurring after the Effective Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent at the direction of the Required Lenders, by notice to the Borrower, shall request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

1.3. Delivery of Notices or Receivables. Any reference to a delivery or notice date that is not a Business Day shall be deemed to mean the next succeeding day that is a Business Day.

1.4 Fixed Amounts and Incurrence-Based Amounts. Notwithstanding anything to the contrary herein, with respect to any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement that does not require compliance with a financial ratio or test (including, without limitation, the Consolidated Senior Secured Leverage Ratio and the Fixed Charge Coverage Ratio) (any such amounts, the "Fixed Amounts") substantially concurrently with any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement that requires compliance with any such financial ratio or test (any such amounts, the "**Incurrence -Based Amounts**"), it is understood and agreed that any Fixed Amount (and any cash proceeds thereof) shall be disregarded in the calculation of the financial ratio or test applicable to the relevant Incurrence-Based Amount in connection with such substantially concurrent incurrence.

1.5 Rates. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Base Rate, the Term SOFR Reference Rate or Term SOFR or any other Benchmark, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Base Rate, the Term SOFR Reference Rate, Term SOFR, or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Base Rate, the Term SOFR Reference Rate, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Base Rate, the Term SOFR Reference Rate, Term SOFR, or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

1.6 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

SECTION 2

Amount and Terms of Loans and Commitments

2.1. Term B Commitments.

(a) Subject to the terms and conditions hereof, each Term B Lender severally agrees to make a term loan (an "Initial Term B Loan") to the Borrower on the Original Closing Date in an amount equal to the amount of the Term B Commitment of such Lender. The Term B Loans may from time to time be Term SOFR Loans or Base Rate Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.2 and 2.15. The Term B Commitments automatically terminated upon the borrowing of the Term B Loans on the Original Closing Date.

(b) Subject to the terms and conditions hereof, each Refinancing Term Loan Lender severally agrees to make a Refinancing Term B Loan to the Borrower on the Effective Date in an amount equal to the amount of the Refinancing Term Loan Commitment of such Lender. The Refinancing Term B Loans may from time to time be Term SOFR Loans or Base Rate Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.2 and 2.15. The Refinancing Term Loan Commitments shall automatically terminate upon the borrowing of the Refinancing Term B Loans on the Effective Date.

(c) Subject to the terms and conditions hereof, each 2025 Refinancing Term Loan Lender severally agrees to make a 2025 Refinancing Term B Loan to the Borrower on the Amendment No. 5 Effective Date in an amount equal to the amount of the 2025 Refinancing Term Loan Commitment of such Lender. The 2025 Refinancing Term B Loans may from time to time be Term SOFR Loans or Base Rate Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.2 and 2.15. The 2025 Refinancing Term Loan Commitments shall automatically terminate upon the borrowing of the 2025 Refinancing Term B Loans on the Amendment No. 5 Effective Date.

2.2. Procedure for Term Loan Borrowing. The Borrower shall give the Administrative Agent irrevocable notice substantially in the form of Exhibit B hereto (which notice must be received by the Administrative Agent prior to 12:00 Noon, New York City time, (a) three (3) U.S. Government Securities Business Days prior to the requested Borrowing Date (or such shorter period as may be agreed to by the Administrative Agent), in the case of Term SOFR Loans or (b) on the requested Borrowing Date, in the case of Base Rate Loans, in either case, requesting that the applicable Lenders make the applicable Term Loans on the Effective Date (or, in the case of Incremental Term Loans, the funding date thereon) and specifying the amount to be borrowed for each such Term Loans); provided, however, with respect to Incremental Term Loans, the Administrative Agent may agree in its reasonable discretion that any such notice may be revocable by the Borrower and may shorten the time periods set forth above for incurring such Incremental Term Loans. Upon receipt of such notice the Administrative Agent shall promptly notify each applicable Lender thereof. Not later than 12:00 Noon, New York City time, on the Effective Date (or, in the case of Incremental Term Loans, the funding date thereon), each Lender shall make available to the Administrative Agent at the Funding Office an amount in immediately available funds equal to the Term Loan or Term Loans to be made by such Lender. The Administrative Agent shall make the proceeds of such Term Loan or Term Loans available to the Borrower on the Borrowing Date by wire transfer in immediately available funds to a bank account designated in writing by the Borrower to the Administrative Agent.

2.3. [Reserved].

2.4. [Reserved].

2.5. [Reserved].

2.6. [Reserved].

2.7. [Reserved].

2.8. Repayment of Loans; Evidence of Debt.

(a) The remaining unpaid principal amount of the 2025 Refinancing Term B Loans and all other Obligations under or in respect of the 2025 Refinancing Term B Loans shall be due and payable in full, if not earlier in accordance with this Agreement, on the Termination Date for the 2025 Refinancing Term B Loans. The Borrower hereby further agrees to pay interest on the unpaid principal amount of the 2025 Refinancing Term B Loans from time to time outstanding from the date hereof until payment in full thereof at the rates per annum, and on the dates, set forth in Section 2.9.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing Indebtedness of the Borrower to such Lender resulting from each Term Loan of such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(c) The Administrative Agent shall, in respect of this Agreement, record in the Register, with separate sub-accounts for each Lender, (i) the amount and Borrowing Date of each Term Loan made hereunder, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) both the amount of any payment received by the Administrative Agent hereunder from the Borrower and each Lender's Term B Percentage or Incremental Term Percentage, as applicable, thereof.

(d) The entries made in the Register and the accounts of each Lender maintained pursuant to Sections 2.8(b) and (c) shall, to the extent permitted by applicable law, be prima facie evidence of the existence and amounts of the obligations of the Borrower therein recorded absent manifest error; provided, however, that the failure of any Lender or the Administrative Agent to maintain the Register or any such account, or any error therein, shall not in any manner affect the obligation of the Borrower to repay (with applicable interest) the Term Loans made to the Borrower by such Lender in accordance with the terms of this Agreement.

(e) If so requested after the Effective Date by any Lender by written notice to the Borrower (with a copy to the Administrative Agent), the Borrower will execute and deliver to such Lender, promptly after the Borrower's receipt of such notice, a Note to evidence such Lender's Term Loans in form and substance reasonably satisfactory to the Administrative Agent and the Borrower.

2.9. Interest Rates and Payment Dates.

(a) Each Term SOFR Loan shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to Term SOFR determined for such Interest Period *plus* the Applicable Margin.

(b) Each Base Rate Loan shall bear interest at a rate per annum equal to the Base Rate from time to time *plus* the Applicable Margin.

(c) Notwithstanding the foregoing, upon the occurrence and during the continuance of an Event of Default under Section 7.1(a) or (b) or at any time after the date on which any principal amount of any Term Loan is due and payable (whether on the maturity date therefor, upon acceleration or otherwise), and, in each case, for so long as such overdue Obligation remains unpaid, the Borrower shall pay, but only to the extent permitted by law, interest (after as well as before judgment) on such unpaid overdue amounts at a rate per annum equal to (a) in the case of overdue principal on any Term Loan, the rate of interest that otherwise would be applicable to such Term Loan plus 2% per annum and (b) in the case of overdue interest, fees, and other monetary Obligations, the rate then applicable to Base Rate Loans *plus* 2% per annum.

(d) Interest shall be payable in arrears on each Interest Payment Date; provided that interest accruing pursuant to paragraph (c) of this Section 2.9 shall be payable from time to time on demand.

(e) The provisions of this Section 2.9 (and the interest rates applicable to various extensions of credit hereunder) shall be subject to modification as expressly provided in Section 2.27.

(f) Term SOFR Conforming Changes. In connection with the use or administration of Term SOFR, the Administrative Agent will have the right, in consultation with the Borrower, to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Administrative Agent will promptly notify the Borrower and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of Term SOFR.

2.10. Computation of Interest and Fees.

(a) Interest and fees payable pursuant hereto shall be calculated on the basis of a 360-day year for the actual days elapsed, except that, with respect to Base Rate Loans, the interest thereon shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed. The Administrative Agent shall as soon as practicable notify the Borrower and the Lenders of each determination of Term SOFR. Any change in the interest rate on a Term Loan resulting from a change in the Base Rate shall become effective as of the opening of business on the day on which such change becomes effective. The Administrative Agent shall as soon as practicable notify the Borrower and the Lenders of the effective date and the amount of each such change in interest rate.

(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error. The Administrative Agent shall, at the request of the Borrower, deliver to the Borrower a statement showing the quotations used by the Administrative Agent in determining any interest rate hereunder.

2.11. Inability to Determine Interest Rate; Benchmark Replacement Setting.

(a) If prior to the first day of any Interest Period:

(i) the Administrative Agent shall have reasonably determined (which determination shall be conclusive and binding upon the Borrower) that, by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining Term SOFR for such Interest Period, or

(ii) the Administrative Agent shall have received notice from the Required Lenders that Term SOFR determined or to be determined for such Interest Period in good faith by such Required Lenders will not adequately and fairly reflect the cost to such Lenders (as conclusively certified by such Lenders) of making or maintaining their affected Term Loans during such Interest Period,

(b) the Administrative Agent shall give telecopy or telephonic notice thereof to the Borrower and the relevant Lenders as soon as practicable thereafter. If such notice is given, (x) any Term SOFR Loans hereunder requested to be made on the first day of such Interest Period shall be made as Base Rate Loans, (y) any Term Loans hereunder that were to have been converted on the first day of such Interest Period to Term SOFR Loans shall be continued as Base Rate Loans and (z) any outstanding Term SOFR Loans hereunder shall be converted, on the last day of the then-current Interest Period, to Base Rate Loans; provided that if the circumstances giving rise to such notice shall cease or otherwise become inapplicable to such Required Lenders, then such Required Lenders shall promptly give notice of such change in circumstances to the Administrative Agent and the Borrower. Until such notice has been withdrawn by the Administrative Agent, no further Term SOFR Loans hereunder shall be made or continued as such, nor shall the Borrower have the right to convert Term Loans hereunder to Term SOFR Loans.

(c) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event, the Administrative Agent and the Borrower may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date that the Administrative Agent has posted such proposed amendment to all affected Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 2.11(c) will occur prior to the applicable Benchmark Transition Start Date.

(d) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(e) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will promptly notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.11(e) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.11, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.11.

(f) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Administrative Agent may in its reasonable discretion modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may in its reasonable discretion modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(g) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, (i) the Borrower may revoke any pending request for a SOFR Borrowing of, conversion to or continuation of Term SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans and (ii) any outstanding affected Term SOFR Loans will be deemed to have been converted to Base Rate Loans at the end of the applicable Interest Period. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate.[Reserved].

2.13. Optional Prepayment of Loans; Repricing Transaction.

(a) Subject to the provisos below, the Borrower may at any time and from time to time prepay either the Term B Loans or any series of Incremental Term Loans, in whole or in part, without premium or penalty, upon irrevocable notice (except as otherwise permitted below) delivered to the Administrative Agent prior to 10:00 A.M., New York City time, one (1) Business Day prior to the date of prepayment, which notice shall specify the date and amount of prepayment and whether the prepayment is (i) of Term SOFR Loans or Base Rate Loans or a combination thereof, and if a combination thereof, the amount allocable to each and (ii) whether the repayment is of the Term B Loans or Incremental Term Loans of a given series or a combination thereof, and if a combination thereof, the amount allocable to each. Upon receipt of any such notice of prepayment, the Administrative Agent shall notify each relevant Lender thereof on the date of receipt of such notice. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein, together with (except in the case of prepayments of Term Loans maintained as Base Rate Loans) accrued interest to such date on the amount prepaid. Partial prepayments shall be in an aggregate principal amount of $1,000,000 or a whole multiple of $100,000 in excess thereof (or, if less, the then outstanding principal amount of Term B Loans or any series of Incremental Term Loans, as applicable). The application of any prepayment pursuant to this Section 2.13(a) shall be made, first, to Base Rate Loans of the respective Lenders (and of the respective tranche, if there are multiple tranches) and, second, to Term SOFR Loans of the respective Lenders (and of the respective tranche, if there are multiple tranches). Any prepayments of Term Loans pursuant to this Section 2.13(a) shall be applied to the remaining scheduled installments of the Term B Loans or any series of Incremental Term Loan, as applicable, as directed by the Borrower. A notice of prepayment of all outstanding Term B Loans or any series of Incremental Term Loans, as applicable, pursuant to this Section 2.13(a) may state that such notice is conditioned upon the effectiveness of other credit facilities the proceeds of which will be used to refinance in full this Agreement, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied.

(b) At the time of the effectiveness of any Repricing Transaction that (x) results in any prepayment of 2025 Refinancing Term B Loans, or (y) effects any amendment of this Agreement resulting in a Repricing Transaction with respect to 2025 Refinancing Term B Loans and (in either case) is consummated prior to ~~December 6~~May 18, ~~2024~~2026, the Borrower agrees to pay to the Administrative Agent, for the ratable account of each applicable 2025 Refinancing Term Loan Lender, a fee in an amount equal to, without duplication, (I) in the case of preceding clause (x), a prepayment premium of 1% of the principal amount of the 2025 Refinancing Term B Loans being prepaid and (II) in the case of preceding clause (y), a payment equal to 1% of the aggregate amount of the applicable 2025 Refinancing Term B Loans outstanding immediately prior to such amendment and subject to such Repricing Transaction.

2.14. Prepayment Offers.

(a) Upon the occurrence of a Change of Control Triggering Event, the Borrower shall make an offer to prepay the entire principal amount of all outstanding Term Loans (the "Change of Control Prepayment Offer") at 101% of the aggregate principal amount thereof and the Borrower shall notify the Administrative Agent in writing of the Change of Control Prepayment Offer in writing within thirty (30) days after the date of such Change of Control Triggering Event. Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the amount of such prepayment and include the payment date, which shall be no earlier than thirty (30) days and no later than sixty (60) days from the date of such notice is mailed (the "Change of Control Payment Date"). The Administrative Agent will promptly notify each relevant Lender of the contents of any such prepayment notice and of such Lender's *pro rata* share of the prepayment. Any Lender may elect, by delivering not less than three (3) U.S. Government Securities Business Days prior to the Change of Control Payment Date, a written notice (such notice, an "Acceptance Notice") that any change of control prepayment be made with respect to all or any portion of the Term Loans held by such Lender pursuant to this Section 2.14(a). If a Lender fails to deliver an Acceptance Notice within the time frame specified above, any such failure will be deemed a rejection of the Change of Control Prepayment Offer as to all outstanding Term Loans of such Lender. Any prepayment of Term Loans pursuant to this Section 2.14(a) shall be applied to the remaining scheduled installments of such Term Loans as directed by the Borrower.

(b) If, pursuant to Section 6.8, the Borrower shall be required to commence an Asset Sale Offer, the Borrower shall notify the Administrative Agent in writing of the Asset Sale Offer in writing within thirty (30) days after the date of such Asset Sale. Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the amount of such prepayment and include the payment date, which shall be no earlier than thirty (30) days and no later than sixty (60) days from the date of such notice is mailed (the "Asset Sale Payment Date"). The Administrative Agent will promptly notify each relevant Lender of the contents of any such prepayment notice and of such Lender's *pro rata* share of the prepayment. Any Lender may elect, by delivering not less than three (3) Business Days prior to the Asset Sale Payment Date, a written notice (such notice, a "Acceptance Notice") that any prepayment be made with respect to all or any portion of the Term Loans held by such Lender pursuant to this Section 2.14(b). If a Lender fails to deliver an Acceptance Notice within the time frame specified above, any such failure will be deemed a rejection of the Asset Sale Offer as to all outstanding Term Loans of such Lender. Any prepayment of Term Loans pursuant to this Section 2.14(b) shall be applied to the remaining scheduled installments of such Term Loans as directed by the Borrower.

2.15. Conversion and Continuation Options.

(a) The Borrower may elect from time to time to convert Term SOFR Loans to Base Rate Loans by giving the Administrative Agent prior irrevocable notice, in substantially the form attached hereto as Exhibit F, of such election no later than 12:00 Noon, New York City time, on the Business Day preceding the proposed conversion date, provided that any such conversion of Term SOFR Loans may only be made on the last day of an Interest Period with respect thereto. The Borrower may elect from time to time to convert Base Rate Loans to Term SOFR Loans by giving the Administrative Agent prior irrevocable notice of such election no later than 12:00 Noon, New York City time, on the third (3rd) U.S. Government Securities Business Day preceding the proposed conversion date (which notice shall specify the length of the initial Interest Period therefor), provided that no Base Rate Loan may be converted into a Term SOFR Loan when any Event of Default has occurred and is continuing and the Required Lenders have determined in its or their sole discretion, by written notice to the Administrative Agent and the Borrower, not to permit such conversions. Upon receipt of any such notice, the Administrative Agent shall promptly notify each relevant Lender thereof.

(b) Any Term SOFR Loan may be continued as such upon the expiration of the then current Interest Period with respect thereto by the Borrower giving irrevocable notice to the Administrative Agent, in substantially the form attached hereto as Exhibit F, in accordance with the applicable provisions of the term "Interest Period" set forth in Section 1.1, of the length of the next Interest Period to be applicable to such Term Loans, provided that no Term SOFR Loan may be continued as such when any Event of Default has occurred and is continuing and the Required Lenders have determined in its or their sole discretion, by written notice to the Administrative Agent and the Borrower, not to permit such continuations; and provided, further, that if the Borrower shall fail to give any required notice as described above in this paragraph or if such continuation is not permitted pursuant to the preceding proviso such Term SOFR Loans shall be automatically converted to Base Rate Loans on the last day of such then expiring Interest Period. Upon receipt of any such notice, the Administrative Agent shall promptly notify each relevant Lender thereof.

2.16. Limitations on Term SOFR Tranches. Notwithstanding anything to the contrary in this Agreement, all borrowings, conversions and continuations of Term SOFR Loans and all selections of Interest Periods shall be in such amounts and be made pursuant to such elections so that, (i) after giving effect thereto, the aggregate principal amount of the Term SOFR Loans comprising each tranche of Term SOFR Loans shall be equal to $5,000,000 or a whole multiple of $500,000 in excess thereof and (ii) no more than ten different Interest Periods for any tranche of Term Loans be outstanding at any one time (unless a greater number of Interest Periods is permitted by the Administrative Agent).

2.17. Pro Rata Treatment, etc.

(a) Except as otherwise provided herein (including Section 2.27), each Borrowing by the Borrower from the Lenders hereunder shall be made *pro rata* according to the Term B Percentages or applicable Incremental Term Percentages, as applicable, of the relevant Lenders.

(b) Except as otherwise provided herein (including Sections 2.14, 2.27, 2.28 and 9.6(f)), each payment (including each prepayment) by the Borrower on account of principal or interest on each tranche of Term Loans shall be made *pro rata* according to the respective outstanding principal amounts of the Term B Loans or any series of Incremental Term Loans, as applicable, then held by the applicable Lenders.

(c) All payments by the Borrower hereunder and under any Notes shall be made in Dollars in immediately available funds at the Funding Office of the Administrative Agent by 2:00 P.M., New York City time, on the date on which such payment shall be due, provided that if any payment hereunder would become due and payable on a day other than a Business Day such payment shall become due and payable on the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension. Interest in respect of any Term Loan hereunder shall accrue from and including the date of such Term Loan to but excluding the date on which such Term Loan is paid in full.

(d) Unless the Administrative Agent shall have been notified in writing by any Lender prior to a Borrowing that such Lender will not make the amount that would constitute its share of such Borrowing available to the Administrative Agent, the Administrative Agent may assume that such Lender is making such amount available to the Administrative Agent and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower a corresponding amount. If such amount is not made available to the Administrative Agent by the required time on the Borrowing Date therefor, such Lender shall pay to the Administrative Agent on demand, such amount with interest thereon, at a rate per annum equal to the greater of (i) the Federal Funds Effective Rate and (ii) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, for the period until such Lender makes such amount immediately available to the Administrative Agent. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this paragraph shall be conclusive in the absence of manifest error. If such Lender's share of such borrowing is not made available to the Administrative Agent by such Lender within three (3) Business Days after such Borrowing Date, the Administrative Agent shall also be entitled to recover such amount with interest thereon at the rate per annum applicable to Base Rate Loans under this Agreement, on demand, from the Borrower, such recovery to be without prejudice to the rights of the Borrower against any such Lender.

(e) Unless the Administrative Agent shall have been notified in writing by the Borrower prior to the date of any payment due to be made by the Borrower hereunder that the Borrower will not make such payment to the Administrative Agent, the Administrative Agent may assume that the Borrower is making such payment, and the Administrative Agent may, but shall not be required to, in reliance upon such assumption, make available to the applicable Lenders their respective *pro rata* shares of a corresponding amount. If such payment is not made to the Administrative Agent by the Borrower within three (3) Business Days after such due date, the Administrative Agent shall be entitled to recover, on demand, from each Lender to which any amount which was made available pursuant to the preceding sentence, such amount with interest thereon at the rate per annum equal to the daily average Federal Funds Effective Rate. Nothing herein shall be deemed to limit the rights of the Administrative Agent or any Lender against the Borrower.

(f) Notwithstanding anything to the contrary contained in this Section 2.17 or elsewhere in this Agreement, the Borrower may extend the final maturity of any tranche of Term Loans in connection with an Extension that is permitted under Section 2.27 without being obligated to effect such extensions on a *pro rata* basis among the relevant Lenders. Furthermore, the Borrower may take all actions contemplated by Section 2.27 in connection with any Extension (including modifying pricing and repayments or prepayments), and in each case such actions shall be permitted, and the differing payments contemplated therein shall be permitted without giving rise to any violation of this Section 2.17 or any other provision of this Agreement.

2.18. Requirements of Law.

(a) If the adoption of or any change in any Requirement of Law or in the interpretation or application thereof or compliance by any Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority, in each case, made subsequent to the Effective Date (including, but not limited to, the Dodd-Frank Wall Street Reform and Consumer Protection Act and, in each case, all requests, rules, guidelines or directives thereunder or issued in connection therewith):

(i) shall subject any Lender to any Tax of any kind whatsoever with respect to this Agreement or any Term SOFR Loan made by it (except for Non-Excluded Taxes or Other Taxes required to be indemnified under Section 2.19 and any Excluded Taxes);

(ii) shall impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, deposits or other liabilities in or for the account of, advances, loans or other extensions of credit by, or any other acquisition of funds by, any office of such Lender; or

(iii) shall impose on any such Lender any other condition;

and the result of any of the foregoing is to increase the cost to such Lender, by an amount that such Lender deems to be material, of making, converting into, continuing or maintaining Term SOFR Loans, or to reduce any amount receivable hereunder in respect thereof, then, in any such case, the Borrower shall promptly pay such Lender, upon its demand, any additional amounts necessary to compensate such Lender for such increased cost or reduced amount receivable. If any Lender becomes entitled to claim any additional amounts pursuant to this paragraph, it shall promptly notify the Borrower (with a copy to the Administrative Agent) of the event by reason of which it has become so entitled.

(b) If any Lender shall have determined that the adoption of or any change in any Requirement of Law regarding capital adequacy or in the interpretation or application thereof or compliance by such Lender or any corporation controlling such Lender with any request or directive regarding capital adequacy (whether or not having the force of law) from any Governmental Authority made subsequent to the Effective Date shall have the effect of reducing the rate of return on such Lender's or such corporation's capital as a consequence of its obligations hereunder to a level below that which such Lender or such corporation could have achieved but for such adoption, change or compliance (taking into consideration such Lender's or such corporation's policies with respect to capital adequacy) by an amount deemed by such Lender to be material, then from time to time, after submission by such Lender to the Borrower (with a copy to the Administrative Agent) of a written request therefor, the Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or such corporation for such reduction.

(c) A certificate as to any additional amounts payable pursuant to this Section 2.18 submitted by any Lender to the Borrower (with a copy to the Administrative Agent) shall be conclusive in the absence of manifest error. Notwithstanding anything to the contrary in this Section 2.18, the Borrower shall not be required to compensate any Lender pursuant to this Section 2.18 for any amounts incurred more than 180 days prior to the date that such Lender notifies the Borrower of such Lender's intention to claim compensation therefor; provided that, if the circumstances giving rise to such claim have a retroactive effect, then such 180 days period shall be extended to include the period of such retroactive effect. The obligations of the Borrower pursuant to this Section 2.18 shall survive the termination of this Agreement and the payment of the Term Loans and all other amounts payable hereunder.

2.19. Taxes.

(a) Unless required by applicable law (as determined in good faith by the applicable withholding agent), all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall be made free and clear of, and without deduction or withholding for or on account of, any Taxes. If any Taxes are required by law to be withheld by the applicable withholding agent from any amounts payable to the Administrative Agent or any Lender hereunder, or under any other Loan Document: (x) to the extent such Taxes are Non-Excluded Taxes or Other Taxes, the amounts so payable by the applicable Loan Party to the Administrative Agent or such Lender shall be increased to the extent necessary so that after all required deductions (including deductions applicable to additional sums payable under this Section 2.19) have been made, such Lender (or, in the case of payments made to the Administrative Agent for its own account, the Administrative Agent) receives an amount equal to the sum it would have received had no such withholding or deductions been made, (y) the applicable withholding agent shall make such deductions, and (z) the applicable withholding agent shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

Notwithstanding anything to the contrary contained in this Section 2.19(a) or Section 2.19(b), unless the Administrative Agent or a Lender gives notice to the applicable Loan Party that it is obligated to pay an amount under Section 2.19(a) or Section 2.19(b) within 180 days of the later of (x) the date the applicable party incurs the Taxes or (y) the date the applicable party has knowledge of its incurrence of the Taxes, then such party shall only be entitled to be compensated for such amount by the applicable Loan Party pursuant to Section 2.19(a) or Section 2.19(b) to the extent the Taxes are incurred or suffered on or after the date which occurs 180 days prior to such party giving notice to the applicable Loan Party that it is obligated to pay the respective amounts pursuant to Section 2.19(a) or Section 2.19(b), but if the circumstances giving rise to such claim have a retroactive effect (*e.g.*, in connection with the audit of a prior tax year), then such 180 day period shall be extended to include such period of retroactive effect.

(b) In addition, the relevant Loan Party shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Whenever any Non-Excluded Taxes or Other Taxes are payable by a Loan Party, as promptly as possible thereafter such Loan Party shall send to the Administrative Agent for its own account or for the account of the relevant Lender, as the case may be, a certified copy of an original official receipt received, if any, by the Borrower or other documentary evidence showing payment thereof.

(d) The Borrower shall indemnify the Administrative Agent and the Lenders (within 30 days after demand therefor) for the full amount of any Non-Excluded Taxes or Other Taxes (including Non-Excluded Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.19), and for any reasonable expenses arising therefrom or with respect thereto, that may become payable by the Administrative Agent or any Lender, whether or not such Non-Excluded Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; provided that the Borrower shall not be obligated to indemnify the Administrative Agent or any Lender for any penalties, interest or expenses relating to Non-Excluded Taxes or Other Taxes to the extent that such penalties, interest or expenses are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such party's gross negligence or willful misconduct. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Each Lender shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with any documentation prescribed by law, or reasonably requested by the Borrower or the Administrative Agent, certifying as to any entitlement of such Lender to an exemption from, or reduction in, any withholding Tax with respect to any payments to be made to such Lender under the Loan Documents. Each such Lender shall, whenever a lapse in time or change in circumstances renders such documentation expired, obsolete or inaccurate in any material respect, deliver promptly to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the applicable withholding agent) or promptly notify the Borrower and the Administrative Agent of its legal ineligibility to do so. Unless the applicable withholding agent has received forms or other documents satisfactory to it indicating that payments under any Loan Document to or for a Lender are not subject to withholding tax or are subject to such Tax at a rate reduced by an applicable tax treaty, the Borrower, Administrative Agent or other applicable withholding agent shall withhold amounts required to be withheld by applicable law from such payments at the applicable statutory rate. Each Lender hereby authorizes the Administrative Agent to deliver to the Borrower and to any successor Administrative Agent any documentation provided by the Lender to the Administrative Agent pursuant to this Section 2.19(e).

Without limiting the generality of the foregoing:

(i) Each Lender that is a "United States person" (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly signed original copies of Internal Revenue Service Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal backup withholding.

(ii) Each Lender that is not a "United States person" (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement whichever of the following is applicable:

(A) two duly completed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or any successor forms) claiming eligibility for the benefits of an income tax treaty to which the United States of America is a party,

(B) two duly completed copies of Internal Revenue Service Form W-8ECI (or any successor forms),

(C) in the case of a Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate, in substantially the form of Exhibit E (any such certificate a "United States Tax Compliance Certificate"), or any other form approved by the Administrative Agent, to the effect that such Lender is not (A) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code, and that no payments in connection with the Loan Documents are effectively connected with such Lender's conduct of a U.S. trade or business and (y) two duly completed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (or any successor forms),

(D) to the extent a Lender is not the beneficial owner (for example, where the Lender is a partnership, or is a Lender that has granted a participation), Internal Revenue Service Form W-8IMY (or any successor forms) of the Lender, accompanied by a Form W-8ECI, W-8BEN, W-8BEN-E, United States Tax Compliance Certificate, Form W-9, Form W-8IMY (or other successor forms) or any other required information from each beneficial owner, as applicable (provided that, if the Lender is a partnership (and not a participating Lender) and one or more direct or indirect partners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate shall be provided by such Lender on behalf of such direct or indirect partner(s)), or

(E) any other form prescribed by applicable requirements of U.S. federal income tax law as a basis for claiming exemption from or a reduction in U.S. federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable Requirements of Law to permit the Borrower and the Administrative Agent to determine the withholding or deduction required to be made.

(iii) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Sections 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their FATCA obligations, to determine whether such Lender has or has not complied with such Lender's FATCA obligations and to determine the amount, if any, to deduct or withhold from such payment. Solely for purposes of this clause (iii), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Notwithstanding any other provision of this clause (e), a Lender shall not be required to deliver any documentation that such Lender is not legally eligible to deliver.

(f) If the Administrative Agent or any Lender determines, in its sole discretion, that it has received a refund of any Non-Excluded Taxes or Other Taxes as to which it has been indemnified by a Loan Party or with respect to which a Loan Party has paid additional amounts pursuant to this Section 2.19, it shall pay over such refund to the applicable Loan Party (but only to the extent of indemnity payments made, or additional amounts paid, by the such Loan Party under this Section 2.19 with respect to the Non-Excluded Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of the Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund, net of any Taxes payable by the Administrative Agent or such Lender); provided that the applicable Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender, as the case may be, is required to repay such refund to such Governmental Authority. This paragraph shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Borrower or any other Person.

(g) The agreements in this Section 2.19 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder or any other Loan Document and any assignment of rights by, or replacement of, any Lender.

(h) For the avoidance of doubt, any payments made by the Administrative Agent to any Lender shall be treated as payments made by the applicable Loan Party.

2.20. [Reserved].

2.21. Change of Lending Office. Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 2.18 or 2.19(a) with respect to such Lender, it will, if requested by the Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to designate another lending office for any Term Loans affected by such event with the object of avoiding the consequences of such event; provided that such designation is made on terms that, in the good faith judgment of such Lender, cause such Lender and its lending office(s) to suffer no economic, legal or regulatory disadvantage, and provided, further, that nothing in this Section shall affect or postpone any of the obligations of the Borrower or the rights of any Lender pursuant to Section 2.18 or 2.19(a).

2.22. Fees.

(a) The Borrower agrees to pay to the Administrative Agent the administrative agent fees in the amounts and on the dates as set forth in any written agreements from time to time between the Administrative Agent and the Borrower.

(b) The Borrower agrees to pay on the Effective Date to the Administrative Agent for the pro rata benefit of each Lender an upfront fee in an amount equal to 0.75% of the aggregate principal amount of the Refinancing Term B Loans incurred on the Effective Date; provided that such upfront fee may be structured as original issue discount as agreed between the Borrower and the Administrative Agent.

2.23. [Reserved].

2.24. Nature of Fees. All Fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent (for the respective accounts of the Administrative Agent and the Lenders), as provided herein. Once paid, none of the Fees shall be refundable under any circumstances.

2.25. Incremental Term Loans.

(a) At any time after the Effective Date, the Borrower may by written notice to the Administrative Agent elect to request the establishment of one or more incremental term loan commitments (any such incremental term loan commitment, an "Incremental Commitment") to make one or more additional term loans (any such additional term loan, an "Incremental Term Loan"); provided that (1) the total aggregate principal amount for all such Incremental Commitments shall not (as of any date of incurrence thereof) exceed the Maximum Incremental Facilities Amount at such time and (2) the total aggregate principal amount for each Incremental Commitment (and the Incremental Term Loans made thereunder) shall not be less than $25,000,000 (or such lesser amount as may be (x) approved by the Administrative Agent or (y) remaining pursuant to foregoing clause (1). Each such notice shall specify the date (each, an "Increased Amount Date") on which the Borrower proposes that any Incremental Commitment shall be effective, which shall be a date not less than five (5) Business Days (or such shorter period as the Administrative Agent may agree to) after the date on which such notice is delivered to the Administrative Agent. The Borrower may invite any Lender, any Affiliate of any Lender and/or any Approved Fund, and/or any other Person reasonably satisfactory to the Administrative Agent, to provide an Incremental Commitment (any such Person, an "Incremental Lender"). Any proposed Incremental Lender offered or approached to provide all or a portion of any Incremental Commitment may elect or decline, in its sole discretion, to provide such Incremental Commitment. Any Incremental Commitment shall become effective as of such Increased Amount Date; provided that:

(i) all the conditions in Section 4.2 shall have been met; provided that in connection with an acquisition or investment permitted hereunder or an irrevocable redemption of other Indebtedness permitted hereunder, if agreed to by the respective Incremental Lenders, the Borrower shall only be required to (i) comply with Section 4.2(a), (ii) make customary "Sungard" representations and warranties and (iii) comply with a requirement that no Event of Default under Sections 7.1(a), (b), (i) or (j) shall have occurred and be continuing on the date on which the definitive agreement for such acquisition or investment is entered into or on the date which the respective irrevocable redemption notice is delivered.

(ii) the proceeds of any Incremental Term Loans shall be used for the working capital and general corporate purposes (including acquisitions, investments and Restricted Payments permitted under this Agreement) of the Borrower and its Restricted Subsidiaries;

(iii) each Incremental Commitment (and the Incremental Term Loans made thereunder) shall constitute Obligations and Parity Secured Obligations for all purposes under the Loan Documents and shall be secured and guaranteed with the other Term Loans hereunder on a pari passu basis;

(iv) in the case of each series of Incremental Term Loans (the terms of which shall be set forth in an amendment (an "Incremental Commitment Supplement") to this Agreement in form and substance reasonably satisfactory to the Administrative Agent and the Borrower):

(A) such Incremental Term Loan will mature and amortize in a manner reasonably acceptable to the Incremental Lenders making such Incremental Term Loan and the Borrower, but will not in any event have a shorter Weighted Average Life to Maturity than the remaining Weighted Average Life to Maturity of the initial 2025 Refinancing Term B Loans made on the Amendment No. 5 Effective Date or a final maturity date earlier than that of such initial 2025 Refinancing Term B Loans;

(B) the Applicable Margin, pricing grid, if applicable, and fees for such Incremental Term Loan shall be determined by the applicable Incremental Lenders and the Borrower and set forth in the applicable Incremental Commitment Supplement;

(C) any Incremental Lender making any Incremental Term Loan shall be entitled to the same voting rights as the existing Lenders and each Incremental Term Loan shall receive proceeds of prepayments on the same basis as the 2025 Refinancing Term B Loans and, in the case of mandatory prepayment offers required pursuant to Section 2.14, such prepayments offers shall be on made pro rata on the basis of the original aggregate funded amount thereof among the 2025 Refinancing Term B Loans and the Incremental Term Loans (except, in each case, to the extent that the respective Incremental Lenders elect a lesser prepayment);

(D) each series of Incremental Commitments shall be effected pursuant to an Incremental Commitment Supplement executed and delivered by the Borrower, the Administrative Agent and the applicable Incremental Lenders (which Incremental Commitment Supplement may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of this Section 2.25); and

(E) the Borrower shall deliver or cause to be delivered any customary legal opinions or other customary documents (including, without limitation, a resolution duly adopted by the board of directors (or equivalent governing body) of each Loan Party authorizing such Incremental Term Loan and/or Incremental Commitment) reasonably requested by the Administrative Agent in connection with any such transaction.

(b) (i) Unless otherwise specifically provided herein, all references in the Loan Documents to Term Loans shall be deemed, unless the context otherwise requires, to include references to Incremental Term Loans that are Term Loans made pursuant to this Agreement; provided that such Incremental Term Loan either shall be designated as a separate tranche of Term Loans for all purposes of this Agreement or may be added to a then existing tranche of Term Loans (and thereafter, for all purposes of the Loan Documents, be treated as part of such existing tranche of Term Loans).

(ii) The Incremental Lenders shall be included in any determination of the Required Lenders and, unless otherwise agreed or provided for in this Agreement, the Incremental Lenders will not constitute a separate voting class for any purposes under this Agreement.

(iii) The Incremental Term Loans may be drawn on a delayed draw basis if agreed by the Incremental Lenders providing such Incremental Term Loans.

(c) On any Increased Amount Date on which any Incremental Commitment becomes effective, subject to the foregoing terms and conditions, each Incremental Lender with an Incremental Commitment shall make, or be obligated to make, an Incremental Term Loan to the Borrower in an amount equal to its Incremental Commitment and shall become a Lender hereunder with respect to such Incremental Commitment and the Incremental made pursuant thereto.

(d) The Lenders hereby irrevocably authorize the Administrative Agent and the Collateral Agent to enter into amendments to this Agreement and the other Loan Documents with the Borrower and the other applicable Loan Parties as may be necessary in order to effectuate the terms of this Section 2.25 (including, without limitation, as applicable, (1) to permit the Incremental Term Loans to share ratably in the benefits of this Agreement and the other Loan Documents and (2) to include the Incremental Commitments or outstanding Incremental Term Loans in any determination of Required Lenders). Without limiting the foregoing, in connection with any Incremental Term Loan, the respective Loan Parties shall (at their expense) amend (and the Collateral Agent is hereby directed to amend) any Mortgage that has a maturity date prior to the then latest Stated Maturity so that such maturity date is extended to the then latest Stated Maturity (or such later date as may be advised by local counsel to the Collateral Agent).

2.26. Replacement of Lenders. The Borrower shall be permitted to replace any Lender that (a) requests reimbursement for amounts owing pursuant to Section 2.18 or 2.19, (b) refuses to extend its Term Loans pursuant to an Extension Offer pursuant to Section 2.27 or (c) does not consent to any proposed amendment, supplement, modification, consent or waiver of any provision of this Agreement or any other Loan Document that requires the consent of each of the Lenders or each of the Lenders affected thereby (so long as the consent of the Required Lenders has been obtained), in each case with a replacement financial institution; provided that (i) prior to any such replacement pursuant to preceding clause (a), such Lender shall have taken no action under Section 2.21 so as to eliminate the continued need for payment of amounts owing pursuant to Section 2.18 or 2.19, (ii) the replacement financial institution shall purchase, at par, all Term Loans outstanding and other amounts related thereto owing to such replaced Lender on or prior to the date of replacement, (iii) [~~reserved~~Reserved], (iv) the replacement financial institution (if other than a then existing Lender or an affiliate thereof or an Approved Fund) shall be reasonably satisfactory to the Administrative Agent, (v) the replaced Lender shall be obligated to make such replacement in accordance with the provisions of Section 9.6 (provided that the Borrower shall be obligated to pay the registration and processing fee referred to therein), (vi) until such time as such replacement shall be consummated, the Borrower shall pay all additional amounts (if any) required pursuant to Section 2.18 or 2.19, as the case may be, and (vii) any such replacement shall not be deemed to be a waiver of any rights that the Borrower, the Administrative Agent or any other Lender shall have against the replaced Lender.

2.27. Extensions of Loans and Commitments.

(a) Notwithstanding anything to the contrary in this Agreement, pursuant to one or more offers (each, an "Extension Offer") made from time to time by the Borrower to any or all Lenders holding Term B Loans or Incremental Term Loans of a given series with a like Stated Maturity, the Borrower may from time to time extend the maturity date of such Term Loans and otherwise modify the terms of such Term Loans pursuant to the terms of the relevant Extension Offer (including, without limitation, by increasing the interest rate or fees payable in respect of such Term Loans (and related outstandings), in each case, without the consent of any other Lenders) (an "Extension," and each group of Term Loans so extended, as well as the original Term Loans (not so extended), being a "tranche"; any Extended Term Loans shall constitute a separate tranche of Term Loans from the tranche of Term Loans from which they were converted), so long as the following terms are satisfied: (i) no Event of Default shall have occurred and be continuing at the time that any offering document in respect of an Extension Offer is delivered to the relevant Lenders, (ii) except as to interest rates, fees. amortization and final maturity, the Term Loans of any Lender (an "Extending Term Lender") extended pursuant to an Extension (an "Extended Term Loan") shall be a Term Loan with the same terms as the original Term Loans; provided that at no time shall there be Term Loans hereunder (including Extended Term Loans and any original Term Loans) which have more than three different Stated Maturities (unless a greater number is permitted by the Administrative Agent), (iii) if the aggregate principal amount of Term Loans in respect of which Lenders shall have accepted the relevant Extension Offer shall exceed the maximum aggregate principal amount of Term Loans offered to be extended by the Borrower pursuant to such Extension Offer, then the Term Loans of such Lenders shall be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings of record) with respect to which such Lenders have accepted such Extension Offer, (viii) all documentation in respect of such Extension shall be consistent with the foregoing, and all written communications by the Borrower generally directed to the Lenders in connection therewith shall be in form and substance consistent with the foregoing and otherwise reasonably satisfactory to the Administrative Agent, and (ix) any applicable Minimum Extension Condition shall be satisfied.

(b) With respect to all Extensions consummated by the Borrower pursuant to this Section 2.27, (i) such Extensions shall not constitute voluntary or mandatory payments or prepayments for purposes of Section 2.13 or 2.14 and (ii) no Extension Offer is required to be in any minimum amount or any minimum increment, provided that the Borrower may at its election specify as a condition (a "Minimum Extension Condition") to consummating any such Extension that a minimum amount (to be determined and specified in the relevant Extension Offer in the Borrower's discretion) of Term Loans of any or all applicable tranches be tendered. The Administrative Agent and the Lenders hereby consent to the Extensions and the other transactions contemplated by this Section 2.27(b) (including, for the avoidance of doubt, payment of any interest or fees in respect of any Extended Term Loans on such terms as may be set forth in the relevant Extension Offer) and hereby waive the requirements of any provision of this Agreement (including, without limitation, Sections 2.13, 2.14, 2.17 and 9.7(a)) or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 2.27.

(c) The Lenders hereby irrevocably authorize the Administrative Agent to enter into amendments to this Agreement and the other Loan Documents with the Borrower and the other applicable Loan Parties as may be necessary in order to establish new tranches or sub-tranches in respect of Term Loans so extended and such technical amendments as may be necessary in connection with the establishment of such new tranches or sub-tranches, in each case on terms consistent with this Section 2.27. Notwithstanding the foregoing, the Administrative Agent shall have the right (but not the obligation) to seek the advice or concurrence of the Required Lenders with respect to any matter contemplated by this Section 2.27(c) and, if the Administrative Agent seeks such advice or concurrence, the Administrative Agent shall be permitted to enter into such amendments with the Borrower in accordance with any instructions actually received by such Required Lenders and shall also be entitled to refrain from entering into such amendments with the Borrower unless and until it shall have received such advice or concurrence; provided, however, that whether or not there has been a request by the Administrative Agent for any such advice or concurrence, all such amendments entered into with the Borrower by the Administrative Agent hereunder shall be binding and conclusive on the Lenders. Without limiting the foregoing, in connection with any Extensions, the respective Loan Parties shall (at their expense) amend (and the Collateral Agent is hereby directed to amend) any Mortgage that has a maturity date prior to the then latest Stated Maturity so that such maturity date is extended to the then latest Stated Maturity (or such later date as may be advised by local counsel to the Collateral Agent).

(d) In connection with any Extension, the Borrower shall provide the Administrative Agent at least five (5) Business Days' (or such shorter period as may be agreed by the Administrative Agent) prior written notice thereof, and shall agree to such procedures, if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.27.

2.28. Dutch Auction Buy Backs. Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, the Borrower may conduct reverse Dutch auctions from time to time after the Effective Date in order to purchase either Term B Loans or any Incremental Term Loans of any particular tranche(s) (as determined by the Borrower in its sole discretion) (each, an "Auction") (each such Auction to be managed exclusively by Administrative Agent or another investment bank or commercial bank of recognized standing selected by the Borrower (in such capacity, the "Auction Manager")), so long as the following conditions are satisfied: (i) each Auction shall be conducted in accordance with the procedures, terms and conditions set forth in this Section 2.28 and Exhibit I, (ii) no Event of Default shall have occurred and be continuing on the date of the delivery of each Auction Notice in connection with any Auction, (iii) the minimum principal amount (calculated on the face amount thereof) of each and all tranches of Term Loans that the Borrower offers to purchase in any such Auction shall be no less than $25,000,000 (across all such tranches) or an integral multiple of $1,000,000 in excess thereof (or such lesser amount and such lesser integral multiple as may be reasonably acceptable to the Auction Manager) and (iv) the aggregate principal amount (calculated on the face amount thereof) of all Term Loans of the applicable tranche or tranches so purchased by the Borrower shall automatically be cancelled and retired by the Borrower on the settlement date of the relevant purchase (and may not be resold). The Borrower must terminate an Auction if it fails to satisfy one or more of the conditions set forth above which are required to be met at the time which otherwise would have been the time of purchase of Term Loans pursuant to the respective Auction. If the Borrower commences any Auction (and all relevant requirements set forth above which are required to be satisfied at the time of the commencement of the respective Auction have in fact been satisfied), and if at such time of commencement the Borrower reasonably believes that all required conditions set forth above which are required to be satisfied at the time of the purchase of Term Loans pursuant to such Auction shall be satisfied, then the Borrower shall have no liability to any Lender for any termination of the respective Auction as a result of its failure to satisfy one or more of the conditions set forth above which are required to be met at the time which otherwise would have been the time of purchase of Term Loans pursuant to the respective Auction, and any such failure shall not result in any Default or Event of Default hereunder. With respect to all purchases of Term Loans of the applicable tranche or tranches made by the Borrower pursuant to this Section 2.28, (x) the Borrower shall pay on the settlement date of each such purchase all accrued and unpaid interest (except to the extent otherwise set forth in the relevant Offer Documents), if any, on the purchased Term Loans of the applicable tranche or tranches up to the settlement date of such purchase and (y) such purchases (and the payments made by the Borrower and the cancellation of the purchased Loans, in each case in connection therewith) shall not constitute voluntary or mandatory payments or prepayments for purposes of Section 2.13 or 2.14. Each Lender acknowledges and agrees that in connection with each Auction, (i) the Borrower may purchase or acquire Term Loans hereunder from Lenders from time to time, subject to this Section 2.28, (ii) the Borrower then may have, and later may come into possession of, information regarding the Term Loans or the Loan Parties hereunder that is not known to such Lender and that may be material to a decision by such Lender to enter into an assignment of such Term Loans hereunder ("Excluded Information"), (iii) such Lender has independently and without reliance on the Borrower or any of its Subsidiaries or Affiliates made such Lender's own analysis and determined to enter into an assignment of such Term Loans and to consummate the transactions contemplated thereby notwithstanding such Lender's lack of knowledge of the Excluded Information and (iv) the Borrower and its Subsidiaries shall have no liability to such Lender, and such Lender hereby waives and releases, to the extent permitted by law, any claims such Lender may have against the Borrower and its Subsidiaries, under applicable laws or otherwise, with respect to the nondisclosure of the Excluded Information. Each Lender further acknowledges that the Excluded Information may not be available to the Administrative Agent, the Auction Manager or the other Lenders hereunder. Each Lender which tenders (or does not tender) Term Loans pursuant to an Auction agrees to the provisions of the two preceding sentences, and agrees that they shall control, notwithstanding any inconsistent provision hereof or in any Assignment and Acceptance. The Administrative Agent and the Lenders hereby consent to the Auctions and the other transactions contemplated by this Section 2.28 and hereby waive the requirements of any provision of this Agreement or any other Loan Document that may otherwise prohibit any Auction or any other transaction contemplated by this Section 2.28. The Auction Manager acting in its capacity as such hereunder shall be entitled to the benefits of the provisions of Section 8 and Section 9.5 *mutatis mutandis* as if each reference therein to the "Administrative Agent" or an "Agent" were a reference to the Auction Manager, and the Administrative Agent shall cooperate with the Auction Manager as reasonably requested by the Auction Manager in order to enable it to perform its responsibilities and duties in connection with each Auction.

SECTION 3

Representations and Warranties

In order to induce the Lenders to enter into this Agreement and to make Term Loans, the Borrower represents and warrants on the Effective Date to the Administrative Agent and to each Lender as follows:

3.1. Existence; Compliance with Law. Each Loan Party (a) is duly organized, validly existing and (to the extent such concept is applicable) in good standing under the laws of the jurisdiction of its organization, (b) has the power and authority, and the legal right, to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged, (c) is duly qualified as a foreign corporation or other organization and (to the extent such concept is applicable) in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification and (d) is in compliance with all Requirements of Law, except, in the case of each of the foregoing clauses (a) through (d), to the extent that the failure to comply therewith would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.2. Power; Authorizations; Enforceable Obligations. Each Loan Party has the power and authority, and the legal right, to make, deliver and perform the Loan Documents to which it is a party and, in the case of the Borrower, to obtain extensions of credit hereunder. Each Loan Party has taken all necessary organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrower, to authorize the extensions of credit on the terms and conditions of this Agreement. No consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority is required in connection with the extensions of credit hereunder or with the execution, delivery, performance, validity or enforceability of this Agreement or any of the Loan Documents, except (i) that have been obtained or made and are in full force and effect, (ii) the filings made in respect of the Security Documents and (iii) to the extent that the failure to obtain any such consent, authorization, filing, notice or other act would not, in the aggregate, reasonably be expected to have a Material Adverse Effect. Each Loan Document has been duly executed and delivered on behalf of each Loan Party party thereto. This Agreement constitutes, and each other Loan Document upon execution will constitute, a legal, valid and binding obligation of each Loan Party party thereto, enforceable against each such Loan Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

3.3. No Legal Bar. The execution, delivery and performance of this Agreement and the other Loan Documents, the borrowings hereunder and the use of the proceeds thereof (x) will not violate any Requirement of Law applicable to any Loan Party or any Contractual Obligation of any Loan Party that (in either case) would reasonably be expected to have a Material Adverse Effect and (y) will not result in, or require, the creation or imposition of any Lien on any of their respective properties or revenues pursuant to any Requirement of Law or any such material Contractual Obligation (other than the Liens created by the Security Documents and other Permitted Liens).

3.4. Accuracy of Information. No statement or information contained in this Agreement, any other Loan Document, the Information Memorandum or any other document, certificate or statement furnished by or on behalf of any Loan Party to the Administrative Agent or the Lenders, or any of them, for use in connection with the transactions contemplated by this Agreement or the other Loan Documents, contained as of the Effective Date, taken as a whole and in light of the circumstances in which made, any untrue statement of a material fact or omitted to state a material fact necessary to make the statements contained herein or therein not materially misleading.

3.5. No Material Adverse Effect. Since December 31, 2022, there has been no development or event that has had or would reasonably be expected to have a Material Adverse Effect.

3.6. Subsidiaries. Schedule 3.6 annexed hereto sets forth the name and jurisdiction of organization of each Restricted Subsidiary of the Borrower as of the Effective Date and, as to each such Restricted Subsidiary, the percentage of each class of Capital Stock owned by any Loan Party as of the Effective Date, and (b) as of the Effective Date, there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options or restricted stock granted to employees or directors and directors' qualifying shares) of any nature relating to any Capital Stock of any of the Guarantors directly owned by the Loan Parties that are included in the Collateral, except as created by the Loan Documents or permitted under Section 6.2.

3.7. Title to Assets; Liens. The Loan Parties have title in fee simple to, or a valid leasehold or easement interest in, all their material real property (including, without limitation, the material real property to be encumbered by a Mortgage), taken as a whole, and good and marketable title to, or a valid leasehold or easement interest in, all their other material property, taken as a whole, in each case, except for those which the failure to have such good title or such leasehold or easement interest would not be reasonably expected to have a Material Adverse Effect, and none of such property is subject to any Lien except Permitted Liens.

3.8. Intellectual Property. Each Loan Party owns, or is licensed to use, all Intellectual Property material to the conduct of its business, and the conduct of the business of each Loan Party does not infringe upon the intellectual property rights of any other Person, in each case except where the failure to do so would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.9. Use of Proceeds. The proceeds of the Refinancing Term B Loans shall be utilized, together with cash on hand, (i) to repay all the Initial Term B Loans outstanding under the Existing Credit Agreement, (ii) to pay fees and expenses related thereto (including without limitation, any breakage fees) and related to this Agreement and the transactions contemplated hereby, (iii) to pay any swap breakage costs (if any) resulting from such repayments and (iv) for general corporate purposes (including a partial prepayment of the Term B-5 Term Loan). The proceeds of Incremental Term Loans shall be used for the purposes described in Section 2.25.

3.10. Litigation. Except as disclosed in writing to the Administrative Agent and the Lenders prior to the Effective Date or otherwise disclosed on the Calpine Platform prior to the Effective Date, no litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of the Borrower, threatened in writing by or against any Loan Party or against any of their respective properties or revenues that, in the aggregate, would reasonably be expected to have a Material Adverse Effect.

3.11. Federal Reserve Regulations. No part of the proceeds of any Term Loan will be used (a) for "buying" or "carrying" any "margin stock" within the respective meanings of each of the quoted terms under Regulation U as now in effect for any purpose that violates the provisions of the Regulations of the Board of Governors or (b) for any purpose that violates the provisions of the Regulations of the Board of Governors. Neither the Borrower nor any of its Restricted Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any "margin stock."

3.12. Solvency. On the Effective Date, the Borrower and its Subsidiaries, taken as a whole, are, and after giving effect to the incurrence of all Indebtedness and obligations being incurred in connection herewith on the Effective Date will be, Solvent.

3.13. Taxes. Each Loan Party has filed or caused to be filed all federal and state income Tax and other Tax returns that are required to be filed, except if the failures to make any such filing would not, in the aggregate, reasonably be expected to have a Material Adverse Effect, and has paid all Taxes (including in its capacity as withholding agent) shown to be due and payable on said returns or on any assessments made against it or any of its property and all other Taxes, fees or other charges imposed on it or any of its property by any Governmental Authority (other than any (x) the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of the relevant Loan Party, or (y) those where the failure to pay, in the aggregate, would not reasonably be expected to have a Material Adverse Effect). There are no proposed Tax assessments or other claims against, and no Tax audits with respect to, any Loan Party that would reasonably be expected to, in the aggregate, have a Material Adverse Effect.

3.14. ERISA. Except as, in the aggregate, does not or would not reasonably be expected to result in a Material Adverse Effect: neither a Reportable Event nor a failure to satisfy the minimum funding standard of Section 430 of the Code or Section 303 of ERISA, whether or not waived, with respect to a Plan has occurred during the five year period prior to the date on which this representation is made or deemed made with respect to any Plan, and each Plan has complied in all respects with the applicable provisions of ERISA and the Code; no termination of a Plan has occurred, and no Lien in favor of the PBGC or a Plan has arisen, during such five-year period; the present value of all accrued benefits under each Plan (based on those assumptions used to fund such Plans) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Plan allocable to such accrued benefits; neither the Borrower nor any Commonly Controlled Entity has had a complete or partial withdrawal (including under Section 4062(e) of ERISA) from any Plan or Multiemployer Plan; to the knowledge of the Borrower, neither the Borrower nor any Commonly Controlled Entity would become subject to any liability under ERISA if the Borrower or any such Commonly Controlled Entity were to withdraw completely from all Multiemployer Plans as of the valuation date most closely preceding the date on which this representation is made or deemed made; and to the knowledge of the Borrower, no Multiemployer Plan is Insolvent.

3.15. Environmental Matters; Hazardous Material. There have been no matters with respect to Environmental Laws or Materials of Environmental Concern which, in the aggregate, would reasonably be expected to have a Material Adverse Effect.

3.16. Investment Company Act; Other Regulations. No Loan Party is an "investment company", or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended.

3.17. Labor Matters. Except as, in the aggregate, would not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes against any Loan Party pending or, to the knowledge of the Borrower, threatened; (b) hours worked by and payment made to employees of each Loan Party have not been in violation of the Fair Labor Standards Act or any other applicable Requirement of Law dealing with such matters; and (c) all payments due from any Loan Party on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the relevant Loan Party.

3.18. Security Documents.

(a) After the execution and delivery thereof, the Pledge and Security Agreement and the Partnership Interest Pledge Agreement are effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof. In the case of the Pledged Stock described in the Pledge and Security Agreement and the Partnership Interest Pledge Agreement, when stock certificates (if any) representing such Pledged Stock are delivered to the Collateral Agent, and in the case of the Collateral described in the Pledge and Security Agreement and the Partnership Interest Pledge Agreement, when financing statements and other filings specified on Schedule 5 of the Perfection Certificate in appropriate form are filed in the offices specified on Schedule 6 of the Perfection Certificate, the Pledge and Security Agreement and the Partnership Interest Pledge Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and the proceeds thereof to the extent security interests can be so perfected (by delivery or filing UCC financing statements as applicable) on such Collateral, as security for the Secured Obligations, in each such case prior and superior in right to any other Person (except Permitted Liens).

(b) After the execution and delivery thereof, each of the Mortgages, is or will be effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable Lien on the Mortgaged Properties described therein and proceeds thereof, and each such Mortgage shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in the Mortgaged Properties and the proceeds thereof, as security for the Secured Obligations, in each case prior and superior in right to any other Person other than Permitted Liens. Schedule 1.1B lists, as of the Effective Date, each parcel of owned real property and each leasehold interest in real property located in the United States and held by the Borrower or any of its Guarantors that has a value, in the reasonable opinion of the Borrower, in excess of $40,000,000.

3.19. Energy Regulation. The Borrower and its Restricted Subsidiaries are in compliance with the Public Utility Holding Company Act of 2005 and the implementing regulations of the Federal Energy Regulatory Commission, as amended from time to time (together, "PUHCA 2005"), and consummation of the transactions contemplated by this Agreement and the other Loan Documents will not cause the Borrower or its Restricted Subsidiaries to cease to be in compliance with PUHCA 2005, except where any such non-compliance would not reasonably be expected to have a Material Adverse Effect.

3.20. Anti-Corruption Laws and Sanctions. No Loan Party is a Sanctioned Person. Neither the Borrower's incurrence of any Term Loans on any Borrowing Date nor its use of the proceeds thereof will violate any Anti-Corruption Law or applicable Sanctions.

3.21. Beneficial Ownership Certification. As of the Effective Date, the information included in the Beneficial Ownership Certification delivered pursuant to Section 4.1(i) is true and correct in all respects.

SECTION 4

Conditions Precedent

4.1. Conditions to the Effective Date. The occurrence of the Effective Date is subject to the satisfaction or waiver of the following conditions precedent:

(a) Amendment No. 3. The Administrative Agent shall have received (i) counterparts of Amendment No. 3 executed and delivered by the Borrower, the Administrative Agent, the Collateral Agent and each Refinancing Term Loan Lender and (ii) Schedules to this Agreement.

(b) Lien Searches. The Administrative Agent shall have received the results of a recent lien search in each jurisdiction where a Loan Party is organized, and such search shall reveal no liens on any of the assets of the Loan Parties except for liens permitted by Section 6.2 or discharged on or prior to the Effective Date pursuant to documentation reasonably satisfactory to the Administrative Agent.

(c) Corporate Documents and Proceedings. The Administrative Agent shall have received (i) a certificate of each Loan Party, dated the Effective Date, substantially in the form attached hereto as Exhibit A-1 or A-2 (as applicable), with appropriate insertions and attachments, including the certificate of incorporation of each Loan Party that is a corporation certified by the relevant authority of the jurisdiction of organization of such Loan Party, and (ii) a long form good standing certificate for each Loan Party from its jurisdiction of organization.

(d) No Material Adverse Effect. Since December 31, 2022, there has been no development or event that has had or would reasonably be expected to have a Material Adverse Effect.

(e) Legal Opinion. The Administrative Agent shall have received an executed legal opinion from White & Case LLP, counsel to the Borrower and the Guarantors, in form and substance reasonably satisfactory to the Arrangers.

(f) [Reserved].

(g) Payment of Fees; Expenses. The Arrangers and the Administrative Agent shall have received all fees required to be paid, and all reasonable costs and expenses required to be paid and for which invoices have been presented (including the reasonable fees and expenses of legal counsel), on or before the Effective Date.

(h) Refinancing. The Refinancing shall have been consummated, or shall be consummated substantially simultaneously with the initial borrowing of the Refinancing Term B Loans, and, in connection therewith, the Borrower shall have paid, or caused to be paid, to the Administrative Agent, for the ratable benefit of each Initial Term B Lender, all accrued and unpaid interest, to but not including the Effective Date, in respect of the Initial Term B Loans.

(i) KYC Information. Upon the request of any Lender made at least ten (10) Business Days prior to the Effective Date, the Borrower shall have provided to such Lender (i) the documentation and other information so requested in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including the PATRIOT Act, in each case at least three (3) Business Days prior to the Effective Date, and (ii) a Beneficial Ownership Certification in relation to the Borrower to the extent that the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation.

(j) Loan Documents. The Administrative Agent and the Collateral Agent shall have received executed counterparts of the Loan Documents listed in Schedule 4.2, each in form reasonably satisfactory to the Administrative Agent and the Collateral Agent.

(k) Flood Insurance. The Administrative Agent shall have received a completed "Life-of-Loan" Federal Emergency Management Agency standard flood hazard determination with respect to each Mortgaged Property, and to the extent any Building or Mobile Home (as such terms are defined by the Flood Insurance Laws) on the Mortgaged Property is located in a special flood hazard area, (i) a notice about special flood hazard area status and flood disaster assistance duly executed by the Borrower, and (ii) evidence of flood insurance as required by Section 5.4.

4.2. Conditions to Each Borrowing of Term Loans. The occurrence of the Effective Date and the making of Term Loans hereunder are subject to the satisfaction or waiver of the following conditions precedent (except to the extent otherwise provided in Section 2.25):

(a) Notice. The Administrative Agent shall have received the applicable notice of borrowing, in substantially the form attached as Exhibit J, from the Borrower.

(b) Representations and Warranties. All representations and warranties contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the date of each Borrowing of Term Loans hereunder with the same effect as if made on and as of such date (unless stated to relate to a specific earlier date, in which case, such representations and warranties shall be true and correct in all material respects as of such earlier date) (it being understood that any representation or warranty that is qualified as to materiality or Material Adverse Effect shall be correct in all respects).

(c) No Default or Event of Default. (i) In the case of any Borrowing of Term Loans (other than Incremental Term Loans), no Default or Event of Default shall have occurred and be continuing on such Borrowing Date or after giving effect to the making of such Term Loans on such Borrowing Date and (ii) in the case of any Borrowing of Incremental Term Loans, no Event of Default shall have occurred and be continuing on such Borrowing Date or after giving effect to the making of such Incremental Term Loans on such Borrowing Date.

SECTION 5

Affirmative Covenants

The Borrower hereby agrees that, so long as any Term Loan or other amount is owing to any Lender or the Administrative Agent hereunder or under any other Loan Document (other than contingent indemnification obligations for which no claim has been asserted) or the Term Commitments are outstanding, the Borrower shall and shall cause each of its Restricted Subsidiaries to:

5.1. Financial Statements, Etc. Whether or not required by the SEC's rules and regulations, the Borrower will furnish to the Administrative Agent (for distribution to the Lenders) unaudited quarterly financial statements of the Borrower for the first three fiscal quarters of each fiscal year of the Borrower (which statements have been certified by a Responsible Officer of the Borrower) beginning with the fiscal quarter ended December 31, 2023, and audited annual financial statements of the Borrower (which annual financial statements shall include a report thereon from the Borrower's certified independent accountants), in each case prepared in accordance with GAAP (in absence of footnote disclosures and year-end audit adjustments as it pertains to quarterly financial statements) and, in each case, within (x) 105 days after the end of the fiscal year of the Borrower, in the case of audited annual financial statements and (y) 60 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, in the case of unaudited quarterly financial statements of the Borrower.

5.2. Compliance Certificate.

(a) The Borrower shall deliver to the Administrative Agent, within 105 days after the end of each fiscal year of the Borrower, an officers' certificate of a Responsible Officer of the Borrower stating that a review of the activities of the Borrower and its Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Responsible Officer with a view to determining whether any Default or Event of Default has occurred and is continuing under this Agreement, and further stating, as to such Responsible Officer signing such certificate, that to the best of his or her knowledge no Default or Event of Default has occurred and is continuing under this Agreement (or, if a Default or Event of Default has occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Borrower is taking or proposes to take with respect thereto).

(b) The Borrower will deliver to the Administrative Agent, promptly upon any Responsible Officer becoming aware of any Default or Event of Default, an officers' certificate of a Responsible Officer of the Borrower specifying such Default or Event of Default and what action the Borrower is taking or proposes to take with respect thereto.

5.3. Maintenance of Existence. Preserve, renew and keep in full force and effect its organizational existence and (ii) take all reasonable action to maintain all rights, privileges and franchises reasonably necessary in the normal conduct of its business, except, in each case, (x) as otherwise permitted by Section 6.3 or 6.8 or (y) to the extent that failure to do so would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.4. Maintenance of Insurance.

(a) The Borrower and the Grantors will maintain insurance policies (or self-insurance) on all its material property in at least such amounts and against at least such risks as are usually insured against by companies of a similar size engaged in the same or a similar business and, from and after the Original Closing Date, will name the Collateral Agent as an additional insured and (in the case of Collateral) lender's loss payee as its interests may appear, to the extent required by the Security Documents. Upon the request of the Collateral Agent, the Borrower and the Grantors will furnish to the Collateral Agent full information as to their property and liability insurance carriers; and

(b) If at any time any Building or Mobile Home (each as defined by the Flood Insurance Laws) located on a Mortgaged Property subject to a Mortgage is located in an area identified by the Federal Emergency Management Agency (or any successor agent) as a special flood hazard area, then the Borrower shall, or shall cause the applicable Loan Party to, (i) maintain with a financially sound and reputable insurer flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) if requested by the Administrative Agent, deliver to the Administrative Agent evidence of such compliance.

5.5. [Reserved].

5.6. [Reserved].

5.7. [Reserved].

5.8. Additional Guarantees. If (1) the Borrower acquires or creates another Wholly-Owned Domestic Subsidiary after the Original Closing Date (that does not constitute an Excluded Subsidiary) or (2) any Wholly-Owned Domestic Subsidiary of the Borrower ceases to constitute an Excluded Subsidiary, then such Wholly-Owned Domestic Subsidiary will become a Guarantor under the Guaranty Agreement within 90 days thereof (as such date may be extended by the Administrative Agent).

5.9. After-Acquired Collateral.

(a) With respect to any property acquired after the Original Closing Date by the Borrower or any Guarantor (other than (x) property constituting an "Excluded Asset" under (and as defined in) the Pledge and Security Agreement and (y) any property described in clauses (b)-(d) of this Section 5.9) as to which the Collateral Agent, for the benefit of the Secured Parties, does not have a perfected Lien, the Borrower and each applicable Guarantor shall promptly:

(i) execute and deliver to the Collateral Agent such amendments to the Pledge and Security Agreement or such other documents as the Collateral Agent deems necessary or advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a security interest in such property; and

(ii) take all actions necessary or advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected first priority security interest in such property (subject to Permitted Liens), including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Pledge and Security Agreement or by law or as may be reasonably requested by the Collateral Agent.

(b) With respect to any fee interest in any real property having a fair market value (together with improvements thereof) of at least $40,000,000 acquired after the Original Closing Date by the Borrower or any Guarantor (other than any such real property subject to a Permitted Lien which precludes the granting of a Mortgage thereon), within 180 days after the creation or acquisition thereof (as such date may be extended by the Administrative Agent), the Borrower or the applicable Guarantor shall deliver to the Collateral Agent the items set forth in Section 5.10(b) hereof.

(c) With respect to any new Wholly-Owned Domestic Subsidiary (other than an Excluded Subsidiary) created or acquired after the Original Closing Date by the Borrower or any Guarantor (which, for the purposes of this paragraph (c), shall include any existing Wholly-Owned Domestic Subsidiary that ceases to be an Excluded Subsidiary), within 90 days after the creation or acquisition thereof (as such date may be extended by the Administrative Agent), the Borrower and each applicable Guarantor shall:

(i) execute and deliver to the Collateral Agent such amendments to the Pledge and Security Agreement as the Collateral Agent reasonably deems necessary or advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected first priority security interest in the Capital Stock of such new Wholly-Owned Domestic Subsidiary that is owned by the Borrower or any Guarantor (subject to Permitted Liens unless constituting an Excluded Asset),

(ii) deliver to the Collateral Agent the certificates representing such Capital Stock (unless constituting an Excluded Asset), together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the Borrower or the relevant Guarantor,

(iii) cause such new Wholly-Owned Domestic Subsidiary (A) to become a party to the Pledge and Security Agreement, (B) to take such actions reasonably necessary or advisable to grant to the Collateral Agent for the benefit of the Secured Parties a perfected first priority security interest in the Collateral described in the Pledge and Security Agreement with respect to such new Wholly-Owned Domestic Subsidiary (subject to Permitted Liens and the terms of the Pledge and Security Agreement), including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by the Pledge and Security Agreement or by law or as may be reasonably requested by the Collateral Agent and (C) to deliver to the Collateral Agent a customary closing certificate of such Wholly-Owned Domestic Subsidiary, with appropriate insertions and attachments, and

(iv) if requested by the Collateral Agent, deliver to the Collateral Agent customary legal opinions relating to the matters described above.

(d) With respect to any new direct Foreign Subsidiary created or acquired after the Original Closing Date by the Borrower or any Guarantor, the Borrower or the applicable Guarantor shall promptly:

(i) execute and deliver to the Collateral Agent such amendments to the Pledge and Security Agreement as the Collateral Agent deems reasonably necessary or advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected first priority security interest in the Capital Stock of such new Foreign Subsidiary that is owned by the Borrower or such Guarantor (provided that in no event shall more than 65% of the total outstanding voting Capital Stock of any such new Foreign Subsidiary be required to be so pledged and then only so long as such Capital Stock does not constitute an Excluded Asset), and

(ii) if commercially reasonable, deliver to the Collateral Agent the certificates representing such Capital Stock (unless constituting an Excluded Asset), together with undated stock powers, in blank, executed and delivered by a duly authorized officer of the Borrower or the relevant Guarantor, and take such other action as may be necessary or, in the opinion of the Collateral Agent, desirable to perfect the Collateral Agent's security interest therein.

5.10. Post-Closing Matters.

(a) Within ninety (90) days after the Effective Date (or such longer period as Administrative Agent may agree in its reasonable discretion), the Collateral Agent shall have received evidence of property and liability insurance policies (or self-insurance) on all of the Borrower's material property in at least such amounts and against at least such risks as are usually insured against by companies of a similar size engaged in the same or a similar business and, from and after the Effective Date, endorsements naming the Collateral Agent as an additional insured and loss payee as its interests may appear, to the extent required by the Security Documents; and

(b) Within 90 days after the Original Closing Date (or such longer period as the Administrative Agent may agree in its reasonable discretion), the Collateral Agent shall have received:

(1) counterparts of a Mortgage with respect to each real property designated as a Mortgaged Property listed on Schedule 1.1B hereto, duly executed and delivered by the record owner of such property in form suitable for filing or recording in the filing or recording office in the jurisdiction in which such property is located or as the Collateral Agent may reasonably deem necessary or desirable in order to create a valid and subsisting perfected first-priority Lien (subject only to Permitted Liens) on the property and/or rights described therein in favor of the Collateral Agent for the benefit of the Secured Parties, and evidence that all filing and recording taxes and fees have been paid or otherwise provided for in a manner reasonably satisfactory to the Collateral Agent (it being understood that if a mortgage tax will be owed on the entire amount of the indebtedness evidenced hereby, then the amount of such mortgage tax shall be calculated based on the lesser of (x) the amount of the Indebtedness allocated to the applicable Mortgaged Property and (y) 110% of the fair market value of the Mortgaged Property at the time the Mortgage is entered into, which in the case of clause (x) will result in a limitation of the debt secured by the Mortgage to such amount);

(2) fully paid policies of title insurance (or marked-up title insurance commitments having the effect of policies of title insurance) on each Mortgaged Property naming the Collateral Agent as the insured party for its benefit and that of the Secured Parties and respective successors and assigns (the "Title Insurance Policies") issued by the Title Insurance Company, such Title Insurance Policies to be in form and substance and in an amount reasonably acceptable to the Collateral Agent, insuring the Mortgages to be valid subsisting first-priority Liens (subject to Permitted Liens) on the property described therein, free and clear of all Liens other than Permitted Liens, each of which shall (i) to the extent reasonably necessary, include such reinsurance arrangements or coinsurance as shall be reasonably acceptable to the Collateral Agent, (ii) contain a "tie-in" endorsement, if available under applicable law and (iii) have been supplemented by such endorsements as shall be reasonably requested by the Collateral Agent (including, if reasonably requested by the Collateral Agent, endorsements on matters relating to usury, first loss, zoning, contiguity, revolving credit, doing business, access, variable rate, survey, environmental lien, subdivision, mortgage recording tax, separate tax lot and so-called comprehensive coverage over covenants and restrictions);

(3) either (a) a new survey with respect to the plant site located on each Mortgaged Property prepared by a surveyor selected by the Borrower and reasonably acceptable to the Collateral Agent, certified to the Administrative Agent, the Collateral Agent and the Title Insurance Company issuing the title insurance policy for such Mortgaged Property pursuant to clause (2) above, and complying with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," each in form and substance reasonably acceptable to the Collateral Agent; or (b) an existing survey of the plant site located on each Mortgaged Property together with an "affidavit of no-change", in each case sufficient to provide coverage under the Title Insurance Policies referred to in clause (2) above that does not contain a general survey exception for survey matters with respect to the plant site and which contains survey-related endorsements with respect to the plant site reasonably acceptable to the Collateral Agent;

(4) customary legal opinions, addressed to the Administrative Agent, the Collateral Agent and the Lenders (a) in the state in which the applicable Mortgaged Property is located with respect to the enforceability and perfection of such Mortgage and any related fixture filing and any other customary matters reasonably requested by the Collateral Agent and (b) in the state in which the mortgagor is organized or formed, with respect to due authorization, execution and delivery of such Mortgage and other customary matters reasonably requested by the Collateral Agent;

(5) with respect to each Mortgaged Property, a completed "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination, and to the extent any Building or Mobile Home (as defined by the Flood Insurance Laws) on the Mortgaged Property is located in an area identified by the Federal Emergency Management Agency (or any successor agent) as a special flood hazard area, (i) a notice about special flood hazard area status and flood disaster assistance duly executed by the Borrower and (ii) evidence of flood insurance as required by Section 5.4 hereof; and

(6) with respect to the Magic Valley Facility, a collateral assignment of (a) that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated as of August 14, 2003, between Calpine Construction Finance Company, L.P., Malcom S. Morris, and Magic Valley Pipeline L.P., recorded on August 20, 2003 as document number 1233814 and (b) that certain Option Agreement, dated as of August 14, 2003, as evidenced by that certain Memorandum of Option Agreement, made effective as of August 14, 2003, in each case in form and substance satisfactory to the Collateral Agent.

(c) *Mortgage Amendments*. Within 180 days after the Effective Date (or such longer period as the Administrative Agent may agree in its reasonable discretion), the Borrower shall, or shall cause the applicable Guarantor to, enter into an amendment to such of the Mortgages encumbering the Mortgaged Properties as the Administrative Agent may reasonably request based on the advice of local counsel in the jurisdiction in which each Mortgaged Property is located, in form reasonably acceptable to the Administrative Agent, together, in each case, if reasonably requested by the Administrative Agent, with opinions of local counsel with respect thereto and a date-down endorsement to the existing lender's title insurance policy (or where such endorsement is not available, a modification endorsement or a title search). For the avoidance of doubt, the requirements under this Section 5.10(c) have been satisfied with respect to Mortgages encumbering Mortgaged Properties in Texas and Massachusetts.

SECTION 6

Negative Covenants

The Borrower agrees that, so long as any Term Loan or other amount is owing to any Lender or the Administrative Agent hereunder or under any other Loan Document (other than contingent indemnification obligations for which no claim has been asserted) or the Term Commitments are outstanding:

6.1. Limitation on Incurrence of Indebtedness and Issuance of Preferred Stock.

(a) The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "incur") any Indebtedness, and the Borrower will not issue any Disqualified Capital Stock and will not permit any of its Restricted Subsidiaries to issue any shares of preferred stock; provided, however, that the Borrower may incur Indebtedness or issue Disqualified Capital Stock, and the Guarantors may incur Indebtedness or issue preferred stock, if the Fixed Charge Coverage Ratio for the Borrower's most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Capital Stock or preferred stock is issued would have been at least 2.0 to 1.0, determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if the additional Indebtedness had been incurred or the Disqualified Capital Stock or preferred stock had been issued, as the case may be, at the beginning of such four-quarter period.

(b) The provisions of Section 6.1(a) will not prohibit the incurrence of any of the following items of Indebtedness (collectively, "Permitted Debt"):

(i) the incurrence by the Borrower and its Restricted Subsidiaries and the guarantee by the Borrower and its Restricted Subsidiaries of Indebtedness and letters of credit under Credit Facilities in an aggregate principal amount at any one time outstanding under this Section 6.1(b)(i) (with letters of credit being deemed to have a principal amount equal to the maximum potential liability of the Borrower and its Restricted Subsidiaries thereunder) not to exceed $50.0 million less the amount incurred pursuant to clause (a)(i) of the definition of "Maximum Incremental Facilities Amount" (but only to the extent that such amount is then outstanding);

(ii) the incurrence by the Borrower and its Restricted Subsidiaries of Indebtedness represented by the Term Loans (including Incremental Term Loans) and the related guarantees and the incurrence by any Restricted Subsidiary of the Borrower of any other guarantee of the Term Loans (including Incremental Term Loans) and other Obligations;

(iii) the incurrence by the Borrower or any of its Restricted Subsidiaries of Indebtedness represented by Capital Lease Obligations, mortgage financings or purchase money obligations, in each case, incurred for the purpose of financing all or any part of the purchase price or cost of design, construction, installation or improvement of property, plant or equipment used or useful in the business of the Borrower or any of its Restricted Subsidiaries or within 180 days thereafter; provided that at the time of incurrence of any such Indebtedness, the aggregate amount of Indebtedness outstanding under this Section 6.1(b)(iii), including all Permitted Refinancing Indebtedness incurred to refund, refinance or replace any Indebtedness incurred pursuant to this Section 6.1(b)(iii), does not exceed the greater of (x) $100.0 million and (y) 5.0% of Total Assets;

(iv) Indebtedness, Disqualified Capital Stock or preferred stock of Persons or assets that are acquired by the Borrower or any of its Restricted Subsidiaries or merged into the Borrower or any of its Restricted Subsidiaries in accordance with the terms of this Agreement; provided that such Indebtedness, Disqualified Capital Stock or preferred stock is not incurred in contemplation of such acquisition or merger; and provided further that after giving effect to such acquisition or merger, either (a) the Borrower would be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 6.1(a) or (b) the Fixed Charge Coverage Ratio would be no less than that immediately prior to such acquisition or merger;

(v) the incurrence by the Borrower or any of its Restricted Subsidiaries of Permitted Refinancing Indebtedness in exchange for, or the net proceeds of which are used to refund, refinance or replace, Indebtedness (other than intercompany Indebtedness) that was permitted by this Agreement to be incurred under Section 6.1(a) or clauses (ii), (iii), (iv), (v), (xiii), (xiv), (xv) or (xvii) of this Section 6.1(b);

(vi) the incurrence by the Borrower or any of its Restricted Subsidiaries of intercompany Indebtedness between or among the Borrower or any of its Restricted Subsidiaries; provided, however, that:

(A) if the Borrower or any Guarantor is the obligor on such Indebtedness and the payee is not the Borrower or a Guarantor, such Indebtedness must be expressly subordinated to the prior payment in full in cash of all Obligations, in the case of the Borrower, or the guarantee, in the case of a Guarantor; and

(B) (i) any subsequent issuance or transfer of Equity Interests that results in any such Indebtedness being held by a Person other than the Borrower or any of its Restricted Subsidiaries and (ii) any sale or other transfer of any such Indebtedness to a Person that is not either the Borrower or a Restricted Subsidiary of the Borrower (except transfers to the applicable Secured Debt Representative to secure Parity Secured Obligations) will be deemed, in each case, to constitute an incurrence of such Indebtedness by the Borrower or such Restricted Subsidiary, as the case may be, that was not permitted by this Section 6.1(b)(vi);

(vii) the Guarantee by the Borrower or any of its Restricted Subsidiaries of Indebtedness that was permitted by this Agreement to be incurred by another provision of this Section 6.1(b);

(viii) the issuance by any of the Borrower's Restricted Subsidiaries to the Borrower or to any of its Restricted Subsidiaries of shares of preferred stock; provided, however, that:

(A) any subsequent issuance or transfer of Equity Interests that results in any such preferred stock being held by a Person other than the Borrower or its Restricted Subsidiary; and

(B) any sale or other transfer of any such preferred stock to a Person that is not either the Borrower or a Restricted Subsidiary of the Borrower

will be deemed, in each case, to constitute an issuance of such preferred stock by such Restricted Subsidiary that was not permitted by this Section 6.1(b)(viii);

(ix) the incurrence by the Borrower or any of its Restricted Subsidiaries of obligations under Swap Agreements or Cash Management Obligations in the ordinary course of business or consistent with past practice;

(x) the incurrence by the Borrower or any of its Restricted Subsidiaries of Indebtedness in respect of workers' compensation claims, self -insurance obligations, bankers' acceptances, performance, surety and similar bonds provided by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(xi) the incurrence by the Borrower or any of its Restricted Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Indebtedness is covered within five Business Days;

(xii) the incurrence of Indebtedness arising from agreements of the Borrower or any of its Restricted Subsidiaries providing for indemnification, adjustment of purchase price or similar obligations, in each case, incurred or assumed in connection with the disposition or acquisition of any business, assets or Equity Interests of a Subsidiary; provided that the maximum aggregate liability in respect of all such Indebtedness in respect of a disposition shall at no time exceed the gross proceeds (including the Fair Market Value of non-cash proceeds) actually received by the Borrower and/or such Restricted Subsidiary in connection with such disposition;

(xiii) Indebtedness of the Borrower or any of its Restricted Subsidiaries consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business or consistent with past practice;

(xiv) Indebtedness of the Borrower and its Restricted Subsidiaries existing on the Effective Date;

(xv) (a) Environmental CapEx Debt or (b) Indebtedness in respect of Upgrades; provided, in each case, that prior to the incurrence of any such Indebtedness, the Borrower shall deliver to the Administrative Agent an officer's certificate of a Responsible Officer designating such Indebtedness as Environmental CapEx Debt or Indebtedness in respect of Upgrades, as applicable;

(xvi) the incurrence by the Borrower or any of its Restricted Subsidiaries of additional Indebtedness in an aggregate principal amount (or accreted value, as applicable) at any time outstanding pursuant to this Section 6.1(b)(xvi), including all Permitted Refinancing Indebtedness incurred to refund, refinance or replace any Indebtedness incurred pursuant to this clause (xvii), not to exceed the greater of (x) $100.0 million and (y) 5.0% of Total Assets (which may, but need not, be incurred under a Credit Facility); and

(xvii) the incurrence by the Borrower or any of its Restricted Subsidiaries of additional Indebtedness in an aggregate principal amount (or accreted value, as applicable) at any time outstanding pursuant to this Section 6.1(b)(xvii), including all Permitted Refinancing Indebtedness incurred to refund, refinance or replace any Indebtedness incurred pursuant to this clause (xvii), not to exceed the greater of (x) $100.0 million and (y) 5.0% of Total Assets (which may, but need not, be incurred under a Credit Facility) less the amount incurred pursuant to clause (a)(ii) of the definition of "Maximum Incremental Facilities Amount" (but only to the extent such amount is then outstanding).

(c) The Borrower shall not, and shall not permit any Guarantor to, incur any Indebtedness (including Permitted Debt) that is contractually subordinated in right of payment to any other Indebtedness of the Borrower or that Guarantor unless such Indebtedness is also contractually subordinated in right of payment to the Obligations or the applicable guarantee on substantially identical terms; provided, however, that no Indebtedness of the Borrower will be deemed to be contractually subordinated in right of payment to any other Indebtedness of the Borrower solely by virtue of being unsecured or by virtue of being secured on a junior basis.

(d) For purposes of determining compliance with this Section 6.1, in the event that an item of proposed Indebtedness meets the criteria of more than one of the categories of Permitted Debt described in clauses (i) through (xvii) of Section 6.1(b), or is entitled to be incurred pursuant to Section 6.1(a), the Borrower will be permitted to classify such item of Indebtedness on the date of its incurrence, or later reclassify from time to time all or a portion of such item of Indebtedness, in any manner that complies with this Section 6.1. The accrual of interest, the accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, and the payment of dividends on Disqualified Capital Stock or preferred stock in the form of additional shares of the same class of Disqualified Capital Stock or preferred stock will not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Capital Stock or preferred stock for purposes of this Section 6.1; provided, in each such case, that the amount thereof is included in (and to the extent required by) Fixed Charges of the Borrower as accrued. Notwithstanding any other provision of this Section 6.1, the maximum amount of Indebtedness that the Borrower or any of its Restricted Subsidiaries may incur pursuant to this Section 6.1 shall not be deemed to be exceeded solely as a result of fluctuations in exchange rates or currency values.

6.2. Limitation on Liens. The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, assume or otherwise cause or suffer to exist or become effective any Lien of any kind on any asset now owned or hereafter acquired, except Permitted Liens.

6.3. Merger, Consolidation, or Sale of Assets.

(a) The Borrower shall not, directly or indirectly, (1) consolidate or merge with or into another Person (whether or not the Borrower is the surviving corporation); or (2) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Borrower and its Restricted Subsidiaries taken as a whole, in one or more related transactions, to another Person, unless:

(i) either:

(A) the Borrower is the surviving corporation; or

(B) the Person formed by or surviving any such consolidation or merger (if other than an Borrower) or to which such sale, assignment, transfer, conveyance or other disposition has been made is either (i) a corporation organized or existing under the laws of the United States, any state of the United States or the District of Columbia or (ii) a partnership or limited liability company organized or existing under the laws of the United States, any state of the United States or the District of Columbia;

(ii) the Person formed by or surviving any such consolidation or merger (if other than the Borrower) or the Person to which such sale, assignment, transfer, conveyance or other disposition has been made assumes all the obligations of the Borrower under this Agreement and the Security Documents pursuant to a supplemental documentation reasonably satisfactory to the Administrative Agent;

(iii) immediately after such transaction, no Event of Default exists; and

(iv) the Borrower or the Person formed by or surviving any such consolidation or merger (if other than the Borrower) or to which such sale, assignment, transfer, conveyance or other disposition has been made will, on the date of such transaction after giving *pro forma* effect thereto and to any related financing transactions as if the same had occurred at the beginning of the applicable four-quarter period, either (i) have a *pro forma* Fixed Charge Coverage Ratio that is at least equal to the actual Fixed Charge Coverage Ratio of the Borrower as of such date or (ii) be permitted to incur at least $1.00 of additional Indebtedness pursuant to Section 6.1(a).

(b) In addition, the Borrower may not, directly or indirectly, lease all or substantially all of its properties or assets, in one or more related transactions, to any other Person.

(c) Notwithstanding the foregoing:

(i) any Restricted Subsidiary of the Borrower may consolidate with, merge into or transfer all or part of its properties and assets to the Borrower or any other Restricted Subsidiary of the Borrower; and

(ii) the Borrower may merge with an Affiliate solely for the purpose of reincorporating the Borrower or reforming in another jurisdiction.

(d) Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets of the Borrower in accordance with this Section 6.3, the successor entity formed by such consolidation or into or with which the Borrower is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, lease, conveyance or other disposition, the provisions of this Agreement referring to the Borrower shall refer instead to the successor entity and not to the Borrower), and may exercise every right and power of the Borrower under this Agreement with the same effect as if such successor Person had been named as the Borrower herein; provided that the predecessor Borrower shall not be relieved from the obligation to pay the principal of and interest on the Notes except in the case of a sale, assignment, transfer, conveyance or other disposition of all of the Borrower's assets that meets the requirements of this Section 6.3.

6.4. Limitation on Sale and Leaseback Transactions.

(a) The Borrower will not, and will not permit any of its Restricted Subsidiaries to, enter into any sale and leaseback transaction; provided that the Borrower or any of its Restricted Subsidiaries may enter into a sale and leaseback transaction if:

(i) the Borrower or the Restricted Subsidiary, as applicable, could have incurred Indebtedness in an amount equal to the Attributable Debt relating to such sale and leaseback transaction under Section 6.1;

(ii) the gross cash proceeds of that sale and leaseback transaction are at least equal to the Fair Market Value of the property that is the subject of that sale and leaseback transaction; and

(iii) if such sale and leaseback transaction constitutes an Asset Sale, the transfer of assets in that sale and leaseback transaction is permitted by, and the Borrower applies (or reinvests) the proceeds of such transaction in compliance with, Section 6.8.

(b) Section 6.4(a) shall not apply to a sale and leaseback transaction entered into between the Borrower and a Restricted Subsidiary of the Borrower or between Restricted Subsidiaries of the Borrower.

6.5. Business Activities. The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, engage in any business other than Permitted Businesses, except to such extent as would not be material to the Borrower and its Subsidiaries taken as a whole.

6.6. Designation of Restricted and Unrestricted Subsidiaries. The Board of Directors of the Borrower may designate any Restricted Subsidiary of the Borrower to be an Unrestricted Subsidiary if that designation would not cause an Event of Default. If a Restricted Subsidiary of the Borrower is designated as an Unrestricted Subsidiary, the aggregate Fair Market Value of all outstanding Investments owned by the Borrower and its Restricted Subsidiaries in the Subsidiary properly designated will be deemed to be an Investment made as of the time of the designation and will utilize the amount available for Restricted Payments under Section 6.9 or Permitted Investments, as determined by the Borrower. That designation will only be permitted if the Investment would be permitted at that time and if the Restricted Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. The Board of Directors of the Borrower may redesignate any Unrestricted Subsidiary to be a Restricted Subsidiary.

6.7. Transactions with Affiliates.

(a) The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Borrower (each, an "Affiliate Transaction") involving aggregate payments in excess of $10.0 million, unless:

(i) the Affiliate Transaction is on terms that are no less favorable (as reasonably determined by the Borrower) to the Borrower or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Borrower or such Restricted Subsidiary with an unrelated Person; and

(ii) the Borrower delivers to the Administrative Agent:

(A) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $25.0 million, either (x) a resolution of the Board of Directors of the Borrower set forth in an officer's certificate of a Responsible Officer certifying that such Affiliate Transaction complies with this Section 6.7 and that such Affiliate Transaction has been approved by a majority of the members of the Board of Directors of the Borrower or (y) an opinion described in clause (B) below; and

(B) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $50.0 million, an opinion as to the fairness to the Borrower or such Restricted Subsidiary of such Affiliate Transaction from a financial point of view issued by an accounting, appraisal or investment banking firm of national standing.

(b) The following items will not be deemed to be Affiliate Transactions and, therefore, will not be subject to the provisions of Section 6.7(a):

(i) any employment agreement or director's engagement agreement, employee benefit plan, officer and director indemnification agreement or any similar arrangement entered into by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business or approved by the relevant Board of Directors;

(ii) transactions between or among the Borrower and/or its Restricted Subsidiaries;

(iii) transactions with a Person that is an Affiliate of the Borrower solely because the Borrower owns, directly or through a Restricted Subsidiary, an Equity Interest in, or controls, such Person;

(iv) payment of reasonable directors' fees and expenses and indemnities to Persons who are not otherwise Affiliates of the Borrower;

(v) any issuance of Equity Interests (other than Disqualified Capital Stock) of the Borrower to Affiliates of the Borrower;

(vi) Restricted Payments that do not violate the provisions of Section 6.9 or a Permitted Investment;

(vii) loans or advances to directors, officers and employees in the ordinary course of business not to exceed $10.0 million in the aggregate outstanding at any one time;

(viii) any agreement, instrument or arrangement as in effect as of the Effective Date and any transactions contemplated thereby and any amendment thereto or replacement thereof, so long as any such amendment or replacement agreement that at the time such amendment or agreement is executed is not materially less favorable taken as a whole than those that would have been obtained in a comparable transaction by the Borrower or such Restricted Subsidiary with an unrelated Person;

(ix) any *pro rata* distribution (including a rights offering) to all holders of a class of Equity Interests or Indebtedness of the Borrower or any of its Restricted Subsidiaries, including Persons who are Affiliates of the Borrower or any of its Restricted Subsidiaries;

(x) any transaction involving sales of electric capacity, energy, ancillary services, transmission services and products, steam, emissions credits, fuel, fuel transportation, shared services agreements, operation and maintenance agreements and fuel storage in the ordinary course of business on terms that are not materially less favorable (as reasonably determined by the Borrower) to the Borrower or the relevant Restricted Subsidiary of the Borrower than those that would have been obtained in a comparable transaction by the Borrower or such Restricted Subsidiary with an unrelated Person;

(xi) if the Borrower or any of its Restricted Subsidiaries enter into a transaction involving sales of electric capacity, energy, ancillary services, transmission services and products, steam, emissions credits, fuel, fuel transportation and fuel storage with any Person that is not an Affiliate, any amendment to any agreement with an Affiliate with respect thereto that modifies such agreement solely with respect to the subject matter of the transaction with such non-Affiliate;

(xii) the trading and sharing of parts and components for equipment, tools and equipment among the Borrower and its Affiliates, in the ordinary course of business or consistent with past practices of the relevant Persons, including for purposes of spare or replacement;

(xiii) transactions with customers, clients, suppliers, joint venture partners or purchasers or sellers of goods or services (including pursuant to joint venture agreements) otherwise in compliance with the terms of this Agreement that are fair to the Borrower and its Restricted Subsidiaries, in the determination of a senior financial officer of the Borrower, or are on terms not materially less favorable taken as a whole would reasonably have been obtained at such time from an unaffiliated party;

(xiv) transactions in which the Borrower or any Restricted Subsidiary of the Borrower, as the case may be, delivers to the Administrative Agent a letter from an accounting, appraisal or investment banking firm of national standing stating that such transaction is fair to the Borrower or such Restricted Subsidiary from a financial point of view or meets the requirements of Section 6.7(a)(i); and

(xv) transactions relating to corporate services agreements, administrative services agreements, operating, service and maintenance agreements, and intercompany tolling agreements, in each case, among the Borrower and/or one or more of its Restricted Subsidiaries and Calpine Corporation and/or one or more of its subsidiaries.

6.8. Asset Sales.

(a) The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, consummate an Asset Sale unless:

(i) the Borrower (or its Restricted Subsidiary, as the case may be) receive consideration at the time of the Asset Sale at least equal to the Fair Market Value of the assets or Equity Interests issued or sold or otherwise disposed of; and

(ii) at least 75% of the consideration received in the Asset Sale by the Borrower or such Restricted Subsidiary is in the form of cash or Cash Equivalents or Designated Non-Cash Consideration to the extent that all Designated Non-Cash Consideration at such time does not exceed the greater of $50.0 million and 2.5% of Total Assets (with the Fair Market Value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value). For purposes of this provision, each of the following will be deemed to be cash:

(A) any liabilities, as shown on the Borrower's most recent consolidated balance sheet, of the Borrower or any Restricted Subsidiary (other than contingent liabilities and liabilities that are by their terms subordinated to the Obligations or any guarantee thereof) and assumed by the transferee of any such assets pursuant to a customary novation agreement that releases the Borrower or such Restricted Subsidiary from further liability;

(B) any securities, notes or other obligations received by the Borrower or any such Restricted Subsidiary from such transferee that are converted (by sale or other disposition) by the Borrower or such Restricted Subsidiary into cash, to the extent of the cash received in that conversion within 180 days; and

(C) reasonable reserves for indemnity obligations and purchase price adjustments funded in cash or held back by the purchaser.

(b) Within 365 days after the receipt of any Net Proceeds from an Asset Sale or, if the Borrower or any of its Restricted Subsidiaries has entered into a binding commitment or commitments with respect to any of the actions described in Section 6.8(b)(iii)(A) through (iii)(C) below, within the later of (x) 365 days after the receipt of any Net Proceeds from an Asset Sale or (y) 365 days after the entering into such commitment or commitments, the Borrower (or the applicable Restricted Subsidiary, as the case may be) may apply such Net Proceeds:

(i) in the case of a sale of assets of a Restricted Subsidiary of the Borrower that is not a Guarantor, to repay Indebtedness of that Restricted Subsidiary and correspondingly reduce commitments with respect thereto;

(ii) in the case of a sale of assets pledged to secure Indebtedness (including Capital Lease Obligations), other than Parity Secured Debt, to repay the Indebtedness secured by those assets;

(iii) in the case of any Asset Sale:

(A) to acquire all or substantially all of the assets of (or any division, business unit or line of business of), or all or a majority of the Voting Stock of, a Person engaged in a Permitted Business, provided that such Person becomes a Restricted Subsidiary;

(B) to make a capital expenditure (including, without limitation, a maintenance capital expenditure or expense); or

(C) to acquire other assets that are not classified as current assets under GAAP and that are used or useful in a Permitted Business;

(iv) to collateralize the reimbursement obligations of the Borrower or any of its Restricted Subsidiaries in connection with surety or performance bonds or letters of credit or bankers' acceptances issued in the ordinary course of business; or

(v) any combination of the foregoing.

(c) As to any Net Proceeds from any Asset Sale, pending final application of such Net Proceeds in accordance with this Section 6.8, the Borrower or any of its Restricted Subsidiaries may temporarily reduce revolving credit borrowings or otherwise use the Net Proceeds in any manner that is not prohibited by this Agreement.

(d) Any Net Proceeds from Asset Sales that are not applied or invested as provided in Section 6.8(b) will constitute "Excess Proceeds." When the aggregate amount of Excess Proceeds exceeds $40.0 million, the Borrower shall make an Asset Sale Offer pursuant to Section 2.14(b) to all Lenders and an offer to all holders of other Parity Secured Debt that is *pari passu* with the Term Loans containing provisions similar to those set forth in this Agreement with respect to offers to purchase or redeem with the proceeds of sales of assets, an aggregate principal amount of Term Loans and such other Parity Secured Debt that may be purchased (or repaid, prepaid or redeemed) on a pro rata basis equal to the aggregate Excess Proceeds (an "Asset Sale Offer"). The offer price for the Term Loans in any Asset Sale Offer will be equal to 100% of the principal amount plus accrued and unpaid interest to the date of purchase, and will be payable in cash. If any Excess Proceeds remain after consummation of an Asset Sale Offer, the Borrower may use those Excess Proceeds for any purpose not otherwise prohibited by this Agreement. If the aggregate principal amount of Term Loans and other Parity Secured Debt tendered into such Asset Sale Offer or other offer exceeds the amount of Excess Proceeds, the Borrower will select the Term Loans and such other Parity Secured Debt to be purchased on a *pro rata* basis. Upon completion of each Asset Sale Offer, the amount of Excess Proceeds will be reset at zero.

6.9. Limitation on Restricted Payments.

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

(i) declare or pay any dividend or make any other payment or distribution on account of the Borrower or any of its Restricted Subsidiaries' Equity Interests (including, without limitation, any payment in connection with any merger or consolidation involving the Borrower or any of its Restricted Subsidiaries) or to the direct or indirect holders of the Borrower's or any of its Restricted Subsidiaries' Equity Interests in their capacity as such (other than dividends or distributions payable in Equity Interests (other than Disqualified Capital Stock) of the Borrower or any of its Restricted Subsidiaries);

(ii) purchase, redeem or otherwise acquire or retire for value (including, without limitation, in connection with any merger or consolidation involving the Borrower) any Equity Interests of the Borrower or Parent;

(iii) make any payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value any Indebtedness of the Borrower or of any Guarantor that is subordinated in right of payment to the Term Loans or any guarantee thereof (excluding any intercompany Indebtedness, intercompany receivables or intercompany advances between or among any of the Borrower and any of its Restricted Subsidiaries), except a payment of interest or principal at the Stated Maturity thereof; or

(iv) make any Investment that is not a Permitted Investment.

(all such payments and other actions set forth in these clauses (i) through (iv) above being collectively referred to as "Restricted Payments").

(b) The foregoing provisions of Section 6.9(a) shall not prohibit:

(i) the payment of any dividend or distribution or the consummation of any irrevocable redemption within 60 days after the date of declaration of the dividend or distribution or giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend, distribution or redemption payment would have complied with the provisions of this Agreement;

(ii) the making of any Restricted Payment in exchange for Equity Interests of the Borrower, or out of the net cash proceeds of the substantially concurrent sale (other than to a Subsidiary of any Borrower) of Equity Interests of the Borrower (other than Disqualified Capital Stock) and, to the extent contributed to the Borrower, Equity Interests of Parent, or out of the cash proceeds of the substantially concurrent contribution of common equity capital or surplus to the Borrower;

(iii) the defeasance, redemption, repurchase or other acquisition or retirement for value of Indebtedness or Disqualified Capital Stock of the Borrower or any Guarantor that is subordinated to the Obligations or to any guarantee thereof with the net cash proceeds from a substantially concurrent incurrence of Permitted Refinancing Indebtedness;

(iv) the payment of any dividend (or, in the case of any partnership or limited liability company, any similar distribution) by a Restricted Subsidiary of the Borrower to the holders of any series of its Equity Interests on a *pro rata* basis;

(v) (A) the repurchase, redemption or other acquisition or retirement for value of any Equity Interests of any Parent, the Borrower or any Restricted Subsidiaries of the Borrower in connection with any management equity subscription agreement, stock option agreement, shareholders' agreement, severance agreement, employee benefit plan or agreement or similar agreement, (B) the repurchase for value of any Equity Interests of any Parent, the Borrower or any Restricted Subsidiaries of the Borrower in the open market to satisfy stock options issued by Parent, the Borrower or any Restricted Subsidiaries of the Borrower that are outstanding; provided that the aggregate price paid for all such repurchased, redeemed, acquired or retired Equity Interests after the Effective Date may not exceed (x) $10.0 million in any calendar year (or the *pro rata* portion thereof for the calendar year 2023) or (y) $40.0 million in the aggregate since the Effective Date; provided, however, that if the aggregate amount applied pursuant to this Section 6.9(b)(v) shall be less than $10.0 million in any calendar year or the *pro rata* portion thereof for the calendar year 2023 (before giving effect to any carryover), then the amount of such shortfall may be added to the amount that may be applied under this Section 6.9(b)(v) in any subsequent calendar year, subject at all times to the preceding clause (y);

(vi) the repurchase of Equity Interests deemed to occur upon the exercise of stock options to the extent such Equity Interests represent a portion of the exercise price of those stock options and repurchases of Equity Interests in connection with the withholding of a portion of the Equity Interests granted or awarded to a director or an employee to pay for the taxes payable by such director or employee upon such grant or award;

(vii) the purchase by the Borrower of fractional shares upon conversion of any securities of the Borrower into Equity Interests of the Borrower;

(viii) the declaration and payment of dividends to holders of any class or series of Disqualified Capital Stock of the Borrower or any preferred stock of its Restricted Subsidiaries issued on or after the Effective Date in accordance with the Fixed Charge Coverage Ratio test contained in Section 6.1;

(ix) upon the occurrence of (i) a Change of Control Triggering Event and after the completion of the Change of Control Prepayment Offer pursuant to Section 2.14(a) or (ii) an Asset Sale to the extent an Asset Sale Offer is required in accordance with this Agreement and after the completion of the Asset Sale Offer pursuant to Section 2.14(b) (including, in each case, the repayment of all Term Loans of accepting Lenders), any purchase, defeasance, retirement, redemption or other acquisition of Equity Interests or Indebtedness that is contractually subordinated to the Obligations or any guarantee thereof required under the terms of such Capital Stock or Indebtedness as a result of such Change of Control Triggering Event or Asset Sale, as applicable;

(x) the declaration and payment of dividends or distributions to any Parent, the proceeds of which are used in a manner contemplated by Section 3.9(iv);

(xi) the transactions with any Person (including any Affiliate of the Borrower) set forth in clauses (i) and (iv) of Section 6.7 and the funding of any obligations in connection therewith;

(xii) the issuance of Equity Interests of the Borrower (other than Disqualified Capital Stock) for other Equity Interests of the Borrower in connection with any rights offering and payments for the redemption of fractional shares in connection with any rights offering;

(xiii) the declaration and payment of dividends or distributions to, or the making of loans to any Parent:

(A) with respect to any taxable period for which the Borrower is a partnership or disregarded entity for U.S. federal income Tax purposes that is wholly-owned (directly or indirectly) by a C corporation for U.S. federal and/or applicable state or local income Tax purposes, in amounts required for such Parent to pay federal, state and/or local income Taxes to the extent such income Taxes are attributable to the income of the Borrower and/or its Restricted Subsidiaries and, to the extent of the amount actually received from Unrestricted Subsidiaries, in amounts required to pay such Taxes to the extent attributable to the income of the Unrestricted Subsidiaries; provided, however, that in each case the amount of such payments in any taxable year does not exceed the amount that the Borrower and/or its applicable Restricted Subsidiaries (and, to the extent described above, its applicable Unrestricted Subsidiaries) would have been required to pay in respect of such federal, state and/or local income Taxes, as applicable, for such taxable year had the Borrower and/or such Restricted Subsidiaries (and/or such Unrestricted Subsidiaries, as applicable) paid such Taxes as a stand-alone taxpayer, less any such federal, state and/or local income Taxes, as applicable, actually payable directly by the Borrower and/or its Restricted Subsidiaries (and/or its Unrestricted Subsidiaries, as applicable); and

(B) in an aggregate amount not to exceed $1.5 million per annum (such amount to be adjusted upwards annually, beginning on January 1, 2024, by 5% on a compounded basis) to pay reasonable accounting, legal and administrative expenses of any Parent when due;

(xiv) Investments in Unrestricted Subsidiaries not to exceed the greater of (x) $100.0 million and (y) 5.0% of Total Assets since the Effective Date;

(xv) [~~reserved~~Reserved];

(xvi) additional Restricted Payments in an aggregate amount not to exceed $10.0 million in any calendar year (or the *pro rata* portion thereof for the calendar year 2023); provided, however, that if the aggregate amount applied pursuant to this Section 6.9(b)(xvi) shall be less than $10.0 million in any calendar year or the *pro rata* portion thereof for the calendar year 2023 (before giving effect to any carryover), then the amount of such shortfall may be added to the amount that may be applied under this Section 6.9(b)(xvi) in any subsequent calendar year;

(xvii) additional Restricted Payments so long as at the time of such Restricted Payment, the amount of such Restricted Payments together with all other Restricted Payments made pursuant to Section 6.9(b)(xvii) does not to exceed the greater of (x) $75.0 million and (y) 3.5% of Total Assets; and

(xviii) the dividend of the Equity Interests or Indebtedness of any Unrestricted Subsidiary; and

(xix) the payment or making of any cash Restricted Payment; provided that no Default or Event of Default has occurred and is continuing or would occur as a consequence of such cash dividend.

The amount of all Restricted Payments (other than cash) will be the Fair Market Value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by the Borrower or its Restricted Subsidiaries, as the case may be, pursuant to the Restricted Payment. The Fair Market Value of any assets or securities that are required to be valued by this Section 6.9 will be determined by the Board of Directors of the Borrower; provided that if the Fair Market Value of such assets or securities involves an aggregate amount in excess of $50.0 million, the Borrower shall deliver to the Administrative Agent a resolution of the Board of Directors of the Borrower set forth in an officer's certificate of a Responsible Officer certifying that such valuation has been approved by a majority of the members of the Board of Directors of the Borrower.

For purposes of determining compliance with this Section 6.9, in the event that a Restricted Payment meets the criteria of more than one of the types of Restricted Payments described in the above clauses, the Borrower, in its sole discretion, may order and classify, and from time to time may reorder and reclassify, such Restricted Payment if it would be permitted at the time of any such reclassification.

6.10. Changes in Covenants When Term Loans Rated Investment Grade.

(a) If on any date following the Effective Date:

(i) the rating assigned to the Term Loans by either S&P or Moody's is an Investment Grade Rating and

(ii) no Default or Event of Default shall have occurred and be continuing,

then, beginning on that day and subject to the provisions of the following paragraph, the covenants contained in Sections 6.1, 6.3(a)(iv), 6.4(a)(i), 6.4(a)(iii), 6.5, 6.6, 6.7, 6.8 (and 2.14(b)) and 6.9 will be suspended.

(b) Notwithstanding the provisions of Section 6.10(a), if the ratings assigned by both such rating agencies with respect to the Term Loans should subsequently decline to below an Investment Grade Rating, the foregoing covenants will be reinstituted as of and from the date that both such ratings are below Investment Grade Ratings, unless and until such Term Loans subsequently attain an Investment Grade Rating from either S&P or Moody's (in which event the suspended covenants will again be suspended for such time that the Term Loans maintain an Investment Grade Rating from either S&P or Moody's); provided, however, that no Default, Event of Default or breach of any kind will be deemed to exist under this Agreement, the Security Documents or the related Guarantees with respect to the suspended covenants, and none of the Borrower or any of its Subsidiaries will bear any liability for any actions taken or events occurring after such Term Loans attain an Investment Grade Rating from either S&P or Moody's and before any reinstatement of the suspended covenants as provided above, or any actions taken at any time pursuant to any contractual obligation arising prior to the reinstatement, regardless of whether those actions or events would have been permitted if the applicable suspended covenant had remained in effect during such period.

SECTION 7

Events of Default

7.1. Events of Default. Each of the following is an "Event of Default":

(a) default for 30 days in the payment when due of interest on the Term Loans;

(b) default in payment when due (at maturity, upon redemption or otherwise) of the principal of, or premium, if any, on, the Term Loans;

(c) failure by Borrower to comply with the provisions of Section 2.14 or 6.3;

(d) failure by any Loan Party for 60 days after notice from the Administrative Agent or the Required Lenders to comply with any of the other agreements in this Agreement or the Security Documents required by this Agreement;

(e) (i) default under any other mortgage, indenture, agreement or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness of any Loan Party (or the payment of which is guaranteed by any Loan Party), whether such Indebtedness or Guarantee now exists, or is created after the Effective Date, if that default:

(A) is caused by a failure to pay principal of such Indebtedness at its stated final maturity (after giving effect to any applicable grace period provided in such Indebtedness) (a "Payment Default"); or

(B) results in the acceleration of such Indebtedness prior to its express maturity,

and 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 $100,000,000 or more; provided that this Section 7.1(e)(i) shall not apply to Indebtedness that becomes due solely as a result of the voluntary sale or transfer of property or assets to the extent such sale or transfer is permitted by the terms of such Indebtedness; or

(ii) [Reserved];

(f) any of the Security Documents shall cease, for any reason, to be in full force and effect (other than in accordance with its terms) with respect to Collateral with a book value greater than $50,000,000, or any Loan Party shall so assert, or any Lien (affecting Collateral with a book value greater than $50,000,000) created by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby (other than, in each case, pursuant to a failure of the Administrative Agent, the Collateral Agent, any other agent appointed by the Administrative Agent, the Collateral Agent or the Lenders to take any action within the sole control of such Person that is expressly required by the Loan Documents to be taken by such Person) (it being understood that the release of Collateral from the Security Documents or the discharge of a Guarantor therefrom in accordance with the terms hereof and thereof shall not be construed (x) as any of the Security Documents ceasing to be in full force and effect or (y) as any of the Liens created thereunder ceasing to be enforceable or of the same priority and effect purported to be created thereby);

(g) except as permitted by this Agreement, the Guaranty Agreement or the Pledge and Security Agreement, any Guaranty Reimbursement Obligation of a Significant Subsidiary ceases, for any reason, to be in full force and effect (other than in accordance with its terms), or any Significant Subsidiary that is a Guarantor denies or disaffirms in writing its obligations under its Guaranty Reimbursement Obligation;

(h) [Reserved];

(i) the Borrower or any Guarantor that is a Significant Subsidiary or any group of Guarantors that, taken together, would constitute a Significant Subsidiary, pursuant to or within the meaning of any Bankruptcy Law:

(i) commences a voluntary case,

(ii) consents to the entry of an order for relief against it in an involuntary case,

(iii) consents to the appointment of a custodian of it or for all or substantially all of its property,

(iv) makes a general assignment for the benefit of its creditors, or

(v) generally is not paying its debt as they become due; or

(j) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(i) is for relief against the Borrower or any Guarantor that is a Significant Subsidiary or any group of Guarantors that, taken together, would constitute a Significant Subsidiary, in an involuntary case;

(ii) appoints a custodian of the Borrower or any Guarantor that is a Significant Subsidiary or any group of Guarantors of the Borrower that, taken together, would constitute a Significant Subsidiary, or for all or substantially all of the property of the Borrower or any Guarantor that is a Significant Subsidiary or any group of Guarantors that, taken together, would constitute a Significant Subsidiary; or

(iii) orders the liquidation of the Borrower or any Guarantor that is a Significant Subsidiary or any group of Guarantors that, taken together, would constitute a Significant Subsidiary;

and the order or decree remains unstayed and in effect for 60 consecutive days.

In the case of an Event of Default specified in clause (i) or (j) of this Section 7.1 with respect to the Borrower, all outstanding Term Loans will become due and payable immediately without further action or notice. If any other Event of Default occurs and is continuing, the Required Lenders may declare all the Term Loans to be due and payable immediately. Upon any such declaration, the Term Loans shall become due and payable immediately. The Required Lenders by written notice to the Administrative Agent may, on behalf of all of the Lenders, rescind an acceleration and its consequences, if the rescission would not conflict with any judgment or decree and if all existing Events of Default (except nonpayment of principal, interest or premium that has become due solely because of the acceleration) have been cured or waived.

SECTION 8

The Agents

8.1. Appointment. Each Lender hereby irrevocably designates and appoints the Administrative Agent as the agent of such Lender under this Agreement and the other Loan Documents, and each such Lender irrevocably authorizes the Administrative Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Each Lender hereby irrevocably designates and appoints the Collateral Agent as the agent of such Lender under this Agreement and the other Loan Documents, and each such Lender irrevocably authorizes the Collateral Agent, in such capacity, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Collateral Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, none of the Administrative Agent and the Collateral Agent shall have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent or the Collateral Agent.

8.2. Delegation of Duties. Each of the Administrative Agent and the Collateral Agent may execute any of their duties under this Agreement and the other Loan Documents by or through agents or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. None of the Administrative Agent and the Collateral Agent shall be responsible for the negligence or misconduct of any agents or attorneys in fact selected by it with reasonable care.

8.3. Exculpatory Provisions. Neither any Agent nor any of their respective officers, directors, employees, agents, attorneys in fact or affiliates shall be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Loan Document (except to the extent that any of the foregoing are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted from its or such Person's own gross negligence or willful misconduct) or (ii) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Agents under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for the creation, perfection or priority of any Lien purported to be created by the Security Documents, the value or sufficiency of the Collateral or for any failure of any Loan Party a party thereto to perform its obligations hereunder or thereunder. The Agents shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party.

8.4. Reliance by the Administrative Agent. Each Agent shall be entitled to rely, and shall be fully protected in relying, upon any instrument, writing, resolution, notice, consent, certificate, affidavit, letter, telecopy, email message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including counsel to the Borrower), independent accountants and other experts reasonably selected by such Agent. The Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless the Administrative Agent shall first receive such advice or concurrence of the Required Lenders (or, if so specified by this Agreement, all Lenders) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Agents shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders (or, if so specified by this Agreement or any other Loan Document, all Lenders), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans.

8.5. Notice of Default. The Administrative Agent and the Collateral Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless it has received written notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that the Administrative Agent receives such a notice, it shall give notice thereof to the Lenders. The Administrative Agent and the Collateral Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement or any other Loan Document, all Lenders); provided that unless and until the Administrative Agent and the Collateral Agent shall have received such directions, the Administrative Agent and the Collateral Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as such Agent shall deem advisable in the best interests of the Lenders.

8.6. Non-Reliance on Arrangers, Agents and Other Lenders. Each Lender expressly acknowledges that neither the Arrangers, the Agents nor any of their respective officers, directors, employees, agents, attorneys in fact or affiliates have made any representations or warranties to it and that no act by any Arranger or Agent hereafter taken, including any review of the affairs of a Loan Party or any affiliate of a Loan Party, shall be deemed to constitute any representation or warranty by any Arranger or Agent to any Lender. Each Lender represents to the Arrangers and Agents that it has, independently and without reliance upon any Arranger, Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates and made its own decision to make its Term Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon any Arranger, Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, neither the Administrative Agent nor the Collateral Agent shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or any affiliate of a Loan Party that may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys in fact or affiliates.

8.7. Indemnification. The Lenders agree to indemnify the Agents in their capacity as such (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), ratably according to their respective Term Percentage in effect on the date on which indemnification is sought under this Section 8.7 (or, if indemnification is sought after the date upon which the Term B Commitments or any series of Incremental Commitments shall have terminated and the Term B Loans or any series of Incremental Term Loans shall have been paid in full, ratably in accordance with such Term Percentage or Incremental Term Percentage immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Term Loans) be imposed on, incurred by or asserted against such Agent, in any way relating to or arising out of, the Term B Commitments, the 2025 Refinancing Term Loan Commitments, any Incremental Commitment, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such Agent's gross negligence or willful misconduct. The agreements in this Section 8.7 shall survive the payment of the Term Loans and all other amounts payable hereunder.

8.8. Agent in Its Individual Capacity. Each Agent and its affiliates may make loans to, accept deposits from and generally engage in any kind of business with any Loan Party as though such Agent were not an Agent. With respect to its Term Loans made or renewed by it, each Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not an Agent, and the terms "Lender" and "Lenders" shall include each Agent in its individual capacity.

8.9. Successor Administrative Agent. Each Agent may resign as Administrative Agent or Collateral Agent, as applicable upon ten (10) days' notice to the Lenders and the Borrower. If the Administrative Agent or the Collateral Agent shall resign as Administrative Agent or Collateral Agent under this Agreement and the other Loan Documents, then the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders, which successor agent shall be subject to approval by the Borrower (which approval shall not be unreasonably withheld or delayed), whereupon such successor agent shall succeed to the rights, powers and duties of in the case of (x) successor Administrative Agent, the Administrative Agent, and the term "Administrative Agent" shall mean such successor agent effective upon such appointment and approval, and the former Administrative Agent's rights, powers and duties as an Administrative Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Agreement or any holders of the Term Loans and (y) a successor Collateral Agent, the Collateral Agent, and the term "Collateral Agent" shall mean such successor agent effective upon such appointment and approval, and the former Collateral Agent's rights, powers and duties as a Collateral Agent shall be terminated, without any other or further act or deed on the part of such former Collateral Agent or any of the parties to this Agreement or any holders of the Term Loans. If no successor agent has accepted appointment as an Administrative Agent or Collateral Agent, as applicable, by the date that is thirty (30) days following the retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective, and the Lenders shall assume and perform all of the duties of such Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above (except that in the case of any collateral security held by the Collateral Agent on behalf of the Lenders under any of the Loan Documents, the retiring Collateral Agent shall continue to hold such collateral security as nominee or sub-agent for perfection until such time as a successor Collateral Agent is appointed). After the retiring Agent's resignation, the provisions of this Section 8 and Section 9.5 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was an Agent (or nominee or sub-agent pursuant to the immediately preceding sentence) under this Agreement and the other Loan Documents.

Notwithstanding the foregoing, the Lenders hereby agree if Credit Suisse AG, Cayman Islands Branch resigns as Administrative Agent and/or Collateral Agent and the Borrower appoints Citibank, N.A. (or any of its affiliates) as a successor Administrative Agent and/or Collateral Agent, then the Required Lenders shall be deemed to have consented to such appointment by their execution of this Agreement, and in connection therewith, (x) the Lenders authorize and approve the Agency Assignment Agreement (if any) entered into by Credit Suisse AG, Cayman Islands Branch, Citibank, N.A. (or any of its affiliates) and the Borrower and agree to be bound by the terms and provisions of such Agency Assignment Agreement and (y) the Lenders authorize Credit Suisse AG, Cayman Islands Branch as resigning Administrative Agent and/or Collateral Agent and Citibank, N.A. as successor Administrative Agent and/or Collateral Agent to execute such documents and take such actions as the may deem appropriate or desirable to effect, evidence or implement the resignation, succession and assignment, including without limitation to file any Uniform Commercial Code assignments or amendments with respect to the Uniform Commercial Code financing statements in respect of the Collateral, together with any amendments, assignments and/or notices of assignment with respect to the Security Documents and the Collateral (including but not limited to intellectual property Collateral and real property). In connection with the foregoing, the Borrower shall and shall cause the other Loan Parties and Grantors to execute such documents and take such other actions as Credit Suisse AG, Cayman Islands Branch or Citibank, N.A., may reasonably request.

8.10. Collateral Security. The Collateral Agent will hold, administer and manage any Collateral pledged from time to time under the Security Documents either in its own name or as Collateral Agent, but each Lender shall hold a direct, undivided *pro rata* beneficial interest therein, on the basis of its proportionate interest in the secured obligations, by reason of and as evidenced by this Agreement and the other Loan Documents, subject to the priority of payments referenced in Section 7.2 of the Pledge and Security Agreement and subject to the terms of any applicable intercreditor agreement.

8.11. Enforcement by the Administrative Agent and Collateral Agent. All rights of action under this Agreement and the other Loan Documents and under the Obligations and all rights to the Collateral hereunder and under the Security Documents may be enforced by the Administrative Agent and the Collateral Agent and any suit or proceeding instituted by the Administrative Agent or the Collateral Agent in furtherance of such enforcement shall be brought in its name as Administrative Agent or Collateral Agent without the necessity of joining as plaintiffs or defendants any other Lenders, and the recovery of any judgment shall be for the benefit of Lenders subject to the expenses of the Administrative Agent and the Collateral Agent.

8.12. Withholding Tax. To the extent required by any applicable law, the Administrative Agent may deduct or withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other authority of the United States or other jurisdiction asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective), such Lender shall indemnify and hold harmless the Agents (to the extent that the Administrative Agent has not already been reimbursed by the Borrower pursuant to Sections 2.18 and 2.19 and without limiting or expanding the obligation of the Borrower to do so) fully for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, together with all expenses incurred, including legal expenses and any out-of-pocket expenses, whether or not such Tax was correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this Section 8.12. The agreements in this Section 8.12 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of this Agreement and the repayment, satisfaction or discharge of all other Obligations.

8.13. Intercreditor Agreements. The Administrative Agent and Collateral Agent are hereby authorized to enter into the Parity Secured Intercreditor Agreement, and the parties hereto acknowledge that the Parity Secured Intercreditor Agreement is binding upon them. Each Lender (a) hereby agrees that it will be bound by and will take no actions contrary to the provisions of the Parity Secured Intercreditor Agreements and (b) hereby authorizes and instructs the Administrative Agent and Collateral Agent to enter into the Parity Secured Intercreditor Agreement. In addition, but in conformance with the terms hereof, each Lender hereby authorizes the Administrative Agent and the Collateral Agent to enter into any amendments to the Parity Secured Intercreditor Agreements to the extent required to give effect to the establishment of intercreditor rights and privileges as contemplated and required by Section 6.2 of this Agreement. Each Lender waives any conflict of interest, now contemplated or arising hereafter, in connection therewith and agrees not to assert against any Agent or any of its affiliates any claims, causes of action, damages or liabilities of whatever kind or nature relating thereto.

SECTION 9

Miscellaneous

9.1. Amendments and Waivers.

(a) None of this Agreement, any Note, any other Loan Document, nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 9.1. Except to the extent otherwise provided in (or permitted by) the Parity Secured Intercreditor Agreement and/or the Guaranty Agreement and the Pledge and Security Agreement, the Required Lenders and each Loan Party party to the relevant Loan Document may, or, with the written consent of the Required Lenders, the Administrative Agent and each Loan Party party to the relevant Loan Document may, from time to time, (I) enter into written amendments, supplements or modifications hereto or to the other Loan Documents for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of the Lenders or of the Loan Parties hereunder or thereunder or (II) waive, on such terms and conditions as the Required Lenders or the Administrative Agent, as the case may be, may specify in such instrument, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; provided, however, that no such waiver and no such amendment, supplement or modification shall (A)(i) forgive the principal amount or extend the final scheduled date of maturity of any Term Loan, (ii) reduce the stated rate of any interest or fee payable hereunder (except in connection with the waiver of applicability of any post-default increase in interest rates (which waiver shall be effective with the consent of the Required Term B Lenders, Required Refinancing Term B Lenders or Required Incremental Lenders with respect to Term B Loans or the applicable tranche of Incremental Term Loans, respectively)) or extend the scheduled date of any payment thereof, (iii) increase the amount or extend the expiration date of any Lender's Term Commitment or Incremental Commitment (it being understood that a waiver of any Event of Default or Default shall not be deemed to be an increase in the amount of any Lender's Term Commitment or Incremental Commitment), or (iv) release all or substantially all of the Collateral for the Obligations or release all or substantially all of the Guarantors (except, in either case, as expressly permitted by the Loan Documents), in each case without the written consent of each Lender directly affected thereby, (B) [Reserved]; (C) without the consent of all the Lenders, (i) amend, modify or waive any provision of this Section 9.1(a) or any other provision of any Section hereof expressly requiring the consent of all the Lenders (except, in either case, for technical amendments with respect to additional extensions of credit pursuant to this Agreement which afford protections to such additional extensions of credit of the type provided to the Term Commitments on the Effective Date), or (ii) reduce the percentage specified in or otherwise change the definition of Required Lenders (it being understood that, with the consent of the Required Lenders, the Required Term B Lenders or Required Refinancing Term B Lenders, as applicable, or as otherwise permitted hereunder, additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders on substantially the same basis as the extensions of Term Commitments are included on the Effective Date), or (iii) change Section 2.17 in a manner that would alter the *pro rata* sharing of payments required thereby (other than as permitted thereby or by Section 9.1(b)), (D) amend, modify or waive any provision of Section 8 or any other provision of this Agreement or the other Loan Documents, which affects, the rights, duties or obligations of the Administrative Agent without the written consent of the Administrative Agent, (E) require consent of any Person to an amendment to this Agreement made pursuant to Section 2.27 other than the Borrower and each Lender participating in the respective Extension and (F) reduce the percentage specified in or otherwise change the definition of Required Term B Lenders, Required Refinancing Term B Lenders or Required Incremental Lenders without the consent of the Required Term B Lenders, Required Refinancing Term B Lenders or Required Incremental Lenders, as applicable (other than as permitted by clause (C)(ii) above). Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Loan Parties, the Lenders, the Administrative Agent and all future holders of the Loans. In the case of any waiver, the Loan Parties, the Lenders and the Administrative Agent shall be restored to their former position and rights hereunder and under any other Loan Documents, and any Default or Event of Default waived shall be deemed to have not occurred or to be cured and not continuing, as the parties may agree; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon.

(b) Notwithstanding the foregoing, this Agreement may be amended (or amended and restated) with the written consent of the Borrower and the institutions providing each Refinancing Credit Facility (as defined below) (a) to add one or more additional credit facilities to this Agreement for the purpose of refinancing or replacing any and all of the Term Loans and Term Commitments hereunder (each a "Refinancing Credit Facility") and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents and the accrued interest and fees in respect thereof and (b) to include appropriately the Lenders holding such credit facilities in any determination of the Required Term B Lenders, Required Refinancing Term B Lenders or Required Incremental Lenders, as applicable; provided that (i) no Default or Event of Default then exists or would result therefrom, (ii) any Refinancing Credit Facility does not mature prior to the earliest maturity date of the Term Loans being refinanced and (iii) the other terms and conditions of such Refinancing Credit Facility (excluding pricing and optional prepayment and redemption terms) are substantially identical to, or (taken as a whole) are no more favorable to the Lenders providing such Refinancing Credit Facility than, those applicable to the Term Loans being refinanced (except for covenants or other provisions applicable only to periods after the latest Termination Date of the Term Loans existing at the time of such refinancing).

(c) Notwithstanding anything to the contrary contained in this Section 9.1, if the Administrative Agent and the Borrower shall have jointly identified an obvious error or any error or omission of a technical or immaterial nature, in each case, in any provision of the Loan Documents, then the Administrative Agent and the Borrower shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Loan Document. Notwithstanding anything to the contrary in this Agreement or the other Loan Documents, the Administrative Agent and the Collateral Agent are each hereby irrevocably authorized by each Lender (and each such Lender expressly consents), without any further action or the consent of any other party to any Loan Document, to make any technical amendments to the Guaranty Agreement and the Security Documents to correct any cross-references therein to any provision of this Agreement that may be necessary in order to properly reflect the amendments made to this Agreement.

(d) Notwithstanding the foregoing, this Agreement and the other Loan Documents may be amended (or amended and restated) as provided in Sections 2.25 and 2.27.

9.2. Notices.

(a) All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when received, addressed as follows in the case of the Loan Parties and the Administrative Agent, and as set forth in the administrative questionnaire delivered to the Administrative Agent in the case of the Lenders, or to such other address as may be hereafter notified by the respective parties hereto and any future Lenders:

The Borrower and the Guarantors:	Calpine Construction Finance Company, LP 717 Texas Avenue, Suite 11.051D Houston, TX 77002 Attention: Chief Legal Officer Telephone: 832-325-5065 Facsimile: 832-325-5066
If to the Administrative Agent:	~~Credit Suisse AG, Cayman Islands Branch~~ ~~Eleven Madison Avenue, 23rd Floor~~ ~~New York, NY 10010~~ ~~Attention: Loan Operations – Agency Manager~~ ~~Telephone: 919-994-6369~~ ~~Facsimile: 212-322-2291~~ ~~E-mail: agency.loanops@credit-suisse~~Citibank, N.A. 1 Penns Way OPS 2/2 Global Loans New Castle, DE 19720 E-mail: AgencyABTFSupport@citi.com

with copies (which shall not constitute notice) to:

Cahill Gordon & Reindel LLP
32 Old Slip
New York, NY 10005
Attention: ~~William J. Miller, Esq. and~~ Michael W. Reddy, Esq.
E-mail: ~~WMiller@cahill.com and~~ MReddy@cahill.com

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications (including e-mail and Internet or intranet websites or other information platform (the "Platform")) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Sections 2.2, 2.8(e), 2.11, 2.13, 2.14, 2.15, 2.25 and 2.27(d) unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) [Reserved].

(d) Each of the Loan Parties understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution, except to the extent caused by the willful misconduct or gross negligence of the Administrative Agent, as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(e) The Platform and any Approved Electronic Communications are provided "as is" and "as available." None of the Agents or any of their respective officers, directors, employees, agents, advisors or representatives warrant the accuracy, adequacy, or completeness of the Approved Electronic Communications or the Platform and each expressly disclaims liability for errors or omissions in the Platform and the Approved Electronic Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects is made by any of the Agents or any of their respective officers, directors, employees, agents, advisors or representatives in connection with the Platform or the Approved Electronic Communications.

(f) Each of the Loan Parties, the Lenders and the Agents agree that Administrative Agent may, but shall not be obligated to, store any Approved Electronic Communications on the Platform in accordance with the Administrative Agent's customary document retention procedures and policies.

9.3. No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of the Administrative Agent or any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

9.4. Survival of Representations and Warranties. All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the making of the Term Loans and the other extensions of credit hereunder.

9.5. Payment of Expenses and Taxes. The Borrower agrees (a) to pay or reimburse each of the Administrative Agent and the Collateral Agent for all its reasonable out-of-pocket costs and expenses reasonably incurred in connection with (i) the development, negotiation, preparation, execution and delivery of this Agreement and any other documents prepared in connection herewith or therewith, including any amendment, supplement or modification to any of the foregoing and (ii) the consummation and administration of the transactions contemplated hereby and thereby, and the reasonable fees and disbursements of one counsel to the Administrative Agent, the Collateral Agent and the Arrangers, taken as a whole (and, to the extent necessary, one local counsel in each relevant jurisdiction for all such entities, taken as a whole and, solely in the case of an actual or potential conflict of interest, one additional local counsel in each relevant jurisdiction to the affected entities similarly situated, taken as a whole), and security interest filing and recording fees and expenses, (b) to pay or reimburse the Administrative Agent, the Collateral Agent and each Lender for all its reasonable costs and expenses reasonably incurred in connection with the enforcement or preservation of any rights under this Agreement, the other Loan Documents and any such other documents following the occurrence and during the continuance of an Event of Default, including without limitation, the reasonable fees and disbursements of one counsel to the Administrative Agent, the Collateral Agent and the Lenders and each of their respective affiliates, taken as a whole (and, to the extent reasonably necessary, one local counsel in each relevant jurisdiction for all such entities, taken as a whole, and, solely in the case of an actual or potential conflict of interest, one additional local counsel in each relevant jurisdiction to the affected entities similarly situated, taken as a whole), (c) to pay, and indemnify and hold harmless each Lender, each Arranger, the Collateral Agent and the Administrative Agent from, any and all recording and filing fees and any and all liabilities with respect to, or resulting from any delay in paying, stamp, excise and other taxes, if any, which may be payable or determined to be payable in connection with the execution and delivery of, or consummation or administration of any of the transactions contemplated by, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Agreement, the other Loan Documents and any such other documents (without duplication to payments made pursuant to Section 2.19) and (d) to pay, and indemnify and hold harmless each Lender, each Arranger, the Collateral Agent, the Administrative Agent and each of their respective Affiliates, directors, officers, employees, representatives, partners and agents (each, an "Indemnitee") from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance, preservation of rights and administration of this Agreement, the other Loan Documents or the use of the proceeds of the Term Loans or any of the foregoing relating to the violation of, noncompliance with or liability under, any Environmental Law applicable to the operations of the Loan Parties or any of their respective properties and the reasonable fees and expenses of one legal counsel for the Indemnitees taken as a whole in connection with claims, actions or proceedings by any Indemnitee against any Loan Party under any Loan Document (all the foregoing in this clause (d), collectively, the "indemnified liabilities"); provided that the Borrower shall have no obligation hereunder to any Indemnitee with respect to indemnified liabilities to the extent (x) determined by the final judgment of a court of competent jurisdiction to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnitee or any of such Indemnitee's Related Persons, (y) resulting from a material breach by such Indemnitee or any of such Indemnitee's Related Persons of its material obligations under this Agreement or the other Loan Documents or (z) related to any dispute solely among Indemnitees other than any claims against any Indemnitee in its capacity or in fulfilling its role as an Agent, an Arranger or any similar role under this Agreement and the other Loan Documents and other than any claims involving any act or omission on the part of the Borrower or its Subsidiaries; provided, further, that the Borrower shall in no event be responsible for consequential, indirect, special or punitive damages to any Indemnitee pursuant to this Section 9.5 except such consequential, indirect, special or punitive damages required to be paid by such Indemnitee in respect of any indemnified liabilities. Without limiting the foregoing, and to the extent permitted by applicable law, the Borrower agrees not to assert and to cause its Subsidiaries not to assert, and hereby waives and agrees to cause its Subsidiaries to waive, all rights for contribution or any other rights of recovery with respect to all claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature, under or related to Environmental Laws, that any of them might have by statute or otherwise against any Indemnitee related to the indemnified liabilities. To the extent permitted by applicable law, no Loan Party nor any of their respective Subsidiaries shall assert, and each Loan Party hereby waives, on behalf of itself and its Subsidiaries, any claim against each Lender, each Arranger, each Agent and their respective affiliates, directors, officers, employees, attorneys, representatives, agents or sub-agents, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Loan Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Term Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each Loan Party hereby waives, releases and agrees, on behalf of themselves and each of their respective Subsidiaries, not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor. All amounts due under this Section 9.5 shall be payable not later than 10 days after written demand therefor. Statements payable by the Borrower pursuant to this Section 9.5 shall be submitted to the Treasurer of the Borrower (Telecopy No. 713-353-9137), at the address of the Borrower set forth in Section 9.2 (with copies (which shall not constitute notice) to the Associate General Counsel of the Borrower at the respective addresses set forth in Section 9.2), or to such other Person or address as may be hereafter designated by the Borrower in a written notice to the Administrative Agent. The agreements in this Section shall survive repayment of the Term Loans and all other amounts payable hereunder.

9.6. Successors and Assigns; Participations.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted, except that (i) unless otherwise permitted by Section 6.3, the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 9.6.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees (other than a Disqualified Lender) (each, an "Assignee") all or a portion of its rights and obligations under this Agreement (including all or a portion of its Term Commitments and the respective tranche of Term Loans at the time owing to it) with the prior written consent of:

(A) the Borrower (such consent not to be unreasonably withheld, delayed or conditioned); provided that no consent of the Borrower shall be required for an assignment to a Lender, an affiliate of a Lender, an Approved Fund (as defined below) or, if an Event of Default under Section 7.1(a), (b), (i) (in the case of the Borrower only) or (j) (in the case of the Borrower only) has occurred and is continuing, any other Person; and

(B) the Administrative Agent (such consent not to be unreasonably withheld, delayed or conditioned), provided that no consent of the Administrative Agent shall be required for an assignment to a Lender, an affiliate of a Lender or an Approved Fund.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender, an affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Term Loans of the respective tranche, the amount of the Term Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than $5,000,000 unless each of the Borrower and the Administrative Agent otherwise consent, provided that (1) no such consent of the Borrower shall be required if an Event of Default under Section 7(a), Section 7.1(b), Section 7.1(i) (in the case of Borrower only) or Section 7(j) (in the case of the Borrower only) has occurred and is continuing and (2) such amounts shall be aggregated in respect of each Lender and its affiliates or Approved Funds, if any;

(B) (1) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of $3,500 (although the Borrower shall not be responsible for the payment of the recordation fee unless the Borrower has chosen to replace a Lender pursuant to Section 2.26) and (2) the assigning Lender shall have paid in full any amounts owing by it to the Administrative Agent;

(C) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an administrative questionnaire in which the Assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower and its Affiliates and their related parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws; and

(D) except as provided in Section 2.28 or in Section 9.6(f), none of the Loan Parties, their respective Affiliates or any natural person shall be an Assignee hereunder.

For the purposes of this Section 9.6, "Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an affiliate of a Lender or (c) an entity or an affiliate of an entity that administers or manages a Lender.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) below, from and after the effective date specified in each Assignment and Acceptance, the Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.18, 2.19 and 9.5 for the period of time in which it was a Lender hereunder. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.6 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Term Commitments of, and principal amount (and interest amounts) of the Term Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice. Any assignment of any Term Loan shall be effective only upon appropriate entries with respect thereto being made in the Register.

(v) Upon its receipt of an Assignment and Acceptance (executed via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually)), by a transferor Lender and an Assignee, as the case may be (and, in the case of an Assignee that is not then a Lender, by the Administrative Agent and the Borrower to the extent required under paragraph (c) above), together with payment to the Administrative Agent by the transferor Lender or the Assignee of a recordation and processing fee of $3,500 (which fee may be waived or reduced in the reasonable discretion of the Administrative Agent), the Administrative Agent shall (i) promptly accept such Assignment and Acceptance, (ii) on the effective date of such transfer determined pursuant thereto record the information contained therein in the Register and (iii) give notice of such acceptance and recordation to the transferor Lender, the Assignee and the Borrower.

(vi) Notwithstanding anything to the contrary contained in Section 9.6(b), no consent of the Administrative Agent (and no processing and recordation fee or administrative questionnaire) shall be required to be obtained, paid or delivered (as the case may be) for any assignment of Term Loans in any principal amount as part of a purchase of such Term Loans in accordance with Section 2.28.

(c) Any Lender may, without the consent of the Borrower or the Administrative Agent, sell participations to one or more banks or other entities (other than any Disqualified Lender) (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Term Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement and any other Loan Document or to otherwise exercise its voting righting rights under this Agreement and any other Loan Document; provided that such agreement may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that (1) requires the consent of each Lender directly affected thereby pursuant to the proviso to the second sentence of Section 9.1(a) and (2) directly affects such Participant. Subject to paragraph (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.18 and 2.19 (subject to the requirements and limitations of such sections and Section 2.26) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section (it being understood that the documentation required under Section 2.19(e) shall be delivered solely to the participating Lender). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.7(b) as though it were a Lender, provided such Participant shall be subject to Section 9.7(a) as though it were a Lender.

(i) A Participant shall not be entitled to receive any greater payment under Section 2.18 or 2.19 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent that any entitlement to a greater payment results from a change in any Requirement of Law arising after such Participant became a Participant.

(ii) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts (and related interest amounts) of each participant's interest in the Term Loans or other obligations under this Agreement (the "Participant Register"). The entries in the Participant Register shall be conclusive, absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary; provided that no Lender shall have the obligation to disclose all or a portion of the Participant Register (including the identity of the Participant or any information relating to a Participant's interest in any Loans or other obligations under any Loan Document) to any Person expect to the extent that such disclosure is necessary to establish that any Loans are in registered form for U.S. federal income tax purposes.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or Assignee for such Lender as a party hereto.

(e) Subject to Section 9.15, the Borrower authorizes each Lender to disclose to any Transferee and any prospective Transferee (in each case which agrees to comply with the provisions of Section 9.15 or confidentiality requirements no less restrictive on such prospective transferee than those set forth in Section 9.15) any and all financial information in such Lender's possession concerning the Borrower and its Affiliates which has been delivered to such Lender by or on behalf of the Borrower pursuant to this Agreement or any other Loan Document or which has been delivered to such Lender by or on behalf of the Borrower in connection with such Lender's credit evaluation of the Borrower and its Affiliates prior to becoming a party to this Agreement.

(f) Notwithstanding anything to the contrary contained herein, any Lender may assign all or any portion of its Loans hereunder to the Borrower or any of its Subsidiaries or Affiliates; provided that:

(i) upon the effectiveness of any such assignment (or contribution of Term Loans to the capital of the Borrower by an Affiliate thereof which shall occur substantially concurrently with the assignment to an Affiliate of the Borrower), such Term Loans shall be retired, and shall be deemed cancelled and not outstanding for all purposes under this Agreement; and

(ii) no Default or Event of Default shall exist or be continuing.

Each Lender acknowledges and agrees that in connection with each Assignment and Acceptance pursuant to this Section 9.6(f), (i) the Borrower then may have, and later may come into possession of Excluded Information, (ii) such Lender has independently and without reliance on the Borrower or any of its Subsidiaries or Affiliates made such Lender's own analysis and determined to enter into an assignment of such Term Loans and to consummate the transactions contemplated thereby notwithstanding such Lender's lack of knowledge of the Excluded Information and (iii) the Borrower and its Subsidiaries shall have no liability to such Lender, and such Lender hereby waives and releases, to the extent permitted by law, any claims such Lender may have against the Borrower and its Subsidiaries, under applicable laws or otherwise, with respect to the nondisclosure of the Excluded Information. Each Lender further acknowledges that the Excluded Information may not be available to the Administrative Agent or the other Lenders hereunder. Each Lender which assigns Term Loans pursuant to this Section 9.6(f) agrees to the provisions of the two preceding sentences, and agrees that they shall control, notwithstanding any inconsistent provision hereof or in any Assignment and Acceptance.

(g) The Borrower, on behalf of itself and its Affiliates and the Lenders, expressly acknowledges that the Administrative Agent (in its capacity as such or as an arranger, bookrunner or other agent hereunder) shall not have any obligation to monitor whether assignments or participations are made to Disqualified Lenders and none of the Borrower, the Lenders or any of their respective Affiliates will bring any claim to such effect. The Administrative Agent shall have the right to disclose the list of Disqualified Lenders to any Lender requesting the same.

9.7. Adjustments; Setoff.

(a) Except to the extent that this Agreement, any other Loan Document or a court order expressly provides or permits for payments to be allocated to a particular Lender or to the Lenders, if any Lender (a "Benefited Lender") shall receive any payment of all or part of the Obligations owing to it (other than in connection with an assignment or participation made pursuant to Section 9.6 or in connection with an Auction that is permitted under Section 2.28), or receive any collateral in respect thereof (whether voluntarily or involuntarily, by setoff, pursuant to events or proceedings of the nature referred to in Section 7.1(i) or (j), or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of the Obligations owing to such other Lender, such Benefited Lender shall purchase for cash from the other Lenders a participating interest in such portion of the Obligations owing to each such other Lender, or shall provide such other Lenders with the benefits of any such collateral, as shall be necessary to cause such Benefited Lender to share the excess payment or benefits of such collateral ratably with each of the Lenders; provided that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefited Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest. Notwithstanding anything to the contrary contained in this Section 9.7(a), no purchase or assignment of Term Loans in connection with an Auction that is permitted under Section 2.28 or Section 9.6(f) (and no payment made or cancellation of such Term Loans in connection therewith) and no extension of Term Loans that is permitted under Section 2.27 shall constitute a payment of any of such Term Loans for purposes of this Section 9.7.

(b) In addition to any rights and remedies of the Lenders provided by law and subject to the terms of the Pledge and Security Agreement, each Lender shall have the right, without notice to the Borrower, any such notice being expressly waived by the Borrower to the extent permitted by applicable law, upon any Obligations becoming due and payable by the Borrower (whether at the stated maturity, by acceleration or otherwise), to apply to the payment of such Obligations, by setoff or otherwise, any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender, any affiliate thereof or any of their respective branches or agencies to or for the credit or the account of the Borrower. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such application made by such Lender, provided that the failure to give such notice shall not affect the validity of such application.

9.8. Counterparts; Electronic Execution. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. The words "execution," "signed," "signature," and words of like import in this Agreement and the other Loan Documents including any Assignment and Assumption shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

9.9. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

9.10. Integration. This Agreement and the other Loan Documents represent the entire agreement of the Borrower, the Administrative Agent and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents.

9.11. GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

9.12. Submission To Jurisdiction; Waivers.

(a) Subject to clause (b)(iii) of this Section 9.12, each party hereto hereby irrevocably and unconditionally submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the exclusive general jurisdiction of the courts of the State of New York, the courts of the United States for the Southern District of New York, and appellate courts from any thereof, in each case that are located in the Borough of Manhattan, The City of New York;

(b) The Borrower hereby irrevocably and unconditionally:

(i) agrees that any such action or proceeding shall be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(ii) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the Borrower at its address set forth in Section 9.2 or at such other address of which the Administrative Agent shall have been notified pursuant thereto;

(iii) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right of any Agent, any Arranger or any Lender to sue in any other jurisdiction; and

(iv) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

9.13. Acknowledgements. The Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) notwithstanding the provisions of this Agreement or any of the other Loan Documents and the Arrangers shall have no powers, duties, responsibilities or liabilities with respect to this Agreement and the other Loan Documents;

(c) the Agents, the Arrangers, the Lenders and their Affiliates may have economic interests that conflict with those of the Borrower; and

(d) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Lenders or among the Borrower and the Lenders.

9.14. Releases of Guarantees and Liens.

(a) Notwithstanding anything to the contrary contained herein or in any other Loan Document, each of the Administrative Agent and the Collateral Agent is hereby irrevocably authorized by each Lender (and each such Lender hereby expressly consents) (without requirement of notice to or consent of any Lender except as expressly required by Section 9.1(a)) to take any action reasonably requested by the Borrower having the effect of releasing any Collateral or Guarantor from its guarantee obligations (i) that has been consented to in accordance with Section 9.1(a) or in connection with any sale, transfer or other disposition of any Collateral or Guarantor to a Person that is not a Loan Party, including as a result of any investments of Collateral in non-Guarantor Subsidiaries to the extent not prohibited by the Loan Documents, (ii) to the extent any such release is permitted at such time pursuant to the applicable Security Document or (iii) under the circumstances described in paragraphs (b) or (c) below (and, upon the consummation of any such transaction in preceding clause (i), (ii) or (iii), such Collateral shall be automatically released from, and be disposed of free and clear of, all Liens under the Security Documents and/or such Guarantor shall be automatically released from its obligations under the Loan Documents).

(b) At such time as the Term Loans and the other Obligations under the Loan Documents (other than obligations under or in respect of Swap Agreements or Cash Management Agreements) shall have been paid in full and all Commitments of the Lenders have expired or terminated, the Collateral shall be released from the Liens created by the Security Documents, and the Security Documents and all obligations (other than those expressly stated to survive such termination) of the Administrative Agent, the Collateral Agent and each Loan Party under the Security Documents shall terminate, all without delivery of any instrument or performance of any act by any Person.

(c) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Lenders hereby agree, and each of the Administrative Agent and the Collateral Agent is hereby irrevocably authorized by each Lender (without requirement of notice to or consent of any Lender) to take any action required by the Borrower having the effect of releasing a Guarantor from its guarantee obligations under the Guaranty Agreement and as a Grantor under the Security Documents if (i) such Guarantor becomes an Excluded Subsidiary or ceases to be a Restricted Subsidiary, (ii) all or substantially all of the assets of such Guarantor have been sold or otherwise disposed of (including by way of merger or consolidation) to a Person that is not a Borrower or a Guarantor in a transaction permitted (or not prohibited) by this Agreement or (iii) such Guarantor has been liquidated or dissolved in a transaction permitted (or not prohibited) by this Agreement.

(d) In connection with any release of Collateral of the type described above in clause (a) or (c) notwithstanding anything to the contrary contained herein or in any other Loan Document, each of the Administrative Agent and the Collateral Agent is hereby irrevocably authorized by each Lender (and each such Lender hereby expressly consents) (without requirement of notice to or consent of any Lender except as expressly required by Section 9.1(a)) to take any action with respect to the Collateral requested by the Borrower to the extent necessary to permit such release or other transaction, including without limitation, directing the Collateral Agent to execute agreements with respect to any Collateral, upon the delivery to the Administrative Agent and Collateral Agent of a certificate signed by an officer of the Borrower stating that such action and the release of the Collateral or other transaction, as applicable, is permitted by each Loan Document.

9.15. Confidentiality. Each Agent, each Arranger and each Lender agrees to keep confidential all non-public information provided to it by any Loan Party, the Administrative Agent or any Lender pursuant to or in connection with this Agreement; provided that nothing herein shall prevent any Agent, any Arranger or any Lender from disclosing any such information (a) to the Administrative Agent, any other Lender or any affiliate thereof (so long as such affiliate agrees to be bound by the provisions of this Section 9.15), (b) subject to an agreement to comply with provisions no less restrictive than this Section 9.15, to any actual or prospective Transferee or any direct or indirect counterparty to any Swap Agreement (or any professional advisor to such counterparty), (c) to its employees, directors, officers, agents, attorneys, accountants, partners and other professional advisors or those of any of its affiliates, (d) upon the request or demand, or in accordance with the requirements (including reporting requirements), of any Governmental Authority having jurisdiction over such Lender, provided that to the extent permitted by law, such Lender shall promptly notify the applicable Loan Party of such disclosure (except with respect to any audit or examination conducted by bank accountants or any governmental bank authority exercising examination or regulatory authority), (e) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Requirement of Law or other legal process, provided that to the extent permitted by law, such Lender shall promptly notify the applicable Loan Party of such disclosure (except with respect to any audit or examination conducted by bank accountants or any governmental bank authority exercising examination or regulatory authority), (f) if requested or required to do so in connection with any litigation or similar proceeding; provided that to the extent permitted by law, such Lender shall promptly notify the applicable Loan Party of such disclosure, (g) to the extent such information has been independently developed by such Lender or that has been publicly disclosed other than in breach of this Agreement, (h) to the National Association of Insurance Commissioners or any similar organization or any nationally recognized rating agency that requires access to information about a Lender's investment portfolio in connection with ratings issued with respect to such Lender, or (i) in connection with the exercise of any remedy hereunder or under any other Loan Document.

Each Lender acknowledges that all information, including requests for waivers and amendments, furnished by the Borrower or the Administrative Agent pursuant to, or in the course of administering this Agreement or the other Loan Documents, will be syndicate-level information, which may (except as provided in the following paragraph) contain material non-public information concerning the Borrower and its Affiliates and their related parties or their respective securities. Accordingly, each Lender confirms to the Borrower and the Administrative Agent that (i) it has developed compliance procedures regarding the use of material non-public information, (ii) it has identified in its administrative questionnaire a credit contact who may receive information that may contain material non-public information in accordance with its compliance procedures and applicable law, including Federal and state securities laws and (iii) it will handle such material non-public information in accordance with those procedures and applicable law, including Federal and state securities laws.

The Borrower acknowledges that certain of the Lenders may be "public-side" Lenders (Lenders that do not wish to receive material non-public information with respect to the Borrower, its subsidiaries or their securities) (each, a "Public Lender") and, if documents required to be delivered pursuant to Section 5.1 or 5.2 or otherwise are being distributed through the Platform, the Borrower agrees to designate those documents or other information that are suitable for delivery to the Public Lenders as such. Any document that the Borrower has indicated contains non-public information shall not be posted on that portion of the Platform designated for such Public Lenders. If the Borrower has not indicated whether a document delivered pursuant to Section 5.1 or 5.2 contains non-public information, the Administrative Agent reserves the right to post such document or notice solely on that portion of the Platform designated for Lenders who wish to receive material nonpublic information with respect to the Borrower, its Subsidiaries and their securities. The Borrower acknowledges and agrees that copies of the Loan Documents may be distributed to Public Lenders (unless the Borrower promptly notifies the Administrative Agent that any such document contains material non-public information with respect to the Borrower or its securities).

Notwithstanding anything contained herein, nothing in this Agreement shall prohibit or in any way restrict the Borrower from reporting possible violations of law or regulation to, otherwise communicating directly with, cooperating with or providing information to any governmental or regulatory body or any self-regulatory organization including but not limited to, bank examiners, the SEC, DOJ, FINRA, NFA, or the CFTC, or making other disclosures pursuant to applicable "whistleblower" laws or regulations.

9.16. WAIVERS OF JURY TRIAL. THE BORROWER, THE ADMINISTRATIVE AGENT, THE COLLATERAL AGENT AND THE LENDERS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

9.17. U.S.A. PATRIOT Act; Beneficial Ownership Regulation. Each Lender that is subject to the requirements of the PATRIOT Act and the Beneficial Ownership Regulation hereby notifies each Loan Party that pursuant to the requirements of the PATRIOT Act and the Beneficial Ownership Regulation, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the PATRIOT Act and the Beneficial Ownership Regulation. The Borrower shall, and shall cause each of its Subsidiaries to, provide, to the extent commercially reasonable, such information and take such actions as are reasonably requested by each Lender and the Administrative Agent to maintain compliance with the PATRIOT Act and the Beneficial Ownership Regulation.

9.18. No Fiduciary Duty. Each Agent, each Lender, the Arrangers and their respective Affiliates (collectively, solely for purposes of this paragraph, the "Lenders") may have economic interests that conflict with those of the Borrower, its stockholders and/or its affiliates. The Borrower agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and the Borrower, its stockholders or its affiliates, on the other. The Borrower acknowledges and agrees that (i) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Lenders, on the one hand, and the Borrower, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Lender has assumed an advisory or fiduciary responsibility in favor of the Borrower, its stockholders or its affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise the Borrower, its stockholders or its affiliates on other matters) or any other obligation to the Borrower except the obligations expressly set forth in the Loan Documents and (y) each Lender is acting solely as principal and not as the agent or fiduciary of the Borrower, its management, stockholders, creditors or any other Person. The Borrower acknowledges and agrees that the Borrower has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. The Borrower agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Borrower, in connection with such transaction or the process leading thereto. None of the Arrangers identified on the cover page or signature pages of this Agreement shall have any rights, powers, obligations, liabilities, responsibilities or duties under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as a Lender hereunder. Without limiting any other provision of this Article, none of such Arrangers in their respective capacities as such shall have or be deemed to have any fiduciary relationship with any Lender, the Administrative Agent or any other Person by reason of this Agreement or any other Loan Document.

9.19. Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of the Administrative Agent, the Co-Managers, the Joint Lead Arrangers, the Joint Bookrunners, the Co-Managers and each of their Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Term Loans or the Term Commitments,

(ii) the prohibited transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable so as to exempt from the prohibitions of Section 406 of ERISA and Section 4975 of the Code such Lender's entrance into, participation in, administration of and performance of the Term Loans, the Term Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Term Loans, the Term Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Term Loans, the Term Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Term Loans, the Term Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its reasonable discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, Administrative Agent, the Co-Managers, the Joint Lead Arrangers, the Joint Bookrunners, the Co-Managers and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, none of the Administrative Agent, the Co-Managers, the Joint Lead Arrangers, the Joint Bookrunners or any of their Affiliates is a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Term Loans, the Term Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent, the Co-Managers, the Joint Lead Arrangers, the Joint Bookrunners under this Agreement, any Loan Document or any documents related hereto or thereto).

9.20. Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

9.21. Erroneous Payments.

(a) If the Administrative Agent (x) notifies a Lender or any Person who has received funds on behalf of a Lender (any such Lender or other recipient (and each of their respective successors and assigns), a "Payment Recipient") that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from the Administrative Agent) received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and (y) demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent pending its return or repayment as contemplated below in this Section 9.21 and held in trust for the benefit of the Administrative Agent, and such Lender shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter (or such later date as the Administrative Agent may, in its sole discretion, specify in writing), return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the Administrative Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender or any Person who has received funds on behalf of a Lender (and each of their respective successors and assigns), agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

(i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 9.21(b).

For the avoidance of doubt, the failure to deliver a notice to the Administrative Agent pursuant to this Section 9.21(b) shall not have any effect on a Payment Recipient's obligations pursuant to Section 9.21(a) or on whether or not an Erroneous Payment has been made.

(c) Each Lender hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender under any Loan Document with respect to any payment of principal, interest, fees or other amounts, against any amount that the Administrative Agent has demanded to be returned under Section 9.21(a).

(d) (i) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor in accordance with immediately preceding clause (a), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "Erroneous Payment Return Deficiency"), upon the Administrative Agent's notice to such Lender at any time, then effective immediately (with the consideration therefor being acknowledged by the parties hereto), (A) such Lender shall be deemed to have assigned its Loans of the relevant Class with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Class") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans of the Erroneous Payment Impacted Class, the "Erroneous Payment Deficiency Assignment") (on a cashless basis and such amount calculated at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance)), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Assumption (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to a Platform as to which the Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent (but the failure of such Person to deliver any such Notes shall not affect the effectiveness of the foregoing assignment), (B) the Administrative Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (C) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement which shall survive as to such assigning Lender, (D) the Administrative Agent and the Borrower shall each be deemed to have waived any consents required under this Agreement to any such Erroneous Payment Deficiency Assignment, and (E) the Administrative Agent will reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment.

(ii) Subject to Section 9.06 (but excluding, in all events, any assignment consent or approval requirements (whether from the Borrower or otherwise)), the Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency owing by the applicable Lender (x) shall be reduced by the proceeds of prepayments or repayments of principal and interest, or other distribution in respect of principal and interest, received by the Administrative Agent on or with respect to any such Loans acquired from such Lender pursuant to an Erroneous Payment Deficiency Assignment (to the extent that any such Loans are then owned by the Administrative Agent) and (y) may, in the sole discretion of the Administrative Agent, be reduced by any amount specified by the Administrative Agent in writing to the applicable Lender from time to time.

(e) The parties hereto agree that (x) irrespective of whether the Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender to the rights and interests of such Lender, as the case may be) under the Loan Documents with respect to such amount (the "Erroneous Payment Subrogation Rights") (provided that the Loan Parties' Obligations under the Loan Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such Obligations in respect of Loans that have been assigned to the Administrative Agent under an Erroneous Payment Deficiency Assignment) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party; provided that this Section 9.21 shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrower relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Administrative Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on "discharge for value" or any similar doctrine.

(g) Each party's obligations, agreements and waivers under this Section 9.21 shall survive the resignation or re-placement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender and/or the repayment, satisfaction or dis-charge of all Obligations (or any portion thereof) under any Loan Document.

9.22. Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States.

(b) As used in this Section 9.22, the following terms have the following meanings:

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

"Covered Entity" means any of the following:

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

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

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

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

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

9.23. Secured Cash Management Agreements and Secured Swap Agreements.

No Cash Management Bank or Hedge Bank that obtains the benefit of the provisions of Section 7.2 of the Pledge and Security Agreement, or the Guaranty Agreement or any Collateral by virtue of the provisions hereof or any Security Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) (or to notice of or to consent to any amendment, waiver or modification of the provisions hereof or of the Guaranty Agreement or any Security Document) other than in its capacity as Administrative Agent, Collateral Agent or a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision to the contrary, neither the Administrative Agent nor the Collateral Agent shall be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Obligations arising under Secured Cash Management Agreements or Secured Swap Agreements except to the extent expressly provided herein and unless the Administrative Agent and the Collateral Agent has received a written notice of such Secured Obligations, together with such supporting documentation as the Administrative Agent or the Collateral Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

Exhibit 10.7

Execution Version

CREDIT AGREEMENT

Dated as of June 9, 2020

among

GEYSERS POWER COMPANY, LLC,
as Borrower,

THE GUARANTORS PARTY HERETO,
as Guarantors,

MUFG BANK, LTD.
as Administrative Agent,

MUFG UNION BANK, N.A.
as First Lien Collateral Agent,

and

THE LENDERS AND ISSUING BANKS PARTIES HERETO

with

MIZUHO BANK, LTD., **MUFG UNION BANK, N.A.**, **NATIONAL BANK OF CANADA**, **SUMITOMO MITSUI BANKING CORPORATION,** and **SUNTRUST ROBINSON HUMPHREY, INC.**
as Coordinating Lead Arrangers and Bookrunners,

CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK and **NATIXIS, NEW YORK BRANCH**
as Coordinating Lead Arrangers, Bookrunners, and Green Loan Coordinators,

BNP PARIBAS,
as Coordinating Lead Arranger, Bookrunner, and Syndication Agent,

COBANK, ACB, COÖPERATIEVE RABOBANK, U.A., NEW YORK BRANCH and **ING CAPITAL LLC,**
as Joint Lead Arrangers,



Geysers Geothermal Projects

$1,100,000,000 Senior Secured Credit Facilities

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Exhibit I	Form of Lender Joinder Agreement
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This CREDIT AGREEMENT, dated as of June 9, 2020 (this "**Agreement**"), is entered into among GEYSERS POWER COMPANY, LLC, a Delaware limited liability company, as borrower ("**Borrower**"), GEYSERS INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, as Holdings ("**Holdings**"), GEYSERS COMPANY, LLC, a Delaware limited liability company ("**Geysers Company**"), WILD HORSE GEOTHERMAL, LLC, a Delaware limited liability company ("**Wild Horse**") and CALISTOGA HOLDINGS, LLC, a Delaware limited liability company ("**Calistoga**", and, together with Holdings, Geysers Company, Wild Horse, and each subsidiary of an Obligor that becomes a "Guarantor" from time to time in accordance with the terms hereof, each a "**Guarantor**" and together, the "**Guarantors**"), THE FINANCIAL INSTITUTIONS LISTED ON SCHEDULE 2.2(a) OR WHO LATER BECOME A PARTY HERETO, as Lenders and Issuing Banks (the financial institutions party to this Agreement being collectively referred to as the "**Lenders**"), MUFG BANK, LTD., as administrative agent for the Lenders (together with its permitted successors and assigns in such capacity, "**Administrative Agent**") and MUFG UNION BANK, N.A. as First Lien Collateral Agent for the First Lien Secured Parties (together with its permitted successors and assigns in such capacity appointed pursuant to the Intercreditor Agreement, "**First Lien Collateral Agent**") with MIZUHO BANK, LTD., MUFG UNION BANK, N.A., NATIONAL BANK OF CANADA, SUMITOMO MITSUI BANKING CORPORATION and SUNTRUST ROBINSON HUMPHREY, INC., as Coordinating Lead Arrangers and Bookrunners, CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK and NATIXIS, NEW YORK BRANCH, as Coordinating Lead Arranger, Bookrunners, and Green Loan Coordinators, BNP PARIBAS, as Coordinating Lead Arranger, Bookrunner, and Syndication Agent, COBANK, ACB, COÖPERATIEVE RABOBANK, U.A., NEW YORK BRANCH and ING CAPITAL LLC, as Joint Lead Arrangers.

WHEREAS:

(A) Borrower is the owner of thirteen geothermal electric generating facilities located in the Geysers area of Northern California (Sonoma and Lake Counties);

(B) Borrower desires that the Lenders, Issuing Banks and the other parties hereto agree to provide, upon the terms and subject to the conditions set forth herein and in the other Credit Documents, certain credit facilities, consisting of (i) a term loan facility of the Borrower in an aggregate principal amount of up to $900,000,000 (the loans thereunder, the "**Term Loans**"), (ii) a senior secured revolving letter of credit facility of the Borrower (the "**Revolving LC Facility**") in an aggregate principal amount up to $130,622,000 (the commitments under Revolving LC Facility, the "**Revolving LC Commitments**"; the loans thereunder, the "**Revolving LC Loans**"), the full amount thereof shall be available for the issuance of Revolving Letters of Credit, (iii) a senior secured letter of credit facility of the Borrower (the "**DSR LC Facility**") in an aggregate principal amount up to $53,000,000 (the commitments under the DSR LC Facility, the "**DSR LC Commitments**"), the full amount thereof shall be available for the issuance of DSR Letters of Credit and (iv) a senior secured letter of credit facility of the Borrower (the "**PPA LC Facility**") in an aggregate principal amount up to $16,378,000 (the commitments under the PPA LC Facility, the "**PPA LC Commitments**" (together with the Revolving LC Commitments and the DSR LC Commitments, the "**LC Commitments**")) the full amount thereof shall be available for the issuance of PPA Letters of Credit;

(C) The credit facilities provided hereunder will be secured by, among other things, the grant to First Lien Collateral Agent, for the benefit of the First Lien Secured Parties, of a first priority Lien on the Collateral (subject to Permitted Liens); and

(D) The Lenders are willing to provide the credit facilities described herein upon the terms and subject to the conditions set forth herein and in the other Credit Documents, and the Lenders have, on or prior to the Closing Date, unanimously approved the execution of this Agreement.

NOW, **THEREFORE**, in consideration of the agreements herein and in the other Credit Documents and in reliance upon the representations and warranties set forth herein and therein, the parties hereto agree as follows:

1. DEFINITIONS

1.1 Definitions

Unless otherwise defined in Exhibit A or otherwise expressly provided in this Agreement, capitalized terms used herein shall have the meanings provided in the First Lien Common Terms Agreement or, if not in the First Lien Common Terms Agreement, in the Intercreditor Agreement.

1.2 Rules of Interpretation

Except as otherwise expressly provided, the rules of interpretation set forth in Exhibit A shall apply to this Agreement and the other Credit Documents.

2. THE CREDIT FACILITIES

2.1 Term Loan Facility

(a) Term Loans; Term Loan Commitments.

(i) The aggregate amount of the Term Loan Commitments on the Closing Date is $900,000,000 (the "**Total Term Loan Commitment**"). Each Lender holding a Term Loan Commitment (a "**Term Lender**") severally agrees, on the terms and conditions hereinafter set forth, to make a Loan to the Borrower on the Closing Date in an amount not to exceed such Lender's Term Loan Commitment at such time. Amounts borrowed under this Section 2.1(a), when repaid or prepaid, may not be reborrowed.

(ii) Notice of Borrowing. Borrower shall request any Loans to be funded on the Closing Date or Borrowing Date, as applicable, by delivering to Administrative Agent a written notice in the form of Exhibit C-1, appropriately completed (a "**Notice of Borrowing**"), at or before 1:00 p.m. (New York City time) at least one Banking Day prior to the Closing Date or Borrowing Date, as applicable.

(A) Each Lender shall, before 12:00 noon (New York City time) on the date of such Borrowing, make available by wire transfer for the account of its Lending Office to the account of the Administrative Agent, in same day funds, such Lender's ratable portion of such Borrowing, in accordance with the respective Commitments of such Lender. After the Administrative Agent's receipt of such funds and upon fulfillment or waiver of the applicable conditions set forth in Section 3.2, the Administrative Agent shall make such funds available to the Borrower (1) in the case of a Borrowing of Term Loans to be made on the Closing Date, as directed by the Borrower pursuant to the terms of, and in accordance with, the Funds Flow Memorandum and (2) in the case of a Borrowing of Incremental Term Loans, as directed by the Borrower pursuant to the terms and in accordance with, the funds flow memorandum relating to the Incremental Term Loans.

(B) Each Notice of Borrowing shall be irrevocable and binding on the Borrower from and after the Banking Day prior to the Borrowing. In the case of any Borrowing that the related Notice of Borrowing specifies is to be comprised of LIBOR Loans, the Borrower shall indemnify each applicable Lender against any actual and documented out-of-pocket loss, cost or expense (excluding loss of anticipated profits and indirect losses) incurred by such Lender as a result of any failure to fulfill on or before the date specified in such Notice of Borrowing for such Borrowing the applicable conditions set forth in Section 3.2, including any loss (excluding loss of anticipated profits and indirect losses), cost or expense incurred by reason of the liquidation or redeployment of deposits or other funds acquired by such Lender to fund the Loans to be made by such Lender as part of such Borrowing when such Loan, as a result of such failure, is not made on such date.

(C) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's ratable portion of such Borrowing, the Administrative Agent may assume that such Lender has made such portion available to the Administrative Agent on the date of such Borrowing in accordance with clause (A) of this Section 2.1(a)(ii) and the Administrative Agent may, in its sole discretion and in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If and to the extent that such Lender shall not have so made such ratable portion available to the Administrative Agent, the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each day from such date of Borrowing until the date such amount is paid to the Administrative Agent, at the Base Rate. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent shall promptly notify the Borrower and the Borrower shall immediately pay such corresponding amount to the Administrative Agent together with interest thereon, for each day from the date of such Borrowing until the date such amount is paid to the Administrative Agent, at the rate payable hereunder for Base Rate Loans.

(D) The failure of any Lender to make the Loans to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing. Nothing in this Section 2.1(a)(ii) shall prejudice any rights that the Borrower may have against a Defaulting Lender.

(b) Incremental Term Loan Facilities.

(i) The Borrower may, at its sole discretion, by written notice to the Administrative Agent, from time to time after the Closing Date, on one or more occasions, arrange or request from one or more Lenders, other banks or other entities an incremental facility for term loans ("**Incremental Term Loans**") in an aggregate principal amount not to exceed the Incremental Term Loan Cap at the time of incurrence (each new facility, an "**Incremental Term Loan Facility**") and/or an increase in the total Term Loan Commitments in an aggregate principal amount not to exceed the Incremental Term Loan Cap at the time of incurrence (each, an "**Incremental Term Loan Commitment**"), used solely for the purposes set forth in Section 5.1(b) or to make a distribution to the Sponsor. Upon the receipt of such notice by the Administrative Agent, the Administrative Agent shall deliver a copy thereof to each Lender. Each such Lender may, in its sole discretion, either agree to provide all or a portion of the offered amount of such Incremental Term Loan Facility or Incremental Term Loan Commitment, as applicable or decline to provide such Incremental Term Loan Facility or Incremental Term Loan Commitment (and any Lender that does not deliver a notice within a period of fifteen days after the date of notice by the Borrower shall be deemed to have declined to provide such Incremental Term Loan Facility or Incremental Term Loan Commitment, as applicable), it being acknowledged and agreed that no Lender is required to provide any such Incremental Term Loan Facility or Incremental Term Loan Commitment. Any Incremental Term Loan Facility or Incremental Term Loan Commitment may be incurred in an amount that is less than the amount set forth by the Borrower in its notice.

(ii) Notwithstanding the foregoing, no increase under clause (i) above shall become effective under this Section 2.1(b) unless the following the conditions have been satisfied:

(A) no Event of Default shall have occurred and be continuing or would result after giving effect to the incurrence of such Incremental Term Loans;

(B) such Incremental Term Loans, shall have a maturity date no earlier than the Term Maturity Date;

(C) the Borrower shall have delivered to the Administrative Agent an updated amortization schedule reasonably satisfactory to the Administrative Agent which amortization schedule shall replace the amortization then set forth in Schedule 2.1(b)(ii)(C) and shall provide that the Incremental Term Loans shall (1) amortize on the same dates as the Term Loans and (2) amortize at the same amortization percentage applicable to amortization on the Term Loans;

(D) the principal amount of the Incremental Term Loans remaining outstanding on the Maturity Date, taken together with the principal amount of the Term Loans outstanding on the Maturity Date, shall equal the (1) the payment on the Maturity Date in respect of the Term Loans under the amortization schedule set forth on Schedule 2.1(b)(ii)(C) as of the date of the incurrence of the applicable Incremental Term Loan Facility multiplied by (2) a fraction, (x) the numerator of which shall be the sum of the Term Loans and any Incremental Term Loans outstanding as of the date of incurrence of the Incremental Term Loan Facility plus the applicable Incremental Term Loan Facility incurred and (y) the denominator of which shall be the Term Loans and any Incremental Term Loans outstanding as of the date of incurrence of the applicable Incremental Term Loan Facility; provided that in no event shall the payment on the Term Maturity Date in respect of the Term Loans under the amortization schedule set forth on Schedule 2.1(b)(ii)(C) as of the date of the incurrence of any Incremental Term Loan Facility exceed $525,000,000;

(E) the representations, covenants, defaults and other provisions relating to such Incremental Term Loan Facility shall be no more favorable in any material respect to the Incremental Term Loan Lenders as the representations, covenants, defaults and other provisions applying in favor of the Term Loans (other than administrative provisions and conditions precedent relating to the incurrence thereof) (or this Agreement shall be amended by the Borrower and the Administrative Agent (without the consent of any Lender) to add such representations, covenants, defaults and other provisions applicable to such Incremental Term Loan Facility);

(F) the Administrative Agent shall have received a certificate of an authorized officer of the Borrower certifying that the conditions set forth in this clause (ii) have been satisfied; and

(G) all other terms and documentation in respect thereof, to the extent not materially consistent with the existing Term Loans shall otherwise be reasonably satisfactory to the Administrative Agent.

(iii) Any Indebtedness incurred pursuant to this Section 2.1(b) shall be effected pursuant to one or more joinder agreements (substantially in the form of Exhibit I hereto, a "**Lender Joinder Agreement**") executed and delivered by the Borrower, each entity providing such Indebtedness (or its representative) and the Administrative Agent, and each of which shall be recorded in the Register. Each Lender Joinder Agreement may, without the consent of any other Lenders, effect such amendments to this Agreement and the First Lien Collateral Documents as may be necessary or appropriate, to effect the provisions of this Section 2.1(b), including any amendments necessary to implement the increased Term Loan Commitment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Lender Joinder Agreement delivered pursuant to this Section 2.1(b), this Agreement and the First Lien Collateral Documents shall be deemed amended to the extent contemplated by the Lender Joinder Agreement (and to the extent not materially consistent with the then existing Term Loans in a manner reasonably satisfactory to the Administrative Agent) in order to reflect the existence of such Indebtedness.

(c) Provisions Relating to all Credit Facilities.

(i) Loan Interest. Subject to Section 2.4(c), Borrower shall pay interest on the unpaid principal amount of each Loan from the Closing Date until the repayment or prepayment thereof at one of the following rates per annum:

(A) With respect to the principal portion of a Term Loan which is, and during such periods as such Term Loan is, a Base Rate Term Loan, at a rate per annum equal to the Base Rate (such rate to change from time to time as the Base Rate shall change) *plus* the Applicable Margin.

(B) With respect to the principal portion of an LC Loan which is, and during such periods as such LC Loan is, a Base Rate LC Loan, at a rate per annum equal to the Base Rate (such rate to change from time to time as the Base Rate shall change) *plus* the Applicable Margin.

(C) With respect to the principal portion of such Term Loan which is, and during such periods as such Term Loan is, a LIBOR Term Loan, at a rate per annum during each Interest Period for such LIBOR Term Loan equal to the LIBO Rate *plus* the Applicable Margin.

(D) With respect to the principal portion of such LC Loan which is, and during such periods as such LC Loan is, a LIBOR LC Loan, at a rate per annum during each Interest Period for such LIBOR LC Loan equal to the LIBO Rate *plus* the Applicable Margin.

(d) Loan Principal Payment.

(i) On each Principal Repayment Date commencing on the Principal Repayment Date occurring on September 30, 2020, Borrower shall repay to Administrative Agent, for the account of each Term Lender, the aggregate unpaid principal amount of the Term Loan made by such Term Lender in installments in accordance with the amortization schedule set forth on Schedule 2.1(b)(ii)(C) (as updated from time to time in accordance with Section 2.1(b)(ii)(C)), with any remaining unpaid principal, interest, fees and costs due and payable on the Maturity Date.

(ii) The Borrower shall repay to the Administrative Agent for the ratable account of each of the LC Lenders on the LC Maturity Date the aggregate principal amount of the LC Loans then outstanding owing to such LC Lender, together with accrued and unpaid interest to the date of such repayment on the aggregate principal amount repaid.

(e) Interest Provisions Relating to All Loans.

(i) Applicable Interest Rate. The basis for determining the interest rate with respect to any Loan may be changed from time to time as specified in a Notice of Conversion of Loan Type delivered pursuant to Section 2.1(g). If on any day a Loan is outstanding with respect to which notice has not been delivered to Administrative Agent in accordance with the terms of this Agreement specifying the applicable basis for determining the rate of interest, then for that day such Loan shall bear interest determined by reference to the Base Rate. Borrower shall not request, and the Lenders shall not be obligated to make, LIBOR Loans at any time an Event of Default exists. Administrative Agent shall promptly notify each Lender of the contents of each Notice of Conversion of Loan Type.

(ii) Interest Payment Dates. Borrower shall pay accrued interest on the unpaid principal amount of each Loan (A) in the case of each Base Rate Loan, on each Quarterly Date, (B) in the case of each LIBOR Loan, on the last day of each Interest Period related to such LIBOR Loan and, with respect to Interest Periods longer than three months, the last Banking Day of each third month in which such LIBOR Loan is outstanding, and (C) in all cases, upon repayment or prepayment (to the extent thereof and including any Optional Prepayments or Mandatory Prepayments), upon conversion from one Type of Loan to another Type of Loan and at maturity (whether by acceleration or otherwise).

(iii) LIBOR Loan Interest Periods.

(A) Each Interest Period selected by Borrower for all LIBOR Loans shall be one, three or six months. Notwithstanding anything to the contrary in the preceding sentence, (1) any Interest Period which would otherwise end on a day which is not a Banking Day shall be extended to the next succeeding Banking Day unless such next Banking Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Banking Day, (2) any Interest Period which begins on the last Banking Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Banking Day of a calendar month, (3) Borrower may not select Interest Periods which would leave a greater principal amount of Loans subject to Interest Periods ending after a date upon which Loans are or may be required to be repaid (including the Maturity Date and each Principal Repayment Date) than the principal amount of Loans scheduled to be outstanding after such date, (4) any Interest Period for a Term Loan which would otherwise end after the Maturity Date shall end on the Maturity Date, (5) LIBOR Loans for each Interest Period shall be in the minimum amount of $500,000 or an integral multiple of $100,000 in excess thereof, (6) Borrower may not at any time have outstanding more than six different Interest Periods relating to LIBOR Loans, (7) Borrower and the Administrative Agent (at the direction of the Incremental Term Loan Lenders) may mutually agree to have an initial non-standard Interest Period with respect to Incremental Term Loans solely to maintain fungibility with existing applicable Term Loans in connection with the enactment of an Incremental Term Loan Facility, and (8) the Interest Period applicable to the Loans borrowed on the Closing Date may have an initial non-standard Interest Period ending on June 30, 2020.

(B) Borrower may contact Administrative Agent at any time prior to the end of an Interest Period for a quotation of Interest Rates in effect at such time for given Interest Periods, and Administrative Agent shall promptly provide such quotation. Subject to Section 2.1(e)(iii)(A), Borrower may select an Interest Period telephonically within the time periods specified in Section 2.1(g), which selection shall be irrevocable on and after commencement of the applicable Minimum Notice Period. Borrower shall confirm such telephonic notice to Administrative Agent by hand delivery or facsimile or other electronic transmission on the day such notice is given by delivery to Administrative Agent of a notice in substantially the form of Exhibit C-2, appropriately completed (a "**Confirmation of Interest Period Selection**"). If Borrower fails to notify Administrative Agent of the next Interest Period for any LIBOR Loans in accordance with this Section 2.1(e)(iii)(B), such Loans shall automatically convert to Base Rate Loans on the last day of the current Interest Period therefor. Administrative Agent shall as soon as practicable (and, in any case, within two Banking Days after delivery of a Confirmation of Interest Period Selection) notify Borrower of each determination of the Interest Rate applicable to each Loan.

(iv) Interest Computations. All computations of interest on Base Rate Loans shall be based upon a year of 365 days or, in the case of a leap year, 366 days, shall be payable for the actual days elapsed (including the first day but excluding the last day), and shall be adjusted in accordance with any changes in the Base Rate to take effect on the beginning of the day of such change in the Base Rate. All computations of interest on LIBOR Loans shall be based upon a year of 360 days and shall be payable for the actual days elapsed (including the first day but excluding the last day). Borrower agrees that all computations by Administrative Agent of interest shall be conclusive and binding in the absence of manifest error.

(f) Promissory Notes. The obligation of Borrower to repay the Loans made by a Lender and to pay interest thereon at the rates provided herein shall, upon the written request of such Lender, be evidenced by promissory notes in the form of Exhibit B-1 (individually, a "**Term Note**" and, collectively, the "**Term Notes**"), Exhibit B-2 (individually, a "**Revolving LC Note**" and, collectively, the "**Revolving LC Notes**"), Exhibit B-3 (individually, a "**DSR LC Note**" and, collectively, the "**DSR LC Notes**"), and Exhibit B-4 (individually, a "**PPA LC Note**" and, collectively, the "**PPA LC Notes**") each payable to such requesting Lender (or its registered assigns) and in the principal amount of such Lender's Term Loan Commitment, Revolving LC Commitment, DSR LC Commitment or PPA LC Commitment, respectively. Borrower authorizes each such requesting Lender to record on the schedule annexed to such Lender's Note or Notes, the date and amount of each Loan made by such requesting Lender, and each payment or prepayment of principal thereunder and agrees that all such notations shall constitute prima facie evidence of the matters noted; provided, that in the event of any inconsistency between the records or books of Administrative Agent and any Lender's records or Notes, the records of Administrative Agent shall be conclusive and binding in the absence of manifest error. Borrower further authorizes each such requesting Lender to attach to and make a part of such requesting Lender's Note or Notes continuations of the schedule attached thereto as necessary. No failure to make any such notations, nor any errors in making any such notations, shall affect the validity of Borrower's obligations to repay the full unpaid principal amount of the Loans or the duties of Borrower hereunder or thereunder. Upon the payment in full in cash of the aggregate principal amount of, and all accrued and unpaid interest on, the Loans, the Lenders holding such Notes shall promptly mark the applicable Notes cancelled and return such cancelled Notes to Borrower.

(g) Conversion of Loans. Subject to Section 2.1(e)(e)(i), Borrower may convert Loans from one Type of Loan to another Type of Loan; provided, that (x) any conversion of LIBOR Loans into Base Rate Loans shall be effective on, and only on, the first day after expiration of an Interest Period for such LIBOR Loans, and (y) Loans shall be converted only in amounts of $500,000 and increments of $100,000 in excess thereof. Borrower shall request such a conversion by delivering to Administrative Agent a written notice in the form of Exhibit C-3, appropriately completed (a "**Notice of Conversion of Loan Type**"), which contains or specifies, among other things:

(i) the Loans, or portion thereof, which are to be converted;

(ii) the Type of Loans into which such Loans, or portion thereof, are to be converted;

(iii) if such Loans are to be converted into LIBOR Loans, the initial Interest Period selected by Borrower for such Loans (which Interest Period shall be selected in accordance with Section 2.1(e)(iii));

(iv) the proposed date of the requested conversion (which shall be a Banking Day and otherwise in accordance with this Section 2.1(g)); and

(v) if Base Rate Loans are to be converted to LIBOR Loans, a certification by Borrower that no Event of Default has occurred and is continuing.

Borrower shall so deliver each Notice of Conversion of Loan Type so as to provide at least the applicable Minimum Notice Period. Any Notice of Conversion of Loan Type may be modified or revoked by Borrower through the Banking Day prior to the Minimum Notice Period, and shall thereafter be irrevocable. Each Notice of Conversion of Loan Type shall be delivered in the manner provided in Section 11.1. Administrative Agent shall promptly notify each Lender of the contents of each Notice of Conversion of Loan Type.

(h) Prepayments.

(i) Terms of All Prepayments.

(A) Upon the prepayment of any Loan (whether such prepayment is an Optional Prepayment or a Mandatory Prepayment), Borrower shall pay to Administrative Agent for the account of the Lender which made such Loan or Hedge Bank, as applicable, (1) all accrued interest to the date of such prepayment on the amount of such Loan prepaid, (2) all accrued fees to the date of such prepayment relating to the amount of such Loan being prepaid, (3) to the extent required by the terms of the applicable Interest Rate Agreement, all Hedge Breaking Fees owed by Borrower to such Hedge Bank as a result of such prepayment, and (4) if such prepayment is the prepayment of a LIBOR Loan on a day other than the last day of an Interest Period for such LIBOR Loan, all Liquidation Costs incurred by such Lender as a result of such prepayment (pursuant to the terms of Section 2.7).

(B) Notwithstanding the foregoing, but only in respect of any Mandatory Prepayment, Borrower shall have the right, by giving five Banking Days' notice to Administrative Agent, in lieu of prepaying a LIBOR Loan on a day other than the last day of an Interest Period for such LIBOR Loan, to deposit or cause Administrative Agent to deposit into an account to be held by Depositary Agent (which account shall be subjected to the Lien of the First Lien Collateral Documents) an amount equal to the LIBOR Loans to be prepaid. Such funds shall be held in such account until the expiration of the Interest Period applicable to the LIBOR Loan to be prepaid at which time the amount deposited in such account shall be used to prepay such LIBOR Loan and any interest accrued on such amount shall be deposited into the Revenue Account. The deposit of amounts into such account shall not constitute a prepayment of Loans and all Loans to be prepaid using the proceeds from such account shall continue to accrue interest at the then applicable interest rate for such Loans until actually prepaid. All amounts in such account shall only be invested in Permitted Investments as directed by and at the expense and risk of Borrower.

(C) Except as otherwise specifically set forth herein (including Section 2.5(a)), (1) all prepayments of Term Loans shall be applied to reduce the remaining payments required under Section 2.1(d)(i) (I) with respect to Mandatory Prepayments, on a pro rata basis to remaining amortization payments and the payments at the final maturity thereof and (II) with respect to Optional Prepayments, as directed by the Borrower, (2) any prepayment of Term Loans or LC Loans of any class or tranche, respectively, shall be applied first to any Term Loans or LC Loans of any class or tranche, as applicable, that are Base Rate Loans and then to any Term Loans or LC Loans of any class or tranche, as applicable, that are LIBOR Loans.

(ii) Optional Prepayments.

(A) Borrower may, at its option and without premium or penalty, upon three Banking Days' notice to Administrative Agent (which notice may state that it is conditioned upon the effectiveness of another credit facility or facilities or other agreement(s) providing the source of funds for such Optional Prepayment, in which case such notice may be revoked by Borrower by providing written notice to Administrative Agent at least one Banking Day prior to the proposed date of the Optional Prepayment if one or more of such conditions is not satisfied), prepay (1) any Term Loans in whole or from time to time in part in minimum amounts of $1,000,000 or an incremental multiple of $1,000,000 in excess thereof (provided, that such minimum amounts shall not apply to a prepayment of all outstanding Term Loans) or (2) any LC Loans of any class or tranche in whole or from time to time in part in minimum amounts of $500,000 or an incremental multiple of $100,000 in excess thereof (provided, that such minimum amounts shall not apply to a prepayment of all LC Loans of any class or tranche or except to the extent that such LC Loan of any class or tranche is being repaid pursuant to clause Twelfth of Section 3.1(b) (*Revenue Account Waterfall*) of the Depositary Agreement) (each, an "**Optional Prepayment**").

(B) Any Optional Prepayments shall be applied (1) *first*, ratably to any outstanding LC Loans, if any, until all LC Loans have been repaid in full; and (2) *second*, subject to Section 2.1(h)(i) and Section 2.1(h) (ii)(A), as Borrower may elect in its sole discretion.

(iii) Mandatory Prepayments. Borrower shall make the following mandatory prepayments (each, a "**Mandatory Prepayment"):**

(A) as and when contemplated by (1) Section 3.4(d) of the Depositary Agreement, within thirty days after the date on which the balance on deposit in the Excess LP Prepayment Sub-Account (as defined in the Depositary Agreement) equals or exceeds $10,000,000, (2) Section 3.5(d) of the Depositary Agreement, within thirty days after the date on which the balance on deposit in the Excess ADP Prepayment Sub-Account (as defined in the Depositary Agreement) equals or exceeds $10,000,000, and (3) Section 3.6(b) of the Depositary Agreement, within thirty days after receipt of Excess Contract Termination Proceeds (as defined in the Depositary Agreement); and

(B) in the event of any termination of all the LC Commitments in accordance with this Agreement, Borrower shall, on the date of such termination, terminate any outstanding Revolving Letter of Credit, PPA Letter of Credit or DSR Letter of Credit, as applicable, and/or cash collateralize any outstanding Revolving Letter of Credit, PPA Letter of Credit or DSR Letter of Credit, as applicable, in the amount of the applicable LC Exposure. If, as a result of any partial reduction of the LC Commitments, the aggregate Revolving LC Exposure, DSR LC Exposure or PPA LC Exposure, as applicable, would exceed the aggregate Revolving LC Commitments, DSR LC Commitments or PPA LC Commitments, as applicable, after giving effect thereto, then Borrower shall, on the date of such reduction, cash collateralize the applicable Letters of Credit in an amount equal to the amount of such excess.

Any Mandatory Prepayments shall be applied (x) *first*, to outstanding Term Loans and Incremental Term Loans and outstanding LC Loans and outstanding Drawing Payments, pro rata, until all Term Loans, LC Loans and Drawing Payments have been repaid in full, (y) *second,* to the Cash Collateralization of any outstanding Letters of Credit and (z) *third*, to all other First Lien Obligations due and payable under the Credit Documents.

(iv) Reduction of Commitments.

(A) Borrower may at any time permanently terminate, or from time to time permanently reduce, the LC Commitments; provided, that (1) each reduction of the LC Commitments shall be in an amount that is an integral multiple of $100,000 and not less than $1,000,000 (or, if less, the remaining amount of the LC Commitments) and (2) Borrower shall not voluntarily terminate or reduce the LC Commitments, if, after giving effect to any concurrent prepayment of LC Loans in accordance with this Section 2.1(h), the Revolving LC Exposure, DSR LC Exposure or PPA LC Exposure would exceed the Total Revolving LC Commitments, Total DSR LC Commitments or Total PPA LC Commitments.

(B) Borrower shall notify Administrative Agent in writing of any election to terminate or reduce Commitments under the foregoing clauses (A) at least three Banking Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any such notice, Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by Borrower pursuant to this clause (B) shall be irrevocable. Any termination or reduction of Commitments shall be permanent; provided, that a notice of termination of Commitments delivered by Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by Borrower (by notice to Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Each reduction of Commitments shall be made ratably among the Lenders participating in the applicable Loan facility in accordance with their respective Proportionate Shares.

(i) Register. Administrative Agent on behalf of Borrower shall maintain, at its address referred to in Section 11.1, a register for the recordation of the names and addresses of the Lenders, the Commitments and Loans of each Lender from time to time and the name of each Lender which holds a Note (the "**Register**"). The Register shall be available for inspection by Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice. Administrative Agent shall record in the Register (i) the Commitments and the Loans from time to time of each Lender, (ii) the interest rates applicable to all Loans and the effective dates of all changes thereto, (iii) the Interest Period for each LIBOR Loan, (iv) the date and amount of any principal or interest due and payable or to become due and payable from Borrower to each Lender hereunder, (v) each repayment or prepayment in respect of the principal amount of the Loans of each Lender, (vi) the amount of any sum received by Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof, and (vii) such other information as Administrative Agent may determine is necessary for the administering of the Loans and this Agreement. Any such recording shall be conclusive and binding in the absence of manifest error; provided, that neither the failure to make any such recordation, nor any error in such recordation, shall affect Borrower's First Lien Obligations in respect of any applicable Loans or otherwise; and provided, further, that in the event of any inconsistency between the Register and any Lender's records, the Register shall govern absent manifest error.

(j) Re-Borrowing. Borrower may not re-borrow the principal amount of any Term Loan repaid or prepaid pursuant to this Agreement. Any prepaid LC Loans may be re-borrowed. The LC Commitments shall not be reduced as a result of any prepayment. To the extent that any LC Commitment was reduced as a result of any issuance of LC Loans, and so long as the Borrower shall have satisfied the requirements of for LC Loans, Section 3.2 and Section 2.2(c)(ii), (b)(ii) or (c)(ii), such LC Commitment shall be reinstated as a result of any prepayment of such LC Loans made in accordance with Section 2.1(h)(ii).

2.2 Letter of Credit Facilities

(a) Revolving LC Commitments; Issuance of Revolving Letters of Credit. The initial Dollar amount of each Lender's Revolving LC Commitment on the Closing Date is set forth under the caption "Revolving LC Commitments" on Schedule 2.2(a). The aggregate amount of the Revolving LC Commitments on the Closing Date is $130,622,000 (the "**Total Revolving LC Commitment**", and each Lender holding such Revolving LC Commitments, a "**Revolving LC Lender**"). All of the Revolving LC Commitments shall be available for the issuance of standby letters of credit. Subject to the terms and conditions set forth in this Agreement, Borrower may request the issuance of an irrevocable standby letter of credit substantially in the forms set forth in Exhibit B-5 or otherwise reasonably satisfactory to such Revolving Issuing Bank (a "**Revolving Letter of Credit**") for its own account, at any time and from time to time prior to the applicable Maturity Date.

(i) Notice of Issuance of Revolving Letter of Credit, Amendment, Renewal, Extension; Certain Conditions.

(A) To request the issuance of a Revolving Letter of Credit (or the amendment, renewal (other than an automatic renewal in accordance with clause (B) below) or extension of an outstanding Revolving Letter of Credit), Borrower shall hand deliver or transmit by telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the applicable Revolving Issuing Bank) to such Revolving Issuing Bank and Administrative Agent (three Banking Days in advance of the requested date of issuance, amendment, renewal or extension or, with respect to any issuance to take place on the Closing Date, one Banking Day in advance of the Closing Date) a Notice of LC Activity requesting the issuance of a Revolving Letter of Credit, or identifying the Revolving Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Banking Day at least three Banking Days after the form of such Revolving Letter of Credit or amendment, renewal or extension has been agreed by Borrower, the applicable Revolving Issuing Bank and Administrative Agent or, with respect to any issuance, amendment, renewal or extension to take place on the Closing Date, one Banking Day in advance of the Closing Date), the date on which such Revolving Letter of Credit is to expire and such other information as shall be necessary to issue, amend, renew or extend such Revolving Letter of Credit. If requested by a Revolving Issuing Bank, Borrower also shall submit a letter of credit application on such Revolving Issuing Bank's standard form in connection with any request for a Revolving Letter of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by Borrower to, or entered into by Borrower with, the applicable Revolving Issuing Bank relating to a Revolving Letter of Credit, the terms and conditions of this Agreement shall control.

(B) Each Revolving Letter of Credit shall expire at or prior to the close of business on the earlier of (1) the date one year after the date of the issuance of such Revolving Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) or such other date as the Revolving Issuing Bank may agree, and (2) five Banking Days prior to the Revolving Maturity Date; provided, that any Revolving Letter of Credit with a one-year tenor shall provide for the automatic renewal thereof for additional one-year periods (which, in no event, shall extend beyond the date referred to in clause (2) of this clause (B)), and provided, further, that a Revolving Letter of Credit may expire after the Revolving Maturity Date to the extent that such Revolving Letter of Credit is Cash Collateralized to a mutually agreed level as between the Borrower and such Revolving Issuing Bank or back-stopped pursuant to arrangements acceptable to the relevant Revolving Issuing Bank during the period commencing on such Revolving Maturity Date until such later stated expiry date occurring after such Revolving Maturity Date. For the avoidance of doubt, the obligation of the Revolving LC Lenders to make Revolving LC Loans shall terminate on the Revolving Maturity Date.

(ii) Revolving LC Loans.

(A) If a Revolving Issuing Bank makes any Drawing Payment, Borrower shall reimburse such Drawing Payment by paying to Administrative Agent an amount equal to such Drawing Payment in Dollars, not later than 12:00 p.m., New York City time, on the second Banking Day following the date Borrower receives notice of such Drawing Payment; provided, that so long as no Event of Default under Section 7.1(a) or Section 6.1(i) (*Bankruptcy*) of the First Lien Common Terms Agreement has occurred and is continuing, to the extent Borrower does not so reimburse the Drawing Payment within one Banking Day, the Revolving LC Lenders shall be irrevocably and unconditionally obligated to fund participations in the Revolving LC Reimbursement Obligations on a pro rata basis based on their respective Revolving LC Commitments. Such amount shall be reduced, if necessary, such that the aggregate amount of applicable Revolving LC Exposure does not exceed the aggregate applicable Total Revolving LC Commitments of such Revolving LC Lender, with the amount of such Drawing Payment that is not covered by Revolving LC Loans becoming due and payable on demand. With respect to any Revolving LC Reimbursement Obligation that is not financed with a Revolving LC Loan because an Event of Default under Section 7.1(a) or Section 6.1(i) (*Bankruptcy*) of the First Lien Common Terms Agreement (with respect to Borrower) has occurred and is continuing, such Revolving LC Reimbursement Obligation shall be due and payable on demand (together with interest) and shall bear interest as provided in Section 2.4(c). The Revolving LC Loans made pursuant to this Section 2.2(a)(ii)(A) shall initially be Base Rate Loans.

(B) If Borrower fails to reimburse any Drawing Payment not covered or financed by Revolving LC Loans as contemplated by clause (A), then Administrative Agent shall promptly notify the applicable Revolving Issuing Bank(s) of the applicable Drawing Payment and the payment then due from Borrower. Promptly following receipt by Administrative Agent of any payment from Borrower pursuant to this paragraph, Administrative Agent shall distribute such payment to the applicable Revolving Issuing Bank(s).

(C) On the Revolving Maturity Date, the Borrower shall repay to Administrative Agent, for the account of each applicable Revolving LC Lender, the aggregate unpaid principal amount of the Revolving LC Loans (including all fees, interest and other amounts accrued in connection therewith).

(b) DSR LC Commitments; Issuance of DSR Letters of Credit. The initial Dollar amount of each Lender's DSR LC Commitment on the Closing Date is set forth under the caption "**DSR LC Commitments**" on Schedule 2.2(a). The aggregate amount of the DSR LC Commitments on the Closing Date is $53,000,000 (the "**Total DSR LC Commitment**", and each Lender holding such DSR LC Commitments, a "**DSR LC Lender**"). Subject to the terms and conditions set forth in this Agreement, Borrower may request the issuance of an irrevocable letter of credit substantially in the form of Exhibit B-6 (the "**DSR Letter of Credit**") for its own account, at any time and from time to time prior to the applicable DSR Maturity Date. The Stated Amount of the DSR Letters of Credit shall never exceed the Total DSR LC Commitment.

(i) Notice of Issuance of DSR Letter of Credit, Amendment, Renewal, Extension; Certain Conditions.

(A) To request the issuance of a DSR Letter of Credit (or the amendment, renewal (other than an automatic renewal in accordance with clause (B) below) or extension of an outstanding DSR Letter of Credit), Borrower shall hand deliver or transmit by telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the applicable DSR Issuing Bank) to such DSR Issuing Bank and Administrative Agent (three Banking Days in advance of the requested date of issuance, amendment, renewal or extension or, with respect to any issuance to take place on the Closing Date, one Banking Day in advance of the Closing Date) a Notice of LC Activity requesting the issuance of a DSR Letter of Credit, or identifying the DSR Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Banking Day at least three Banking Days after the form of such DSR Letter of Credit or amendment, renewal or extension has been agreed by Borrower, the applicable DSR Issuing Bank and Administrative Agent or, with respect to any issuance to take place on the Closing Date, one Banking Day in advance of the Closing Date), the date on which such DSR Letter of Credit is to expire and such other information as shall be necessary to issue, amend, renew or extend such DSR Letter of Credit. If requested by a DSR Issuing Bank, Borrower also shall submit a DSR Letter of Credit application on such DSR Issuing Bank's standard form in connection with any request for a DSR Letter of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by Borrower to, or entered into by Borrower with, the applicable DSR Issuing Bank relating to a DSR Letter of Credit, the terms and conditions of this Agreement shall control.

(B) A DSR Letter of Credit shall be issued, amended, renewed or extended only if, after giving effect to such issuance, amendment, renewal or extension, the total DSR LC Exposure shall not exceed the Total DSR LC Commitment and the DSR LC Exposure of such DSR Issuing Bank shall not exceed the DSR LC Commitments of such DSR Issuing Bank.

(C) Each DSR Letter of Credit shall expire at or prior to the close of business on the earlier of (x) the date one year after the date of the issuance of such DSR Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension), and (y) the applicable DSR Maturity Date; provided that any DSR Letter of Credit with a one-year tenor may provide for the automatic renewal thereof for additional one-year periods (which, in no event, shall extend beyond the date referred to in clause (y) of this clause (C)); provided, further, that upon the date of such expiry (taking into account the preceding proviso), each such DSR Letter of Credit shall be surrendered by the beneficiary or transferee of such DSR Letter of Credit to the applicable DSR Issuing Bank for cancellation, all DSR LC Loans (including all fees, interest and other amounts accrued in connection therewith) made or deemed to have been made with respect to such DSR Letter of Credit shall be repaid in full, and all DSR LC Commitments of such DSR Issuing Bank shall be terminated.

(ii) DSR LC Loans

(A) If a DSR Issuing Bank makes any Drawing Payment, Borrower shall reimburse such Drawing Payment by paying to Administrative Agent an amount equal to such Drawing Payment in Dollars, not later than 12:00 p.m., New York City time, on the Banking Day immediately following the date Borrower receives notice of such Drawing Payment; provided, that so long as no Event of Default under Section 7.1(a) or Section 6.1(i) (*Bankruptcy*) of the First Lien Common Terms Agreement has occurred and is continuing any Drawing Payment shall be deemed to be a request by Borrower for a Borrowing in an aggregate amount equal to the amount of DSR LC Reimbursement Obligations with respect to the DSR Letters of Credit (a "**DSR LC Loan**") and, to the extent so financed, such DSR LC Reimbursement Obligations shall be discharged and replaced by the resulting DSR LC Loan owing to the DSR LC Lender which issued the Letter of Credit giving rise to such DSR LC Reimbursement Obligation in its capacity as the DSR Issuing Bank. Such requested amount shall be reduced, if necessary, such that the aggregate amount of applicable DSR LC Exposure does not exceed the aggregate applicable Total DSR LC Commitments of such DSR Issuing Bank, with the amount of such Drawing Payment that is not covered by DSR LC Loans becoming due and payable on demand. With respect to any DSR LC Reimbursement Obligation that is not financed with a DSR LC Loan because an Event of Default under Section 7.1(a) or Section 6.1(i) (*Bankruptcy*) of the First Lien Common Terms Agreement has occurred and is continuing, such DSR LC Reimbursement Obligation shall be due and payable on demand (together with interest) and shall bear interest as provided in Section 2.4(c). The DSR LC Loans made pursuant to this Section 2.2(b)(ii)(A) shall initially be Base Rate Loans.

(B) If Borrower fails to reimburse any Drawing Payment not covered or financed by DSR LC Loans as contemplated by Section 2.2(b)(ii)(A), then Administrative Agent shall promptly notify the applicable DSR Issuing Bank(s) of the applicable Drawing Payment and the payment then due from Borrower. Promptly following receipt by Administrative Agent of any payment from Borrower pursuant to this paragraph, Administrative Agent shall distribute such payment to the applicable DSR Issuing Bank(s).

(C) In the event that multiple DSR Issuing Banks have issued DSR Letters of Credit, Administrative Agent shall allocate any DSR LC Loan in respect of the DSR Letters of Credit among the DSR Letters of Credit such that such DSR LC Loan is borne pro rata among the DSR Issuing Banks based on the relative Stated Amount (immediately prior to the making of such DSR LC Loan) of DSR Letters of Credit held by each such DSR Issuing Bank.

(D) On the Maturity Date, the Borrower shall repay to Administrative Agent, for the account of each applicable DSR LC Lender, the aggregate unpaid principal amount of the DSR LC Loans (including all fees, interest and other amounts accrued in connection therewith).

(c) PPA LC Commitments; Issuance of PPA Letters of Credit. The initial Dollar amount of each Lender's PPA LC Commitment on the Closing Date is set forth under the caption "PPA LC Commitments" on Schedule 2.2(a). The aggregate amount of the PPA LC Commitments on the Closing Date is $16,378,000 (the "**Total PPA LC Commitment**", and each Lender holding such PPA LC Commitments, a "**PPA LC Lender**", and together with the Revolving LC Lenders and the DSR LC Lenders, the "**LC Lenders**"). Subject to the terms and conditions set forth in this Agreement, Borrower may request the issuance of an irrevocable letter of credit substantially in the form of Exhibit B-5 or otherwise reasonably satisfactory to such PPA Issuing Bank (the "**PPA Letter of Credit**", and together with the Revolving Letters of Credit and the DSR Letters of the Credit, the "**Letters of Credit**") for its own account, at any time and from time to time prior to the applicable PPA Maturity Date.

(i) Notice of Issuance of PPA Letter of Credit, Amendment, Renewal, Extension; Certain Conditions.

(A) To request the issuance of a PPA Letter of Credit (or the amendment, renewal (other than an automatic renewal in accordance with clause (B) below) or extension of an outstanding PPA Letter of Credit), Borrower shall hand deliver or transmit by telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the applicable PPA Issuing Bank) to the PPA Issuing Bank and Administrative Agent (three Banking Days in advance of the requested date of issuance, amendment, renewal or extension or, with respect to any issuance to take place on the Closing Date, one Banking Day in advance of the Closing Date) a Notice of LC Activity requesting the issuance of a PPA Letter of Credit, or identifying the PPA Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Banking Day at least three Banking Days after the form of such PPA Letter of Credit or amendment, renewal or extension has been agreed by Borrower, the PPA Issuing Bank and Administrative Agent or, with respect to any issuance to take place on the Closing Date, one Banking Day in advance of the Closing Date), the date on which such PPA Letter of Credit is to expire and such other information as shall be necessary to issue, amend, renew or extend such PPA Letter of Credit. If requested by the PPA Issuing Bank, Borrower also shall submit a PPA Letter of Credit application on the PPA Issuing Bank's standard form in connection with any request for a PPA Letter of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by Borrower to, or entered into by Borrower with, the PPA Issuing Bank relating to a PPA Letter of Credit, the terms and conditions of this Agreement shall control.

(B) A PPA Letter of Credit shall be issued, amended, renewed or extended only if, after giving effect to such issuance, amendment, renewal or extension, the PPA LC Exposure shall not exceed the Total PPA LC Commitment and the PPA LC Exposure of the PPA Issuing Bank shall not exceed the PPA LC Commitments of the PPA Issuing Bank.

(C) Each PPA Letter of Credit shall expire at or prior to the close of business on the earlier of (1) the date one year after the date of the issuance of such PPA Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) or such other date as the PPA Issuing Bank may agree, and (2) the applicable PPA Maturity Date; provided that any PPA Letter of Credit with a one-year tenor may provide for the automatic renewal thereof for additional one-year periods (which, in no event, shall extend beyond the date referred to in clause (2) of this clause (C)); provided, further, that a PPA Letter of Credit may expire after the PPA Maturity Date to the extent that such PPA Letter of Credit is Cash Collateralized to a mutually agreed level as between the Borrower and such PPA Issuing Bank or back-stopped pursuant to arrangements acceptable to the relevant PPA Issuing Bank during the period commencing on such PPA Maturity Date until such later stated expiry date occurring after such PPA Maturity Date.

(ii) PPA LC Loans

(A) If the PPA Issuing Bank makes any Drawing Payment, Borrower shall reimburse such Drawing Payment by paying to Administrative Agent an amount equal to such Drawing Payment in Dollars, not later than 12:00 p.m., New York City time, on the second Banking Day following the date Borrower receives notice of such Drawing Payment; provided, that so long as no Event of Default under Section 7.1(a) or Section 6.1(i) (*Bankruptcy*) of the First Lien Common Terms Agreement has occurred and is continuing, any Drawing Payment shall be deemed to be a request by Borrower for a Borrowing in an aggregate amount equal to the amount of PPA LC Reimbursement Obligations with respect to the PPA Letters of Credit (a "**PPA LC Loan**") and, to the extent so financed, such PPA LC Reimbursement Obligations shall be discharged and replaced by the resulting PPA LC Loan owing to the PPA LC Lender which issued the Letter of Credit giving rise to such PPA LC Reimbursement Obligation in its capacity as the PPA Issuing Bank. Such requested amount shall be reduced, if necessary, such that the aggregate amount of applicable PPA LC Exposure does not exceed the aggregate applicable Total PPA LC Commitments of the PPA Issuing Bank, with the amount of such Drawing Payment that is not covered by PPA LC Loans becoming due and payable on demand. With respect to any PPA LC Reimbursement Obligation that is not financed with a PPA LC Loan because an Event of Default under Section 7.1(a) or Section 6.1(i) (*Bankruptcy*) of the First Lien Common Terms Agreement has occurred and is continuing, such PPA LC Reimbursement Obligation shall be due and payable on demand (together with interest) and shall bear interest as provided in Section 2.4(c). The PPA LC Loans made pursuant to this Section 2.2(c)(ii)(A) shall initially be Base Rate Loans.

(B) If Borrower fails to reimburse any Drawing Payment not covered or financed by PPA LC Loans as contemplated by Section 2.2(c)(ii)(A), then Administrative Agent shall promptly notify the PPA Issuing Bank of the applicable Drawing Payment and the payment then due from Borrower. Promptly following receipt by Administrative Agent of any payment from Borrower pursuant to this paragraph, Administrative Agent shall distribute such payment to the PPA Issuing Bank.

(C) On the Maturity Date, the Borrower shall repay to Administrative Agent, for the account of the PPA LC Lender, the aggregate unpaid principal amount of the PPA LC Loans (including all fees, interest and other amounts accrued in connection therewith).

(d) Reimbursement Obligations Absolute. The obligation of Borrower to reimburse any Drawing Payment as provided in Section 2.2 shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by an Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, (iv) any amendment or waiver of or any consent to departure from all or any terms of any of the Credit Documents, (v) the existence of any claim, setoff, defense or other right which Borrower may have at any time against the beneficiary of such Letter of Credit (or any Persons for whom such beneficiary may be acting), the applicable Issuing Bank, Administrative Agent, any Lender or any other Person, whether in connection with this Agreement, the transactions contemplated hereby, by any other Credit Document or by any unrelated transaction, (vi) any breach of contract or dispute among or between Borrower, an Issuing Bank, Administrative Agent, any Lender or any other Person, (vii) any non-application or misapplication by the beneficiary of a Letter of Credit of the proceeds of any Drawing Payment or any other act or omission of such beneficiary in connection with such Letter of Credit, (viii) any failure to preserve or protect any Collateral, any failure to perfect or preserve the perfection of any Lien thereon, or the release of any of the Collateral securing the performance or observance of the terms of this Agreement or any of the other Credit Documents, or (ix) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.2(d), constitute a legal or equitable discharge of, or provide a right of setoff against, Borrower's obligations hereunder; provided, that in each case, payment by an Issuing Bank shall not have constituted gross negligence or willful misconduct. Neither Administrative Agent, the Lenders nor the applicable Issuing Bank, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of an Issuing Bank; provided, that nothing contained herein shall be construed to excuse an Issuing Bank from liability to Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by Borrower to the extent permitted by applicable law) suffered by Borrower that are determined by a court having jurisdiction to have been caused by (x) such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof, or (y) such Issuing Bank's refusal to issue a Letter of Credit in accordance with the terms of this Agreement. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of an Issuing Bank, such Issuing Bank shall be deemed to have exercised care in each such determination and each refusal to issue a Letter of Credit. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, an Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(e) Disbursement Procedures. An Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. Each Issuing Bank shall promptly notify Administrative Agent and Borrower by telephone (confirmed by telecopy or other electronic transmission) of such demand for payment and whether such Issuing Bank has made or shall make a Drawing Payment thereunder; provided, that any failure to give or delay in giving such notice shall not relieve Borrower of its obligation to reimburse the applicable Issuing Bank with respect to any such Drawing Payment.

(f) Interim Interest. If an Issuing Bank shall make any Drawing Payment, then, unless Borrower shall reimburse such Drawing Payment in full by 4:00 p.m. (New York time) on the second Banking Day after the date such Drawing Payment is made, the unpaid amount thereof shall bear interest, for each day from and including the date such Drawing Payment is made to but excluding the date that Borrower reimburses such Drawing Payment (including by the making of a Borrowing), at the rate per annum then applicable to Base Rate LC Loans or LIBOR LC Loans, at the election of Borrower, for Drawing Payments under a Letter of Credit; provided, that if such Drawing Payment is not reimbursed by Borrower when due or otherwise discharged pursuant to Section 2.22.2(c)(a)(ii), (b)(ii) or (c)(ii), then Section 2.4(c) shall apply. Interest accrued pursuant to this Section 2.2(f) shall be for the account of the applicable Issuing Bank.

(g) Additional Issuing Banks. From time to time, Borrower may by notice to Administrative Agent designate one or more other Lenders or other financial institutions (in addition to the Issuing Banks and their respective Affiliates) that agree (in their sole discretion) to act in such capacity and is reasonably satisfactory to Administrative Agent as a Revolving Issuing Bank, DSR Issuing Bank or PPA Issuing Bank, as applicable. Each such additional Issuing Bank shall execute a counterpart of this Agreement in such capacity upon the approval of Administrative Agent (which approval shall not be unreasonably withheld or delayed) and shall thereafter be a Revolving Issuing Bank, DSR Issuing Bank or PPA Issuing Bank, as applicable, hereunder for all purposes. The Register shall be updated following such execution.

(h) Reporting. Unless otherwise requested by Administrative Agent, each Issuing Bank shall (i) provide to Administrative Agent copies of any notice received from Borrower pursuant to Section 2.2 no later than the next Banking Day after receipt thereof, and (ii) report in writing to Administrative Agent (A) on or prior to each Banking Day on which such Issuing Bank expects to issue, amend, renew or extend any Letter of Credit, the date of such issuance, amendment, renewal or extension, and the aggregate face amount of the Letters of Credit to be issued, amended, renewed or extended by it and outstanding after giving effect to such issuance, amendment, renewal or extension occurred (and whether the amount thereof changed), and such Issuing Bank shall be permitted to issue, amend, renew or extend such Letter of Credit if Administrative Agent shall not have advised such Issuing Bank that such issuance, amendment renewal or extension would not be in conformity with the requirements of this Agreement, (B) on each Banking Day on which such Issuing Bank makes any Drawing Payment, the date of such Drawing Payment and the amount of such Drawing Payment, and (C) on any other Banking Day, such other information as Administrative Agent shall reasonably request, including but not limited to prompt verification of such information as may be requested by Administrative Agent.

(i) Replacement of an Issuing Bank. An Issuing Bank may be replaced at any time by written agreement among Borrower, Administrative Agent and the successor Issuing Bank. Administrative Agent shall notify the Lenders of any such replacement of an Issuing Bank. At the time any such replacement shall become effective, Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.3(c), (f) or (h), as applicable, and any unreimbursed obligations and other First Lien Obligations owed to such Issuing Bank in its capacity as such. From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the replaced Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter by such successor Issuing Bank, and (ii) references herein to the term "Issuing Bank", and, as applicable, "Revolving Issuing Bank," "DSR Issuing Bank" or "PPA Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. Upon the replacement of an Issuing Bank hereunder, (x) all outstanding Letters of Credit issued by the replaced Issuing Bank shall be cancelled and returned to the replaced Issuing Bank and (y) any Cash Collateral pledged to the First Lien Collateral Agent for the account of any such Issuing Bank shall be released by the First Lien Collateral Agent upon written confirmation from the Issuing Bank of the Issuing Bank's receipt of originals of all Letters of Credit and any and all amendments thereto issued by such Issuing Bank and payment by the Borrower of all First Lien Obligations owing to such Issuing Bank as contemplated by this Section 2.2(i).

(j) Non-Fronted Obligations. For certainty, each of the PPA Letters of Credit and the DSR Letters of Credit are intended to be non-fronted letters of credit, such that the PPA LC Lender or the DSR LC Lender, as applicable, with respect to any PPA Letter of Credit or DSR Letter of Credit, as applicable, is the same entity as, or an Affiliate of, the PPA Issuing Bank or DSR Issuing Bank, as applicable, that has issued such PPA Letter of Credit or such DSR Letter of Credit.

2.3 Fees

(a) Agents' and Arranger's Fees. Borrower shall pay to Administrative Agent, First Lien Collateral Agent, and Depositary Agent, as applicable, solely for (i) Administrative Agent's account the fees and other amounts described in the Agency Fee Letter, and (ii) Depositary Agent's and First Lien Collateral Agent's account the fees and other amounts described in the schedule of fees agreed among Borrower, First Lien Collateral Agent and Depositary Agent (the "**Depositary and Collateral Agency Fee Letter**").

(b) Revolving LC Commitment Fees. On each Quarterly Date, Borrower shall pay to Administrative Agent the following commitment fees, in each case, payable quarterly in arrears, and for the benefit of the Revolving LC Lenders, accruing from the Closing Date or the first day of the Payment Period, as the case may be, a commitment fee for such quarter (or portion thereof) then ending equal to 0.50% per annum on the average daily balance of the aggregate undrawn Revolving LC Commitments (calculated on an actual/360-day basis).

(c) Revolving LC Fees. On each Quarterly Date, Borrower shall pay to Administrative Agent, for the benefit of the Revolving LC Lenders, accruing from the Closing Date or the first day of the Payment Period, as the case may be, a letter of credit participation fee on all outstanding Revolving Letters of Credit (the "**Revolving LC Fee**") for such quarter (or portion thereof) then ending at a per annum rate equal to the Applicable Margin then in effect with respect to LIBOR Loans under the Revolving LC Commitments, on the face amount of each such Revolving Letter of Credit. Such fee shall be shared ratably among the Revolving LC Lenders holding Revolving LC Commitments (other than Defaulting Lenders) and calculated on an actual/360-day basis, payable quarterly in arrears.

(d) Revolving Letter of Credit Fronting Fee. The Borrower shall pay to the Administrative Agent for the account of each Issuing Bank a fronting fee (the "**Revolving Letter of Credit Fronting Fee**") until the Revolving Maturity Date, payable quarterly in arrears on each Quarterly Date occurring after the Closing Date, and the Revolving Maturity Date at the rate per annum on the difference between the average daily Stated Amount of all undrawn Revolving Letters of Credit issued by such Issuing Bank for such quarter (or portion thereof), minus such Issuing Bank's pro rata portion of such Stated Amount that corresponds to its pro rata portion of the Revolving LC Commitments, as agreed to between the Borrower and such Issuing Bank.

(e) DSR LC Commitment Fees. On each Quarterly Date, Borrower shall pay to Administrative Agent the following commitment fees, in each case, payable quarterly in arrears, and for the benefit of the DSR LC Lenders, accruing from the Closing Date or the first day of the Payment Period, as the case may be, a commitment fee for such quarter (or portion thereof) then ending equal to 0.50% per annum on the average daily balance of the aggregate undrawn DSR LC Commitments (calculated on an actual/360-day basis).

(f) DSR LC Fees. On each Quarterly Date, Borrower shall pay to Administrative Agent, for the benefit of the DSR LC Lenders, accruing from the Closing Date or the first day of the Payment Period, as the case may be, a letter of credit participation fee on all outstanding DSR Letters of Credit (the "**DSR LC Fee**") for such quarter (or portion thereof) then ending at a per annum rate equal to the Applicable Margin then in effect with respect to LIBOR Loans under the DSR LC Commitments, on the face amount of each such DSR Letter of Credit. Such fee shall be shared ratably among the DSR LC Lenders holding DSR LC Commitments (other than Defaulting Lenders) and calculated on an actual/360-day basis, payable quarterly in arrears.

(g) PPA LC Commitment Fees. On each Quarterly Date, Borrower shall pay to Administrative Agent the following commitment fees, in each case, payable quarterly in arrears, and for the benefit of the PPA LC Lenders, accruing from the Closing Date or the first day of the Payment Period, as the case may be, a commitment fee for such quarter (or portion thereof) then ending equal to 0.50% per annum on the average daily balance of the aggregate undrawn PPA LC Commitments (calculated on an actual/360-day basis).

(h) PPA LC Fees. On each Quarterly Date, Borrower shall pay to Administrative Agent, for the benefit of the PPA LC Lender, accruing from the Closing Date or the first day of the Payment Period, as the case may be, a letter of credit participation fee on all outstanding PPA Letters of Credit (the " **PPA LC Fee**") for such quarter (or portion thereof) then ending at a per annum rate equal to the Applicable Margin then in effect with respect to LIBOR Loans under the PPA LC Commitments, on the face amount of each such PPA Letter of Credit. Such fee shall be shared ratably among the PPA LC Lenders holding PPA LC Commitments (other than Defaulting Lenders) and calculated on an actual/360-day basis, payable quarterly in arrears.

2.4 Other Payment Terms

(a) Place and Manner. Except as otherwise provided in the Agency Fee Letter, Depositary and Collateral Agency Fee Letter or any other provision contained in any of the Credit Documents, Borrower shall make all payments due to any Lender, any Issuing Bank, First Lien Collateral Agent, Depositary Agent or Administrative Agent hereunder to Administrative Agent, for the account of such Lender, such Issuing Bank, First Lien Collateral Agent, Depositary Agent or Administrative Agent (as the case may be), to the account in the name of MUFG Bank, Ltd., Bank Name: MUFG Bank, Ltd., ABA No. 026-009-632, Account No: 9777-0191, Account Name: Loan Operations Department, Attention: Agency Desk, Reference: Geysers or such other account as Administrative Agent shall notify Borrower from time to time, in Dollars and in immediately available funds not later than 12:00 p.m., New York City time, on the date on which such payment is due. Any payment made after such time on any day shall be deemed received on the Banking Day after such payment is received. Administrative Agent shall disburse to each Lender, each Issuing Bank, First Lien Collateral Agent or Depositary Agent (as the case may be) each such payment received by Administrative Agent for such Lender, such Issuing Bank or First Lien Collateral Agent (as the case may be), such disbursement to occur on the day such payment is received if received by 12:00 p.m., New York City time, or if otherwise reasonably possible, or otherwise on the next Banking Day.

(b) Date. Whenever any payment due hereunder shall fall due on a day other than a Banking Day, such payment shall be made on the next succeeding Banking Day, and such extension of time shall be included in the computation of interest or fees, as the case may be, without duplication of any interest or fees so paid in the next subsequent calculation of interest or fees payable.

(c) Default Interest. Notwithstanding anything to the contrary herein, upon the occurrence and during the continuation of any Event of Default, the outstanding principal amount of overdue Loans and amounts due under outstanding Letters of Credit (without duplication) and, to the extent permitted by applicable Legal Requirements, any accrued and overdue but unpaid interest payments thereon and any accrued and overdue but unpaid fees, and other overdue amounts hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under applicable Bankruptcy Laws) payable upon demand, and the LC Fees shall be increased, at a rate that is (i) 2% per annum in excess of the interest rate or LC Fee, as applicable, then otherwise payable under this Agreement with respect to the LC Loans, or (ii) in the case of any such fees and other amounts, at a rate that is 2% per annum in excess of the interest rate then otherwise payable under this Agreement for Base Rate Loans (the "**Default Rate**"); provided, that in the case of LIBOR Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective, such LIBOR Loans shall thereupon become Base Rate Loans and shall thereafter bear interest payable upon demand at a rate that is 2% per annum in excess of the interest rate then otherwise payable under this Agreement for Base Rate Loans, (it being understood that from and after the date on which all continuing Events of Default have been waived by the Lenders pursuant to Section 9.9, the Default Rate shall no longer apply).

(d) Net of Taxes, Etc.

(i) Taxes. Any and all payments to or for the benefit of any Lender Party by or on behalf of any Obligor hereunder or under any other Credit Document shall be made free and clear of and without deduction or withholding, setoff or counterclaim of any kind whatsoever, except as required by applicable law. If any Taxes are required to be deducted or withheld from or in respect of any sum payable by or on behalf of any Obligor hereunder or under any other Credit Document to any Lender Party, (A) if such Tax is an Indemnified Tax, the sum payable shall be increased as may be necessary so that after all required deductions or withholdings (including deductions or withholdings applicable to additional sums payable under this Section 2.4(d)), such Lender Party receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (B) the relevant Obligor shall make (or cause to be made) such deductions or withholdings, and (C) the relevant Obligor shall pay (or cause to be paid) the full amount deducted or withheld to the relevant taxation authority or other authority in accordance with applicable Legal Requirements. In addition, Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(ii) Tax Indemnity. Borrower shall indemnify each Lender Party for and hold it harmless against the full amount of Indemnified Taxes and Other Taxes (including any Indemnified Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 2.4(d)) paid by any Lender Party or its Affiliates, or any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally asserted. Payments by Borrower pursuant to this indemnification shall be made within thirty days from the date such Lender Party makes written demand therefor (submitted through Administrative Agent), which demand shall be accompanied by a certificate describing in reasonable detail the basis thereof.

(iii) Notice. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by or on behalf of Borrower pursuant to this Section 2.4(d), Borrower shall furnish to Administrative Agent, at its address referred to in Section 11.1, the original or a certified copy of a receipt evidencing payment thereof or, if such receipt is not obtainable, other evidence of such payment reasonably satisfactory to Administrative Agent.

(iv) Conduit Financing. Notwithstanding anything to the contrary contained in this Section 2.4(d), if a Lender Party is a conduit entity participating in a conduit financing arrangement (as defined in Section 7701(l) of the Code and the Treasury Regulations issued thereunder) with respect to any payments made by Borrower under this Agreement and under any Note, Borrower shall not be obligated to pay additional amounts to such Lender Party pursuant to this Section 2.4(d) to the extent that the amount of Indemnified Taxes exceeds the amount that would have otherwise been payable were such Lender Party not a conduit entity participating in a conduit financing arrangement.

(v) Reimbursement by Lender Parties. If any Lender Party receives an indemnification payment pursuant to Section 2.4(d)(ii) and if such Lender Party is able, in its sole discretion exercised in good faith, to apply or otherwise take advantage of any refund or tax credit arising out of or in conjunction with any Indemnified Taxes or Other Taxes which give rise to such indemnification, such Lender Party shall, to the extent that in its sole discretion exercised in good faith, it can do so without prejudice to the retention of the amount of such refund or credit and without any other adverse tax consequences for such Lender Party, reimburse to Borrower at such time as such tax refund or credit shall have actually been received by such Lender Party such amount as the Lender Party shall, in its sole discretion exercised in good faith, have determined to be attributable to the relevant Taxes or Other Taxes and as will leave such Lender Party in no better or worse position than it would have been in if the payment of such Taxes or Other Taxes had not been required; provided, that if the Lender Party is required to repay all or any portion of any refund or any interest thereon to such Governmental Authority or to forfeit all or any portion of such credit, then, upon the request of such Lender Party, Borrower agrees to repay such Lender Party, as soon as reasonably practicable, the amount of the refund required to be paid to such Governmental Authority by such Lender Party or the amount of such credit that is required to be forfeited, in each case *plus* any penalties, interest or other charges imposed by such Governmental Authority with respect to such refund or credit, as the case may be. Nothing in this Section 2.4(d)(v) shall oblige any Lender Party to disclose to Borrower or any other Person any information regarding its tax affairs or tax computations, or shall interfere with Lender Party's absolute discretion to arrange its tax affairs in whatever manner it thinks fit. In particular, no Lender Party shall be under any obligation to claim relief from its corporate profits or similar tax liability in credits or deductions available to it and, if it does claim, the extent, order and manner in which it does so shall be at its absolute discretion.

(vi) Survival of Obligations. The obligations of Obligors under this Section 2.4(d) shall survive the termination of this Agreement and the repayment of Borrower's First Lien Obligations hereunder.

(e) Application of Payments. Except as otherwise expressly provided herein or in the other Credit Documents, payments made under this Agreement or the other Credit Documents and other amounts received by Administrative Agent, First Lien Collateral Agent, Depositary Agent, the Issuing Banks or the Lenders under this Agreement or the other Credit Documents shall first be applied to any fees, costs, charges or expenses payable to Administrative Agent, First Lien Collateral Agent, Depositary Agent, the Issuing Banks or the Lenders hereunder or under the other Credit Documents, next to any accrued but unpaid interest then due and owing, then to outstanding principal then due and owing or otherwise to be prepaid, and to all ordinary course settlement payments and termination payments then due and payable under any Interest Rate Agreement and Cash Collateralize outstanding LC Exposure (in each case, such application to be made on a pro rata basis among such applicable Persons), and any surplus then remaining shall be paid to Borrower or its successors or assigns or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

(f) Withholding Exemption Certificates.

(i) Any Lender Party that is entitled to an exemption from or reduction of withholding tax with respect to payments made under any Credit Document shall deliver to Borrower and the Administrative Agent, at the time or times reasonably requested by Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender Party, if reasonably requested by Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Legal Requirements or reasonably requested by Borrower or the Administrative Agent as will enable Borrower or the Administrative Agent to determine whether or not such Lender Party is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.4(f)(ii)(A), 2.4(f)(ii)(B), and 2.4(f)(ii)(D) below) shall not be required if in the Lender Party's reasonable judgment such completion, execution or submission would subject such Lender Party to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender Party that is a U.S. Person shall deliver to Borrower and the Administrative Agent on or prior to the date on which such Lender Party becomes a Lender Party under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender Party is exempt from U.S. federal backup withholding tax;

(B) any Non-U.S. Lender Party shall, to the extent it is legally entitled to do so, deliver to Borrower and the Administrative Agent (in such number of copies as shall be requested by the Recipient) on or prior to the date on which such Non-U.S. Lender Party becomes a Lender Party under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Non-U.S. Lender Party claiming the benefits of an income tax treaty to which the United States is a party (I) with respect to payments of interest under any Credit Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "interest" article of such tax treaty, and (II) with respect to any other applicable payments under any Credit Document, IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Non-U.S. Lender Party claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (I) a certificate substantially in the form of Exhibit H-1 to the effect that such Non-U.S. Lender Party is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of Borrower (or if the Borrower is an entity that is disregarded as separate from its regarded owner for U.S. federal income tax purposes, such regarded owner) within the meaning of Section 881(c)(3) (B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "**U.S. Tax Compliance Certificate**"), and (II) executed copies of IRS Form W-8BEN or W-8BEN-E; or

(4) to the extent a Non-U.S. Lender Party is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit H-2 or Exhibit H-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided, that if the Non-U.S. Lender Party is a partnership and one or more direct or indirect partners of such Non-U.S. Lender Party are claiming the portfolio interest exemption, such Non-U.S. Lender Party may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit H-4 on behalf of each such direct and indirect partner;

(C) any Lender Party shall, to the extent it is legally entitled to do so, deliver to Borrower and the Administrative Agent (in such number of copies as shall be requested by the Recipient) on or prior to the date on which such Lender Party becomes a Lender Party under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender Party under any Credit Document would be subject to U.S. federal withholding tax imposed by FATCA if such Lender Party were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender Party shall deliver to Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower or the Administrative Agent as may be necessary for Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender Party has complied with such Lender Party's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender Party agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) Defaulting Lender. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article 7 or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.2 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to Cash Collateralize each Issuing Bank's LC Exposure (if any) with respect to such Defaulting Lender in accordance with Section 2.4(g)(iii); *third*, as Borrower may request (so long as no Default or Event of Default exists), to the funding of any Term Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fourth*, if so determined by the Administrative Agent and Borrower, to be held in a deposit account and released pro rata in order to (A) satisfy such Defaulting Lender's potential future funding obligations with respect to Term Loans under this Agreement and (B) Cash Collateralize any Issuing Bank's future LC Exposure (if any) with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement; *fifth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *sixth*, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *seventh*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided, that if such payment is a payment of the principal amount of any Term Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, such payment shall be applied solely to pay the Term Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Term Loans are held by the Lenders pro rata in accordance with the Term Loan Commitments. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Cash Collateral. At any time that there shall exist a Defaulting Lender, within one Banking Day following the written request of the Administrative Agent or a Issuing Bank (with a copy to the Administrative Agent) the Borrower shall Cash Collateralize each Issuing Bank's LC Exposure (other than the LC Exposure of any Issuing Bank that is the Defaulting Lender or its Affiliate) with respect to such Defaulting Lender (determined after giving effect to Section 2.4(g)(iii)(B) and any Cash Collateral provided by such Defaulting Lender).

(A) Grant of Security Interest. The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the First Lien Collateral Agent, for the benefit of the applicable Issuing Bank, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lenders' obligation to fund participations in respect of Letters of Credit, to be applied pursuant to clause (B) below. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the First Lien Collateral Agent and an Issuing Bank as herein provided, or that the total amount of such Cash Collateral is less than 102.5% of the Stated Amount of such Letters of Credit, the Borrower shall, promptly upon demand by the Administrative Agent, pay or provide to the First Lien Collateral Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(B) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 2.4(g) in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of Letters of Credit (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(C) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce the applicable Issuing Bank's LC Exposure shall not be held as Cash Collateral pursuant to this Section 2.4(g) following (1) the elimination of the LC Exposure (including by the termination of Defaulting Lender status of the applicable Lender) or (2) the determination by the Administrative Agent and the applicable Issuing Bank that there exists excess Cash Collateral; provided, that, subject to the other provisions of this Section 2.4(g), the Person providing Cash Collateral and the applicable Issuing Bank may agree that Cash Collateral shall be held to support future anticipated LC Exposure or other obligations; provided, further, that to the extent that such Cash Collateral was provided by the Borrower, such Cash Collateral shall remain subject to the security interest granted pursuant to the Credit Documents.

(iv) Certain Fees. Notwithstanding anything herein to the contrary, no Defaulting Lender shall be entitled to receive any Commitment Fee for any period during which that Lender is a Defaulting Lender (and Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(v) Termination or Transfer of Interest Rate Agreements. During the period that any Lender is a Defaulting Lender, such Lender (or any of its Affiliates) shall, at Borrower's option, not be permitted to be a Hedge Bank with respect to any Permitted Interest Rate Agreement, and to the extent such Lender (or its Affiliate) is a Hedge Bank, Borrower may, at its sole option, require such Hedge Bank to terminate or transfer its Permitted Interest Rate Agreements to an existing Lender (or its Affiliate). Any transfer of a Permitted Interest Rate Agreement, if required by the Borrower, shall be subject to the following conditions: (A) the Lender (or its Affiliate) as Hedge Bank and as transferor (the "**Transferor Hedge Provider**") and the transferee (the "**Transferee Hedge Provider**") shall enter into a novation agreement (based on the ISDA standard form novation agreement); (B) the calculation of the pricing of such novation (including any payment to be made between the Transferor Hedge Provider and the Transferee Hedge Provider) shall be acceptable to the Transferor Hedge Provider (unless it, or its Affiliates is a Defaulting Lender) and Transferee Hedge Provider in their reasonable discretion; and (C) the Transferor Hedge Provider shall bear all costs and expenses (including legal costs and expenses) in relation to any such transfer.

(vi) Defaulting Lender Cure. If Borrower, the Administrative Agent and each Issuing Bank agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Term Loans to be held pro rata by the Lenders in accordance with the Term Loan Commitments, whereupon such Lender will cease to be a Defaulting Lender; provided, that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

2.5 Pro Rata Treatment

(a) Borrowings, Commitment Reductions, Etc. Except as otherwise provided herein, (i) each Borrowing consisting of Loans or each Drawing Payment under any Letters of Credit or each reduction of Commitments shall be made or allocated among the Lenders pro rata according to their respective Proportionate Shares of such Loans or Commitments, as the case may be, (ii) each payment of principal of and interest on Term Loans and LC Loans shall be made or shared among the Lenders holding such Loans pro rata according to their respective unpaid principal amounts of such Loans held by such Lenders, (iii) each payment of commitment fees shall be shared among the Lenders pro rata according to (A) their respective Proportionate Shares of the Commitments held by such Lenders to which such fees apply, and (B) in respect of each Lender which becomes a party to this Agreement hereunder after the Closing Date, the date upon which such Lender so became a party hereunder, and (iv) each payment of LC Fees shall be made or shared among the Lenders holding such Loans pro rata according to their respective Proportionate Shares of the Commitments held by such Lenders to which such fees apply.

(b) Sharing of Payments, Etc. If any Lender or Issuing Bank shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) on account of its Loans or participations in Drawing Payments resulting in such Lender or Issuing Bank receiving payment of a greater proportion of the aggregate amount of its Loans or participations in Drawing Payments and accrued interest thereon under the applicable facility than the proportion received by any other Lender or Issuing Bank with respect to such facility (other than the application of funds arising from the existence of a Defaulting Lender), then the Lender or Issuing Bank receiving such greater proportion shall forthwith purchase from the other Lenders or Issuing Bank such participations in the Loans or Drawing Payments, as the case may be, as shall be necessary to cause such purchasing Lender or Issuing Bank to share the excess payment ratably with each of them; provided, that (i) the foregoing shall not apply to any assignments by a Lender or Issuing Bank in accordance with Section 9.14, (ii) the foregoing shall not apply to any upfront fees, arranging fees or agency fees and (iii) if all or any portion of such excess payment is thereafter recovered from such purchasing Lender or Issuing Bank, such purchase from such Lender or Issuing Bank shall be rescinded and each other Lender or Issuing Bank shall repay to the purchasing Lender of Issuing Bank the purchase price to the extent of such recovery together with an amount equal to such other Lender's or Issuing Bank's proportionate share of the applicable facility (according to the proportion of (A) the amount of such other Lender's or Issuing Bank's required repayment to (B) the total amount so recovered from the purchasing Lender or Issuing Bank) of any interest or other amount paid or payable by the purchasing Lender or Issuing Bank in respect of the total amount so recovered. Borrower agrees that any Lender or Issuing Bank so purchasing a participation from another Lender or Issuing Bank pursuant to this Section 2.5(b) may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of setoff) with respect to such participation as fully as if such Lender or Issuing Bank was the direct creditor of Borrower in the amount of such participation.

2.6 Change of Circumstances

(a) Inability to Determine Rates; Effect of Benchmark Transition Event.

(i) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Credit Document, upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, the Administrative Agent and the Borrower may, by mutual agreement, amend this Agreement by replacing the LIBO Rate with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth Banking Day after the Administrative Agent has posted such proposed amendment to all Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. Any such amendment with respect to an Early Opt-in Election will become effective on the date that Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders accept such amendment. No replacement of the LIBO Rate with a Benchmark Replacement pursuant to this Section 2.6(a) will occur prior to the applicable Benchmark Transition Start Date.

(ii) Benchmark Replacement Conforming Changes. In connection with the implementation of a Benchmark Replacement, the Administrative Agent, with the written consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed), will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Credit Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(iii) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (A) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date and Benchmark Transition Start Date, (B) the implementation of any Benchmark Replacement, (C) the effectiveness of any Benchmark Replacement Conforming Changes and (D) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or Lenders pursuant to this Section 2.6(a), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their commercially reasonable discretion, except, in each case, as expressly required pursuant to this Section 2.6(a).

(iv) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a LIBOR Loan of, conversion to or continuation of LIBOR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans. During any Benchmark Unavailability Period, the component of Base Rate based upon the LIBO Rate will not be used in any determination of Base Rate.

(b) Illegality. If any Lender reasonably determines that, after the Closing Date, the adoption of any Governmental Rule, any change in any Governmental Rule or the application or requirements thereof (whether such change occurs in accordance with the terms of such Governmental Rule as enacted, as a result of amendment, or otherwise), any change in the interpretation or administration of any Governmental Rule by any Governmental Authority, or compliance by any Lender or Borrower with any request or directive (whether or not having the force of law, but if not having the force of law, being of a type with which a Lender customarily complies) of any Governmental Authority; provided, that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith, and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", (regardless of the date enacted, adopted or issued, a "**Change in Law**") shall make it unlawful or impossible for any Lender to make or maintain any LIBOR Loan, or results in a Governmental Authority imposing material restrictions on the authority of the Lenders to purchase, sell or take deposits of Dollars in the pursuant to the preceding sentence prior to the notice thereof by such Lender to Borrower through Administrative Agent, (1) Borrower's right to request the making of or conversion to, and the Lender's obligations to make or convert to, LIBOR Loans shall be suspended until such Lender notifies Borrower and Administrative Agent that the circumstances giving rise to such determination no longer exist, and (2) Borrower shall, upon demand from such Lender (with a copy to Administrative Agent), either (I) pursuant to Section 2.1(g) convert any then outstanding LIBOR Loans into Base Rate Loans at the end of the current Interest Periods for such Loans, or (II) immediately repay LIBOR Loans pursuant to Section 2.1(h) or convert LIBOR Loans into Base Rate Loans if such Lender shall notify Borrower that such Lender may not lawfully continue to fund and maintain such Loans. Upon any such conversion, Borrower shall also pay accrued interest on the amount so converted. Any conversion or prepayment of LIBOR Loans made pursuant to the preceding sentence prior to the last day of an Interest Period for such Loans shall be deemed a prepayment thereof for purposes of Section 2.7.

(c) Increased Costs. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement) or any Issuing Bank; or

(ii) impose on any Lender or any Issuing Bank or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letters of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost (other than any cost relating to any Taxes) to such Lender or such other Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender, such Issuing Bank or such other Recipient of participating in, issuing or maintaining any Letters of Credit (or of maintaining its obligation to participate in or to issue any Letters of Credit), or to reduce the amount of any sum received or receivable by such Lender, Issuing Bank or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, Issuing Bank or other Recipient, Borrower shall pay to such Lender, Issuing Bank or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, Issuing Bank or other Recipient, as the case may be, for such additional costs incurred or reduction suffered (without duplication and after netting out the effect of any benefits resulting therefrom).

(d) Capital Requirements.

(i) If any Lender or Issuing Bank reasonably determines that any Change in Law affecting such Lender or Issuing Bank or any Lending Office of such Lender or such Lender's or Issuing Bank's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's or Issuing Bank's capital or on the capital of such Lender's or Issuing Bank's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by any Issuing Bank, to a level below that which such Lender or Issuing Bank or such Lender's or Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or Issuing Bank's policies and the policies of such Lender's or Issuing Bank's holding company with respect to capital adequacy), then from time to time Borrower shall pay to such Lender or Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or Issuing Bank or such Lender's or Issuing Bank's holding company for any such reduction suffered (without duplication and after netting out the effect of any benefits resulting therefrom).

(ii) Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including eurocurrency funds or deposits (currently known as "Eurocurrency Liabilities" in Regulation D), additional interest on the unpaid principal amount of each LIBOR Loan equal to the actual costs of such reserves allocated to such Loan by such Lender; provided, that such costs shall be applied consistently across all other similar loans of such Lender, as determined by such Lender in good faith, which determination shall be conclusive absent manifest error. Such additional interest shall be due upon the occurrence of event giving rise to, or the imposition of, as applicable, the reserve requirement, and payable on each date on which interest is payable on such Loan; provided, that such Lender shall provide Borrower at least ten days' prior notice (with a copy to the Administrative Agent) of such additional interest. If a Lender fails to give notice ten days prior to the relevant interest payment date, such failure shall not excuse Borrower's obligation to pay such additional interest, however, such additional interest shall be only payable ten days from receipt of such notice.

(e) Notice; Participating Lenders' Rights. Each Lender shall notify Borrower of any event occurring after the date of this Agreement that will entitle such Lender to compensation pursuant to this Section 2.6(e), promptly, and in no event later than 180 days after the principal officer of such Lender responsible for administering this Agreement obtains knowledge thereof; provided, that any Lender's failure to notify Borrower within such 180 day period shall not relieve Borrower of its obligation under this Section 2.6(e) with respect to claims arising prior to the end of such period, but shall relieve Borrower of its obligations under this Section 2.6(e) with respect to the time between the end of such period and such time as Borrower receives notice from the applicable Lender as provided herein; and provided, further, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180 day period referred to above shall be extended to include the period of retroactive effect thereof. No Person purchasing from a Lender a participation in any Commitment (as opposed to an assignment) shall be entitled to any payment from or on behalf of Borrower pursuant to Section 2.6(c) or Section 2.6(d) which would be in excess of the applicable proportionate amount (based on the portion of the Commitment in which such Person is participating) which would then be payable to such Lender if such Lender had not sold a participation in that portion of the Commitment.

2.7 Funding Losses

If Borrower shall (a) repay or prepay any LIBOR Loans on any day other than the last day of an Interest Period for such Loans (whether an Optional Prepayment or a Mandatory Prepayment), (b) fail to convert any Loans into LIBOR Loans in accordance with a Notice of Conversion of Loan Type delivered to Administrative Agent (whether as a result of the failure to satisfy any applicable conditions or otherwise) after such Notice of Conversion of Loan Type has become irrevocable, (c) fail to continue a LIBOR Loan in accordance with a Confirmation of Interest Period Selection delivered to Administrative Agent, or (d) fail to make any prepayment in accordance with any notice of prepayment delivered to Administrative Agent, then Borrower shall, within ten days after demand by any Lender, reimburse such Lender for all reasonable costs and losses incurred by such Lender as a result of such repayment, prepayment or failure ("**Liquidation Costs**"). Borrower understands that such costs and losses may include losses incurred by a Lender as a result of funding and other contracts entered into by such Lender to fund LIBOR Loans (other than non-receipt of the margin applicable to such LIBOR Loans). Each Lender demanding payment under this Section 2.7 shall deliver to Borrower a certificate setting forth in reasonable detail the basis for and the amount of costs and losses for which demand is made. Such a certificate so delivered to Borrower shall, in the absence of manifest error, be conclusive and binding as to the amount of such loss for purposes of this Agreement.

2.8 Alternate Office; Minimization of Costs; Replacement of Lenders

(a) To the extent reasonably possible, each Lender shall designate an alternative Lending Office with respect to its LIBOR Loans and otherwise take any reasonable actions to reduce any liability of Borrower to any Lender under Sections 2.4(d), 2.6(c), 2.6(d) or Section 2.7, or to avoid the unavailability of any Type of Loans under Section 2.6(b) so long as (in the case of the designation of an alternative Lending Office) such Lender, in the reasonable judgment of such Lender, determines that (i) such designation would not subject the Lender to any unreimbursed cost or otherwise be disadvantageous to such Lender in any material respect, and (ii) such actions would eliminate or reduce liability to such Lender; provided, that no Lender shall be required to designate an alternative Lending Office if such designation requires internal credit approval until such time as such Lender receives such internal credit approval. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or actions within ten Banking Days of demand thereof to Borrower.

(b) If and with respect to each occasion that any Lender has failed to consent to a proposed amendment, waiver, discharge or termination which pursuant to the terms of Section 9.9 requires the consent of all of the Lenders affected and with respect to which the Required Lenders shall have granted their consent, a Lender either makes a demand for compensation pursuant to Sections 2.4(d), 2.6(c) or 2.6(d) or is unable to fund LIBOR Loans pursuant to Section 2.6(b) or is a Defaulting Lender, then Borrower may, upon at least five Banking Days' prior irrevocable written notice to each of such Lender and Administrative Agent, in whole permanently replace the Loans and Commitments of such Lender. Such replacement Lender shall upon the effective date of replacement purchase Borrower's First Lien Obligations hereunder owed to such replaced Lender for the aggregate amount thereof and shall thereupon for all purposes become a "Lender" hereunder. Such notice from Borrower shall specify an effective date for the replacement of such Lender's Loans and Commitments, which date shall not be later than the fourteenth day after the day such notice is given. On the effective date of any replacement of such Lender's Loans and Commitments pursuant to this Section 2.8(b), Borrower shall pay to Administrative Agent for the account of such Lender (i) any fees due to such Lender to the date of such replacement, (ii) the principal of and accrued interest on the principal amount of outstanding Loans held by such Lender to the date of such replacement (such amount to be represented by the purchase of Borrower's First Lien Obligations hereunder of such replaced Lender by the replacing Lender and not as a prepayment of such Loans), and (iii) the amount or amounts due to such Lender pursuant to each of Sections 2.4(c), 2.6(c) or 2.6(d), as applicable, and any other amount then payable hereunder to such Lender. Borrower shall remain liable to such replaced Lender for any Liquidation Costs that such Lender sustains or incurs as a consequence of the purchase of such Lender's Loans (unless such Lender has defaulted on its obligation to fund a Loan hereunder). Upon the effective date of the purchase of any Lender's Loans owed to such Lender and termination of such Lender's Commitments pursuant to this Section 2.8(b), such Lender shall cease to be a Lender hereunder. No such termination of any such Lender's Commitments and the purchase of such Lender's Loans pursuant to this Section 2.8(b) shall affect (x) any liability or obligation of Borrower or any other Lender to such terminated Lender, or any liability or obligation of such terminated Lender to Borrower or any other Lender, which accrued on or prior to the date of such termination, or (y) such terminated Lender's rights hereunder in respect of any such liability or obligation. Nothing in this Section 2.8(b) shall be deemed to prejudice any rights that Borrower may have against any Lender that is a Defaulting Lender.

(c) Upon written notice to Administrative Agent, any Lender may designate a Lending Office other than the Lending Office most recently designated to Administrative Agent and may assign all of its interests under the Credit Documents and its Notes (if any) to such Lending Office; provided, that, such designation and assignment do not at the time of such designation and assignment increase the reasonably foreseeable liability of Borrower under Sections 2.4(d), 2.6(c) or 2.6(d) or make an Interest Rate option unavailable pursuant to Section 2.6(b).

3. CONDITIONS PRECEDENT

3.1 Conditions Precedent to the Closing Date

The obligation of the Lenders to make the Term Loans or LC Loans on the Closing Date, as applicable, under this Agreement, and the obligation of any Issuing Bank to issue any Letter of Credit hereunder on the Closing Date is subject to the prior satisfaction of each of the following conditions (unless waived in writing by Administrative Agent with the consent of the Lenders) (the date such conditions precedent are so satisfied or waived being referred to as the "**Closing Date**"):

(a) Resolutions. Delivery to the Administrative Agent of a copy of one or more resolutions or other authorizations, in form and substance reasonably satisfactory to the Administrative Agent, of the Obligors certified by a Responsible Officer of Holdings or Borrower, as applicable, as being in full force and effect on the Closing Date, authorizing, as applicable and among other things, the Borrowings herein provided for, the granting or continuation of the Liens under the First Lien Collateral Documents, delivery and performance of this Agreement and the other Closing Date Credit Documents and any instruments or agreements required hereunder or thereunder to which any of the Obligors is a party.

(b) Incumbency. Delivery to the Administrative Agent and the Depositary Agent of a certificate, in form and substance reasonably satisfactory to the Administrative Agent, from the Obligors, signed by the appropriate authorized officer or manager of the Obligors and dated as of the Closing Date, as to the incumbency of the natural Persons authorized to execute and deliver this Agreement and the other Closing Date Credit Documents and any instruments or agreements required hereunder or thereunder to which an Obligor is a party.

(c) Formation Documents. Delivery to the Administrative Agent of (i) copies of the articles of incorporation, certificate of incorporation, charter or other state certified constituent documents of each Obligor, certified by the secretary of state of such Obligor's state of formation, and (ii) copies of the limited liability company operating agreement or other comparable constituent documents, if applicable, of each Obligor, certified by an authorized officer of such Obligor, as applicable, as being true, correct and complete on the Closing Date.

(d) Good Standing Certificates. Delivery to the Administrative Agent of good standing certificates in a form customarily issued by (i) the secretary of state of the state in which the Obligors are formed or incorporated, as applicable, and (ii) in the case of Borrower, the Secretary of State of the State of California.

(e) Third Party Approvals. Delivery to the Administrative Agent of copies of any approval by any Governmental Authority reasonably required in connection with any transaction herein contemplated or contemplated in any other Credit Document, which the Administrative Agent may reasonably have requested in connection herewith.

(f) Credit Documents and Major Project Contracts. Delivery to the Administrative Agent of (i) executed copies of this Agreement, the First Lien Common Terms Agreement, and each other Credit Document (other than the Interest Rate Agreements) to be executed on the Closing Date and any supplements or amendments thereto and (ii) a certified list of, and true, correct and complete copies of, each Major Project Contract executed on or prior to the Closing Date (together with any supplements or amendments thereto), in the case of each of clauses (i) and (ii), all of which shall have been duly authorized, executed and delivered by the parties thereto, and all of which shall be certified by a Responsible Officer of Borrower as being true, complete and correct and in full force and effect (to the extent provided therein) on the Closing Date pursuant to the certificate delivered pursuant to Section 3.1(g).

(g) Closing Certificate. Delivery to the Administrative Agent of a certificate, dated as of the Closing Date, duly executed by a Responsible Officer of Borrower, in substantially the form of Exhibit F-1.

(h) Legal Opinions. Delivery to the Administrative Agent of legal opinions of counsel to the Obligors entering into Financing Documents entered into as of the Closing Date, in each case in form and substance reasonably satisfactory to the Administrative Agent.

(i) Insurance. Insurance complying with terms and conditions set forth in Exhibit K shall be in full force and effect and the Administrative Agent and the Insurance Consultant shall have received (i) a certificate from Borrower's insurance broker(s), dated as of the Closing Date, in form and substance reasonably satisfactory to the Administrative Agent, (A) identifying underwriters, type of insurance, insurance limits and policy terms, (B) listing the special provisions required as set forth in Exhibit K, (C) describing the insurance obtained, and (D) stating that such insurance is in full force and effect and that all premiums then due thereon have been paid and that, in the opinion of such broker(s), such insurance complies with the terms and conditions set forth in Exhibit K, and (ii) certified copies of all policies evidencing such insurance (or a binder, commitment or certificates signed by the insurer or a broker authorized to bind the insurer).

(j) Consultant Reports. Delivery to the Administrative Agent of the Independent Engineer, Insurance Consultant, Reserve Consultant, Environmental Consultant and Market Consultant's reports, together with a reliance letter from each such Person in form and substance reasonably satisfactory to the Administrative Agent.

(k) Depositary Accounts. The Depositary Accounts shall have been established and the Debt Service Reserve Account and shall have been funded in an amount equal to the Debt Service Reserve Requirement, with cash or a letter of credit.

(l) Payment of Taxes, Interest and Fees. All taxes, fees and other costs payable in connection with the execution, delivery, recordation and filing of the documents and instruments referred to in this Section 3.1 and due on the Closing Date shall have been paid in full or, as approved by the Lenders, provided for. Borrower shall have paid (or caused to be paid) all outstanding amounts due, as of the Closing Date, and owing to (i) the Lenders, Administrative Agent, First Lien Collateral Agent, the Issuing Banks, Coordinating Lead Arrangers or the Joint Lead Arrangers under any fee or other letter, including without limitation the Agency Fee Letter, the Depositary and Collateral Agency Fee Letter or pursuant to Section 2.3(a), (ii) the Lenders' attorneys and consultants (including the Independent Consultants) for all services rendered and billed at least one Banking Day prior to the Closing Date, (iii) the Depositary Agent under the Depositary Agreement and the Depositary and Collateral Agency Fee Letter and (iv) Administrative Agent for any other amounts required to be paid or deposited by Borrower on the Closing Date. In addition, Borrower shall have provided, to any Lender that has so requested in writing at least one Banking Day prior to the Closing Date, documentation reasonably satisfactory to Borrower and such Lender regarding the description or designation of any fees payable to such Lender pursuant to the foregoing clause (i); provided, that Borrower shall not be responsible for making any determination or verification with respect to the description or designation of fees requested by any such Lender, and shall not have any liability to any such Lender as a result of the delivery of such documentation.

(m) Financial Statements. Delivery to the Administrative Agent of (i) accurate and complete copies of (A) the audited balance sheets of the Borrower for the years ended December 31, 2017, December 31, 2018 and December 31, 2019, and (B) audited statements of cash flows of the Borrower for the years ended December 31, 2016, December 31, 2017, December 31, 2018 and December 31, 2019, and (ii) together with a certificate from the appropriate Responsible Officer of Borrower, dated as of the Closing Date, stating that, since December 31, 2019, there has occurred no event or circumstance which could reasonably be expected to have a Material Adverse Effect.

(n) UCC Reports. Delivery to the Administrative Agent of a UCC report of a date no less recent than ten days before the Closing Date for each of the jurisdictions in which the UCC-1 financing statements and the fixture filings are intended to be filed in respect of the Collateral, showing that upon due filing or recordation (assuming such filing or recordation occurred on the date of such respective reports), as the case may be, the security interests created under the First Lien Collateral Documents, with respect to such Collateral, will be prior to all other financing statements, future filings or other security documents wherein the security interest is perfected by filing or recording in respect of the Collateral, together with evidence of release of the Projects from all liens other than Permitted Liens and payoff of any debt for borrowed money of the Obligors.

(o) Base Case Projections. Delivery to the Administrative Agent of the Base Case Projections of operating expenses and cash flow for the Projects in the form of Schedule 3.1(o), which Base Case Projections shall be in form and substance satisfactory to the Administrative Agent.

(p) Reorganization. Delivery to the Administrative Agent of a certificate by the Borrower certifying that the structure set forth in Schedule 3.1(p) is the Obligor's corporate structure as of the Closing Date, together with documents evidencing that such corporate structure has been effectuated.

(q) Flood Determination. Delivery to the Administrative Agent of a completed "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination for the real property relating to each of the Projects.

(r) Representations and Warranties. Each representation and warranty of Borrower and each other Obligor under the Credit Documents shall be true and correct as of the Closing Date, except to the extent that such representations and warranties are stated to be made as of a specific date, in which case they shall be true and correct as of such date.

(s) Absence of Litigation. The absence of any action, suit, investigation or proceeding pending or, to the knowledge of the Borrower, threatened in any court or before any arbitrator or Governmental Authority that could reasonably be expected to have a Material Adverse Effect.

(t) No Default. No Default or Event of Default shall have occurred and be continuing as of the Closing Date.

(u) Annual Operating Budget. The Lenders shall have received a copy of the Annual Operating Budget for calendar year 2020.

(v) Notice of Borrowing. Borrower shall have delivered the Notice of Borrowing to Administrative Agent in accordance with the procedure specified in Section 2.1(a)(ii).

(w) Know-your-Customer. At least three Banking Days prior to the Closing Date, the Agents and the Lenders shall have received (i) all documentation and other information required by bank regulatory authorities or reasonably requested by any Agent or any Lender, at least seven Banking Days prior to the Closing Date, under or in respect of applicable "know-your-customer" and anti-money laundering rules and regulations, including the PATRIOT Act and (ii) to the extent that Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, Borrower shall deliver a Beneficial Ownership Certification.

(x) Release Letter. Substantially concurrently with the transactions contemplated hereby, all Indebtedness of the Obligors (other than Permitted Debt), together with all accrued and unpaid interest thereon and all applicable make-whole or other premiums payable in connection therewith, concurrently with the consummation of the transactions contemplated hereby, has been prepaid, redeemed or defeased in full or otherwise satisfied and extinguished, in each case, on terms reasonably satisfactory to the Administrative Agent, and all commitments relating thereto terminated and all Liens on security interests related thereto shall have been terminated or released, in each case, on terms reasonably satisfactory to the Administrative Agent.

(y) Consents. Delivery to the Administrative Agent of executed copies of the Consent for the (i) Administrative Services Agreement, dated as of the date hereof, between Calpine Administrative Services Company, Inc. and the Borrower, Geysers Company, Wild Horse and Calistoga, (ii) the O&M Agreement, and (iii) the Third Amended and Restated Power Purchase and Sale Agreement.

3.2 Conditions Precedent to Credit Events

The obligation of any Lenders to make the LC Loans after the Closing Date or to issue, amend or renew Letters of Credit after the Closing Date is subject to the prior satisfaction of each of the following conditions (unless waived in writing by Administrative Agent with the consent of the Lenders) (any date such conditions precedent are so satisfied or waived being referred to as a "**Borrowing Date**"):

(a) Representations and Warranties. Each representation and warranty made by or on behalf of Borrower or any Obligor in any of the Credit Documents shall be true and correct in all material respects (or, in the case of any such representations and warranties qualified as to materiality, in all respects) as if made on the date of such Credit Event, unless such representation or warranty expressly relates solely to an earlier date; provided, that this Section 3.2(a) shall not be a condition to reinstating the Stated Amount of any Letter of Credit upon remibursement thereof.

(b) No Default. No Event of Default shall have occurred and be continuing or shall result from such Credit Event.

(c) Borrowing Notice; Notice of LC Activity. In respect of any Borrowing of Term Loans, Borrower shall have delivered a Notice of Borrowing to Administrative Agent in accordance with the procedures specified in Section 2.1(a)(ii). In respect of any Letter of Credit issuance, amendment or renewal, Borrower shall have delivered a Notice of LC Activity to Administrative Agent in accordance with the procedures specified in Section 2.2.

4. REPRESENTATIONS AND WARRANTIES

Each Obligor makes each representation and warranty set forth in Article 3 (*Representations and Warranties*) of the First Lien Common Terms Agreement and each of the following supplemental representations and warranties set forth in this Article 4, on the Closing Date and as of the date of each Credit Event (unless such representation and warranty is stated to be made as of a specific date), in favor of, the First Lien Collateral Agent, each of the Lender Parties and each other party hereto:

4.1 Organization

(a) Each Obligor is (i) a limited liability company duly formed, validly existing and in good standing under the laws of the state of its formation, and (ii) is duly qualified as a foreign limited liability company, in each other jurisdiction in which such qualification is required by law in light of the business it conducts and the property it owns or leases and in light of the transactions contemplated by this Agreement, except where the failure to be so qualified or be in good standing could not reasonably be expected to have a Material Adverse Effect.

(b) Borrower and each Obligor has all requisite limited liability company power and authority to (i) own or hold under lease and operate the property it purports to own or hold under lease, (ii) carry on its business as now being conducted and as now proposed to be conducted in respect of the Projects, and (iii) execute, deliver and perform each Credit Document to which it is a party and perform its obligations thereunder.

4.2 Authorization; No Conflict

Each Obligor has duly authorized, executed and delivered each Credit Document to which such Obligor is a party (or such Credit Documents have been duly and validly assigned to such Obligor and such Obligor has authorized the assumption thereof, and has assumed the obligations of the assignor thereunder) and neither any Obligor's execution and delivery thereof nor its consummation of the transactions contemplated thereby nor its compliance with the terms thereof

(a) violate in any material respect any of its Governing Documents,

(b) violate any Legal Requirement applicable to or binding on such Obligor or any of such Obligor's properties in a manner which could reasonably be expected to result in a Material Adverse Effect,

(c) violate in any respect or result in any breach of or constitute any default under, or result in or require the creation of any Lien (other than Permitted Liens) upon any of its property under, any agreement or instrument to which it is a party or by which it or any of its properties may be bound or affected which, in each case, could reasonably be expected to result in a Material Adverse Effect, or

(d) require any consent or approval of any Person, and with respect to any Governmental Authority, does or will require any registration with, or notice to, or any other action of, with or by any applicable Governmental Authority, in each case which has not already been obtained and disclosed in writing to Administrative Agent (except (i) any Permits that are not yet Applicable Permits, (ii) for those that are required by securities, regulatory or applicable law in connection with an exercise of remedies, (iii) as set forth on Schedule 3.2(d) of the First Lien Common Terms Agreement and the filing of any required continuation statements, (iv) for those that, by the terms of the First Lien Collateral Documents, are not required to be obtained or completed or are required to be obtained or completed only after the Closing Date, or (v) for those the absence of which could not reasonably be expected to have a Material Adverse Effect).

4.3 Enforceability

Each of the Credit Documents and, except as otherwsie permitted by Section 6.2, the Major Project Contracts to which each Obligor is a party is a legal, valid and binding obligation of such Obligor, enforceable against such Obligor in accordance with its terms, except to the extent that enforceability may be limited by (a) applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights, (b) the effect of general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law), or (c) implied covenants of good faith and fair dealing.

4.4 Energy Regulatory

(a) Each of the Obligors is in compliance with the FPA and PUHCA, except to the extent such Obligor is not subject to, or is exempt from, the FPA or PUHCA or where failure to be in such compliance could not reasonably be expected to have a Material Adverse Effect. Borrower is a "public utility" within the meaning of the FPA, and has authorization from FERC under Section 205 of the FPA to engage in wholesale sales of electric energy, capacity, and certain ancillary services at market-based rates and has received such waivers and authorizations as are customarily granted to market-based rate sellers by FERC, including blanket authorization to issue securities and assume liabilities pursuant to Section 204 of the FPA. No Obligor is, nor solely as a result of the execution, delivery and performance of, and the consummation of the transactions contemplated by the Credit Documents shall be or become, a "public utility," a "transmitting utility," or an "electric utility" within the meaning of the FPA. No Obligor is, nor solely as a result of the execution, delivery and performance of, and the consummation of the transactions contemplated by the Credit Documents shall be or become, subject to state regulation of rates or to state financial or organizational requirements for utilities.

(b) Borrower is an Exempt Wholesale Generator with respect to its ownership and operation of all of the Projects and such status remains in effect. Each of the Obligors is not a "holding company" under PUHCA or is a "holding company" under PUHCA solely with respect to one or more Exempt Wholesale Generators, "qualifying facilities" (as defined in 18 C.F.R § 292.101(b)(1)) or "foreign utility companies" (as defined under PUHCA), and each of the Obligors is not subject to, or is exempt from, regulation under the federal access to books and records, accounting and recordkeeping and reporting requirements under PUHCA.

(c) None of the Lender Parties or any of their respective "affiliates" (as defined in PUHCA and applicable FERC regulations), solely by virtue of the Obligors' or any of their respective Subsidiaries' ownership or operation of the Projects, the sale or transmission of electricity therefrom or the execution, delivery and performance of or the consummation of the transactions contemplated by any Credit Document or Major Project Contracts, shall be or become subject to, or not exempt from, regulation under PUHCA, the FPA or any state law or regulation respecting the rates of electric utilities or the financial and organizational regulation of electric utilities; provided, that any exercise of remedies under the First Lien Collateral Documents that results in the direct or indirect ownership or control of the Projects or of a Project by any Lender Party or any of its "affiliates" (as defined in PUHCA and applicable FERC regulations) may subject such Lender Party and its "affiliates" (as defined in PUHCA and applicable FERC regulations) to regulation under PUHCA, the FPA or any state law or regulation respecting the rates of electric utilities or the financial and organizational regulation of electric utilities.

4.5 Adverse Change

As of the Closing Date, since December 31, 2019 there has occurred no event or circumstance which could reasonably be expected to have a Material Adverse Effect.

4.6 Investment Company Act

Borrower is not an investment company or a company controlled by an investment company, within the meaning of the Investment Company Act of 1940, as amended. Borrower is not a "covered fund" under Section 13 of the Bank Holding Company Act of 1956, as amended, as such term is defined in the final regulations issued on December 10, 2013 implementing Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (commonly known as the "Volcker Rule").

4.7 ERISA

As of the Closing Date, except as would not (individually or in the aggregate) reasonably be expected to have a Material Adverse Effect, no ERISA Event has occurred or is reasonably expected to occur. Except as would not (individually or in the aggregate) reasonably be expected to have a Material Adverse Effect, (a) neither Holdings or its Subsidiaries has incurred or reasonably expect to incur liability under Title IV of ERISA with respect to the termination of or withdrawal from any ERISA Plan or Multiemployer Plan and (b) each ERISA Plan that is intended to be qualified under Section 401 of the Code is so qualified and nothing has occurred, whether by action or failure to act, which would reasonably be expected to result in the loss of such qualification.

4.8 Permits

(a) As of the Closing Date, other than the Permits required under Section 3.2(d) of the First Lien Common Terms Agreement, the Obligors currently have all material Permits under existing Legal Requirements.

(b) Each Obligor is in compliance with all of its Applicable Permits except to the extent such noncompliance could not reasonably be expected to have a Material Adverse Effect.

4.9 Environmental Matters

Except as set forth in Schedule 4.9 and as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, Holdings, and each of its Subsidiaries are in compliance with all applicable Environmental Laws and Applicable Permits required under Environmental Laws to conduct their businesses and operations as currently conducted.

4.10 Litigation

(a) Except as set forth on Schedule 4.10(a), as of the Closing Date, no action, suit, proceeding or investigation has been instituted or, to Borrower or any Obligor's knowledge, threatened in writing against Borrower or any Obligor that could reasonably be expected to have a Material Adverse Effect.

(b) Except as set forth on Schedule 4.10(b), Borrower has no knowledge of any order, judgment or decree that has been issued or proposed to be issued by any Governmental Authority that, as a result of the leasing, ownership, operation or maintenance of the Projects by any Obligor, the sale of electricity or steam therefrom by any Obligor or the entering into of any Credit Document or any transaction contemplated hereby or thereby, could reasonably be expected to cause or deem the Lenders, Administrative Agent, First Lien Collateral Agent, the Issuing Banks, Coordinating Lead Arrangers, Joint Lead Arrangers or any Affiliate of any of them to be subject to, or not exempted from, regulation under PUHCA, the FPA or treated as a public utility under the laws of the State of California as presently constituted and as construed by the courts of California respecting the rates or the financial or organizational regulation of electric utilities.

(c) As of the date of each Credit Event occurring after the Closing Date, no action, suit, proceeding or investigation has been instituted or, to Borrower's knowledge, threatened in writing against any Obligor, which could reasonably be expected to have a Material Adverse Effect and which have not been disclosed by Borrower to Administrative Agent.

4.11 Labor Disputes.

No labor dispute with the employees of the Borrower or any Subsidiary exists or, to the knowledge of the Borrower, is imminent that would reasonably be expected to have a Material Adverse Effect.

4.12 Major Project Contracts

As of the Closing Date, copies of all of the Major Project Contracts executed on or prior to such date have been delivered to Administrative Agent. As of the Closing Date, there are no services or materials required for development, construction, operation and maintenance of the Projects in accordance with the Specified Major Project Contracts, other than those (a) to be provided under the Project Contracts, (b) that are not material to the development, construction, operation and maintenance of the Projects or (c) that can reasonably be expected to be commercially available at or for delivery to the Projects on commercially reasonable terms. As of the Closing Date, there is no default or event of default under the Material Project Contracts (other than any such default or event of default arising from or relating to the bankruptcy filing by Pacific Gas & Electric Company in the Northern District of California under Chapter 11 of the Bankruptcy Law), which could reasonably be expected to have a Material Adverse Effect.

4.13 Disclosures

(a) None of this Agreement, the other Credit Documents, any certificate or other information or documentation (other than the Annual Operating Budget or the Base Case Projections and other forward-looking statements, the Market Consultant's report, the conclusions drawn by the Independent Engineer in its report, the conclusions drawn by the Insurance Consultant in its report and the information contained in any other reports provided by the Coordinating Lead Arrangers' consultants (it being understood and agreed that Borrower will be solely responsible for the contents of any information, documentation or other materials delivered by it or on its behalf to the preparers of such study and/or reports) and any other forward-looking statements) furnished or verified by Borrower to the Coordinating Lead Arrangers, Joint Lead Arrangers, Administrative Agent, First Lien Collateral Agent, or the Lenders, or to any consultant submitting a report to Administrative Agent, Coordinating Lead Arrangers, Joint Lead Arrangers or the Lenders, by or, to Borrower's knowledge, on behalf of Borrower with respect to the Projects, in connection with the transactions contemplated by this Agreement or the other Credit Documents, contained (when taken as a whole and at the time of delivery or verification thereof) any untrue statement of a material fact or omitted (when taken as a whole and at the time of delivery or verification thereof) to state a material fact necessary in order to make the statements contained herein or therein not misleading under the circumstances in which they were made at the time such statements were made (other than any information that was corrected or updated in writing to the Coordinating Lead Arrangers, or Joint Lead Arrangers prior to the Closing Date).

(b) The Annual Operating Budget or the Base Case Projections and the other forward-looking statements and *pro forma* financial information contained in the materials provided by the Borrower and referenced in paragraph (a) above (other than, in each case, any assumptions or projections therein provided by any third-party consultant) are based upon good faith estimates and assumptions believed by management of the Borrower to be reasonable in light of the conditions existing at the time they were made, it being recognized by the Coordinating Lead Arrangers, Joint Lead Arrangers, Administrative Agent, First Lien Collateral Agent, or the Lenders, that such information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount.

4.14 Taxes

Holdings and its Subsidiaries have accurately prepared and timely filed all federal, state and other tax returns that are required to be filed by them and have paid or made provision for the payment of all taxes, assessments, governmental or other similar charges, including without limitation, all sales and use taxes and all taxes which they are obligated to withhold from amounts owing to their respective employees, creditors and third parties, with respect to the periods covered by such tax returns (whether or not such amounts are shown as due on any tax return), except any amounts that an Obligor is contesting in good faith for which appropriate reserves have been provided in accordance with GAAP or where the failure to so accurately prepare, file or pay would not reasonably be expected to have a Material Adverse Effect. No deficiency assessment with respect to a proposed adjustment of the Borrower's or any of the Subsidiaries' federal, state, or other taxes is pending or, to the Borrower's knowledge, threatened, which would reasonably be expected to have a Material Adverse Effect. There is no material tax Lien, whether imposed by any federal, state, or other taxing authority, outstanding against the assets, properties or business of the Borrower or any of its Subsidiaries, which would reasonably be expected to have a Material Adverse Effect.

As of the date hereof, Borrower is an entity that is disregarded as separate from its regarded owner for U.S. federal income tax purposes.

4.15 Governmental Regulation

No consent, approval, authorization or order of, or registration, qualification or filing with any court or regulatory authority or other governmental agency or instrumentality (including but not limited to, prior authorization from FERC under Sections 203 or 204 of the FPA) is required in connection with the consummation by the Borrower and the other Obligors of the transactions contemplated by the Credit Documents, except such consents, approvals, authorizations, registrations or qualifications (a) as have been obtained or made, (b) as may be required under state securities or "blue sky" laws in connection with the transactions contemplated by the Credit Documents, (c) as may be required in connection with an exercise of remedies under the First Lien Collateral Documents, or (d) the failure of which to obtain or make would not reasonably be expected to have a Material Adverse Effect.

4.16 Regulation U, Etc.

No Obligor is engaged principally, or as one of its principal activities, in the business of extending credit for the purpose of "buying", "carrying" or "purchasing" margin stock (each as defined in Regulations T, U or X of the Federal Reserve Board), and no part of the proceeds of the Loans shall be used by any Obligor for the purpose of "buying", "carrying" or "purchasing" any such margin stock or for any other purpose which violates the provisions of the regulations of the Federal Reserve Board.

4.17 Projections

Borrower has prepared the Annual Operating Budget and the Base Case Projections and is responsible for developing the assumptions on which such Annual Operating Budget and the Base Case Projections are based; and such Annual Operating Budget and the Base Case Projections (a) as of the date delivered, updated or supplemented are based on reasonable assumptions (including as to all legal and factual matters material to the estimates set forth therein), and (b) as of the date delivered, updated or supplemented are consistent in all material respects with the provisions of the Project Contracts executed on or prior to such date (it being understood that such Annual Operating Budget and the Base Case Projections are subject to significant uncertainties and contingencies, many of which are beyond the control of Borrower, and Borrower makes no representation or warranty as to (a) the attainability of such Annual Operating Budget and the Base Case Projections or as to whether such Annual Operating Budget and the Base Case Projections shall be achieved and (b) any assumptions or projections therein provided by any third-party consultant).

4.18 Financial Statements

In the case of each financial statement of Holdings and its Subsidiaries and accompanying information delivered by Borrower under (a) Section 3.1(m), each such financial statement and information has been prepared in conformity with GAAP and fairly presents, in all material respects, the financial position of Holdings and its Subsidiaries described therein for each of the periods then ended, subject, if applicable, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments, the absence of footnote disclosure and the exclusion of income tax impacts, and (b) Section 5.3, each such financial statement and information has been prepared in conformity with GAAP and fairly presents, in all material respects, the financial position of Holdings and its Subsidiaries described therein for each of the periods then ended, subject, if applicable, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments, the absence of footnote disclosure and the exclusion of income tax impacts.

4.19 No Default

No Default or Event of Default which has not been disclosed to Administrative Agent in writing has occurred and is continuing.

4.20 Title and Liens

The Obligors have good title in fee simple to all real property owned by them and good title to all personal property owned by them, in each case free and clear of all liens, encumbrances and defects (other than Permitted Liens), except where the failure to possess such title would not reasonably be expected to have a Material Adverse Effect. The Obligors have a good leasehold interest in any real property held under lease by the Obligors, in each case free and clear of all liens, encumbrances and defects (other than Permitted Liens), except where the failure to possess such interests would not reasonably be expected to have a Material Adverse Effect. The Borrower and the Guarantors have a good and valid interest in any real property held by the Borrower and the Guarantors under easements, rights-of-way, permits or licenses, in each case free and clear of all liens, encumbrances and defects (other than Permitted Liens), except where the failure to possess such interests would not reasonably be expected to have a Material Adverse Effect. The Borrower and the Guarantors possess all real property rights and interests necessary to operate and maintain all of the electrical generation facilities of the Borrower and the Guarantors as currently operated and maintained, except where the failure to possess such rights and interests would not reasonably be expected to have a Material Adverse Effect.

4.21 Intellectual Property

Except as disclosed in Schedule 4.21, Holdings and its Subsidiaries own or possess sufficient trademarks, trade names, patent rights, copyrights, licenses, approvals, trade secrets and other similar rights (collectively, "**Intellectual Property Rights**") reasonably necessary to conduct their businesses as now conducted, in each case, except where the failure to own or possess such Intellectual Property Rights would not reasonably be expected to have a Material Adverse Effect, and the expected expiration of any of such Intellectual Property Rights would not reasonably be expected to have a Material Adverse Effect. Neither Holdings nor any of its Subsidiaries has received any notice of infringement or conflict with asserted Intellectual Property Rights of others, which could reasonably be expected to have a Material Adverse Effect.

4.22 Collateral

The respective liens and security interests granted to First Lien Collateral Agent (for the benefit of the First Lien Secured Parties) pursuant to the First Lien Collateral Documents (a) constitute as to personal property included in the Collateral a valid security interest, and (b) constitute as to real property included in the Collateral, upon the execution of the Mortgages in accordance with Section 4.13 (*Post-Closing Covenant*) of the First Lien Common Terms Agreement and the recording of the Mortgages in the appropriate filing office, a valid lien of record and security interest in such Collateral. The security interest granted to First Lien Collateral Agent (for the benefit of the First Lien Secured Parties) pursuant to the First Lien Collateral Documents in the Collateral consisting of personal property shall be perfected (x) with respect to any property that can be perfected by filing, upon the filing of financing statements in the filing offices identified in Schedule 4.22, (y) with respect to any property that can be perfected by control, upon execution of the Control Agreements (as defined in the Depositary Agreement) or the Depositary Agreement, as applicable, and (z) with respect to any property (if any) that can be perfected by possession, upon First Lien Collateral Agent receiving possession thereof, and in each case such security interest shall be, as to Collateral perfected under the UCC or otherwise as aforesaid and to the extent provided therein, superior and prior to the rights of all third Persons now existing or hereafter arising whether by way of mortgage, lien, security interests, encumbrance, assignment or otherwise, except for Permitted Liens. Except to the extent possession of portions of the Collateral is required for perfection and except for the Collateral covered by the Mortgages, all such action as is necessary has been taken to establish and perfect First Lien Collateral Agent's rights in and to the Collateral in existence on such date to the extent First Lien Collateral Agent's security interest can be perfected by filing, including any recording, filing, registration, giving of notice or other similar action. As of the Closing Date, no filing, recordation, re-filing or re-recording other than those listed on Schedule 4.22 hereto is necessary to perfect and maintain the perfection of the interest, title or Liens of the First Lien Collateral Documents, and as soon as reasonably practicable after the Closing Date all such filings or recordings shall have been made to the extent First Lien Collateral Agent's security interest can be perfected by filing except for the Collateral secured by the Mortgages, which filings in respect of the Mortgages shall be made in accordance with Section 4.13 (*Post-Closing Covenant*) of the First Lien Common Terms Agreement. Borrower has properly delivered or caused to be delivered, or provided control (to the extent providing control is possible using commercially reasonable efforts), to First Lien Collateral Agent with respect to all Collateral that permits perfection of the Lien and security interest described above by possession or control.

4.23 Sanctions and Anti-Corruption Laws

(a) Neither Holdings nor any of its Subsidiaries, nor any director, officer, employee or, to the knowledge of the Borrower or any of its Subsidiaries, an Affiliate of the same is an individual or entity (i) located, organized or resident in a country or territory that is the subject of Sanctions (including, currently, Crimea, Cuba, Iran, North Korea and Syria (each a "**Sanctioned Country**")); (ii) on any applicable U.S. sanctions list administered or enforced by the Office of Foreign Assets Control of the U.S. Department of Treasury; (iii) currently listed by the European Union sanctions laws and regulations as they appear in the following link (as the same may be updated from time to time upon ten days' notice from the Administrative Agent to Borrower if such link no longer displays such then-current European Union sanctions laws and regulations): https://eeas.europa.eu/topics/common-foreign-security-policy-cfsp/8442/consolidated-list-of-sanctions_en; (iv) currently listed by United Nations sanctions laws and regulations as they appear in the following link (as the same may be updated from time to time upon ten days' notice from the Administrative Agent to Borrower if such link no longer displays such then-current United Nations sanctions laws and regulations): https://www.un.org/securitycouncil/content/un-sc-consolidated-list, or on any applicable U.S. sanctions list administered or enforced by the Office of Foreign Assets Control of the U.S. Department of Treasury (collectively, "**Sanctions**"); or (v) individually or in the aggregate owned 50% or greater by or, as relevant under applicable Sanctions, controlled by the foregoing ((i) through (v) collectively, "**Sanctioned Persons**").

(b) (i) None of Holdings nor its Subsidiaries or Affiliates, nor any of their respective officers, directors or employees, in their capacities as such, or any representative or agent thereof, have violated, and the Borrower's and Guarantors' participation in the transactions contemplated by the Credit Documents shall not violate, the Foreign Corrupt Practices Act of 1977 (the "FCPA") as amended, the Bribery Act 2010 of the United Kingdom, any law, rule, or regulation promulgated to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed on December 17, 1997, or any other applicable anti-bribery or anticorruption law (collectively, the "**Anti-Corruption Laws**"); (ii) Holdings and its Subsidiaries have instituted, maintain and enforce, and shall continue to maintain and enforce, policies and procedures designed to promote and ensure compliance with Anti-Corruption Laws; and (iii) neither Holdings nor its Subsidiaries shall use, directly or indirectly the proceeds of the offering in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value to any person in violation of any applicable Anti-Corruption Laws. The operations of Holdings and its Subsidiaries are and have been conducted at all times in material compliance with all applicable anti-money laundering laws, including applicable federal, state, international, foreign or other laws or regulations regarding anti-money laundering, including Title 18 U.S. Code Sections 1956 and 1957, the Patriot Act and the Bank Secrecy Act, as amended by Title III of the Patriot Act (collectively, the "**Anti-Money Laundering Laws**"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving Holdings or any of its Subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to Holdings or any of its Subsidiaries' knowledge, threatened.

4.24 Solvency

Immediately after giving effect to the transactions to occur on the Closing Date and immediately following the occurrence of each other Credit Event, (a) the fair value of the assets of the Obligors, on a consolidated basis, shall exceed the debts and liabilities, direct, subordinated, contingent or otherwise, of the Obligors, (b) the present fair saleable value of the property of the Obligors shall be greater than the amount that will be required to pay the probable liability, on a consolidated basis, of the Obligors on their debts and other liabilities, direct, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured, (c) the Obligors shall, on a consolidated basis, be able to pay their debts and liabilities, direct, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured (after giving effect to any guarantees and credit support), and (d) the Obligors shall, on a consolidated basis, not have unreasonably small capital with which to conduct the business in which they are engaged as such business is now conducted and is proposed to be conducted following the Closing Date. For purposes of this Section 4.24 (x) "able to pay their debts and liabilities, direct, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured (after giving effect to any guarantees and credit support)" means that such Person shall be able to generate enough cash from operations, asset dispositions or refinancings, or a combination thereof, to meet its obligations as they become due, and (y) the amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

4.25 Insurance

Holdings has caused its Subsidiaries to have insurance coverage in at least the amounts and against such risks as required by Section 4.11 (*Maintenance of Insurance*) of the First Lien Common Terms Agreement.

4.26 Beneficial Ownership Regulation

To the extent that Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, the information included in the Beneficial Ownership Certification is true and correct.

5. AFFIRMATIVE COVENANTS

Each Obligor covenants and agrees that until the Discharge of First Lien Obligations under this Agreement and the other Credit Documents (other than those contingent First Lien Obligations that are intended to survive the termination of this Agreement and the other applicable Credit Documents), it shall perform or observe or cause to be performed or observed (as applicable) each of the obligations set forth in Article 4 (*Affirmative Covenants*) of the First Lien Common Terms Agreement and each of the following supplemental obligations set forth in this Article 5:

5.1 Use of Proceeds and Letters of Credit

(a) Borrower shall not request any Credit Event, and Borrower shall not use, and shall take reasonable steps to ensure that its directors, officers, and employees shall not use, the proceeds of any Credit Event, directly or indirectly (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in material violation of any Anti-Corruption Laws and Anti-Money Laundering Laws or (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person or in any Sanctioned Country in violation of any applicable Sanctions.

(b) The Obligors will use the net proceeds from the Term Loans to (i) make a distribution to the Sponsor, including to repay existing Indebtedness of the Sponsor in order to cause the release of Liens on Holdings, Borrower, the Project Companies (other than Permitted Liens), (ii) pay costs and expenses incurred in connection with the Loan Transactions, (iii) working capital and general corporate purposes of the Obligors (including to purchase the CoBank Service Share) and (iv) fund the Debt Service Reserve Account and the Major Maintenance Reserve Account.

(c) Revolving Letters of Credit shall be available to provide credit support in respect of the working capital needs of any Obligors and the other obligations of the Obligors associated with the Projects (including credit support obligations of the Obligors under the PPAs) and fund the Debt Service Reserve Account and the Major Maintenance Reserve Account.

(d) DSR Letters of Credit shall be available to fund the Debt Service Reserve Account.

(e) PPA Letters of Credit shall be available to provide credit support in respect of the working capital needs of any Obligors and the other obligations of the Obligors associated with the Projects (including credit support obligations of the Obligors under the PPAs).

5.2 Special Purpose Entity

(a) Each Obligor shall conduct in all material respects its business solely in its own name (or the name of another Obligor) through its duly authorized directors, officers or agents so as not to mislead others as to the identity of such Obligor with which those other entities (other than any Obligor) are concerned, and particularly shall avoid the appearance of conducting business on behalf of any other entity (other than any other Obligor) or that such Obligor's assets are available to pay the creditors of such other entity (other than any other Obligor) or the assets of any other entity (other than any other Obligor) are available to pay the creditors of such Obligor. Without limiting the generality of the foregoing, all material written communications of each Obligor shall be made solely in the name of such Obligor (or another Obligor).

(b) Each Obligor shall comply in all material respects with all organizational formalities to maintain its existence separate from that of the Sponsor, each Affiliate of the Sponsor and any unaffiliated entity.

(c) Except to the extent provided in the Depositary Agreement, each Obligor shall keep its assets and its liabilities wholly separate from those of all other entities (other than any other Obligor).

5.3 Operating Plan and Reports

(a) On the Closing Date (as delivered pursuant to Section 3.1(u) (in the case of the calendar year 2020), and on or before sixty days prior to the beginning of each calendar year commencing on calendar year 2021), Borrower shall submit a budget to the Administrative Agent, detailed by month, of anticipated revenues and anticipated expenditures under all applicable waterfall levels set forth in clauses First through Fourth of Section 3.1(b) (*Revenue Account Waterfall*) of the Depositary Agreement, each such budget to include Debt Service, proposed dividend distributions, Major Maintenance, Capital Expenditures, reserves and all anticipated O&M Costs (including reasonable allowance for contingencies) for the ensuing calendar year (or, in the case of the initial Annual Operating Budget, partial calendar year) (each such annual operating plan and budget, including the initial Annual Operating Budget, an "**Annual Operating Budget**"). Notwithstanding the foregoing, this Agreement shall not restrict any deviation by the Obligors from the Annual Operating Budget.

(b) Borrower shall deliver to Administrative Agent within sixty days of the end of each fiscal quarter, a summary operating report with respect to the Projects, which shall include, with respect to the period most recently ended, the information set forth on the Template Operating Report, which information shall include a level of detail on a month-by-month basis and consolidated revenue generated.

5.4 Financial Reports

(a) The Borrower shall deliver to the Administrative Agent:

(i) within 120 days after the end of each fiscal year (commencing with fiscal year ending on December 31, 2020), audited annual financial statements of Borrower and its consolidated Subsidiaries prepared in accordance with GAAP as in effect from time to time;

(ii) within ninety days after the end of each of the first three fiscal quarters of each fiscal year (commencing on the fiscal quarter ending June 30, 2020), unaudited quarterly financial statements (comprised of a balance sheet, income statement, and cash flow statement) of the Borrower and its consolidated Subsidiaries (but, with respect to the fiscal quarter ending June 30, 2020, such financial statements may exclude the results of operations of, or the assets held by, Geysers Company, Wild Horse and Calistoga, which will become direct wholly owned Subsidiaries of the Borrower on the Closing Date) prepared in accordance with GAAP as in effect from time to time (subject to changes resulting from audit and normal year-end adjustments and the absence of footnote disclosure);

(iii) at the time of providing the information required by Section 5.4(a)(i), a certificate signed by a Responsible Officer of the Borrower certifying that to such Responsible Officer's knowledge, no Default, Event of Default, CTA Default or CTA Event of Default has occurred and is continuing or, if any Default, Event of Default, CTA Default or CTA Event of Default has occurred and is continuing, a brief description of the nature thereof and the corrective actions that the Borrower or Guarantor, as applicable, has taken or proposes to take with respect thereto (other than litigation strategy).

(b) Notwithstanding the foregoing, the financial information and other documents referred to in the preceding paragraph may be those of any direct or indirect parent of the Borrower; provided, that if there are material differences (as determined in good faith by the Borrower) between the consolidated results of operations and financial condition of such parent and its consolidated Subsidiaries, on the one hand, and of the Borrower and its consolidated Subsidiaries, on the other hand, the quarterly and annual information required by the preceding paragraph will include a discussion of such material differences in reasonable detail as determined in good faith by the Borrower.

(c) The Borrower shall be deemed to have satisfied its obligation to deliver information referred to in this Section 5.4 by (i) filing or furnishing such information with the SEC for public availability or (ii) posting such information on a website (which may be nonpublic and may be password-protected) hosted by the Borrower or by a third party, in each case within the applicable time periods specified herein.

(d) To the extent that any information required by this Section 5.4 is not delivered to the Administrative Agent within the applicable time periods specified herein and such information is subsequently delivered, the Borrower will be deemed to have satisfied its obligations under this Section 5.4 with respect to such information and any CTA Default or CTA Event of Default with respect thereto shall be deemed to have been cured and any acceleration of any First Lien Obligations resulting therefrom shall be deemed to have been rescinded so long as such rescission would not conflict with any applicable judgment or decree.

5.5 Debt Service Coverage Ratio

No later than 45 days after each Principal Repayment Date, Borrower shall calculate and deliver to Administrative Agent the Debt Service Coverage Ratio for the Calculation Period of such Principal Repayment Date.

5.6 Additional Consents

The Borrower and the Guarantors shall use commercially reasonably efforts to obtain from each counterparty to each Major Project Contract that is in effect as of the Closing Date a Consent within ninety days following the Closing Date. Concurrently with or promptly after entering into any Replacement Major Project Contract that is also a Major Project Contract after the Closing Date, the Borrower or the Guarantor, as applicable, shall use commercially reasonable efforts to obtain from the counterparty under such Replacement Major Project Contract that is also a Major Project Contract, and deliver or cause to be delivered to the First Lien Collateral Agent, a Consent.

5.7 Lender Meetings

Borrower shall, upon the request of Administrative Agent or Required Lenders, participate in a meeting of Administrative Agent and Lenders (which, unless an Event of Default has occurred and is continuing, shall be limited to no more than once during each fiscal year) to be held telephonically at such time as may be agreed to by Borrower and Administrative Agent.

5.8 Interest Rate Hedging

From and after the date that is twenty Banking Days following the Closing Date, the Borrower shall, on each Principal Repayment Date until the Maturity Date, have in effect one or more Interest Rate Agreements with respect to an effective notional amount equal to at least 75% of the Projected Notional Principal Amount of the sum of Term Loans and Additional Ratio Indebtedness (excluding any Additional Ratio Indebtedness that bears interest at a fixed rate); provided, that if, at any time, Borrower incurs any Incremental Term Loan Facility or such Additional Ratio Indebtedness and, as a result of such incurrence, Borrower would not be in compliance with the terms of this Section 5.8, then Borrower shall be deemed not to be in default of this Section 5.8 so long as Borrower is in compliance with the terms of this Section 5.8 within twenty Banking Days of the incurrence of such Incremental Term Loan Facility. Interest Rate Agreements with respect to Term Loans shall be entered into with Hedge Banks pursuant to clause (a) of the definition thereof and Interest Rate Agreements with respect to Additional Ratio Indebtedness shall be entered into with Hedge Banks.

5.9 Insurance

Borrower shall maintain or cause to be maintained in all material respects on its behalf in effect at all times the types of insurance required pursuant to Exhibit K, in the amounts and on the terms and conditions specified therein, from the quality of insurers specified in such Exhibit or other insurance companies of recognized responsibility reasonably satisfactory to the Administrative Agent.

5.10 Notices

Borrower shall promptly, upon acquiring notice or giving notice (except as otherwise specified below), as the case may be, or obtaining knowledge thereof (except as otherwise specified below), give written notice (with copies of any underlying notices, papers, files or related documentation except as otherwise specified below) to Administrative Agent of:

(a) any litigation pending or, to any Obligor's knowledge, threatened in writing against any Obligor as to which an adverse determination is reasonably probable and which involves material claims against any Obligor or the Projects in excess of $10,000,000 individually or $50,000,000 in the aggregate per calendar year or which could reasonably be expected to have a Material Adverse Effect, such notice to include reasonable details about such litigation other than litigation strategy and related documentation subject to attorney-client-privilege;

(b) any dispute or disputes for which written notice has been received by any Obligor which may exist between any Obligor and any Governmental Authority and which involve (a) claims which could reasonably be expected to have a Material Adverse Effect, or (b) revocation, modification, failure to renew or the like of any Applicable Permit which could reasonably be expected to have a Material Adverse Effect;

(c) any Default, Event of Default, CTA Default or CTA Event of Default (together with a statement of a Responsible Officer of Borrower setting forth the details of such Default, Event of Default, CTA Default or CTA Event of Default and the action which the applicable Obligor has taken and proposes to take with respect thereto);

(d) any casualty, damage or loss to the Projects, whether or not insured, through fire, theft, other hazard or casualty, or any act or omission of (a) any Obligor, its employees, agents, contractors, consultants or representatives for which a mandatory prepayment is required in respect of the First Lien Obligations or (b) to any Obligor's knowledge, any other Person if such casualty, damage or loss could reasonably be expected to have a Material Adverse Effect;

(e) any (i) early termination (other than expiration in accordance with its terms and any applicable Consent) or default of which any Obligor has knowledge or written notice thereof under any Major Project Contract which could reasonably be expected to have a Material Adverse Effect and (ii) material Project Contract Modification (with copies of all such Project Contract Modifications whether or not requiring approval of Administrative Agent or the Required Lenders pursuant to Section 6.2);

(f) any written claim of events of force majeure under any Major Project Contract which could reasonably be expected to have a Material Adverse Effect together with reasonable details with respect to such claim;

(g) initiation of any condemnation proceedings involving a portion of (i) the Projects or (ii) the Project Sites, in each case, which could reasonably be expected to have a Material Adverse Effect;

(h) promptly, but in no event later than fifteen Banking Days after any Obligor has knowledge of the execution and delivery thereof, a copy of each Additional Major Project Contracts;

(i) promptly, but in no event later than thirty days after the receipt thereof by any Obligor, copies of (i) any material amendment, supplement or other material modification to any material Applicable Permit received by any Obligor, and (ii) all notices relating to the Projects received by any Obligor from, or delivered by any Obligor to, any Governmental Authority (other than routine correspondence given or received in the ordinary course of business relating to routine aspects of owning, financing, operating, maintaining or using the Projects) which could reasonably be expected to have a Material Adverse Effect;

(j) any unscheduled or forced outage of the Projects (taken as a whole) causing a reduction of at least 50 MW of capacity, which continues for more than twenty consecutive days;

(k) the occurrence of any ERISA Event that, individually or together with all other ERISA Events that have occurred, would reasonably be expected to result in a Material Adverse Effect; and

(l) the occurrence of any event or circumstance specific to any Obligor or the Projects that is not a matter of general public knowledge and that could reasonably be expected to have a Material Adverse Effect; provided, that, solely for purposes of this Section 5.10(l), clause (ii) of the proviso in the definition of Material Adverse Effect shall be disregarded.

In addition, Borrower shall provide, with reasonable promptness, to Administrative Agent any other material information (other than litigation strategy and related documentation subject to attorney-client-privilege) with respect to any Obligor or the Projects as is reasonably requested by Administrative Agent or any Lender (which request shall be made through Administrative Agent).

6. NEGATIVE COVENANTS

Each Obligor covenants and agrees that until the Discharge of First Lien Obligations under this Agreement and the other Credit Documents (other than those contingent First Lien Obligations that are intended to survive the termination of this Agreement and the other applicable Credit Documents), it shall perform or observe or cause to be performed or observed (as applicable) each of the obligations set forth in Article 5 (*Negative Covenants*) of the First Lien Common Terms Agreement and each of the following supplemental obligations set forth in this Article 6:

6.1 Regulations

Borrower shall not directly or indirectly apply any part of the proceeds of any Loan, any cash equity contributions received by Borrower or other funds or revenues to the "buying", "carrying" or "purchasing" of any margin stock within the meaning of Regulations T, U or X of the Federal Reserve Board, or any regulations, interpretations or rulings thereunder.

6.2 Amendments to Major Project Contracts

(a) No Obligor shall, without the prior written consent of the Required Lenders, (such consent not to be unreasonably withheld, conditioned or delayed), amend or otherwise modify any Major Project Contract or give any consent, waiver or approval (other than consents, waivers or approvals in the ordinary course of business consistent with past practices, where applicable) (each such amendment or modification being referred to herein as a "**Project Contract Modification**") thereunder (including any waiver of any default under or breach of any Major Project Contract), or agree in any manner to any other amendment, modification or change of any term or condition of any Major Project Contract; provided, that the foregoing shall not restrict any of the following: (i) the extension of the term of a Major Project Contract on substantially the same terms and conditions then in effect (or on more favorable terms and conditions to such Obligor), (ii) ministerial or administrative amendments, modifications, waivers, consents and approvals, (iii) replacement of any Major Project Contract as permitted by Section 6.2(d) or (iv) any Project Contract Modification that could not reasonably be expected to have a Material Adverse Effect (as certified by the Borrower in an officer's certificate of a Responsible Officer).

(b) No Obligor shall, without the prior written consent of Administrative Agent, such consent not to be unreasonably withheld, amend, supplement, waive or otherwise modify the organizational documents of such Obligor, if the result could reasonably be expected to have a Material Adverse Effect on the Lenders or their rights or remedies under the Credit Documents in any material respect.

(c) If applicable, the Required Lenders and Administrative Agent shall use good faith efforts to respond to each request pursuant to this Section 6.2 as soon as possible and in all events within thirty days of its receipt of written notification thereof.

(d) No Obligor shall without the prior written consent of the Required Lenders (acting in consultation with the Independent Engineer), such consent not to be unreasonably withheld, conditioned or delayed, enter into any Additional Major Project Contract; provided, that the foregoing shall not restrict the entry by an Obligor into an Additional Major Project Contract so long as the entry by the applicable Obligor into such Additional Major Project Contract could not reasonably be expected to have a Material Adverse Effect (as certified by the Borrower in an officer's certificate signed by a Responsible Officer). In connection with the entry by a Obligor into any Additional Major Project Contract, the Obligor shall: (A) deliver copies of all such Additional Major Project Contracts to the Administrative Agent prior to entering into such Additional Major Project Contract and (B) (1) use commercially reasonable efforts to enter into a Consent as specified in Section 5.6 and (2) deliver copies of any such Consent to Administrative Agent and First Lien Collateral Agent following the execution thereof.

7. EVENTS OF DEFAULT; REMEDIES

7.1 Events of Default

The CTA Events of Default set forth in Article 6 (*Events of Default*) of the First Lien Common Terms Agreement shall constitute Events of Default under this Agreement, subject to all of the provisions of such Article 6 (*Events of Default*) in the First Lien Common Terms Agreement, and each of the following events or occurrences set forth in this Article 7 shall be a supplemental Event of Default (each, an "**Event of Default**") hereunder:

(a) Failure to Make Payments. Borrower shall fail to pay, in accordance with the terms of this Agreement (a) any principal on any Loan on the date that such sum is due, (b) any interest on any Loan within five Banking Days after the date such sum is due, (c) any scheduled fee, cost, charge or sum due hereunder within five Banking Days of the date that such sum is due, or (d) any other fee, cost, charge or other sum due under this Agreement within thirty days after written notice to Borrower that such sum is due.

(b) Cross-Payment Default. An event of default (howsoever defined) shall occur with respect to an Obligor which is caused by a failure to pay principal or interest beyond the applicable grace period in respect of (i) any Indebtedness for borrowed money of such Obligor, which would entitle the lender(s) under such Indebtedness to cause the principal amounts in excess of $50,000,000 in the aggregate to become immediately due or (ii) any Permitted Commodity Hedge Agreement or Permitted Interest Rate Agreement of such Obligor and, in the case of this clause (ii), which would entitle the counterparty under such agreement to demand an early termination amount (howsoever defined in such Commodity Hedge Agreement or Interest Rate Agreement) and such early termination amount that would result from a liquidation, acceleration or early termination of such Permitted Commodity Hedge Agreement or Permitted Interest Rate Agreement is in excess of $50,000,000.

(c) Cross-Acceleration.

(i) An event of default (howsoever defined) shall occur with respect to any Obligor under any Indebtedness for borrowed money of such Obligor, having drawn principal amounts in excess of $50,000,000 in the aggregate and shall have continued beyond the applicable grace period, the effect of which has been to cause the entire amount of such Indebtedness to become due and such Indebtedness remains unpaid or the acceleration of its stated maturity unrescinded.

(ii) An event of default (howsoever defined) shall occur with respect to Any Permitted Commodity Hedge Agreement or Permitted Interest Rate Agreement and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, such Permitted Commodity Hedge Agreement or Permitted Interest Rate Agreement, and, in addition, the early termination amount (howsoever defined in such Permitted Commodity Hedge Agreement or Permitted Interest Rate Agreement) resulting from the occurrence of such liquidation, acceleration or early termination that is due and payable by Obligor (if any) is in excess of $50,000,000.

(d) ERISA Event. One or more ERISA Events shall have occurred that, when taken together with any other ERISA Events that have occurred, would reasonably be expected to have a Material Adverse Effect;

(e) Breach of Terms of Agreement.

(i) Defaults without Cure Periods. Any Obligor shall fail to perform or observe any of the covenants set forth in Sections 5.1, 5.10(c) (but excluding any obligation thereunder in respect of any Default or CTA Default) or Article 6.

(ii) Defaults with Cure Periods. Any Obligor shall fail to perform or observe any of the covenants set forth in (A) Section 5.9 and such failure shall continue unremedied for a period of fifteen Banking Days after Borrower receives written notice thereof from Administrative Agent or (B) Section 5.2 and such failure shall continue unremedied for a period of thirty days after Borrower receives written notice thereof from Administrative Agent.

(iii) Other Defaults. Any Obligor shall fail to perform or observe any of its covenants set forth hereunder not otherwise specifically provided for in Section 7.1(e)(i), Section 7.1(e)(ii) or elsewhere in this Article 7, and such failure shall continue unremedied for a period of thirty days after such Obligor receives written notice thereof from Administrative Agent; provided, that if (A) such failure cannot be cured within such thirty-day period, (B) such failure is susceptible of cure within ninety days, (C) such Obligor is proceeding with diligence and in good faith to cure such failure, (D) the existence of such failure has not had and could not, after considering the nature of the cure, be reasonably expected to have a Material Adverse Effect, and (E) Administrative Agent shall have received an officer's certificate signed by a Responsible Officer to the effect of clauses (i), (ii), (iii), and (F) above and stating what action such Obligor is taking to cure such failure, then such thirty-day cure period shall be extended to such date, not to exceed a total of ninety days, as shall be necessary for such Obligor diligently to cure such failure.

(f) Regulatory Status.

(i) Any Obligor shall become a public utility under the laws of the State of California as presently constituted and as construed by the courts of California, and in each case, such event could reasonably be expected to have a Material Adverse Effect.

(ii) FERC has issued an order determining that any Obligor that is a "public utility" under the FPA is no longer entitled to make sales at wholesale of electric energy, capacity and certain ancillary services at market-based rates and/or is no longer entitled to associated waivers and blanket authorizations under FERC regulations, including blanket authorization to issue securities and assume liabilities pursuant to Section 204 of the FPA, if loss of such Obligor's authorization from FERC under the FPA to make sales at wholesale of electric energy, capacity and certain ancillary services at market-based rates and/or associated waivers and blanket authorizations under FERC regulations, including blanket authorization to issue securities and assume liabilities pursuant to Section 204 of the FPA, could reasonably be expected to have a Material Adverse Effect.

(g) Change of Control. A Change of Control shall have occurred.

(h) Unenforceability. At any time after the execution and delivery thereof, any material provision of this Agreement shall cease to be in full force and effect (other than by reason of the satisfaction in full or release of Borrower's First Lien Obligations hereunder or any other termination of this Agreement in accordance with the terms hereof) or this Agreement shall be declared null and void by a Governmental Authority of competent jurisdiction.

(i) Misstatements; Omissions. Any representation or warranty made or deemed made by any Obligor in any Credit Document to which it is a party or in any separate written statement or certificate required to be delivered to Administrative Agent, Depositary Agent, First Lien Collateral Agent, or any Lender hereunder or under any other Credit Document to which it is a party, shall be untrue in any material respect as of the time made; provided, that misrepresentations which are capable of being remedied, are made or deemed made after the Closing Date, the untruth of which could not reasonably be expected to have a Material Adverse Effect, shall not be deemed to be an Event of Default if such misrepresentation is cured, corrected or otherwise remedied within thirty days (or if such incorrect representation, warranty, written statement or certificate is not susceptible to cure within thirty days, and such Obligor is proceeding with diligence and in good faith to cure such default and such default is susceptible to cure, such thirty day cure period shall be extended as may be necessary to cure such incorrect representation, warranty, written statement or certificate, such extended period not to exceed ninety days in the aggregate (inclusive of the original thirty-day period)) from the date a Responsible Officer of Borrower acquires knowledge thereof such that such representation or warranty (as cured, corrected or remedied) has not resulted in a Material Adverse Effect, then such false or incorrect representation, warranty, written statement or certification shall not constitute a Default or an Event of Default for purposes of the Credit Documents.

(j) Specified Major Project Contract Defaults. (i) Any Specified Major Project Contract shall terminate or shall be declared null and void (except (a) upon fulfillment of the parties' obligations thereunder or (b) upon the scheduled expiration of the term of such Specified Major Project Contract) and such termination is reasonably expected to have a Material Adverse Effect, (ii) any provision in any Specified Major Project Contract shall for any reason cease to be valid and binding on any party thereto (other than Borrower), other than any such failure to be valid and binding which could not reasonably be expected to have a Material Adverse Effect or (iii) performance shall be breached under any Specified Major Project Contract and such breach is reasonably expected to have a Material Adverse Effect except, in the case of the foregoing clauses (i), (ii), or (iii) to the extent that (x) such provision is restored or replaced by a replacement provision in form and substance reasonably acceptable to Administrative Agent within a 120-day period thereafter, or (y) Borrower enters into a Replacement Major Project Contract within 120 days thereafter.

7.2 Remedies

Subject to the terms and conditions of the Intercreditor Agreement, upon the occurrence and during the continuation of an Event of Default, Administrative Agent shall, upon the direction of the Required Lenders, without further notice of default, presentment or demand for payment, protest or notice of non-payment or dishonor, or other notices or demands of any kind, all such notices and demands (other than notices expressly required by the Credit Documents) being waived, exercise any or all of the following rights and remedies, in any combination or order that the Required Lenders may elect, in addition to such other rights or remedies as the First Lien Secured Parties may have hereunder, under the First Lien Collateral Documents or at law or in equity:

(a) No Further Loans or Letters of Credit. Cancel all Commitments, refuse, and Administrative Agent, the Issuing Banks and the Lenders shall not be obligated, to continue any Loans, make any additional Loans, or make any payments, or permit the making of payments, from any Depositary Account or any Loan proceeds or other funds held by Administrative Agent or First Lien Collateral Agent under the Credit Documents or on behalf of Borrower; provided, that in the case of an Event of Default occurring under Section 6.1(i) (*Bankruptcy*) of the First Lien Common Terms Agreement, all such Commitments shall be cancelled and terminated without further act of Administrative Agent, First Lien Collateral Agent, or any First Lien Secured Party.

(b) Cure by Agents. Without any obligation to do so, make disbursements or Loans to or on behalf of Borrower or disburse amounts from any Depositary Account to cure (i) any Default or Event of Default hereunder, and (ii) any default and render any performance under any Major Project Contract as the Required Lenders in their sole discretion may consider necessary or appropriate, whether to preserve and protect the Collateral or the First Lien Secured Parties' interests therein or for any other reason. All sums so expended, together with interest on such total amount at the Default Rate (but in no event shall the rate exceed the maximum lawful rate), shall be repaid by Borrower to Administrative Agent or First Lien Collateral Agent, as the case may be, on demand and shall be secured by the Credit Documents, notwithstanding that such expenditures may, together with amounts advanced under this Agreement, exceed the aggregate amount of the Total Term Loan Commitment.

(c) Acceleration. Declare and make all or a portion of the sums of accrued and outstanding principal and accrued but unpaid interest remaining under this Agreement, together with all unpaid fees, costs (including Liquidation Costs and Hedge Breaking Fees) and charges due hereunder or under any other Credit Document, immediately due and payable and require Borrower immediately, without presentment, demand, protest or other notice of any kind, all of which Borrower hereby expressly waives, to pay Administrative Agent or the First Lien Secured Parties an amount in immediately available funds equal to the aggregate amount of any outstanding First Lien Obligations of Borrower under this Agreement and the other Credit Documents; provided, that in the event of an Event of Default occurring under Section 6.1(i) (*Bankruptcy*) of the First Lien Common Terms Agreement, all such amounts shall become immediately due and payable without further act of Administrative Agent, the Issuing Banks, First Lien Collateral Agent, or the First Lien Secured Parties.

(d) Cash Collateral; Letters of Credit.

(i) Pursuant to the terms of the First Lien Common Terms Agreement and the Collateral and Intercreditor Agreement, vote in favor of the First Lien Collateral Agent taking action to declare, apply or execute upon any amounts on deposit in any Depositary Account, or any proceeds or any other moneys of Borrower on deposit with Administrative Agent, First Lien Collateral Agent, Depositary Agent or any First Lien Secured Party in the manner provided in the UCC and other relevant statutes and decisions and interpretations thereunder with respect to Cash Collateral; or draw upon any letter of credit held by First Lien Collateral Agent as security. Without limiting the foregoing, each of Administrative Agent, First Lien Collateral Agent and Depositary Agent shall have all rights and powers with respect to the Loan proceeds, draws upon any Letter of Credit, the Depositary Accounts and the contents of the Depositary Accounts as it has with respect to any other Collateral and may apply, or cause the application of, such amounts to the payment of interest, principal, fees, costs, charges or other amounts due or payable to Administrative Agent, First Lien Collateral Agent, Depositary Agent or the First Lien Secured Parties with respect to the Loans in such order as the Required Lenders may elect in their sole discretion. Borrower shall not have any rights or powers with respect to such amounts.

(ii) Make demand upon the Borrower to, and forthwith upon such demand the Borrower shall, pay to the Administrative Agent on behalf of the Lenders in same day funds at the Administrative Agent's account, to the extent not already funded, an amount equal to 102.5% of the aggregate LC Exposure; provided, that upon the occurrence of any Default or Event of Default under Section 6.1(i) (*Bankruptcy*) of the First Lien Common Terms Agreement, the Borrower shall be obligated to pay to the Administrative Agent on behalf of the Lenders in same day funds at the Administrative Agent's account, to the extent not already funded, an amount equal to 102.5% of the aggregate LC Exposure, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by the Borrower.

(e) Possession of Projects. Pursuant to the terms of the First Lien Common Terms Agreement and the Collateral and Intercreditor Agreement, vote in favor of the First Lien Collateral Agent taking action to enter into possession of the Projects or operate and maintain the Projects, and all sums expended by Administrative Agent, First Lien Collateral Agent or Depositary Agent in so doing, together with interest on such total amount at the Default Rate, shall be repaid by Borrower to Administrative Agent, First Lien Collateral Agent or Depositary Agent, as the case may be, upon demand and shall be secured by the Credit Documents, notwithstanding that such expenditures may, together with amounts advanced under this Agreement, exceed the aggregate amount of the Total Term Loan Commitment.

(f) Remedies under Credit Documents. Take (or vote in favor of the taking) other action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement and the other Credit Documents.

8. SCOPE OF LIABILITY

Except as set forth in this Article 8, notwithstanding anything in this Agreement or the other Credit Documents to the contrary, none of the Lender Parties shall have any claims with respect to the transactions contemplated by the Credit Documents against Sponsor or any of its Affiliates (other than Borrower or any other Obligor), shareholders, officers, directors or employees (collectively, the "**Non-Recourse Persons**") and the Lender Parties' recourse against Borrower and the Non-Recourse Persons shall be limited to the Obligors, the Collateral, the Projects, all Project Revenues, all Loan proceeds, Insurance Proceeds, Eminent Domain Proceeds, and all income or revenues of the foregoing as and to the extent provided herein and in the First Lien Collateral Documents; provided, that the foregoing provision of this Article 8 shall not (a) constitute a waiver, release or discharge of any of the Indebtedness, or of any of the terms, covenants, conditions, or provisions of this Agreement or any other Credit Document and the same shall continue (but without personal liability to the Non-Recourse Persons) until fully paid, discharged, observed, or performed, (b) limit or restrict the right of Administrative Agent, First Lien Collateral Agent or any other Lender Party (or any assignee, beneficiary or successor to any of them) to name the Obligors or any other Person as a defendant in any action or suit for a judicial foreclosure or for the exercise of any other remedy under or with respect to this Agreement or any other Collateral Document or Credit Document, or for injunction or specific performance, so long as no judgment in the nature of a deficiency judgment shall be enforced against any Non-Recourse Person, except as set forth in this Article 8, (c) in any way limit or restrict any right or remedy of Administrative Agent, First Lien Collateral Agent or any other Lender Party (or any assignee or beneficiary thereof or successor thereto) with respect to, and each of the Non-Recourse Persons shall remain fully liable to the extent that it would otherwise be liable for its own actions with respect to, any fraud, willful misrepresentation (which shall not include innocent or negligent misrepresentation), or misappropriation of Project Revenues, Loan proceeds, Insurance Proceeds, Eminent Domain Proceeds or any other earnings, revenues, rents, issues, profits or proceeds from or of the Collateral, that should or would have been paid as provided herein or paid or delivered to Administrative Agent, First Lien Collateral Agent or any other Lender Party (or any assignee or beneficiary thereof or successor thereto) towards any payment required under this Agreement or any other Credit Document, (d) affect or diminish or constitute a waiver, release or discharge of any specific written obligation, covenant, or agreement in respect of the transactions contemplated by the Credit Documents made by any of the Non-Recourse Persons or any security granted by the Non-Recourse Persons in support of the obligations of such Persons under any First Lien Collateral Document or Project Contract (or as security for the obligations of any Obligor), or (e) limit the liability of (i) any Person who is a party to any Project Contract or has issued any certificate or other statement in connection therewith with respect to such liability as may arise by reason of the terms and conditions of such Project Contract (but subject to any limitation of liability in such Project Contract), certificate or statement or (ii) any Person rendering a legal opinion pursuant to this Agreement (including Section 3.1(h)), in each case under this clause (e) relating solely to such liability of such Person as may arise under such referenced agreement, instrument or opinion. The limitations on recourse set forth in this Article 8 shall survive the termination of this Agreement, the termination of all Commitments and the Interest Rate Agreements to which any Lender Party is a party and the indefeasible payment in full in cash and performance in full of Borrower's First Lien Obligations hereunder and under the other Credit Documents.

9. AGENTS; SUBSTITUTION

9.1 Appointment, Powers and Immunities

(a) In order to expedite the transactions contemplated by this Agreement, (i) CoBank, ACB, Coöperatieve Rabobank, U.A., New York Branch and ING Capital LLC are hereby appointed to act as the Joint Lead Arrangers, (ii) Mizuho Bank Ltd., National Bank of Canada and Sumitomo Mitsui Banking Corporation are hereby appointed to act as the Coordinating Lead Arrangers and Bookrunners, (iii) Crédit Agricole Corporate and Investment Bank and Natixis, New York Branch are hereby appointed to act as the Green Loan Coordinators, (iv) BNP Paribas is hereby appointed to act as the Syndication Agent, Coordinating Lead Arranger, and Bookrunner, (v) MUFG Bank, Ltd. is hereby appointed to act as the Administrative Agent (vi) MUFG Union Bank, N.A. is hereby appointed to act as the Coordinating Lead Arranger, Bookrunner and First Lien Collateral Agent. None of Administrative Agent, First Lien Collateral Agent, Coordinating Lead Arrangers, Joint Lead Arrangers nor any of their respective Related Parties shall have any duties or responsibilities except those expressly set forth in this Agreement or in any other Credit Document, or be a trustee or a fiduciary for any Lender Party, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into the Credit Documents or otherwise exist against any Agent, Coordinating Lead Arranger, or Joint Lead Arranger (other than those implied as a matter of applicable law that are not capable of being waived). Notwithstanding anything to the contrary contained herein, none of Administrative Agent, First Lien Collateral Agent, Coordinating Lead Arrangers, Joint Lead Arrangers or any of their respective Related Parties shall be liable as such for any action taken or omitted by any of them except for its or their own gross negligence or willful misconduct, or required to take any action which is contrary to this Agreement or any other Credit Documents or any Legal Requirement or exposes Administrative Agent, First Lien Collateral Agent, Coordinating Lead Arrangers, Joint Lead Arrangers or any of their respective Related Parties (as the case may be) to any liability. None of the Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent, Administrative Agent, the Lenders nor any of their respective Related Parties shall be required to ascertain or to make any inquiry concerning the performance or observance by the Obligors of any of the terms, conditions, covenants or agreements contained in any Credit Document, or be responsible for (x) any recitals, statements, representations or warranties made by any other Person contained in this Agreement or the contents of any document delivered in connection herewith, the other Credit Documents or in any certificate or other document referred to or provided for in, or received by the Coordinating Lead Arrangers, Joint Lead Arrangers, Administrative Agent, First Lien Collateral Agent or any other Lender Party under this Agreement or any other Credit Document, (y) any failure by any Obligor or its Affiliates to perform their respective obligations hereunder or thereunder, or (z) the failure, delay in performance or breach by any Lender or Issuing Bank of any of its obligations hereunder or as a result of any information provided by any Lender or Issuing Bank, or to any Lender or Issuing Bank on account of the failure of or delay in performance or breach by any other Lender or Issuing Bank or any Obligor of any of its obligations hereunder or in connection herewith. Each of Administrative Agent, First Lien Collateral Agent, Coordinating Lead Arranger, and Joint Lead Arranger may execute any and all duties hereunder by or through agents, employees or any sub-agent appointed by it, and neither shall be responsible for the negligence or misconduct of any such agents or attorneys-in-fact selected by it with reasonable care.

(b) Without limiting the generality of the foregoing, (i) Administrative Agent may treat the payee of any Note as the holder thereof until Administrative Agent receives written notice of the assignment or transfer thereof signed by such payee and in form satisfactory to Administrative Agent, (ii) each of Administrative Agent and First Lien Collateral Agent may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by them in accordance with the advice of such counsel, accountants or experts, (iii) none of First Lien Collateral Agent, Administrative Agent, Syndication Agent, Bookrunners, Green Loan Coordinators, Coordinating Lead Arrangers, and Joint Lead Arrangers makes any warranty or representation to any other Lender Party for any statements, warranties or representations made in or in connection with any Credit Document, (iv) none of First Lien Collateral Agent, Administrative Agent, Syndication Agent, Bookrunners, Green Loan Coordinators, Coordinating Lead Arrangers, and Joint Lead Arrangers shall have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of any Credit Document on the part of any party thereto, to inspect the property (including the books and records) of the Obligors or any other Person or to ascertain or determine whether a Material Adverse Effect exists or is continuing, and (v) none of First Lien Collateral Agent, Administrative Agent the Syndication Agent, Bookrunners, Green Loan Coordinators, Coordinating Lead Arrangers, or Joint Lead Arrangers shall be responsible to any other Lender Party for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of any Credit Document or any other instrument or document furnished pursuant hereto. Except as otherwise provided under this Agreement and the other Credit Documents, each of Administrative Agent and First Lien Collateral Agent shall take such action with respect to the Credit Documents as shall be directed by the Required Lenders or, if expressly so provided, all Lenders, and shall exercise such powers, rights and remedies hereunder and under the other Credit Documents as are specifically delegated or granted to such Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. The Lenders hereby acknowledge that no Agent shall be under any duty to take any discretionary action permitted to be taken by it pursuant to the provisions of this Agreement unless it shall be requested in writing to do so by the Required Lenders. The Lenders further acknowledge and agree that so long as an Agent shall make any determination to be made by it hereunder or under any other Credit Document in good faith, such Agent shall have no liability in respect of such determination to any Person.

(c) No Agent shall have, by reason hereof or of any of the other Credit Documents, a fiduciary relationship in respect of any Lender; and nothing herein or in any of the other Credit Documents, expressed or implied, is intended to or shall be so construed as to impose upon any Agent any obligations in respect hereof or of any of the other Credit Documents except as expressly set forth herein or therein. Each Lender agrees to be bound by the terms and limitations of (i) any "use of work products" or similar agreement entered into by the Administrative Agent in connection with the Independent Consultant reports and reliance letters delivered in connection therewith or (ii) any reliance letter required to be countersigned by the Administrative Agent on behalf of the Lenders. In connection with any direction by the Lenders of the First Lien Collateral Agent under the Credit Documents, including but not limited to the Intercreditor Agreement, the First Lien Collateral Agent may request the Administrative Agent determine whether the Required Lenders (or other applicable requisite percentage of First Lien Secured Parties under the Intercreditor Agreement) have consented to any such direction or action of the First Lien Collateral Agent.

(d) Each Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees, and may consult with the applicable Independent Consultants in the exercise of such powers, rights and remedies and the performance of such duties. To the extent of any conflict or inconsistencies between the functions, responsibilities, duties, obligations or liabilities of the Depositary Agent set forth in this Article 9 and those set forth in the Depositary Agreement, the terms of the Depositary Agreement shall govern.

(e) Any Agent may perform any and all of its duties and exercise its rights and powers under this Agreement or under any other Credit Document by or through any one or more sub-agents appointed by such Agent. Any such Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. The exculpatory, indemnification and other provisions of this Section 9.1(e) and of Section 9.5 shall apply to any of the Affiliates of each Agent and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as an Agent. All of the rights, benefits, and privileges (including the exculpatory and indemnification provisions) of this Section 9.1(e) and of Section 9.5 shall apply to any such sub-agent and to the Affiliates of any such sub-agent and shall apply to their respective activities as sub-agent as if such sub-agent and Affiliates were named herein. Notwithstanding anything herein to the contrary, with respect to each sub-agent appointed by an Agent, (i) such sub-agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory rights and rights to indemnification) and shall have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of the Obligors and the Lenders, (ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub-agent, (iii) such sub-agent shall only have obligations to the applicable Agent and not to any Obligor, Lender or any other Person, and no Obligor, Lender or any other Person shall have any rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub-agent, and (iv) the applicable Agent shall not be responsible for the negligence or misconduct of any of its sub-agents except to the extent that a court of competent jurisdiction determines in a final, non-appealable judgment that such selecting Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

9.2 Reliance

Each of Administrative Agent, First Lien Collateral Agent, Coordinating Lead Arranger, and Joint Lead Arranger, shall be entitled to rely upon any certificate, notice or other document (including any cable, telegram, facsimile, electronic mail or telex) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by it. First Lien Collateral Agent, Administrative Agent, Coordinating Lead Arrangers, and Joint Lead Arrangers shall in all cases be fully protected in acting, or refraining from acting, in accordance with written instructions signed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided herein or under the other Credit Documents) or otherwise, and, except as otherwise specifically provided herein, such instructions and any action or inaction pursuant thereto shall be binding on all the Lenders. As to any other matters not expressly provided for by this Agreement, neither First Lien Collateral Agent nor Administrative Agent shall be required to take any action or exercise any discretion, but shall be required to act or to refrain from acting upon instructions of the Required Lenders or, where expressly provided, all Lenders (except that neither First Lien Collateral Agent nor Administrative Agent shall be required to take any action which exposes First Lien Collateral Agent or Administrative Agent (as the case may be) to personal liability or which is contrary to this Agreement, any other Credit Document or any Legal Requirement). Each of First Lien Collateral Agent and Administrative Agent shall in all cases (including when any action by First Lien Collateral Agent or Administrative Agent (as the case may be) alone is authorized hereunder, if First Lien Collateral Agent or Administrative Agent (as the case may be) elects in its sole discretion to obtain instructions from the Required Lenders) be fully protected in acting, or in refraining from acting, hereunder or under any other Credit Document in accordance with the instructions of the Required Lenders (or, where so expressly stated, all Lenders), and such instructions of the Required Lenders (or all Lenders, where applicable) and any action taken or failure to act pursuant thereto shall be binding on all of the Lender Parties.

9.3 Non-Reliance

Each Lender represents that it has, independently and without reliance on the Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent, Administrative Agent, or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of the financial condition and affairs of the Obligors and its own decision to enter into this Agreement and agrees that it shall, independently and without reliance upon the Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent, Administrative Agent, or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own appraisals and decisions in taking or not taking action under this Agreement. Each of Administrative Agent, Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent and any Lender shall not be required to keep informed as to the performance or observance by any Obligor or its Affiliates under this Agreement or any other document referred to or provided for herein or to make inquiry of, or to inspect the properties or books of any Obligor or its Affiliates.

9.4 Defaults; Material Adverse Effect

None of the Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent and Administrative Agent shall be deemed to have knowledge or notice of the occurrence of any Default, Event of Default or Material Adverse Effect, unless such Person has received a notice from a Lender or Borrower, referring to this Agreement, describing such Default, Event of Default or Material Adverse Effect and indicating that such notice is a notice of the occurrence of such Default, Event of Default or Material Adverse Effect (as the case may be). If Administrative Agent receives such a notice of the occurrence of a Default, Event of Default or Material Adverse Effect, Administrative Agent shall give notice thereof to the Lenders. Each of First Lien Collateral Agent and Administrative Agent shall take such action with respect to such Default, Event of Default or Material Adverse Effect as is provided in Article 3, Article 7 or the terms of the Credit Documents, including but not limited to the Intercreditor Agreement, or if not provided for in Article 3, Article 7 or such Credit Documents, as the Administrative Agent or First Lien Collateral Agent shall be reasonably directed by the Required First Lien Secured Parties; provided, that unless and until Administrative Agent or First Lien Collateral Agent shall have received such directions, each of Administrative Agent and First Lien Collateral Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default, Event of Default or Material Adverse Effect as it shall deem advisable in the best interest of the First Lien Secured Parties.

9.5 Indemnification

Without limiting the First Lien Obligations of Borrower hereunder, each Lender severally agrees to indemnify the Coordinating Lead Arrangers, Joint Lead Arrangers, each Agent and their respective officers, directors, shareholders, controlling Persons, employees, agents and servants, ratably in accordance with their Proportionate Shares for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against such Agent, the Coordinating Lead Arrangers, Joint Lead Arrangers, or such Person in any way relating to or arising out of this Agreement or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or the enforcement of any of the terms hereof or thereof or of any such other documents, or any action taken or omitted by it or any of them under this Agreement or any other Credit Document, to the extent the same shall not have been reimbursed by Borrower; provided, that no Lender shall be liable to an Agent the Syndication Agent, Bookrunners, Coordinating Lead Arrangers, or Joint Lead Arrangers for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements found in a final non-appealable judgment by a court of competent jurisdiction to have resulted primarily from the gross negligence or willful misconduct of such Agent, such Coordinating Lead Arrangers, Joint Lead Arrangers or any of their Related Parties. The obligations of the Lenders under this Section 9.5 shall survive payment of all First Lien Obligations and the resignation or replacement of any Agent. An Agent or any such Person shall be fully justified in refusing to take or to continue to take any action hereunder or under any other Credit Document unless it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Without limitation of the foregoing, each Lender agrees to reimburse each Agent, the Coordinating Lead Arrangers, Joint Lead Arrangers, or any such Person promptly upon demand for its Proportionate Share of any out-of-pocket expenses (including reasonable counsel fees and compensation of agents and employees paid for services rendered on behalf of the Lenders, but limited in the case of legal expenses, to the actual and reasonable and documented expenses of one counsel for the Agents, and, if necessary, one firm of local counsel in each appropriate jurisdiction where any action to realize upon any part of the Collateral is necessary, in each case for the Agents (and, in the case of an actual or perceived conflict of interest where the Agents affected by such conflict informs the Borrower of such conflict, of another firm of counsel for such affected Agent) incurred by such Agent, Coordinating Lead Arrangers, Joint Lead Arrangers, or any such Person in connection with the preparation, execution, administration or enforcement of, or legal advice in respect of rights or responsibilities under, the Credit Documents, to the extent that such Agent, Coordinating Lead Arrangers, Joint Lead Arrangers, or any such Person is not reimbursed for such expenses by Borrower).

9.6 Successor Agent

Any Agent may resign at any time by notifying the Lenders and Borrower, in accordance with this Section 9.6 or the provisions of the Intercreditor Agreement, as applicable. Upon any such resignation of either Administrative Agent or First Lien Collateral Agent, the Required Lenders shall have the right, with the consent of Borrower (such consent not to be unreasonably withheld or delayed) to appoint a successor Administrative Agent or First Lien Collateral Agent (as the case may be). Subject to the provisions of the Intercreditor Agreement, if no successor Administrative Agent or First Lien Collateral Agent (as the case may be) shall have been so appointed by the Required Lenders and shall have accepted such appointment, within fifteen days after the retiring Administrative Agent's or First Lien Collateral Agent's (as the case may be) giving of notice of resignation or the Lenders' removal of the retiring Administrative Agent or First Lien Collateral Agent (as the case may be), the retiring Administrative Agent and First Lien Collateral Agent (as the case may be) may, on behalf of the Lender Parties, with the consent of Borrower (such consent not to be unreasonably withheld or delayed), appoint a successor Administrative Agent or First Lien Collateral Agent (as the case may be) hereunder, which shall be a Lender, if any Lender shall be willing to serve, and otherwise shall be a commercial bank having a combined capital and surplus of at least $500,000,000 or an Affiliate of any such bank. Upon the acceptance of any appointment as Administrative Agent or First Lien Collateral Agent (as the case may be) under the Credit Documents by a successor Administrative Agent or First Lien Collateral Agent (as the case may be), such successor Administrative Agent or First Lien Collateral Agent (as the case may be) shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent or First Lien Collateral Agent (as the case may be), and the retiring Administrative Agent or First Lien Collateral Agent (as the case may be) shall be discharged from its duties and obligations as Administrative Agent or First Lien Collateral Agent (as the case may be) only under the Credit Documents. After any retiring Administrative Agent's or First Lien Collateral Agent's resignation hereunder as Administrative Agent or First Lien Collateral Agent (as the case may be), the provisions of this Article 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent or First Lien Collateral Agent (as the case may be) under the Credit Documents. In addition to the foregoing, if a Lender becomes, and during the period it remains, a Defaulting Lender, an Issuing Bank may, upon prior written notice to Borrower and Administrative Agent, resign as an Issuing Bank effective at the close of business New York time on a date specified in such notice (which date may not be less than twenty Banking Days after the date of such notice); provided, that such resignation by the applicable Issuing Bank shall have no effect on the validity or enforceability of any Letter of Credit then outstanding or on the obligations of Borrower or any Lender under this Agreement with respect to any such outstanding Letter of Credit or otherwise to such Issuing Bank. Anything herein to the contrary notwithstanding, if at any time the Required Lenders determine that the Person serving as Administrative Agent is a Defaulting Lender, the Required Lenders (determined after giving effect to Section 9.9) may by notice to Borrower and such Person remove such Person as Administrative Agent and appoint a replacement Administrative Agent hereunder. Such removal shall, to the fullest extent permitted by applicable law, be effective on the earlier of (a) the date a replacement Administrative Agent is appointed, and (b) the date which is five Banking Days after the giving of such notice by the Required Lenders (regardless of whether a replacement Administrative Agent has been appointed).

9.7 Authorization

Each of the Lenders and each assignee of any such Lender hereby irrevocably authorizes each of Administrative Agent, First Lien Collateral Agent, the Coordinating Lead Arrangers, Joint Lead Arrangers, and Issuing Banks to take such actions on behalf of such Lender or assignee and to exercise such powers as are specifically delegated to such Person in such capacity by the terms and provisions hereof and of the other Credit Documents, together with such actions and powers as are reasonably incidental thereto, and each Lender and each assignee or any such Lender hereby agrees to be bound by any such actions. Without limiting the generality of the foregoing, Administrative Agent is hereby expressly authorized by the Lenders and Issuing Banks, without hereby limiting any implied authority, (a) to receive on behalf of the Lenders and the Issuing Banks all payments of principal of and interest on the Loans, all payments in respect of Drawing Payments and all other amounts due to the Lenders and the Issuing Banks hereunder, and promptly to distribute to each Lender or Issuing Bank its proper share of each payment so received (and any such payments not so distributed by Administrative Agent within one Banking Day of receipt thereof shall bear interest (at Administrative Agent's expense) at a rate equal to the greater of (i) the Federal Funds Rate, and (ii) a rate reasonably determined by Administrative Agent in accordance with banking industry rules on interbank compensation); (b) to give notice on behalf of each of the Lenders of any Event of Default specified in this Agreement of which Administrative Agent has actual knowledge acquired in connection with the performance of its duties as Administrative Agent hereunder; (c) to distribute to each Lender copies of all notices, financial statements and other materials delivered by Borrower pursuant to this Agreement as received by Administrative Agent; and (d) to enter into (and each of the Lenders, Issuing Banks, Coordinating Lead Arrangers, and Joint Lead Arrangers hereby agree to be bound by the terms of and direct the Administrative Agent to enter into) a use of work product agreement in the form of Exhibit J on behalf of each Lender, Issuing Banks, Coordinating Lead Arrangers, and Joint Lead Arrangers. Each of Administrative Agent and First Lien Collateral Agent is further authorized by the Lender Parties to release Liens on property that the Obligors are permitted to sell or transfer pursuant to the terms of this Agreement or the other Credit Documents and to enter into agreements supplemental hereto for the purpose of curing any formal defect, inconsistency, omission or ambiguity in this Agreement or any Credit Document to which it is a party.

9.8 Other Roles

With respect to its Commitment, the Loans made by it and any Note issued to it, each of the Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent, Administrative Agent and Issuing Banks in its individual capacity shall have the same rights and powers under the Credit Documents as any other Lender and may exercise the same as though it were not a Coordinating Lead Arranger, Joint Lead Arranger, First Lien Collateral Agent, Administrative Agent or Issuing Bank. The term "Lender" or "Lenders" shall, unless otherwise expressly indicated, include each of the Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent, Administrative Agent and Issuing Banks in its individual capacity. Each of the Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent, Administrative Agent, Issuing Banks and their respective Affiliates may accept deposits from, lend money to, and generally engage in any kind of business with Borrower or any other Person, without any duty to account therefor to the Lenders. For the avoidance of doubt, MUFG Union Bank, N.A. may act as both First Lien Collateral Agent and as Depositary Agent, notwithstanding any potential or actual conflict of interest presented by the foregoing. Each of the Lenders hereby waives any claim against each of the Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent, Administrative Agent, Issuing Banks, Borrower and any of their respective Affiliates based upon any conflict of interest that such Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent, Administrative Agent, Issuing Bank or any of their respective Affiliates may have with regard to acting as an agent, arranger or Issuing Bank hereunder and acting in such other roles.

9.9 Amendments; Waivers

(a) Unanimous Consent. Subject to the provisions of this Section 9.9, unless otherwise specified in this Agreement or another Credit Document, the Required Lenders (or Administrative Agent or First Lien Collateral Agent upon written direction or consent of the Required Lenders) and the Obligors may enter into agreements, waivers or supplements hereto for the purpose of adding, modifying or waiving any provisions to the Credit Documents or changing in any manner the rights of the Lenders or the Obligors hereunder or thereunder or waiving any Default or Event of Default; provided, that notwithstanding anything to the contrary set forth herein, any amendment modification, termination or consent to, of or under any First Lien Collateral Document permitted pursuant to this Section 9.9 shall be subject to the applicable terms of the Intercreditor Agreement and no such supplemental agreement shall, without the consent of all of the Lenders affected thereby or, with respect to clauses (i) and (iii), all of the Lenders affected thereby and all of the Hedge Banks affected thereby:

(i) increase the amount of the Commitment of any Lender hereunder;

(ii) amend any provision of this Section 9.9;

(iii) release (A) all or substantially all of the Collateral (other than (1) pursuant to Section 5.9 (*Limitation on Asset Dispositions*) of the First Lien Common Terms Agreement, (2) in respect of any Casualty Event or Event of Eminent Domain, or (3) as otherwise expressly permitted hereby or under any other Credit Document) from the Lien of any of the First Lien Collateral Documents or (B) release all or substantially all of the guaranties of the Guarantors pursuant to the Credit Documents (except as expressly permitted hereby or under any other Credit Document);

(iv) extend the Maturity Dates or reduce the principal amount of any outstanding Loans or Notes or reduce the rate or change the time of payment of interest due on any Loan; provided, that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" contained in Section 2.4(c) or to waive any obligation of Borrower to pay interest at the Default Rate;

(v) reduce the amount or extend the payment date for any amount due, whether principal or interest (but not prepayment);

(vi) add, modify or waive any provisions to the Credit Documents so as to subordinate the Loans to any other Indebtedness;

(vii) amend or modify the definition of "Required First Lien Secured Parties" (as defined in the Intercreditor Agreement); provided, that, additional extensions of credit pursuant hereto (including any Incremental Term Loans) shall be included in the definition of "Required First Lien Secured Parties" on substantially the same basis as the Loans and Commitments included on the Closing Date; or

(viii) modify the order of application of any prepayment of Term Loans or LC Loans from the application thereof set forth in the applicable provisions of Section 2.1(h) of this Agreement or Section 4.1 (*Applications of Proceeds*) of the Intercreditor Agreement; provided, that the Required Lenders may waive, in whole or in part, any prepayment so long as the application as between Loans, of any portion of such prepayment which is still required to be made is not altered.

(b) Affected Party Consent. Notwithstanding anything to the contrary herein, no agreement, waiver or supplement hereto shall add, modify or waive any provisions to the Credit Documents, or change in any manner the rights of the Lenders, Hedge Banks or the Obligors hereunder or thereunder, so as to:

(i) amend or modify any provision set forth in Sections 2.1(h)(i), 2.1(h)(ii), 2.1(h)(iii), 2.4(d)(i), 2.4(e), 2.5(a) or 2.5(b) in a manner that would alter the pro rata sharing of payments with respect to the applicable Loan facility without the prior written consent of each Lender adversely affected thereby;

(ii) change the order of priority of payments set forth in Section 4.1 (*Applications of Proceeds*) of the Intercreditor Agreement or Section 3.1(b) (*Revenue Account Waterfall*) of the Depositary Agreement, without the prior written consent of each Lender adversely affected thereby;

(iii) amend, modify or otherwise affect the rights or duties of Administrative Agent, First Lien Collateral Agent, Depositary Agent or an Issuing Bank without the prior written consent of Administrative Agent, Depositary Agent, First Lien Collateral Agent or such Issuing Bank, as applicable, acting as such at the effective date of such agreement;

(iv) amend the definition of "Lenders" or reduce the percentage specified in the definition "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the prior written consent of each Lender adversely affected thereby;

(v) change the relative priority or the extent of the security interest granted in favor of any Lender or Hedge Bank as compared to the priority or the extent of the security interest granted in favor of any other Lender or Hedge Bank, without the prior written consent of each Lender or Hedge Bank adversely affected thereby; or

(vi) otherwise subordinate the First Lien Obligations of Borrower in respect of the Interest Rate Agreements to any other First Lien Obligations of Borrower hereunder, without the prior written consent of each Hedge Bank adversely affected thereby.

Notwithstanding the foregoing, without the consent of any Lender or Issuing Bank, the Administrative Agent may enter into amendments in connection with Incremental Term Loan Facilities as set forth in Section 2.1(b).

(c) Defaulting Lenders. Anything herein to the contrary notwithstanding, during such period as a Lender is a Defaulting Lender, to the fullest extent permitted by applicable law, such Lender shall not be entitled to vote in respect of amendments and waivers hereunder and the Commitment and the outstanding Loans or other extensions of credit of such Lender hereunder shall not be taken into account in determining whether the Required Lenders or all of the Lenders, as required, have approved any such amendment or waiver (and the definition of "Required Lenders" shall automatically be deemed modified accordingly for the duration of such period), except that (i) without the consent of such Defaulting Lender (A) the Commitment of any Defaulting Lender may not be increased or extended, (B) any amount due to any Defaulting Lender, whether principal or interest, may not be reduced, and (C) the payment date for any amount due to such Defaulting Lender, whether principal or interest, may not be extended, and (ii) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

(d) Minor Defects. Notwithstanding the other provisions of this Section 9.9, Borrower, Administrative Agent and First Lien Collateral Agent may (but shall have no obligation to) amend or supplement the Credit Documents without the consent of any other Lender Party for the purpose of (i) curing any ambiguity, defect or inconsistency, (ii) making any change that would provide any additional rights or benefits to the Lender Parties or that does not adversely affect the legal rights hereunder of any Lender Party, and (iii) making, completing or confirming any grant of Collateral permitted or required by this Agreement, any of the Credit Documents or the Intercreditor Agreement or any release of any Collateral that is otherwise permitted under the terms of this Agreement and the Credit Documents.

9.10 Withholding Tax

Each Lender Party shall severally indemnify the Administrative Agent, within ten days after demand therefor, for (a) any taxes (including any interest, additions to tax or penalties applicable thereto) attributable to such Lender Party for whatever reason (but, if such taxes are Indemnified Taxes and Other Taxes, only to the extent that Borrower has not already indemnified the Administrative Agent for such taxes and without limiting the obligation of Borrower to do so), and (b) any taxes (including any interest, additions to tax or penalties applicable thereto) attributable to such Lender Party's failure to comply with the provisions of Section 9.13 relating to the maintenance of a Participant Register (as defined in Section 9.13 below), in each case, that are payable or paid by the Administrative Agent in connection with any Credit Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender Party by the Administrative Agent shall be conclusive absent manifest error. Each Lender Party hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender Party under any Credit Document or otherwise payable by the Administrative Agent to the Lender Party from any other source against any amount due to the Administrative Agent under this Section 9.10. The obligations of the Lender Parties under this Section 9.10 shall survive the payment of all First Lien Obligations and the resignation or replacement of Administrative Agent.

If any Lender or Issuing Bank sells, assigns, grants participation in, or otherwise transfers its rights under this Agreement, the purchaser, assignee, Participant or transferee, as applicable, shall comply and be bound by the terms of Section 2.4(f) and this Section 9.10 as though it were such Lender or Issuing Bank.

9.11 General Provisions as to Payments

Administrative Agent shall promptly distribute to each Lender, subject to the terms of any separate agreement between Administrative Agent and such Lender, its pro rata share of each payment of principal and interest payable to the Lenders on the Loans and of fees hereunder received by Administrative Agent for the account of the Lenders and of any other amounts owing under the Loans. The payments made for the account of each Lender shall be made, and distributed to it, for the account of (a) its domestic Lending Office in the case of payments of principal of, and interest on, its Base Rate Loans, (b) its domestic or foreign Lending Office, as each Lender may designate in writing to Administrative Agent, in the case of LIBOR Loans, and (c) its domestic Lending Office, or such other Lending Office as it may designate for the purpose from time to time, in the case of payments of fees and other amounts payable hereunder.

9.12 Substitution of Lender

Should any Lender fail to make a Loan in violation of its obligations under this Agreement (a "**Non-Advancing Bank**"), Administrative Agent shall (a) in its sole discretion fund the Loan on behalf of the Non-Advancing Bank, or (b) cooperate and consult with Borrower or any other Lender to find another Person that shall be acceptable to Administrative Agent and that shall be willing to assume the Non-Advancing Bank's obligations under this Agreement (including the obligation to make the Loan which the Non-Advancing Bank failed to make but without assuming any liability for damages for failing to have made such Loan or any previously required Loan). Subject to the provisions of the next following sentence, such Person shall be substituted for the Non-Advancing Bank hereunder upon execution and delivery to Administrative Agent of an agreement acceptable to Administrative Agent by such Person assuming the Non-Advancing Bank's obligations (including its Commitments) under this Agreement, and all interest and fees which would otherwise have been payable to the Non-Advancing Bank shall thereafter be payable to such Person. Nothing in (and no action taken pursuant to) this Section 9.12 shall relieve the Non-Advancing Bank from any liability it might have to Borrower or to the other Lenders as a result of its failure to make any Loan.

9.13 Participation.

Any Lender may, without the consent of Borrower, Administrative Agent or any Issuing Bank, sell participations to one or more banks or other entities (a "**Participant**") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans and Drawing Payments owing to it); provided, that (a) no such sale of a participation shall alter such Lender's or Borrower's obligations hereunder, (b) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (c) Borrower and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement, and (d) any agreement or instrument (oral or written) pursuant to which any Lender may grant a participation in its rights with respect to its Commitment (or Loans made hereunder) shall provide that, with respect to such Commitment (or Loans made hereunder), subject to the following proviso, such Lender shall retain the sole right and responsibility to exercise the rights of such Lender, and enforce the obligations of Borrower relating to such Commitment (or Loans made hereunder), including the right to approve any amendment, modification or waiver of any provision of this Agreement or any other Credit Document and the right to take action to have the First Lien Obligations hereunder (or any portion thereof) declared due and payable pursuant to Article 7; provided, that (e) such agreement may provide that the participant may have rights to approve or disapprove decreases in Loans, interest rates or fees, lengthening of maturity of any Loans, extending the payment date for any amount due under Article 2 or releasing all or a material portion of the Collateral (other than (i) pursuant to Section 5.9 (*Limitation on Asset Dispositions*) of the First Lien Common Terms Agreement, (ii) in respect of any Casualty Event or Event of Eminent Domain, or (iii) as otherwise expressly permitted hereby or under any other Credit Document), and (w) no other agreement (oral or written) with respect to such Participant may exist between such Lender and such Participant. Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.6, 2.7, and 2.4(d) (subject to the requirements and limitations therein, including the requirements under Section 2.4(f) (it being understood that the documentation required under Section 2.4(f) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 9.14; provided, that such Participant (x) agrees to be subject to the provisions of Section 2.8 as if it were an assignee under this Section 9.13; and (y) shall not be entitled to receive any greater payment under Sections 2.6, 2.7 and 2.4(d), with respect to any participation, than its participating Lender would have been entitled to receive. No recipient of a participation in any Commitment or Loans of any Lender shall have any rights under this Agreement or shall be entitled to any reimbursement for Indemnified Taxes, Other Taxes, increased costs or reserve requirements under Sections 2.6 or 2.7 or any other indemnity or payment rights against Borrower (but shall be permitted to receive from the Lender granting such participation a proportionate amount which would have been payable to the Lender from whom such Person acquired its participation as provided in this Section 9.13). Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Credit Documents (the "**Participant Register**"); provided, that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Credit Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations and Section 1.163-5(b) of the United States Proposed Treasury Regulations (or any amended or successor version). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

9.14 Transfer of Commitment

(a) Notwithstanding anything else herein to the contrary, any Lender, after receiving Administrative Agent's prior written consent (such consent not to be unreasonably withheld) and (so long as no Event of Default has occurred and is continuing) after receiving Borrower's prior written consent (such consent not to be unreasonably withheld solely with respect to a sale, assignment, transfer, negotiation or disposal to a commercial bank, financial institution or an insurance company but such consent may be withheld in Borrower's sole discretion with respect to a sale, assignment, transfer, negotiation or disposal to any other Eligible Assignee), may from time to time, at its option, sell, assign, transfer, negotiate or otherwise dispose of a portion of one or more of its Commitments (including, for purposes of this Section 9.14, Loans made hereunder) (including the Lender's interest in this Agreement and the other Credit Documents) to one or more banks, financial institutions, or Eligible Assignees; provided, that (i) no Lender (including any assignee of any Lender) may assign any portion of its Commitment (including Loans) (A) in an amount less than $5,000,000 (unless to another Lender), or (B) in an amount which leaves the assigning Lender with a Commitment (including Loans) of less than $5,000,000 (in each case based on the original principal amount of the Commitment assigned) after giving effect to such assignment and all previous assignments (except that a Lender may be left with no Commitment or Loans if it assigns its entire Commitment); (ii) without the consent of the Borrower or any other Party, any Lender may assign all or any portion of its Commitments to another Lender, an Affiliate of a Lender; (iii) no consent of the Borrower shall be required in the case of primary syndication of the Loans and Commitments within sixty days after the Closing Date, to institutions that have been identified by the Syndication Agent and accepted by the Borrower (in its reasonable discretion) prior to the Closing Date and (iv) Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten Banking Days after having received notice thereof. An assignee shall not be entitled to receive any greater payment under any of Sections 2.4(d), 2.6 and 2.7.

(b) No such assignment shall be made to (i) Borrower or any of Borrower's Affiliates or Subsidiaries, or (ii) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute a Defaulting Lender or a Subsidiary thereof. In the event of any such assignment, (A) the assigning Lender's Proportionate Share shall be reduced and its obligations hereunder released by the amount of the Proportionate Share assigned to the new Lender, (B) the parties to such assignment shall execute and deliver an appropriate agreement evidencing such sale, assignment, transfer or other disposition, in form and substance reasonably satisfactory to Administrative Agent and Borrower, (C) the parties to the sale, assignment, transfer or other disposition, excluding Borrower, shall collectively pay to Administrative Agent an administrative fee of $3,500; provided, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment, (D) at the assigning Lender's option, Borrower shall execute and deliver, to such new Lender, Notes in the forms attached hereto as Exhibit B-1, as requested, in a principal amount equal to such new Lender's Commitment, but only if it shall also be executing and exchanging with the assigning Lender a replacement note for any Note in an amount equal to the Commitment retained by the assigning Lender, if any; provided, that Borrower shall have received for cancellation the existing Note held by such assigning Lender, and (E) Administrative Agent shall amend Schedule 2.2(a) to reflect the Proportionate Shares of the Lenders following such assignment. Thereafter, such new Lender shall be deemed to be a Lender and shall have all of the rights and duties of a Lender (except as otherwise provided in this Article 9), in accordance with its Proportionate Share, under each of the Credit Documents. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in Section 2.1(i).

(c) Disqualified Institution. Any assignments and participations to Disqualified Institutions are void ab initio unless such assignment or participation, as the case may be, has been approved by the Borrower, in which case such assignee or participant shall not be considered a Disqualified Institutions solely for such particular assignment or participation, as the case may be. In case of such assignments not approved by the Borrower, the assignee who is a Disqualified Institutions shall be deleted from the Register upon written notification from the Borrower. Except for notifying the Lenders with a list of Disqualified Institutions, Administrative Agent shall have no responsibility or liability to monitor or enforce such list of Disqualified Institutions.

9.15 Laws

Notwithstanding the foregoing provisions of this Article 9, no sale, assignment, transfer, negotiation or other disposition of the interests of any Lender hereunder or under the other Credit Documents shall be allowed if it would require registration under the federal Securities Act of 1933, as then amended, any other federal securities laws or regulations or the securities laws or regulations of any applicable jurisdiction. Borrower shall, from time to time at the request and expense of Administrative Agent, execute and deliver to Administrative Agent, or to such party or parties as Administrative Agent may designate, any and all further instruments as may in the opinion of Administrative Agent be reasonably necessary or advisable to give full force and effect to such sale, assignment, transfer, negotiation or disposition which would not require any such registration.

9.16 Assignability as Collateral

Notwithstanding any other provision contained in this Agreement or any other Credit Document to the contrary, any Lender may assign all or any portion of the Loans or Notes held by it to the Federal Reserve Bank, any other central banking authorities in accordance with applicable law and the United States Treasury as collateral security; provided, that any payment in respect of such assigned Loans or Notes made by Borrower to or for the account of the assigning or pledging Lender in accordance with the terms of this Agreement shall satisfy Borrower's obligations hereunder in respect of such assigned Loans or Notes to the extent of such payment. No such assignment shall release the assigning Lender from its obligations hereunder and in no event shall the Federal Reserve Bank, any other central banking authorities in accordance with applicable law or the United States Treasury be considered a "Lender" hereunder.

9.17 Notices to Lenders

Administrative Agent promptly shall deliver all material documents, instruments and notices that it receives hereunder and under the other Credit Documents to each Lender. Except as expressly provided in this Agreement or the other Credit Documents, Borrower shall not be required to deliver any documents, instruments or notices directly to the Lenders.

9.18 First Lien Collateral Agent

First Lien Collateral Agent shall: (a) forward promptly to Administrative Agent any notice delivered to First Lien Collateral Agent pursuant to any Consent; (b) have the right, but not the obligation, to (i) refuse any item for credit to any Depositary Account except as required by the terms of the Credit Documents, (ii) refuse to honor any request for transfer in relation to any Depositary Account that is not consistent with the Credit Documents, (iii) charge to any Depositary Account all applicable charges related to maintaining such Depositary Accounts, and (iv) pay fees, interest and other charges owing by the Obligors as provided herein and in the other Credit Documents; (c) except as otherwise provided herein and in the Depositary Agreement (including by the provision of standing instructions therein), take all actions and make all determinations with respect to the Collateral, the First Lien Collateral Documents (including as to the advisability of taking additional steps to perfect, or cause the perfection of, any security interest) and the other Credit Documents to which it is a party as directed in writing by Administrative Agent (acting in accordance with Section 9.7); and (d) have the right at any time to seek clarification and instructions concerning the administration of the Credit Documents from Administrative Agent, legal counsel selected by it in good faith with reasonable care or any court of competent jurisdiction and shall be fully protected in relying upon such instructions.

9.19 Right to Realize on Collateral

Notwithstanding anything contained in any of the Credit Documents to the contrary notwithstanding, the Obligors, the Administrative Agent, the First Lien Collateral Agent and each Lender hereby agree that: (a) no Lender or Agent shall have any right individually to realize upon any of the Collateral, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by the Administrative Agent, on behalf of Lenders, in accordance with the terms hereof, and all powers, rights and remedies under the First Lien Collateral Documents may be exercised solely by the First Lien Collateral Agent, on behalf of the First Lien Secured Parties and (b) in the event of a foreclosure by the First Lien Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition, the First Lien Collateral Agent or any Lender may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and the First Lien Collateral Agent, as agent for and representative of the First Lien Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless Required Lenders shall otherwise agree in writing), shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the First Lien Obligations as a credit on account of the purchase price for any Collateral payable by the First Lien Collateral Agent at such sale or other disposition.

9.20 Depositary Agent The Depositary Agent is an intended third party beneficiary of, and entitled to enforce on its respective behalf and for its own benefit and, if applicable, the benefit of the other First Lien Secured Parties, the provisions of this Agreement that purport to grant the Depositary Agent rights, privileges and benefits, entitlements, immunities, indemnities and/or benefits. Each Lender hereby (a) acknowledges that it has received and reviewed a copy of the Depositary Agreement and agrees to be bound by the terms thereof, and (b) authorizes and directs (i) the appointment of MUFG Union Bank, N.A. to act as the initial depositary agent under the Credit Documents, and (ii) the Depositary Agent to execute the Depositary Agreement and to take such actions as are contemplated by the terms of the Depositary Agreement. The Depositary Agent has, and shall have, no obligations under this Agreement.

10. INDEPENDENT CONSULTANTS

10.1 Removal and Fees

Administrative Agent, in its reasonable discretion, may remove from time to time, any one or more of the Independent Consultants (other than the Independent Engineer) and Administrative Agent may appoint replacements, which, so long as no Default or Event of Default shall have occurred and be continuing, shall be reasonably acceptable to Borrower. Notice of any replacement such Independent Consultant shall be given by Administrative Agent to Borrower, the Lenders and to the Independent Consultant being replaced. All reasonable fees and expenses of the Independent Consultants (whether the original ones or replacements) shall be paid by Borrower pursuant to agreements reasonably acceptable to Borrower; provided, that no such acceptance shall be required at any time an Event of Default shall have occurred and be continuing.

10.2 Certification of Dates

Administrative Agent will request that the Independent Consultants act diligently in the issuance of all letters required to be delivered by the Independent Consultants hereunder, if their issuance is appropriate. Borrower shall provide the Independent Consultants with reasonable notice of the expected occurrence of any dates or events requiring the issuance of such letters.

11. MISCELLANEOUS

11.1 Addresses

Any communications between the parties hereto or notices provided herein to be given may be given to the following addresses:
If to Administrative Agent:

MUFG Bank, Ltd., as Administrative Agent
1221 Avenue of the Americas, 6th Floor
New York, NY 10020
Attention: Lawrence Blat / Peter Chi
Telephone: (212) 405-6621 / (213) 236-4128
E-mail: lawrence.blat@mufgsecurities.com; agencydesk@us.sc.mufg.jp
With a copy to: PChi@us.mufg.jp

If to First Lien Collateral Agent:

MUFG Union Bank, N.A.,
350 California Street, 17th Floor
San Francisco, CA 94104
Attention: Corporate Trust
Email: SFCT@unionbank.com,
Cc: sonia.flores@unionbank.com

If to Borrower:

Geysers Power Company, LLC
717 Texas Avenue, Suite 11.043C
Houston, Texas 77002
Telephone: (832) 325-1581
Facsimile: (832) 325-1582
Attn: Chief Legal Officer

If to Holdings:

Geysers Intermediate Holdings LLC
717 Texas Avenue, Suite 11.059C
Houston, Texas 77002
Telephone: (832) 325-5039
Facsimile: (832) 325-5040
Attn: Chief Legal Officer

If to Geysers Company:

Geysers Company, LLC
717 Texas Avenue, Suite 11.059A
Houston, Texas 77002

Telephone: (832) 325-5045
Facsimile: (832) 325-5046
Attn: Chief Legal Officer

If to Calistoga:

Calistoga Holdings, LLC
717 Texas Avenue, Suite 11.059B
Houston, Texas 77002
Telephone: (832) 325-5031
Facsimile: (832) 325-5032
Attn: Chief Legal Officer

If to Wild Horse:

Wild Horse Geothermal, LLC
717 Texas Avenue, Suite 11.050B
Houston, Texas 77002
Telephone: (832) 325-5063
Facsimile: (832) 325-5064
Attn: Chief Legal Officer

All such notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service (including Federal Express, UPS, DHL and other similar overnight delivery services), (c) if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (d) if sent by facsimile with receipt confirmed by telephone, or (e) by Electronic Transmission (as defined below). Notice so given shall be effective upon receipt by the addressee, except that communication or notice so transmitted by facsimile or other direct written electronic means shall be deemed to have been validly and effectively given on the day (if a Banking Day and, if not, on the next following Banking Day) on which it is transmitted if transmitted before 4:00 p.m., recipient's time, and if transmitted after that time, on the next following Banking Day; provided, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving of thirty days' notice to the other parties in the manner set forth above.

Borrower may deliver to Administrative Agent, First Lien Collateral Agent or Depositary Agent, as the case may be, any Borrowing certificate, collateral report or other material that Borrower is required to deliver to Administrative Agent, First Lien Collateral Agent or Depositary Agent (as the case may be) hereunder or under the other Credit Documents, by e-mail or other electronic transmission.

11.2 Right to Set-Off

If an Event of Default shall have occurred and be continuing, subject to the Intercreditor Agreement (which may limit the rights specified in this Section 11.2), each Lender Party is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by such Lender Party to or for the credit or the account of Borrower, against any and all obligations of Borrower, now or hereafter existing under this Agreement or any other Credit Document held by such Lender Party, irrespective of whether or not such Lender Party shall have made any demand under this Agreement or such other Credit Document and although the obligations may be unmatured; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (a) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.4(g) and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Banks, and the Lenders, and (b) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the First Lien Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender Party under this Section 11.2 are in addition to other rights and remedies (including other rights of set-off) that such Lender Party may have.

11.3 Delay and Waiver

No delay or omission to exercise any right, power or remedy accruing to the Lender Parties upon the occurrence of any Default, Event of Default or Material Adverse Effect or any breach or Default of Borrower or any other Obligor or unsatisfied condition precedent under this Agreement or any other Credit Document shall impair any such right, power or remedy of the Lender Parties, nor shall it be construed to be a waiver of any such breach or Default or unsatisfied condition precedent, or an acquiescence therein, or of or in any similar breach or Default or unsatisfied condition precedent thereafter occurring, nor shall any waiver of any single Default, Event of Default, Material Adverse Effect or other breach or Default or unsatisfied condition precedent be deemed a waiver of any other Default, Event of Default, Material Adverse Effect or other breach or Default or unsatisfied condition precedent theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of Administrative Agent, First Lien Collateral Agent or any other Lender Party of any Default, Event of Default, Material Adverse Effect or other breach or default or unsatisfied condition precedent under this Agreement or any other Credit Document, or any waiver on the part of Administrative Agent, First Lien Collateral Agent or any other Lender Party of any provision or condition of this Agreement or any other Credit Document, must be in writing and shall be effective only to the extent in such writing specifically set forth. All remedies, either under this Agreement or any other Credit Document or by law or otherwise afforded to Administrative Agent, First Lien Collateral Agent, Issuing Banks or any other Lender Party, shall be cumulative and not alternative.

11.4 Costs, Expenses and Attorneys' Fees; Syndication.

Borrower shall pay to each of the Agents, Coordinating Lead Arrangers, and Joint Lead Arrangers all of their respective actual, reasonable and documented out-of-pocket costs and expenses (net of any costs and expenses paid prior to the Closing Date), in connection with the preparation, negotiation, closing and administering of this Agreement and the documents contemplated hereby but limited, in the case of legal expenses, to the actual, reasonable and documented expenses of Latham & Watkins LLP (or in the case of an actual or perceived conflict of interest, such other counsel reasonably acceptable to the Required Lenders and, prior to the delivery of a notice of a Trigger Event that has not been withdrawn, reasonably acceptable to the Borrower) for all Agents, Coordinating Lead Arrangers, and Joint Lead Arrangers taken as a whole and, if necessary, one firm in the State of California for all Agents, Coordinating Lead Arrangers, and Joint Lead Arrangers taken as a whole (and, in the case of an actual or perceived conflict of interest where the Agent, Coordinating Lead Arranger, or Joint Lead Arranger affected by such conflict informs the Borrower of such conflict, of another firm of counsel for such affected Agent, Coordinating Lead Arranger, or Joint Lead Arranger); provided, that Borrower shall not be required to pay the fees of the other attorneys of the Agents, Coordinating Lead Arrangers, and Joint Lead Arrangers). Borrower shall reimburse the Agents for all costs and expenses, including actual, reasonable and documented attorneys' fees and actual, reasonable and documented expert, consultant and advisor fees and expenses, expended or incurred by the Agents for their actual, reasonable and documented out-of-pocket expenses, but limited, in the case of legal expenses, to the actual, reasonable and documented expenses of Latham & Watkins LLP (or in the case of an actual or perceived conflict of interest, such other counsel reasonably acceptable to the Required Lenders and, prior to the delivery of a notice of a Trigger Event that has not been withdrawn, reasonably acceptable to the Borrower) for all Agents taken as a whole and, if necessary, one firm of local counsel in the State of California, in each case for all Agents taken as a whole (and, in the case of an actual or perceived conflict of interest where the Agent affected by such conflict informs the Borrower of such conflict, of another firm of counsel for such affected Agent), in enforcing this Agreement or the other Credit Documents in connection with a Default or Event of Default, in actions for declaratory relief in any way related to this Agreement, protecting its rights and interests under any First Lien Collateral Document, in collecting any sum which becomes due on the Notes or under the Credit Documents, in any restructuring of the Loans or otherwise relating to the occurrence of any Default or Event of Default.

11.5 Entire Agreement

This Agreement and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. Except as otherwise expressly provided, in the event of any conflict between the terms, conditions and provisions of this Agreement and any such agreement, document or instrument, the terms, conditions and provisions of this Agreement shall prevail.

11.6 Governing Law

THIS AGREEMENT AND ANY OTHER CREDIT DOCUMENT (UNLESS OTHERWISE EXPRESSLY PROVIDED FOR THEREIN), SHALL BE GOVERNED BY, AND CONSTRUED UNDER, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CONFLICTS OF LAWS (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

11.7 Severability

In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

11.8 Headings

Article, Section and Paragraph headings have been inserted in this Agreement as a matter of convenience for reference only and it is agreed that such headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

11.9 Accounting Terms

All accounting terms not specifically defined herein shall be construed in accordance with GAAP and practices consistent with those applied in the preparation of the financial statements submitted by Borrower to Administrative Agent, and all financial data submitted pursuant to this Agreement shall be prepared in accordance with such principles and practices.

11.10 No Partnership, Etc.

Neither the Administrative Agent nor any Lender has any fiduciary relationship with or duty to any Obligor arising out of or in connection with this Agreement or any of the other Credit Documents, and the relationship between Administrative Agent and Lenders, on one hand, and Borrower, on the other hand, in connection herewith or therewith shall be solely that of creditor and debtor. Nothing contained in this Agreement, the Notes or in any of the other Credit Documents shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership by or between the Lenders and Borrower or any other Person. None of the Coordinating Lead Arrangers, Joint Lead Arrangers, Administrative Agent, First Lien Collateral Agent or the Lenders shall be in any way responsible or liable for the debts, losses, obligations or duties of Borrower or any other Person with respect to the Projects or otherwise. All obligations to pay real property or other taxes, assessments, insurance premiums, and all other fees and charges arising from the ownership, operation or occupancy of the Projects (if any) and to perform all obligations and other agreements and contracts relating to the Projects shall be the sole responsibility of the Obligors.

11.11 Mortgage/Collateral Documents

Certain guaranties of the Loans shall be secured in part by the Mortgages encumbering certain properties in the State of California solely to the extent provided therein. Reference is hereby made to the Mortgages and the other First Lien Collateral Documents for the provisions, among others, relating to the nature and extent of the security provided thereunder, the rights, duties and obligations of the Obligors and the rights of Administrative Agent, First Lien Collateral Agent and the other Lender Parties with respect to such security.

11.12 Limitation on Liability

No claim shall be made by any Obligor against the Coordinating Lead Arrangers, Joint Lead Arrangers, Green Loan Coordinators, Administrative Agent, First Lien Collateral Agent, Depositary Agent, the Lenders, Issuing Banks or any of their respective Affiliates, directors, employees, attorneys or agents for any loss of profits, business or anticipated savings, special or punitive damages or any indirect or consequential loss whatsoever in respect of any breach or wrongful conduct (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or the other Credit Documents or any act or omission or event occurring in connection therewith, and each Obligor hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor, in each case, except to the extent such claim is based on gross negligence or willful misconduct of such Person. No claim shall be made by any Syndication Agent, Bookrunners, Green Loan Coordinator, Coordinating Lead Arranger, Joint Lead Arranger, Administrative Agent, First Lien Collateral Agent, Depositary Agent, Lender or Issuing Bank against any Obligor or any of their respective Affiliates, directors, employees, attorneys or agents for any loss of profits, business or anticipated savings, special or punitive damages or any indirect or consequential loss whatsoever in respect of any breach or wrongful conduct (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or the other Credit Documents or any act or omission or event occurring in connection therewith, and each of the Syndication Agent, Bookrunner, Green Loan Coordinator, Coordinating Lead Arranger, Joint Lead Arranger, Administrative Agent, First Lien Collateral Agent, Depositary Agent, the Lenders and Issuing Banks hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor, in each case, except to the extent such claim is based on gross negligence or willful misconduct of such Person.

11.13 Indemnity

Borrower agrees to indemnify the Coordinating Lead Arrangers, Joint Lead Arrangers, and the Agents, the Lenders, Issuing Banks and each of their respective directors, trustees, officers, employees, Affiliates, and agents (each such Person being called an "**Indemnitee**") against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (other than Taxes), including reasonable and documented counsel fees, charges and disbursements, but limited, in the case of legal expenses, to the actual, reasonable and documented expenses of one counsel for the Indemnitees taken as a whole, and, if necessary, one firm of local counsel in each material jurisdiction, in each case for the Indemnitees taken as a whole (and in the case of an actual or perceived conflict of interest where the Indemnitee affected by such conflict informs the Borrower of such conflict, of another firm of counsel for such affected Indemnitee), incurred by or asserted against any Indemnitee (collectively, "**Subject Claims**") arising out of, in any way connected with, or as a result of (a) the execution or delivery of this Agreement or any other Credit Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto and thereto of their respective obligations hereunder or thereunder or the consummation of the other transactions contemplated hereby, (b) the use of the proceeds of the Loans or the use of any Letter of Credit, or (c) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto (other than claims solely as between the Indemnitees); provided, that such indemnity shall not, as to any Indemnitee, be available to the extent that (i) the applicable Subject Claim results from the gross negligence or willful misconduct of such Indemnitee, as determined by the final judgment of a court of competent jurisdiction, or (ii) such Subject Claims arise out of any dispute solely among Indemnitees (other than claims against any Indemnitee in its capacity or in fulfilling its role as Agent under this Agreement and the other Credit Documents, and other than any claims involving any act or omission on the part of the Borrower or any Guarantor). Subject to and without limiting the generality of the foregoing sentence, Borrower agrees to indemnify each Indemnitee against, and hold each Indemnitee harmless from, any and all Subject Claims arising out of, in any way connected with, or as a result of (x) any claim or enforcement action under Environmental Laws alleging a violation of Environmental Laws issued to or against Obligors or the Projects, or (y) any Release or threatened Release of Hazardous Substances at, under, on or from the Projects, or, to the extent related in any way to any Project, any property to which any Obligor has sent Hazardous Substances for treatment, storage or disposal; provided, that such indemnity shall not, as to any Indemnitee, be available to the extent that the applicable Subject Claim results from (i) the gross negligence or willful misconduct of such Indemnitee or any of its Affiliates employees, or agents, as determined by the final judgment of a court of competent jurisdiction or (ii) any act or omission by any Indemnitee or any of its Affiliates, employees, or agents, occurring on or after the date of foreclosure on any Collateral. The provisions of this Section 11.13 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the First Lien Obligations under this Agreement or any other Credit Document, the invalidity or unenforceability of any term or provision of this Agreement or any other Credit Document, or any investigation made by or on behalf of any Indemnitee. All amounts due under this Section 11.13 shall be payable within thirty days at the written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested. This Section 11.13 shall not apply to Taxes. Each of the Indemnitees, on behalf of itself and its respective directors, trustees, officers, employees, Affiliates, and agents, agrees to provide Borrower with written notice of a proposed compromise or settlement of any Subject Claim specifying in detail the nature and amount of such proposed settlement or compromise. Each such Indemnitee shall consult with Borrower before compromising or settling such Subject Claim for at least thirty days after Borrower receives such notice of intended compromise or settlement and shall take into consideration any views or issues communicated by Borrower in connection with such compromise or settlement. Such Indemnitee shall act in good faith and reasonably, taking into account the interests of Borrower, in agreeing to any compromise or settlement.

11.14 Waiver of Jury Trial

ADMINISTRATIVE AGENT, FIRST LIEN COLLATERAL AGENT, THE LENDERS, THE HEDGE BANKS, THE ISSUING BANKS AND THE OBLIGORS HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ADMINISTRATIVE AGENT, FIRST LIEN COLLATERAL AGENT, THE LENDERS, THE HEDGE BANKS, THE ISSUING BANKS, OR THE OBLIGORS. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE OBLIGORS, ADMINISTRATIVE AGENT, FIRST LIEN COLLATERAL AGENT, THE LENDERS, THE HEDGE BANKS AND THE ISSUING BANKS TO ENTER INTO THIS AGREEMENT.

11.15 Consent to Jurisdiction

Administrative Agent, First Lien Collateral Agent, the Lenders, the Hedge Banks, the Issuing Banks and the Obligors agree that any legal action or proceeding by or against any Obligor or with respect to or arising out of this Agreement, the Notes, or any other Credit Document may be brought in or removed to the courts of the State of New York, in and for the County of New York, or of the United States of America for the Southern District of New York, as Administrative Agent may elect. By execution and delivery of this Agreement, the Lenders, the Hedge Banks, the Issuing Banks, Administrative Agent, First Lien Collateral Agent and the Obligors accept, for themselves and in respect of their property, generally and unconditionally, the jurisdiction of the aforesaid courts. Administrative Agent, First Lien Collateral Agent, the Lenders, the Hedge Banks, the Issuing Banks and the Obligors irrevocably consent to the service of process out of any of the aforementioned courts in any manner permitted by law. Nothing herein shall affect the right of Administrative Agent to bring legal action or proceedings in any other competent jurisdiction, including judicial or non-judicial foreclosure of the Mortgages. Administrative Agent, First Lien Collateral Agent, the Lenders, the Hedge Banks, the Issuing Banks and the Obligors further agree that the aforesaid courts of the State of New York and of the United States of America shall have exclusive jurisdiction with respect to any claim or counterclaim of any Obligor based upon the assertion that the rate of interest charged by the Lenders on or under this Agreement, the Loans or the other Credit Documents is usurious. Administrative Agent, First Lien Collateral Agent, the Lenders, the Hedge Banks, the Issuing Banks and the Obligors hereby waive any right to stay or dismiss any action or proceeding under or in connection with the Projects, this Agreement or any other Credit Document brought before the foregoing courts on the basis of *forum non-conveniens*.

11.16 Knowledge and Attribution

References in this Agreement and the other Credit Documents to the "knowledge", "best knowledge" or facts and circumstances "known to" the Obligors, and all like references, mean facts or circumstances of which a Responsible Officer of the applicable Obligor has actual knowledge.

11.17 Successors and Assigns

The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Borrower may not assign or otherwise transfer any of its rights under this Agreement, and the Lenders may not assign or otherwise transfer any of their rights under this Agreement except as provided in Article 9.

11.18 Counterparts

This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in one or more duplicate counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Delivery of an executed counterpart to this Agreement by facsimile transmission or electric transmission in ".pdf" format shall be as effective as delivery of a manually signed original.

11.19 Usury

Nothing contained in this Agreement or the Notes shall be deemed to require the payment of interest or other charges by Borrower or any other Person in excess of the amount which the holders of the Notes may lawfully charge under applicable usury laws. In the event that the Lenders shall collect moneys which are deemed to constitute interest which would increase the effective Interest Rate to a rate in excess of that permitted to be charged by applicable Legal Requirements, all such sums deemed to constitute interest in excess of the legal rate shall, upon such determination, at the option of the Lenders, be returned to Borrower or credited against the principal balance then outstanding.

11.20 Survival

All representations, warranties, covenants and agreements made herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement and the other Credit Documents shall be considered to have been relied upon by the parties hereto and shall survive the execution and delivery of this Agreement, the other Credit Documents and the making of the Loans. Notwithstanding anything in this Agreement or implied by law to the contrary, the agreements of the Obligors set forth in Sections 2.1(f), 2.4(d), 2.6(c), 2.6(d), 11.4, 11.13 and 11.22 and the agreements of the Lenders set forth in Sections 9.1, 9.5, 9.8 and 11.22 shall survive the payment and performance of the Loans and the other First Lien Obligations under this Agreement and the other Credit Documents and the reimbursement of any amounts drawn hereunder, and the termination of this Agreement.

11.21 Patriot Act Notice

Each Lender, First Lien Collateral Agent (for itself and not on behalf of any other Person, including any Lender), Administrative Agent (for itself and not on behalf of any other Person, including any Lender) and Issuing Bank (for itself and not on behalf of any other Person, including any Lender) hereby notifies the Obligors and Sponsor that, pursuant to the requirements of the USA Patriot Act (2001 H.R. 3162 (signed into law October 26, 2001)) (the "**Patriot Act**"), it is required to obtain, verify and record information that identifies the Obligors and Sponsor which information includes the name, address, the tax identification number and other identifying information that shall allow such Lender, First Lien Collateral Agent, Administrative Agent or Issuing Bank, as applicable, to identify the Obligors and Sponsor in accordance with the Patriot Act.

11.22 Treatment of Certain Information; Confidentiality

Each Lender, each Hedge Bank and each Agent agrees (on behalf of itself and each of its Affiliates, directors, officers, members, employees, agents and third party service providers and representatives) to keep confidential any nonpublic information supplied to it by Borrower or any other Obligor; provided, that nothing herein shall limit the disclosure of any such information: (a) to the extent such information is required to be disclosed by any Governmental Rule or judicial or administrative process, or to any Governmental Authority in connection with a tax audit or dispute or otherwise; (b) to counsel for any of the Lenders or any Agent; (c) to banking, securities exchange or other regulatory or supervisory authorities, auditors or accountants having proper jurisdiction and authority to require such disclosure; (d) to any Agent or any other Lender; (e) to any entity in connection with a securitization or proposed securitization of, among other things, all or a part of any amounts payable to or for the benefit of any Lender or its Affiliates under the Credit Documents so long as such entity agrees to keep such information confidential in a manner consistent with this Section 11.22; (f) in connection with the exercise of any remedies hereunder or under any of the other Credit Documents, including without limitation upon the occurrence of any Event of Default and any enforcement or collection proceedings resulting therefrom or in connection with the negotiation of any restructuring or "work-out", whether or not consummated, of the obligations of Borrower under this Agreement or the obligations of any Obligor or Major Project Participant under any other Credit Document or any suit, action or proceeding relating to this Agreement or any other Credit Document or the enforcement of rights hereunder or thereunder, so long as such Major Project Participant agrees to keep such information confidential in a manner consistent with this Section 11.22; (g) to the Independent Engineer, the Market Consultant, the Reserve Consultant, the Insurance Consultant, the Environmental Consultant or to other experts engaged by Administrative Agent or any Lender in accordance with the provisions of this Agreement and in connection with the transactions contemplated hereby so long as such expert agrees to keep such information confidential in a manner consistent with this Section 11.22; (h) to any assignee or Participant (or prospective assignee or Participant) so long as such assignee or Participant (or prospective assignee or Participant) agrees to keep such information confidential in a manner consistent with this Section 11.22, (i) with the consent of Borrower or the relevant Obligor; (j) in connection with the collateral assignment of all or any portion of the Loans or Notes held by it to the Federal Reserve Bank, any other central banking authorities in accordance with applicable law and the United States Treasury as collateral security; or (k) to credit insurers of the Lenders in connection with the transactions contemplated hereby so long as such credit insurers agree to keep such information confidential in a manner consistent with this Section 11.22. In no event shall any Lender, Administrative Agent or First Lien Collateral Agent be obligated or required to return any materials furnished by Borrower. Notwithstanding the foregoing provisions of this Section 11.22, the foregoing obligation of confidentiality shall not apply to any such information that (x) was known to any Lender or Agent prior to the time it received such confidential information from Borrower or its Affiliates, (y) becomes part of the public domain independently of any act of any Lender or Agent not permitted hereunder (through publication or otherwise), or (z) is received by any Lender or any Agent, as applicable, without restriction as to its disclosure or use, from a Person other than an Obligor. Notwithstanding anything to the contrary set forth herein or in any other agreement to which the parties hereto are parties or by which they are bound, any obligations of confidentiality contained herein and therein, as they relate to the transactions contemplated by this Agreement (the "**Loan Transactions**"), shall not apply to the federal tax structure or federal tax treatment of the Loan Transactions, and each party hereto (and any employee, representative, or agent of any party hereto) may disclose to any and all Persons, without limitation of any kind, the federal tax structure and federal tax treatment of the Loan Transactions. The preceding sentence is intended to cause the Loan Transactions not to be treated as having been offered under conditions of confidentiality for purposes of Section 1.6011-4(b)(3) (or any successor provision) of the Treasury Regulations promulgated under Section 6011 of the Code and shall be construed in a manner consistent with such purpose. In addition, each party hereto acknowledges that it has no proprietary or exclusive rights to any tax concept, tax matter or tax idea related to the Loan Transactions. Nothing herein shall permit the disclosure of such confidential information to Disqualified Institutions by any party under the Agreement (or any Person receiving information under this Section 11.22) unless agreed to by Borrower.

11.23 Communications

(a) Delivery.

(i) Each Obligor hereby agrees that it shall use all reasonable efforts to provide to Administrative Agent all information, documents and other materials that it is obligated to furnish to Administrative Agent pursuant to this Agreement and any other Credit Document, including all notices, requests, financial statements, financial and other reports, certificates and other information materials (collectively, the "**Communications**"), by transmitting the Communications in an electronic/soft medium in a format reasonably acceptable to Administrative Agent at the address referenced on Section 11.1. Nothing in this Section 11.23 shall prejudice the right of the Coordinating Lead Arrangers, Joint Lead Arrangers, any Lender or Borrower to give any notice or other communication pursuant to this Agreement or any other Credit Document in any other manner specified in this Agreement or any other Credit Document.

(ii) Administrative Agent agrees that receipt of the Communications by Administrative Agent at the email address referenced in Section 11.1 shall constitute effective delivery of the Communications to Administrative Agent for purposes of the Credit Documents. Each Lender agrees that notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform (as defined below) shall constitute effective delivery of the Communications to such Lender for purposes of the Credit Documents. Each Lender agrees (A) to notify Administrative Agent in writing (including by electronic communication) from time to time of such Lender's email address to which the foregoing notice may be sent by electronic transmission, and (B) that the foregoing notice may be sent to such email address.

(b) Posting. Borrower further agrees that Administrative Agent may make the Communications available to the Lenders by posting the Communications on IntraLinks, SyndTrak or a substantially similar electronic transmission system (the "**Platform**").

(c) The Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the accuracy or completeness of the Communications or the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall Administrative Agent, Collateral Agent, Syndication Agent, any other Agent, Coordinating Lead Arranger, or Joint Lead Arrangers or any of their Affiliates or any of their respective officers, directors, employees, agents advisors or representatives (collectively, the "**Agent Parties**") have any liability to any Obligor, any Lender or any other Person or entity for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of such Obligor's or such Person's transmission of Communications through the internet, except to the extent the liability of any Agent Party is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted primarily from such Agent Party's gross negligence or willful misconduct.

11.24 Acknowledgement and Consent to Bail-In of Affected Financial Institutions

Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Credit Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership shall be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Credit Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

11.25 Certain ERISA Matters

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender hereto, to, and (y) covenants, from the date such Person became a Lender hereto to the date such Person ceases being a Lender hereto, for the benefit of, the Administrative Agent and its Affiliates and not, for the avoidance of doubt, to or for the benefit of the Borrower, that at least one of the following is and shall be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) of one or more Benefit Plans in connection with the Loans, the Letters of Credit, the Commitments or this Agreement;

(ii) the prohibited transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable so as to exempt from the prohibitions of Section 406 of ERISA and Section 4975 of the Code such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of sub-section (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (i) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (ii) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (A) represents and warrants, as of the date such Person became a Lender hereto, and (B) covenants, from the date such Person became a Lender hereto to the date such Person ceases being a Lender hereto, for the benefit of, the Administrative Agent and its Affiliates and not, for the avoidance of doubt, to or for the benefit of the Borrower, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Credit Document or any documents related hereto or thereto).

11.26 Keepwell

Each Qualified ECP Guarantor hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Obligor to honor all of its obligations to (a) the First Lien Secured Parties under the First Lien Collateral Documents in respect of Swap Obligations that are First Lien Obligations and (b) the guaranty provided within the Intercreditor Agreement; provided, that each Qualified ECP Guarantor shall only be liable under this Section 11.26 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 11.26, or otherwise under the First Lien Collateral Documents, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount. The obligations of each Qualified ECP Guarantor under this Section 11.26 shall remain in full force and effect until the termination of this Agreement. Each Qualified ECP Guarantor intends that this Section 11.26 constitute, and this Section 11.26 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Obligor for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

11.27 Security Agreement and Intercreditor Agreement

Each Lender hereby acknowledges and agrees on behalf of itself that the Lien priorities and other matters related to the Credit Documents and the Collateral are subject to and governed by the Security Agreement, Intercreditor Agreement and the other First Lien Collateral Documents. Each Lender, by delivering its signature page hereto, funding its Loans on the Closing Date and/or executing an assignment and assumption agreement, in form and substance reasonably satisfactory to the Administrative Agent, (as applicable) shall be deemed to have (a) acknowledged receipt of, consented to and approved of the Security Agreement, the Intercreditor Agreement, the Depositary Agreement and the other First Lien Collateral Documents and (b) authorized and directed the Administrative Agent and the First Lien Collateral Agent to perform their respective obligations thereunder.

11.28 Acknowledgement Regarding Any Supported QFCs

To the extent that the Financing Documents provide support, through a guarantee or otherwise, for a Swap Obligation or any other agreement or instrument that is a QFC (such support, "**QFC Credit Support**" and each such QFC a "**Supported QFC**"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "**U.S. Special Resolution Regimes**") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Financing Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a "**Covered Party**") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party shall be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Financing Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Financing Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

11.29 Climate Bonds Standard and Certification Scheme

The Obligors will use commercially reasonable efforts to (a) obtain on or prior to the Closing Date certification of the Term Loans under the applicable standards of the Climate Bonds Standard and Certification Scheme and, within twelve months after the Closing Date, obtain a post-issuance certification of the Term Loans under the applicable standards of the Climate Bonds Standard and Certification Scheme and (b) comply in all material respects with the reporting requirements set forth in Section 2.4 of the Green Financing Framework; provided, that, notwithstanding the foregoing or anything in this Agreement or any other Financing Document to the contrary, no failure by any Obligor to comply with this Section 11.29, any terms of the Climate Bonds Standard and Certification Scheme or any reporting requirements or any other terms of the Green Financing Framework shall (i) constitute a Default, a CTA Default, an Event of Default or a CTA Event of Default under this Agreement or any other Financing Document, (ii) give rise to any claim, liability, remedy or other cause of action (including any remedy of specific performance), (iii) operate in any matter to limit, restrict or otherwise affect the use of proceeds of the Term Loans or (iv) otherwise affect Obligor's right or ability to take any actions otherwise permitted under this Agreement or any other Financing Document.

11.30 Electronic Execution

The words "execution," "execute", "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation assignments, amendments or other Notices of Borrowing, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

11.31 Climate Loan Disclaimer

The certification of the Loans by the Climate Bonds Initiative is based solely on the Climate Bond Standard and Certification and does not, and is not intended to, make any representation or give any assurance with respect to any other matter relating to the Loans or any Project. The certification of the Loans by the Climate Bonds Initiative was addressed solely to the board of directors of the Borrower and is not a recommendation to any person to purchase, hold or sell the Loans and such certification does not address the market price or suitability of the Loans for a particular investor. The certification also does not address the merits of the decision by the Borrower or any third party to participate in any Project and does not express and should not be deemed to be an expression of an opinion as to the Borrower or any aspect of any Project (including but not limited to the financial viability of any Project). The Climate Bonds Initiative does not assume or accept any responsibility to any person for independently verifying (and it has not verified) any information received by it or to undertake (and it has not undertaken) any independent evaluation of any Project or the Borrower. In addition, the Climate Bonds Initiative does not assume any obligation to conduct (and it has not conducted) any physical inspection of any Project. The certification does not and is not in any way intended to address the likelihood of timely payment of interest when due on the Loans and/or the payment of principal at maturity or any other date. The certification may be withdrawn at any time in the Climate Bonds Initiative's sole and absolute discretion and there can be no assurance that such certification will not be withdrawn. References to Loans certified by the Climate Bonds Initiatives do not imply that the Loans and First Lien Obligations hereunder are a "security" and it is the intent of the parties to treat Loans hereunder as loans.

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IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Agreement as of the date first written.

GEYSERS POWER COMPANY, LLC,
a Delaware limited liability company,
as Borrower

By: /s/ ZAMIR RAUF
Name: Zamir Rauf
Title: Chief Financial Officer

GEYSERS INTERMEDIATE HOLDINGS LLC,
a Delaware limited liability company,
as Guarantor

By: /s/ ZAMIR RAUF
Name: Zamir Rauf
Title: Chief Financial Officer

GEYSERS COMPANY, LLC,
a Delaware limited liability company,
as Guarantor

By: /s/ ZAMIR RAUF
Name: Zamir Rauf
Title: Chief Financial Officer

WILD HORSE GEOTHERMAL, LLC,
a Delaware limited liability company,
as Guarantor

By: /s/ ZAMIR RAUF
Name: Zamir Rauf
Title: Chief Financial Officer

[*Signature Page to Credit Agreement*]

CALISTOGA HOLDINGS, LLC,
a Delaware limited liability company,
as Guarantor

By: /s/ ZAMIR RAUF
Name: Zamir Rauf
Title: Chief Financial Officer

[*Signature Page to Credit Agreement*]

MUFG BANK, LTD.,
as Administrative Agent

By: /s/ LAWRENCE BLAT
Name: Lawrence Blat
Title: Authorized Signatory

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MUFG UNION BANK, N.A.,
as First Lien Collateral Agent

By: /s/ SONIA N. FLORES
Name: Sonia N. Flores
Title: Vice President

[*Signature Page to Credit Agreement*]

MUFG UNION BANK, N.A.,
as a Lender

By: /s/ PASCAL UTTINGER
Name: Pascal Uttinger
Title: Managing Director

[*Signature Page to Credit Agreement*]

MUFG BANK, LTD.,
as a Lender

By: /s/ LAWRENCE BLAT
Name: Lawrence Blat
Title: Authorized Signatory

[*Signature Page to Credit Agreement*]

COÖPERATIEVE RABOBANK U.A., NEW YORK BRANCH,
as a Lender

By: /s/ CLAUS HERTEL
Name: Claus Hertel
Title: Managing Director

By: /s/ GREGORY HUTTON
Name: Gregory Hutton
Title: Managing Director

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SUMITOMO MITSUI BANKING CORPORATION,
as a Lender

By: /s/ JUAN KREUTZ
Name: Juan Kreutz
Title: Managing Director

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BNP PARIBAS,
as a Lender

By: /s/ TIMOTHY CHIN
Name: Timothy Chin
Title: Managing Director

By: /s/ FRANK DELANEY
Name: Frank DeLaney
Title: Managing Director

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CRÉDIT AGRICOLE CORPORATE & INVESTMENT BANK
as a Lender

By: /s/ DEBORAH KROSS
Name: Deborah Kross
Title: Managing Director

By: /s/ KENNETH RICCIARDI
Name: Kenneth Ricciardi
Title: Director

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COBANK, ACB,
as a Lender

By: /s/ JUSTIN MERKOWITZ
Name: Justin Merkowitz
Title: Vice President

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NATIXIS, NEW YORK BRANCH,
as a Lender

By: /s/ JAMES KAISER
Name: James Kaiser
Title: Managing Director Head of Infrastructure Finance, North America

By: /s/ DAMIEN AUGUSTE
Name: Damien Auguste
Title: Director Infrastructure Finance, Americas

MIZUHO BANK, LTD.,
as a Lender

By: /s/ CHRISTOPHER STOLARSKI
Name: Christopher Stolarski
Title: Managing Director

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NATIONAL BANK OF CANADA
as a Lender

By: /s/ RAHUL RAHUL
Name: Rahul Rahul
Title: Authorized Signatory

By: /s/ MARK WILLIAMSON
Name: Mark Williamson
Title: Authorized Signatory

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ING CAPITAL LLC,
as a Lender

By: /s/ SCOTT HANCOCK
Name: Scott Hancock
Title: Director

By: /s/ STEFANO PALOMBO
Name: Stefano Palombo
Title: Director

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TRUST BANK,
as a Lender

By: /s/ MICHAEL CANAVAN
Name: Michael Canavan
Title: Managing Director

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DZ BANK AG DEUTSCHE ZENTRAL-GENOSSENSCHAFTSBANK, NEW YORK
as a Lender

By: /s/ STEVEN L BISSONNETTE
Name: Steven L Bissonnette
Title: Director

By: /s/ JUDSON HORN
Name: Judson Horn
Title: Vice President

DEFINITIONS

"**Additional Major Project Contract**" has the meaning given in the First Lien Common Terms Agreement.

"**Administrative Agent**" has the meaning given in the preamble hereto.

"**Administrative Services Agreement**" has the meaning given in the First Lien Common Terms Agreement.

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

"**Affiliate**" has the meaning given in the Intercreditor Agreement.

"**Agency Fee Letter**" means that certain letter agreement regarding fees, dated June 9, 2020, by and among Administrative Agent and Borrower.

"**Agent(s)**" means the Administrative Agent, the First Lien Collateral Agent and the Depositary Agent.

"**Agent Parties**" has the meaning given in Section 11.23(c).

"**Agreement**" has the meaning given in the preamble hereto.

"**Annual Operating Budget**" has the meaning given in Section 5.3(a).

"**Anti-Corruption Laws**" has the meaning given in Section 4.23(b).

"**Anti-Money Laundering Laws**" has the meaning given in Section 4.23(b).

"**Applicable Margin**" means, for any period, in respect of Base Rate Loans and respect of LIBOR Loans, the applicable rate per annum set forth below in respect of such period.

Term Period	Base Rate Loans	LIBOR Loans
From the Closing Date until the third anniversary of the Closing Date	1.00%	2.00%
From the third anniversary of the Closing Date until the sixth anniversary of the Closing Date	1.125%	2.125%
From and after the sixth anniversary of the Closing Date	1.250%	2.250%

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

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

"**Banking Day**" means any day other than a Saturday, Sunday or other day on which commercial banks are or Administrative Agent is authorized or required to be closed in the State of California or the State of New York and, where such term is used in any respect relating to a LIBOR Loan, which is also a day on which dealings in U.S. Dollar deposits are carried out in the London interbank market

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

"**Base Case Projections**" means a projection of operating results for the Projects, showing at a minimum Borrower's reasonable good faith estimates, as of the Closing Date, of revenues, O&M Costs, Major Maintenance, Capital Expenditures, the Debt Service Coverage Ratio, and sources and uses of revenues over the forecast period, which projection is attached as Schedule 3.1(o).

"**Base Rate**" means, for any day, the greatest of (a) the prime rate published in the Wall Street Journal, (b) the Federal Funds Rate for such day *plus* 0.50%, and (c) 1.00%. Any change in the Base Rate due to a change in the prime rate, bank prime rate or the Federal Funds Rate shall be effective from and including the effective date of such change in the prime rate, bank prime rate, the Federal Funds Rate, as the case may be.

"**Base Rate LC Loan**" means an LC Loan that shall bear interest at the rate set forth in Section 2.1(c)(i)(D).

"**Base Rate Loans**" means, collectively, the Base Rate Term Loans and the Base Rate LC Loans.

"**Base Rate Term Loan**" means a Term Loan which bears interest as provided in Section 2.1(c)(i)(A).

"**Benchmark Replacement**" means the sum of: (a) the alternate benchmark rate (which may include Term SOFR) that has been selected and agreed by both the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the relevant Governmental Authority or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to LIBO Rate for both U.S. Dollar-denominated syndicated credit facilities and (b) the Benchmark Replacement Adjustment; provided, that, if the Benchmark Replacement as so determined would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement.

"**Benchmark Replacement Adjustment**" means, with respect to any replacement of LIBO Rate with an Unadjusted Benchmark Replacement for each applicable Interest Period, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected and agreed by both the Administrative Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of LIBO Rate with the applicable Unadjusted Benchmark Replacement by the relevant Governmental Authority or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of LIBO Rate with the applicable Unadjusted Benchmark Replacement for U.S. Dollar-denominated syndicated credit facilities at such time.

"**Benchmark Replacement Conforming Changes**" means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest and other administrative matters) that the Administrative Agent decides, with the consent of the Borrower (not to be unreasonably withheld, conditioned or delayed), may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of the Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides, with the consent of the Borrower (not to be unreasonably withheld, conditioned or delayed), is reasonably necessary in connection with the administration of this Agreement).

"**Benchmark Replacement Date**" means the earlier to occur of the following events with respect to the LIBO Rate:

(a) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event," the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of the LIBO Rate permanently or indefinitely ceases to provide the LIBO Rate; or

(b) in the case of clause (c) of the definition of "Benchmark Transition Event," the date of the public statement or publication of information referenced therein.

"**Benchmark Transition Event**" means the occurrence of one or more of the following events with respect to the LIBO Rate:

(a) a public statement or publication of information by or on behalf of the administrator of the LIBO Rate announcing that such administrator has ceased or will cease to provide the LIBO Rate, permanently or indefinitely; provided, that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBO Rate;

(b) a public statement or publication of information by the regulatory supervisor for the administrator of the LIBO Rate, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for the LIBO Rate, a resolution authority with jurisdiction over the administrator for the LIBO Rate or a court or an entity with similar insolvency or resolution authority over the administrator for the LIBO Rate, which states that the administrator of the LIBO Rate has ceased or will cease to provide the LIBO Rate permanently or indefinitely; provided, that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBO Rate; or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of the LIBO Rate announcing that the LIBO Rate is no longer representative.

"**Benchmark Transition Start Date**" means (a) in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the ninetieth day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than ninety days after such statement or publication, the date of such statement or publication) and (b) in the case of an Early Opt-in Election, the date specified by the Administrative Agent or the Required Lenders, as applicable, with the consent of the Borrower (not to be unreasonably withheld, conditioned or delayed), by notice to the Borrower, the Administrative Agent (in the case of such notice by the Required Lenders) and the Lenders.

"**Benchmark Unavailability Period**" means, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the LIBO Rate and solely to the extent that the LIBO Rate has not been replaced with a Benchmark Replacement, the period (a) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the LIBO Rate for all purposes hereunder in accordance with Sections 2.6(a)(i) through 2.6(a) (iv) and (b) ending at the time that a Benchmark Replacement has replaced the LIBO Rate for all purposes hereunder pursuant to Sections 2.6(a)(i) through 2.6(a)(iv).

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

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

"**Beneficially Owns**" shall have the corresponding meaning to the term "Beneficial Owner" as defined in Rule 13d-3 and Rule 13d-5 under the Exchange Act.

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

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

"**Bona Fide Debt Fund**" means any fund or investment vehicle that is primarily engaged in the making, purchasing, holding or otherwise investing in commercial loans, bonds and other similar extensions of credit or securities in the ordinary course.

"**Bookrunner**" means MUFG Union Bank, N.A., BNP Paribas, Crédit Agricole Corporate and Investment Bank, Mizuho Bank Ltd., Natixis, New York Branch, National Bank of Canada, SunTrust Robinson Humphrey, Inc. and Sumitomo Mitsui Banking Corporation, each acting in its capacity as **a** Bookrunner under this Agreement.

"**Borrower**" has the meaning given in the preamble hereto.

"**Borrowing**" means a borrowing by Borrower of any Loan.

"**Borrowing Date**" has the meaning given in Section 3.2.

"**Calculation Period**" has the meaning given in the First Lien Common Terms Agreement.

"**Calistoga**" has the meaning given in the preamble hereto.

"**Capital Expenditures**" has the meaning given in the First Lien Common Terms Agreement.

"**Cash Collateralize**" means, with respect to any Letter of Credit or any other First Lien Obligation, the deposit of immediately available funds into a cash collateral account maintained with (or on behalf of) the applicable Issuing Bank on terms reasonably satisfactory to such Issuing Bank in an amount equal to 102.5% of the Stated Amount of such Letter of Credit or such other First Lien Obligation. "Cash Collateral", "Cash Collateralized", and "Cash Collateralization" shall have correlative meanings.

"**Casualty Event**" has the meaning given in the First Lien Common Terms Agreement.

"**Change in Law**" has the meaning given in Section 2.6(b).

"**Change of Control**" means the occurrence of one or more of the following events:

(a) the Borrower ceases to Beneficially Own 100% of the Equity Interests of the Project Companies on a fully diluted basis (except as permitted by the Financing Documents);

(b) the Sponsor ceases to own, directly or indirectly, at least 20% of the Equity Interests in the Borrower on a fully diluted basis;

(c) the Sponsor ceases to maintain, directly or indirectly, day-to-day operational control of the Borrower; or

(d) Holdings ceases to own, directly, 100% of the Equity Interests in the Borrower on a fully diluted basis;

provided, that no Change of Control will be deemed to have occurred in the case of clauses (b) or (c) above if the Borrower (x) is directly or indirectly controlled by one or more Persons, at least one of which (i) either (A) is a Qualified Operator or (B) has engaged the Sponsor or another Qualified Operator to operate the Projects; and (ii) has a tangible net worth (or has an Affiliate that has a tangible net worth) of at least $750,000,000); (y) obtains a ratings reaffirmation of at least two of the then-current ratings of any then-outstanding First Lien Secured Bond Debt in the capital markets (or, if such First Lien Secured Bond Debt has a rating at such time that is higher than the lowest Investment Grade rating, confirmation by at least two of S&P, Fitch, and Moody's that after such giving effect to the transaction such indebtedness has an Investment Grade rating); provided, that this clause (y) shall only apply if the Borrower has incurred First Lien Secured Bond Debt in the capital markets which requires such ratings reaffirmation, and (z) shall have provided the Administrative Agent with all information reasonably necessary for the Lenders and Issuing Banks to identify the Qualified Operator in accordance with the requirements of the PATRIOT Act (including applicable, and uniformly applied, "know your customer" regulations) and all other applicable anti-money laundering laws and anti-terrorism laws.

"**Climate Bonds Standard and Certification Scheme**" means a labelling scheme for bonds, loans and other debt instruments under the Climate Bonds Standard V2.1, published by the Climate Bonds Initiative and as in effect on the Closing Date.

"**Closing Date**" has the meaning given in Section 3.1.

"**Closing Date Credit Document**" means any Credit Document to be entered into on the Closing Date.

"**Collateral**" has the meaning given in the Intercreditor Agreement.

"**Collateral Agents**" has the meaning given in the Intercreditor Agreement.

"**Commitments**" means, with respect to each Lender, such Lender's Term Loan Commitment, Revolving LC Commitment, PPA LC Commitment, DSR LC Commitment and Incremental Term Loan Commitment and with respect to all Lenders, the Total Term Loan Commitment, the Total Revolving LC Commitment, the Total PPA LC Commitment, the Total DSR LC Commitment and the total Incremental Term Loan Commitments.

"**Commodity Exchange Act**" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"**Communications**" has the meaning given in Section 11.23(a).

"**Confirmation of Interest Period Selection**" has the meaning given in Section 2.1(e)(iii)(B).

"**Consent**" means (a) the consents to collateral assignment entered into on the Closing Date pursuant to Section 3.1(y) and (b) the consents to collateral assignment entered into after the Closing Date from the counterparties to all Major Project Contracts, in each case, to the extent required by the Credit Documents and in substantially the form of Exhibit E, with such changes as are reasonably acceptable to Administrative Agent.

"**Coordinating Lead Arrangers**" means MUFG Union Bank, N.A., Mizuho Bank Ltd., National Bank of Canada, Sumitomo Mitsui Banking Corporation, SunTrust Robinson Humphrey, Inc., Crédit Agricole Corporate and Investment Bank, and Natixis New York Branch.

"**Covered Entity**" means any of the following:

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

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

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

"**Covered Party**" has the meaning given in Section 11.28.

"**Credit Document**" means (a) the First Lien Common Terms Agreement, (b) this Agreement, (c) the First Lien Collateral Documents, (d) the other financing and security agreements, documents and instruments delivered in connection with this Agreement (excluding, for the avoidance of doubt, (A) any Permitted Interest Rate Agreements and any Permitted Commodity Hedge Agreements and (B) any Second Lien Documents (other than the Intercreditor Agreement and the Depositary Agreement)), and (e) each other document designated as a Credit Document by the Borrower and the Administrative Agent.

"**Credit Event**" means the making or continuation of Term Loans in accordance with Section 2.1 or the issuance, amendment, renewal or extension of a Letter of Credit.

"**CTA Default**" has the meaning given in the First Lien Common Terms Agreement.

"**CTA Event of Default**" has the meaning given in the First Lien Common Terms Agreement.

"**Debt Service**" has the meaning given in the First Lien Common Terms Agreement.

"**Debt Service Coverage Ratio**" has the meaning given in the First Lien Common Terms Agreement.

"**Debt Service Reserve Account**" has the meaning given in the Depositary Agreement.

"**Debt Service Reserve Requirement**" means, as of any date, an amount equal to the amount of interest and commitment fees, and required amortization payments in respect of the Term Loans (net of any ordinary course hedge payments to be made under the Permitted Interest Rate Agreements with respect to the Term Loans) reasonably anticipated to be payable over the next six-month period (other than the final principal payment of the Loans on the final Maturity Date and excluding, for the avoidance of doubt, any principal required to be repaid pursuant to Section 2.1(h)(iii)).

"**Default**" means any event that is, or with the passage of time or the giving of notice or both, would be, an Event of Default.

"**Default Rate**" has the meaning given in Section 2.4(c).

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

"**Defaulting Lender**" means, subject to Section 2.4(g)(vi), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Banking Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two Banking Days of the date when due, (b) has become the subject of a Bail-In Action, (c) has notified Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (d) has failed, within three Banking Days after written request by the Administrative Agent or Borrower, to confirm in writing to the Administrative Agent and Borrower that it shall comply with its prospective funding obligations hereunder; provided, that such Lender shall cease to be a Defaulting Lender pursuant to this clause (d) upon receipt of such written confirmation by the Administrative Agent and Borrower, or (e) has, or has a direct or indirect parent company that has, other than via an Undisclosed Administration, (i) become the subject of a proceeding under any Bankruptcy Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal or national regulatory authority acting in such a capacity; provided, that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (e) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.4(g)(vi) upon delivery of written notice of such determination to Borrower and each Lender).

"**Depositary Accounts**" has the meaning given in the Depositary Agreement.

"**Depositary Agent**" means MUFG Union Bank, N.A., not in its individual capacity but solely as depositary agent, bank and securities intermediary under the Depositary Agreement and its permitted successors and assigns.

"**Depositary Agreement**" has the meaning given in the Intercreditor Agreement and is substantially in the form of Exhibit D-2.

"**Depositary and Collateral Agency Fee Letter**" has the meaning given in Section 2.3(a).

"**Discharge of First Lien Obligations**" has the meaning given in the Intercreditor Agreement.

"**Disqualified Institutions**" means (a) those Persons identified by the Borrower or the Sponsor to the Administrative Agent in writing prior to the Closing Date (and such Persons' Affiliates clearly identifiable as such solely on the basis of their names (other than an Affiliate that is a Bona Fide Debt Fund)), (b) competitors of any Obligor separately identified by the Borrower or the Sponsor to the Administrative Agent in writing from time to time and (c) any Affiliate of any competitor described in clause (b) that is identified by the Borrower or the Sponsor to the Administrative Agent in writing from time to time or clearly identifiable solely by name as an Affiliate of such Person, other than an Affiliate of such Person that is a Bona Fide Debt Fund; provided, that no updates to the Disqualified Institution list shall be deemed to retroactively disqualify any parties that have previously acquired an assignment or participation in respect of the Loans or Commitments from continuing to hold or vote such previously acquired assignments and participations on the terms set forth herein for Lenders that are not Disqualified Institutions. Any supplement to the list of Disqualified Institutions pursuant to clause (b) or (c) above shall be made by the Borrower to the Administrative Agent in writing (including by email) and such supplement shall take effect three Banking Days after such notice is received by the Administrative Agent. The list of Disqualified Institutions shall be made available to any Lender, any Participant, prospective Lender or prospective Participant upon request to the Administrative Agent, subject to customary confidentiality requirements.

"**Division**" means the division of a limited liability company into two or more limited liability companies pursuant to a "plan of division" or similar method within the meaning of the Delaware Limited Liability Company Act.

"**Drawing Payment**" means any payment by an Issuing Bank honoring a drawing under a Letter of Credit.

"**DSR Issuing Bank**" means each Lender listed on Schedule 2.2(a) holding DSR LC Commitments and each other Lender designated as DSR Issuing Bank pursuant to Section 2.2(g), in each case in its capacity as an issuer of any DSR Letter of Credit hereunder, and its successors in such capacity pursuant to Section 2.2(i). A DSR Issuing Bank may, in its discretion, arrange for any DSR Letter of Credit to be issued by an Affiliate of such DSR Issuing Bank, in which case the term "DSR Issuing Bank" shall include any such Affiliate with respect to DSR Letters of Credit issued by such Affiliate.

"**DSR LC Commitments**" has the meaning given in the Recitals.

"**DSR LC Exposure**" means, with respect to any DSR Issuing Bank, at any time the sum of a) the aggregate principal amount of all DSR LC Loans owing to such DSR Issuing Bank in its capacity as a Lender, b) any unreimbursed drawing under any DSR Letter of Credit issued by such DSR Issuing Bank that have not yet been reimbursed at such time from the proceeds of DSR LC Loans or otherwise, and c) the Stated Amount of all DSR Letters of Credit issued by such DSR Issuing Bank outstanding at such time.

"**DSR LC Facility**" has the meaning given in the Recitals.

"**DSR LC Fee**" has the meaning given in Section 2.3(f).

"**DSR LC Lender**" has the meaning given in Section 2.2(b).

"**DSR LC Loan(s)**" has the meaning given in Section 2.2(b)(ii)(A).

"**DSR LC Note**" has the meaning given in Section 2.1(f).

"**DSR LC Reimbursement Obligation**" means the obligation of the Borrower to repay any Drawing Payments relating to any DSR Letter of Credit.

"**DSR Letter of Credit**" has the meaning given in Section 2.2(b).

"**DSR Maturity Date**" means June 9, 2027.

"**Early Opt-in Election**" means the occurrence of:

(a) (i) a determination by the Administrative Agent or (ii) a notification by the Required Lenders to the Administrative Agent (with a copy to the Borrower) that the Required Lenders have determined that U.S. Dollar-denominated syndicated credit facilities being executed at such time, or that include language similar to that contained in Section 2.6(a) are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace the LIBO Rate; and

(b) (i) the election by the Administrative Agent or (ii) the election by the Required Lenders, in each case, with the consent of the Borrower (not to be unreasonably withheld, conditioned or delayed), to declare that an Early Opt-in Election has occurred and the provision, as applicable, by the Administrative Agent of written notice of such election to the Borrower and the Lenders or by the Required Lenders of written notice of such election to the Administrative Agent.

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

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

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

"**Electronic Transmission**" has the meaning given in Section 11.1.

"**Eligible Assignee**" means a commercial bank, financial institution, insurance company, investment or mutual fund or other entity that is an "accredited investor" (as defined in Regulation D under the Securities Act) and which extends credit or buys loans in the ordinary course of business.

"**Eminent Domain Proceeds**" has the meaning given in the Depositary Agreement.

"**Environmental Consultant**" means West Yost Associates.

"**Environmental Law**" has the meaning given in the Intercreditor Agreement.

"**Equity Interests**" has the meaning given in the Intercreditor Agreement.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended.

"**ERISA Affiliate**" means any corporation or trade or business (whether or not incorporated) under common control with any of the Borrower or Guarantors within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

"**ERISA Event**" means (a) the occurrence of any "reportable event" as defined in Section 4043(c) of ERISA or the regulations issued thereunder, other than those events as to which the thirty-day notice period has been waived, with respect to an ERISA Plan, (b) any failure by any ERISA Plan to satisfy the minimum funding standard (within the meaning of Section 412 or 430 of the Code or Section 302 of ERISA) applicable to such ERISA Plan, in each case, whether or not waived, (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any ERISA Plan, the failure to make by its due date a required installment under Section 430(j) of the Code with respect to any ERISA Plan or the failure to make any required contribution to a Multiemployer Plan, (d) a determination that any ERISA Plan is, or is expected to be, in "at risk" status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code), (e) the incurrence by the Borrower or any Guarantor or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any ERISA Plan, (f) the receipt by the Borrower or any Guarantor or any ERISA Affiliate from the Pension Benefit Guaranty Corporation or a plan administrator of any notice relating to an intention to terminate any ERISA Plan or to appoint a trustee to administer any ERISA Plan under Section 4042 of ERISA, or the occurrence of any event or condition which could reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any ERISA Plan, (g) the incurrence by the Borrower or any Guarantor or any ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any ERISA Plan or Multiemployer Plan, (h) the receipt by the Borrower or any Guarantor or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any Guarantor or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent, or in endangered or critical status (within the meaning of Section 432 of the Code or Section 305 of ERISA), or (i) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could reasonably be expected to result in liability to the Borrower or any Guarantor.

"**ERISA Plan**" means any employee pension benefit plan (other than a Multiemployer Plan) that is maintained or is contributed to by the Borrower or any Guarantor or any ERISA Affiliate and is covered by Title IV of ERISA or is subject to minimum funding standards under Section 412 of the Code or Section 302 of ERISA and in respect of which the Borrower, the Guarantors or any ERISA Affiliate is (or if such plan were terminated the Borrower or any Guarantor would, under Section 4069 of ERISA, be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

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

"**Event of Default**" has the meaning given in Section 7.1.

"**Event of Eminent Domain**" has the meaning given in the Depositary Agreement.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, or any successor statute or statutes thereto.

"**Excluded Taxes**" means any of the following Taxes imposed on or with respect to a Lender Party or required to be withheld or deducted from a payment to a Lender Party, (a) Taxes imposed on or measured by net income (however denominated), franchise and branch profits taxes, which include Taxes imposed on or measured by the net income, net profits or capital of such Lender Party by any jurisdiction or any political subdivision or taxing authority thereof or therein as a result of a connection between such Lender Party and such jurisdiction or political subdivision, unless such connection results solely from such Lender Party's executing, delivering or performing its obligations or receiving a payment under, or enforcing, this Agreement or any Note, (b) any withholding Tax imposed by the United States that is in effect and would apply to amounts payable hereunder to such Lender Party at the time such Lender Party becomes a party to this Agreement (other than pursuant to an assignment request by Borrower under Section 2.8(b)) or at the time such Lender Party designates a new Lending Office (except to the extent that such Lender or other Lender Party (or its assignor, if any) was entitled, at the time of the designation of a new Lending Office (or assignment) to receive additional amounts from Borrower with respect to such withholding tax pursuant to Section 2.4(d)(i)), (c) Taxes attributable to such Lender Party's failure to comply with Section 2.4(f), and (d) any withholding taxes imposed under FATCA.

"**Exempt Wholesale Generator**" means an "exempt wholesale generator" under PUHCA.

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

"**FCPA**" has the meaning given in Section 4.23(b).

"**Federal Funds Rate**" means, for any day, the rate *per annum* equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System on such day, as published by the Federal Reserve Bank of New York on the Banking Day next succeeding such day; provided, that (a) if such day is not a Banking Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Banking Day as so published on the next succeeding Banking Day, and (b) if no such rate is so published on such next succeeding Banking Day, the Federal Funds Rate for such day shall be the average rate charged to Administrative Agent on such day on such transactions as determined by Administrative Agent.

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

"**FERC**" means the Federal Energy Regulatory Commission and its successors.

"**First Lien Collateral Agent**" has the meaning given in the preamble hereto.

"**First Lien Collateral Documents**" has the meaning given in the Intercreditor Agreement.

"**First Lien Common Terms Agreement**" means the First Lien Common Terms Agreement, to be dated the Closing Date (as amended, amended and restated, supplemented or otherwise modified from time to time), among the Obligors, the First Lien Secured Debt Representative and the First Lien Collateral Agent.

"**First Lien Secured Debt Representative**" has the meaning given in the Intercreditor Agreement.

"**First Lien Secured Parties**" has the meaning given in the Intercreditor Agreement.

"**Fitch**" has the meaning given in the First Lien Common Terms Agreement.

"**FPA**" means the Federal Power Act and rules and regulations promulgated by FERC thereunder.

"**Funds Flow Memorandum**" means the memorandum, dated as of June 9, 2020, delivered by Borrower to the Administrative Agent and the Depositary Agent with respect to the disbursement of funds on the Closing Date, attached to a letter of direction executed by the Borrower.

"**Geysers Company**" has the meaning given in the preamble hereto.

"**Governmental Authority**" has the meaning given in the Intercreditor Agreement.

"**Governmental Rule**" has the meaning given in the Intercreditor Agreement.

"**Green Financing Framework**" means the Borrower's Green Financing Framework, dated as of June 2020.

"**Green Loan Coordinators**" means Crédit Agricole Corporate and Investment Bank, Natixis, New York Branch, each acting in its capacity as a Green Loan Coordinator under this Agreement.

"**Guarantor(s)**" has the meaning given in the preamble hereto.

"**Hazardous Substances**" means substances and materials regulated as hazardous, toxic, pollutants, or contaminants under Environmental Law.

"**Hedge Bank**" means (a) any Person that was, at the time of entering into an Interest Rate Agreement, an Agent, Coordinating Lead Arranger, Joint Lead Arranger, Term Lender, Revolving LC Lender, or any Affiliate thereof or (b) any other Person (other than any Affiliate of an Obligor) that was, at the time of entering into an Interest Rate Agreement, a commercial bank, investment bank, swap dealer, insurance company or any other financial institution, or any Affiliate thereof, whose long-term senior unsecured debt is rated at least BBB+ by S&P and Baa1 by Moody's.

"**Hedge Breaking Fee**" means all costs, fees and expenses incurred by any Obligor in connection with any unwinding, breach or termination of any Permitted Commodity Hedge Agreements and Permitted Interest Rate Agreements

"**Holdings**" has the meaning given in the preamble hereto.

"**Incremental Term Loan Cap**" means, at any time after the Closing Date, an amount equal to (a) (i) $1,000,000,000 multiplied by (ii) a fraction (A) the numerator of which is equal to the then-current principal balance of the Term Loans and (B) the denominator of which is the Term Loans incurred on the Closing Date minus (b) the aggregate principal amount of all Term Loans and Incremental Term Loans outstanding at such time.

"**Incremental Term Loan Commitment**" has the meaning given in Section 2.1(b)(i).

"**Incremental Term Loan Facility**" has the meaning given in Section 2.1(b)(i).

"**Incremental Term Loan Lenders**" means the lender providing Incremental Term Loan Commitments pursuant to Section 2.1(b) (i).

"**Incremental Term Loans**" has the meaning given in Section 2.1(b)(i).

"**Indebtedness**" has the meaning given in the Intercreditor Agreement.

"**Indemnified Taxes**" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Obligors under any Credit Document and (b) to the extent not otherwise described in (a), Other Taxes.

"**Indemnitee**" has the meaning given in Section 11.13.

"**Independent Consultants**" means, collectively, the Market Consultant, the Environmental Consultant, the Insurance Consultant, and the Independent Engineer.

"**Independent Engineer**" has the meaning given in the First Lien Common Terms Agreement.

"**Insurance Consultant**" means Aon Risk Consultants, Inc.

"**Intellectual Property Rights**" has the meaning given in Section 4.21.

"**Intercreditor Agreement**" has the meaning given in the First Lien Common Terms Agreement and is substantially in the form of Exhibit D-3.

"**Interest Period**" means, with respect to any LIBOR Loan, the time period selected by Borrower or provided for pursuant this Agreement which commences on the first day of such Loan, or the effective date of any conversion (as the case may be) and ends on the last day of such time period.

"**Interest Rate**" means the Base Rate or the LIBO Rate, as the case may be.

"**Interest Rate Agreement**" has the meaning given in the Intercreditor Agreement.

"**Interest Rate Determination Date**" means, with respect to any Interest Period, the second Banking Day prior to the first day of such Interest Period.

"**Interpolated Rate**" means, in relation to the LIBO Rate, the rate which results from interpolating on a linear basis between: (a) the applicable LIBO Rate for the longest period (for which that LIBO Rate is available) which is less than the Interest Period of the Loans; and (b) the applicable LIBO Rate for the shortest period (for which that LIBO Rate is available) which exceeds the Interest Period of the Loans, each as of approximately 11:00 a.m. (London, England time) on the Interest Rate Determination Date prior to the commencement of such Interest Period of the Loans.

"**Issuing Bank**" means, collectively, the DSR Issuing Bank, PPA Issuing Bank, and Revolving Issuing Bank, as applicable.

"**Joint Lead Arrangers**" means Cobank, ACB, Coöperatieve Rabobank, U.A., New York Branch and ING Capital LLC, each acting in its capacity as a Joint Lead Arranger under this Agreement.

"**LC Commitments**" has the meaning given in the Recitals.

"**LC Exposure**" means, collectively, the Revolving LC Exposure, the PPA LC Exposure, and the DSR LC Exposure.

"LC Fees" means, collectively, the Revolving LC Fees, the DSR LC Fees, and the PPA LC Fees.

"LC Lenders" has the meaning given in Section 2.2(c).

"LC Loans" means, collectively, the Revolving LC Loans, the DSR LC Loans, and the PPA LC Loans.

"LC Maturity Date" means, the Revolving Maturity Date, the DSR Maturity Date and the PPA Maturity Date, as applicable.

"**Legal Requirements**" has the meaning given in the Intercreditor Agreement.

"**Lender Joinder Agreement**" has the meaning given in Section 2.1(b)(iii).

"**Lender Parties**" means the Administrative Agent, Coordinating Lead Arrangers, Joint Lead Arrangers, the First Lien Collateral Agent, the Depositary Agent, any Issuing Bank, each Lender and each of their respective successors, transferees and assigns; provided, that no Affiliate of Sponsor shall be a "Lender Party" hereunder or under any other Credit Document.

"**Lender(s)**" has the meaning given in the preamble hereto.

"**Lending Office**" means, with respect to any Lender, the office designated in writing as such to Administrative Agent and Borrower from time to time.

"**Letter of Credit**" means a Revolving Letter of Credit, DSR Letter of Credit, or the PPA Letter of Credit, as applicable.

"**LIBO Rate**" means, with respect to any LIBOR Loan for any Interest Period, the rate per annum determined by Administrative Agent at approximately 11:00 a.m. (London time) on the Interest Rate Determination Date by reference to London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for Dollars for a period equal in length to such Interest Period as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate) (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or, if the agreed page is replaced or service ceased to be available, Administrative Agent may specify another page or service displaying the appropriate rate after consultation with Borrower and the Lenders) for a period equal to such Interest Period; provided, that (a) to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, the "LIBO Rate" shall be the interest rate per annum determined by Administrative Agent to be the average of the rates per annum at which deposits in Dollars are offered for such Interest Period to major banks in the London interbank market in London, England by Administrative Agent at approximately 11:00 a.m. (London time) on the Interest Rate Determination Date or, in the case of the borrowing of Term Loans on the Closing Date, the Interpolated Rate and (b) in no event shall the LIBO Rate be less than zero.

"**LIBOR LC Loan**" means an LC Loan that shall bear interest at the rate set forth in Section 2.1(c)(i)(D).

"**LIBOR Loans**" means the Loans, the interest in respect of which is determined by reference to the LIBO Rate.

"**LIBOR Term Loan**" means a Term Loan that bears interest as provided in Section 2.1(c)(i)(C).

"**Lien**" has the meaning given in the Intercreditor Agreement.

"**Liquidation Costs**" has the meaning given in Section 2.7.

"**Loan Transactions**" has the meaning given in Section 11.22.

"**Loans**" means the Term Loans and LC Loans.

"**Major Maintenance**" has the meaning given in the Depositary Agreement.

"**Major Maintenance Reserve Account**" has the meaning given in the Depositary Agreement.

"**Major Project Participants**" means any counterparty to a Major Project Contract.

"**Mandatory Prepayment**" has the meaning given in Section 2.1(h)(iii).

"**Market Consultant**" means PA Consulting Group, Inc.

"**Maturity Dates**" means, collectively, the Term Maturity Date, the Revolving Maturity Date, the PPA Maturity Date and the DSR Maturity Date.

"**Minimum Notice Period**" means (a) at least three Banking Days before the date of any Borrowing, continuation or conversion of a Type of Loan resulting in whole or in part in one or more LIBOR Term Loans, and (b) at least one Banking Day before any Borrowing or conversion of a Type of Loan resulting in whole or in part in one or more Base Rate Term Loans.

"**Moody's**" has the meaning given in the Intercreditor Agreement.

"**Multiemployer Plan**" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA subject to the provisions of Title IV of ERISA and in respect of which the Borrower and Guarantors or any ERISA Affiliate is an "employer" as defined in Section 3(5) of ERISA.

"**Non-Advancing Bank**" has the meaning given in Section 9.12.

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

"**Non-Recourse Persons**" has the meaning given in Article 8.

"**Non-U.S. Lender Party**" means each Lender or Issuing Bank, as applicable, that is not a U.S. Person.

"**Notes**" means, collectively, any Term Notes and any Revolving LC Notes.

"**Notice of Borrowing**" has the meaning given in Section 2.1(a)(ii).

"**Notice of Conversion of Loan Type**" has the meaning given in Section 2.1(g).

"**Notice of LC Activity**" means a request by Borrower in accordance with the terms of Section 2.2 and substantially in the form of Exhibit C-4.

"**O&M Costs**" has the meaning given in the First Lien Common Terms Agreement.

"**Obligors**" has the meaning given in the Intercreditor Agreement.

"**Optional Prepayment**" has the meaning given in Section 2.1(h)(ii).

"**Other Taxes**" means any present or future stamp, recording or documentary taxes and any other excise or property taxes, charges or similar levies (and interest, fines, penalties and additions related thereto) (not including income, branch profits or franchise taxes) that arise from any payment made hereunder or under any other Credit Document or from the execution or delivery or otherwise with respect to this Agreement or any other Credit Document.

"**Participant**" has the meaning given in Section 9.13.

"**Participant Register**" has the meaning given in Section 9.13.

"**PATRIOT Act**" has the meaning given in Section 11.21.

"**Payment Period**" means the three-month period commencing on a Quarterly Date and ending on the day prior to the next Quarterly Date.

"**Permit**" has the meaning given in the Intercreditor Agreement.

"**Permitted Commodity Hedge Agreement**" has the meaning given in the Intercreditor Agreement.

"**Permitted Debt**" has the meaning given in the First Lien Common Terms Agreement.

"**Permitted Interest Rate Agreement**" has the meaning given in the First Lien Common Terms Agreement.

"**Permitted Investments**" has the meaning given in the First Lien Common Terms Agreement.

"**Permitted Liens**" has the meaning given in the First Lien Common Terms Agreement.

"**Person**" has the meaning given in the Intercreditor Agreement.

"**Platform**" has the meaning given in Section 11.23(b).

"**PPA**" has the meaning given in the First Lien Common Terms Agreement.

"**PPA Issuing Bank**" means Coöperatieve Rabobank U.A., New York Branch and each other Lender designated as PPA Issuing Bank pursuant to Section 2.2(g), in each case in its capacity as an issuer of any PPA Letter of Credit hereunder, and its successors in such capacity pursuant to Section 2.2(i). A PPA Issuing Bank may, in its discretion, arrange for any PPA Letter of Credit to be issued by an Affiliate of such PPA Issuing Bank, in which case the term "PPA Issuing Bank" shall include any such Affiliate with respect to PPA Letters of Credit issued by such Affiliate.

"**PPA LC Commitments**" has the meaning given in the Recitals.

"**PPA LC Exposure**" means, with respect to the PPA Issuing Bank, at any time the sum of a) the aggregate principal amount of all PPA LC Loans owing the PPA Issuing Bank in its capacity as a Lender, b) any unreimbursed drawing under any PPA Letter of Credit issued by such PPA Issuing Bank that have not yet been reimbursed at such time from the proceeds of PPA LC Loans or otherwise, and c) the Stated Amount of all PPA Letters of Credit issued by such PPA Issuing Bank outstanding at such time.

"**PPA LC Facility**" has the meaning given in the Recitals.

"**PPA LC Fee**" has the meaning given in Section 2.3(h).

"**PPA LC Lender**" has the meaning given in Section 2.2(c).

"**PPA LC Loan(s)**" has the meaning given in the Section 2.2(c)(ii)(A).

"**PPA LC Note**" has the meaning given in Section 2.1(f).

"**PPA LC Reimbursement Obligation**" means the obligation of the Borrower to repay any Drawing Payments relating to any PPA Letter of Credit.

"**PPA Letter of Credit**" has the meaning given in Section 2.2(c).

"**PPA Maturity Date**" means June 9, 2027.

"**Principal Repayment Dates**" means (a) each Quarterly Date, and (b) the Maturity Date.

"**Project Companies**" means, collectively, Calistoga Holdings, LLC, a Delaware limited liability company, Geysers Company, LLC, a Delaware limited liability company, and Wild Horse Geothermal, LLC, a Delaware limited liability company, any other Person owning a Project, and their respective successors and assigns.

"**Project Contract Modification**" has the meaning given in Section 6.2(a).

"**Project Revenue**" has the meaning given in the Depositary Agreement.

"**Projected Notional Principal Amount**" means, with respect to any date, the aggregate principal amount of the Term Loans and Additional Ratio Indebtedness (excluding any Additional Ratio Indebtedness that bears interest at a fixed rate) that is projected to be outstanding through the Term Maturity Date on such date, as set forth in the Base Case Projections or in any projections delivered by the Borrower in connection with any Incremental Term Loan Facility or such Additional Ratio Indebtedness, after giving effect to any prepayments made since the delivery of the applicable projections.

"**Projects**" has the meaning give in the Intercreditor Agreement.

"**Proportionate Share**" means (a) in the context of voting in matters requiring the vote of all or a percentage of the Lenders and indemnification obligations of the Lenders under Section 9.5, with respect to each Lender at any time, a percentage equal to the quotient of (i) the sum of (A) the percentage interest of such Lender in the aggregate amount of all Commitments(as may be amended pursuant to Article 9), *multiplied by* the aggregate amount of all Commitments *plus* (B) (1) prior to the termination of the transactions under the Interest Rate Agreement, zero, and (2) thereafter, the percentage interest of such Lender (or its Affiliate) in the Interest Rate Agreements (as communicated in a written notice by such Lender to the Administrative Agent), *multiplied by* the Hedge Breaking Fees actually payable (and not on a "marked to market" basis) at such time (reasonably determined upon the close of the applicable voting period in accordance with the terms of such Interest Rate Agreement), *divided by* (ii) the sum of (A) the aggregate amount of all Commitments *plus* (B) (1) prior to the termination of the transactions under the Interest Rate Agreement, zero, and (2) thereafter, the Hedge Breaking Fees actually payable (and not on a "marked to market" basis) at such time (reasonably determined upon the close of the applicable voting period in accordance with the terms of such Interest Rate Agreement), and (b) with respect to each Lender at any time in the context of funding Loans, receiving payments, or any purpose under this Agreement other than as set forth in clause (a) above, the percentage participation of such Lender in the Total Term Loan Commitment, Total Revolving LC Commitment, Total PPA LC Commitment or Total DSR LC Commitment, respectively, as set forth on Schedule 2.2(a) (as may be amended pursuant to Article 9).

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

"**PUHCA**" has the meaning given in the First Lien Common Terms Agreement.

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

"**QFC Credit Support**" has the meaning given in Section 11.28.

"**Qualified ECP Guarantor**" means, in respect of any Swap Obligation, each Obligor that has total assets exceeding $10,000,000 at the time the relevant guaranty or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another Person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"**Qualified Operator**" means any Person that has substantial (prior or current) experience as an owner, operator, or manager of power generation facilities totaling at least 1000 MW; provided, that, if the ratings reaffirmation requirement in clause (y) of the definition of "Change of Control" is not applicable as provided in the proviso therein, "Qualified Operator" shall mean any Person that either (x) has substantial (prior or current) experience as an owner, operator, or manager of geothermal facilities totaling at least 100 MW or (y) has engaged at least half of the individuals who, immediately prior to the occurrence of the event that would otherwise constitute a Change of Control, held the title of "Area Operator" in connection with the operation of the Projects.

"**Quarterly Date**" means the last Banking Day of each December, March, June, and September.

"**Recipient**" means any Lender Party.

"**Register**" has the meaning given in Section 2.1(i).

"**Regulation D**" means Regulation D of the Board of Governors of the Federal Reserve System (or any successor).

"**Related Parties**" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's Affiliates.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing in the environment.

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

"**Replacement Major Project Contract**" has the meaning given in the First Lien Common Terms Agreement.

"**Required First Lien Secured Parties**" has the meaning given in the Intercreditor Agreement.

"**Required Lenders**" means, at any time, Lenders having Proportionate Shares which in the aggregate exceed 50%. A Defaulting Lender shall be disregarded in determining Required Lenders at any time.

"**Reserve Consultant**" means GeothermEx, Inc.

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

"**Responsible Officer**" has the meaning given in the First Lien Common Terms Agreement.

"**Revenue Account**" has the meaning given in the Depositary Agreement.

"**Revolving Issuing Bank**" means Natixis, New York Branch in its capacity as an issuer of any Revolving Letter of Credit hereunder, and its successors in such capacity pursuant to Section 2.2(i). A Revolving Issuing Bank may, in its discretion, arrange for any Revolving Letter of Credit to be issued by an Affiliate of such Revolving Issuing Bank, in which case the term "Revolving Issuing Bank" shall include any such Affiliate with respect to Revolving Letters of Credit issued by such Affiliate.

"**Revolving LC Commitments**" has the meaning given in the Recitals.

"**Revolving LC Exposure**" means, with respect to any Revolving Issuing Bank, at any time the sum of a) the aggregate principal amount of all Revolving LC Loans owing to such Revolving Issuing Bank in its capacity as a Lender, b) any unreimbursed drawing under any Revolving Letter of Credit issued by such Revolving Issuing Bank that have not yet been reimbursed at such time from the proceeds of Revolving LC Loans or otherwise, and c) the Stated Amount of all Revolving Letters of Credit issued by such Revolving Issuing Bank outstanding at such time.

"**Revolving LC Facility**" has the meaning given in the Recitals.

"**Revolving LC Fee**" has the meaning given in Section 2.3(c).

"**Revolving LC Lender**" has the meaning given in Section 2.2(a).

"**Revolving LC Loan(s)**" has the meaning given in the Recitals.

"**Revolving LC Note**" has the meaning given in Section 2.1(f).

"**Revolving LC Reimbursement Obligation**" means the obligation of the Borrower to repay any Drawing Payments relating to any Revolving Letter of Credit.

"**Revolving Letter of Credit**" has the meaning given in Section 2.2(a).

"**Revolving Letter of Credit Fronting Fee**" has the meaning given in Section 2.3(d).

"**Revolving Maturity Date**" means June 9, 2027.

"**Sanctioned Country**" has the meaning given in Section 4.23(a).

"**Sanctioned Persons**" has the meaning given in Section 4.23(a).

"**Sanctions**" has the meaning given in Section 4.23(a).

"**Second Lien Documents**" has the meaning given in the Intercreditor Agreement.

"**Security Agreement**" means the First Lien Pledge and Security Agreement, dated as of the Closing Date, substantially in the form of Exhibit D-1, among the Obligors and First Lien Collateral Agent.

"**SOFR**" with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark, (or a successor administrator) on the Federal Reserve Bank of New York's Website.

"**Specified Major Project Contract**" means, at any time, a Material Water Supply Agreement and/ or PPA that is a Major Project Contract at such time.

"**Sponsor**" has the meaning given in the Intercreditor Agreement.

"Stated Amount" means with respect to the Letters of Credit, the total amount available to be drawn thereunder at the time in question in accordance with the terms of the Letters of Credit. The Stated Amount of any Letter of Credit shall be reduced by the amount of Drawing Payments made in respect thereof.

"**Subject Claims**" has the meaning given in Section 11.13.

"**Subsidiary**" has the meaning given in the Intercreditor Agreement.

"**Supported QFC**" has the meaning given in Section 11.28.

"**Swap Obligation**" means any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act.

"**Syndication Agent**" means BNP Paribas, acting in its capacity as a Syndication Agent under this Agreement.

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

"**Template Operating Report**" means an operating report required by Section 5.3(b), in substantially the form of Exhibit G-1.

"**Term Lender**" has the meaning given in Section 2.1(a)(i).

"**Term Loan**" has the meaning given in the Recitals.

"**Term Loan Commitment**" means, at any time with respect to each Lender, such Lender's Proportionate Share of the Total Term Loan Commitment at such time.

"**Term Maturity Date**" means June 9, 2027.

"**Term Note**" has the meaning given in Section 2.1(f).

"**Term SOFR**" means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"**Third Amended and Restated Power Purchase and Sale Agreement**" has the meaning given in the First Lien Common Terms Agreement.

"**Total DSR LC Commitment**" has the meaning given in Section 2.2(b).

"**Total PPA LC Commitment**" has the meaning given in Section 2.2(c).

"**Total Revolving LC Commitment**" has the meaning given in Section 2.2(a).

"**Total Term Loan Commitment**" has the meaning given in Section 2.1(a)2.1(a)(i).

"**Transferee Hedge Provider**" has the meaning given in Section 2.4(g)(v).

"**Transferor Hedge Provider**" has the meaning given in Section 2.4(g)(v).

"**Type**" means the type of Loan, whether a Base Rate Loan or LIBOR Loan.

"**UK Financial Institution**" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended form time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"**UK Resolution Authority**" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"**Unadjusted Benchmark Replacement**" means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

"**Undisclosed Administration**" means in relation to a Lender or its direct or indirect parent company the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official by a supervisory authority or regulator under or based on the law in the country where such Lender or its direct or indirect parent company is subject to home jurisdiction supervision if applicable law requires that such appointment is not to be publicly disclosed.

"**U.S. Special Resolution Regime**" has the meaning given in Section 11.28.

"**U.S. Tax Compliance Certificates**" has the meaning given in Section 2.4(f)(ii)(B)(3).

"**Wild Horse**" has the meaning given in the preamble hereto.

"**Withdrawal Liability**" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part 1 of Subtitle E of Title IV of ERISA.

"**Write-Down and Conversion Powers**" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

RULES OF INTERPRETATION

1. The singular includes the plural and the plural includes the singular.

2. "or" is not exclusive.

3. A reference to a Governmental Rule includes any amendment or modification to such Governmental Rule, and all regulations, rulings and other Governmental Rules promulgated under such Governmental Rule.

4. A reference to a Person includes its permitted successors, permitted replacements and permitted assigns.

5. Accounting terms have the meanings assigned to them by GAAP, as applied by the accounting entity to which they refer.

6. The words "include", "includes" and "including" are not limiting.

7. A reference in a document to an Article, Section, Exhibit, Schedule, Annex or Appendix is to the Article, Section, Exhibit, Schedule, Annex or Appendix of such document unless otherwise indicated. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed incorporated by reference in such document. In the event of any conflict between the provisions of this Agreement (exclusive of the Exhibits, Schedules, Annexes and Appendices thereto) and any Exhibit, Schedule, Annex or Appendix thereto, the provisions this Agreement shall control.

8. Unless otherwise expressly provided, references to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) means such document, instrument or agreement, or replacement or predecessor thereto, as amended, amended and restated, modified and supplemented from time to time and in effect at any given time.

9. The words "hereof", "herein" and "hereunder" and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.

10. References to "days" means calendar days, unless the term "Banking Days" shall be used. References to a time of day means such time in New York, New York, unless otherwise specified.

11. The time period specified in Section 5.6, shall be extended (a) automatically to account for any period during which any applicable Obligor is unable, after exercising commercially reasonable efforts, to perform its obligations under such Section due to any circumstances existing in connection with the COVID-19 pandemic, or (b) as may otherwise be agreed by the Administrative Agent, acting reasonably.

12. If, at any time after the Closing Date, Moody's or S&P shall change its respective system of classifications, then any Moody's or S&P "rating" referred to herein shall be considered to be at or above a specified level if it is at or above the new rating which most closely corresponds to the specified level under the old rating system.

13. The Credit Documents are the result of negotiations between, and have been reviewed by the Obligors, each Affiliate of each Obligor, Administrative Agent, Coordinating Lead Arrangers, Joint Lead Arrangers, each Lender and their respective counsel. Accordingly, the Credit Documents shall be deemed to be the product of all parties thereto, and no ambiguity shall be construed in favor of or against the Obligors, any Affiliate of the Obligors, Administrative Agent or any Lender solely as a result of any such party having drafted or proposed the ambiguous provision.

14. For all purposes under the Credit Documents, in connection with any Division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

Exhibit 10.8

Execution Version

OMNIBUS AMENDMENT AGREEMENT

This OMNIBUS AMENDMENT AGREEMENT, dated as of November 9, 2021 (this "**Omnibus Amendment Agreement**"), is by and among GEYSERS POWER COMPANY, LLC (the "**Borrower**"), THE LENDERS SIGNATORY HERETO, THE GUARANTORS SIGNATORY HERETO, MUFG BANK, LTD., as Administrative Agent (together with its permitted successors and assigns in such capacity, "**Administrative Agent**"), MUFG UNION BANK, N.A., as First Lien Collateral Agent (together with its permitted successors and assigns in such capacity appointed, "**First Lien Collateral Agent**") and MUFG UNION BANK, N.A., as Depositary Agent (together with its permitted successors and assigns in such capacity appointed, "**Depositary Bank**"), and is made with reference to (a) that certain Credit Agreement, dated as of June 9, 2020, among the Borrower, the several banks and other financial institutions and entities from time to time party thereto as lenders and issuing banks (collectively, the "**Lenders**"), the Administrative Agent, the First Lien Collateral Agent, GEYSERS INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, as Holdings ("**Holdings**"), GEYSERS COMPANY, LLC, a Delaware limited liability company ("**Geysers Company**"), WILD HORSE GEOTHERMAL, LLC, a Delaware limited liability company ("**Wild Horse**") and CALISTOGA HOLDINGS, LLC, a Delaware limited liability company ("**Calistoga**", and, together with Holdings, Geysers Company, Wild Horse, and each subsidiary of an Obligor (as defined in the Credit Agreement) that becomes a "Guarantor" from time to time in accordance with the terms hereof, each a "**Guarantor**" and together, the "**Guarantors**") and other financial institutions and entities from time to time party thereto (as may be further amended, supplemented, amended and restated or otherwise modified from time to time prior to the date hereof, the "**Credit Agreement**"), (b) that certain First Lien Common Terms Agreement, dated as of June 9, 2020, by and among the Borrower, the Guarantors, each First Lien Secured Debt Representative party thereto from time to time (the "**First Lien Secured Debt Representative**") and the First Lien Collateral Agent (as amended, supplemented, amended and restated or otherwise modified from time to time prior to the date hereof, the "**Common Terms Agreement**") and (c) that certain Depositary Agreement, dated as of June 9, 2020, among the Borrower, the Guarantors, the First Lien Collateral Agent and the Depositary Bank and MUFG UNION BANK, N.A., as Second Lien Collateral Agent (in such capacity, together with its successors and permitted assigns, the "**Second Lien Collateral Agent**") for the Second Lien Secured Parties (as may be further amended, supplemented, amended and restated or otherwise modified from time to time prior to the date hereof, the "**Depositary Agreement**"). Capitalized terms used herein without definition shall have the meaning assigned to such terms in Section 1.1 of the Credit Agreement and the interpretive provisions set forth in Section 1.2 of the Credit Agreement.

RECITALS:

WHEREAS, pursuant to the Credit Agreement, the Lenders and the other parties thereto have agreed to provide to the Borrower certain credit facilities, consisting of (i) a term loan facility of the Borrower in an aggregate principal amount of up to $900,000,000 (the "**Term Loan Commitments**"), (ii) a senior secured revolving letter of credit facility of the Borrower (the "**Revolving LC Facility**") in an aggregate principal amount up to $130,622,000 (the commitments under Revolving LC Facility, the "**Revolving LC Commitments**"), (iii) a senior secured letter of credit facility of the Borrower (the "**DSR LC Facility**") in an aggregate principal amount up to $53,000,000 (the commitments under the DSR LC Facility, the "**DSR LC Commitments**") and (iv) a senior secured letter of credit facility of the Borrower (the "**PPA LC Facility**") in an aggregate principal amount up to $16,378,000 (the commitments under the PPA LC Facility, the "**PPA LC Commitments**" and, together with the Revolving LC Commitments and the DSR LC Commitments, the "**LC Commitments**" and the LC Commitments and the Term Loan Commitments, the "**Existing Commitments**" and, the loans thereunder, the "**Existing Loans**");

WHEREAS, in connection with repricing, extension and upsize of the Existing Loans, the Borrower hereby requests the amendments of the Credit Agreement, the Common Terms Agreement and the Depositary Agreement;

WHEREAS, pursuant to Section 9.9 of the Credit Agreement, amendments to the Credit Agreement are required to be in writing signed by the Borrower, the Guarantors, the Lenders, the Administrative Agent and the First Lien Collateral Agent, and each of Borrower, the Guarantors, the Lenders, the Administrative Agent and the First Lien Collateral Agent are willing to agree to the amendments to the Credit Agreement requested by the Borrower subject to and in accordance with the terms and conditions hereinafter set forth;

WHEREAS, pursuant to Section 7.2 of the Common Terms Agreement, amendments to the Common Terms Agreement are required to be in writing signed by each of the Borrower, the Guarantors, the First Lien Collateral Agent and the First Lien Secured Debt Representatives constituting the Required First Lien Secured Debt Parties (as defined in the Common Terms Agreement) (the "**Required First Lien Secured Debt Parties**") and each of the Borrower, the Guarantors, the First Lien Collateral Agent and the Required First Lien Secured Debt Parties are willing to agree to the amendments to the Common Terms Agreement requested by the Borrower subject to and in accordance with the terms and conditions hereinafter set forth;

WHEREAS, pursuant to Section 6.1 of the Depositary Agreement, amendments to the Depositary Agreement are required to be in writing signed by each of the Borrower, the Guarantors, the Depositary Bank and the First Lien Collateral Agent and each of the Borrower, the Guarantors, the Depositary Bank and the First Lien Collateral Agent are willing to agree to the amendments to the Depositary Agreement requested by the Borrower subject to and in accordance with the terms and conditions hereinafter set forth;

WHEREAS, the parties hereto wish to enter into this Omnibus Amendment Agreement pursuant to Section 9.9 of the Credit Agreement, Section 7.2 of the Common Terms Agreement and Section 6.1 of the Depositary Agreement, respectively, and it is the intent of the parties hereto that this Omnibus Amendment Agreement not constitute a novation of the obligations and liabilities of the parties under the Credit Agreement and rather that this Omnibus Amendment Agreement amend the Credit Agreement;

WHEREAS, the Borrower has requested an increase of the Total Term Loan Commitment in an aggregate principal amount of $660,084,691.61 (together with the Term Loan Commitment, the "**2021 Term Loan Commitment**", and any loans made thereunder, the "**2021 Term Loans**") which shall be provided by the 2021 Term Lenders (as defined below) party hereto and effective on the Omnibus Amendment Date (as defined below) pursuant to the terms and subject to the conditions set forth herein and in the Credit Agreement, which the Borrower intends to treat as fungible with the Term Loans made on the Omnibus Amendment Date to the fullest extent permitted by applicable law;

WHEREAS, the Borrower has requested that the Revolving LC Facility, DSR LC Facility and PPA LC Facility be combined into one facility with an increase in the LC Commitments in an aggregate principal amount equal to $50,000,000 (together with the LC Commitments, the "**2021 LC Commitment**") which shall be provided by the 2021 LC Lenders (as defined below) party hereto and effective on the Omnibus Amendment Date (as defined below) pursuant to the terms and subject to the conditions set forth herein and in the Credit Agreement;

WHEREAS, each of the institutions listed on Schedule I hereto as a 2021 Term Lender (the "**2021 Term Lenders**") is willing to provide their respective 2021 Term Loan Commitments as set forth on Schedule I to the Borrower on the Omnibus Amendment Date subject to the conditions set forth herein and in the Credit Agreement;

WHEREAS, each of the institutions listed on Schedule I hereto as a 2021 LC Lender (the "**2021 LC Lenders**") is willing to provide their respective 2021 LC Commitments as set forth on Schedule I to the Borrower on the Omnibus Amendment Date subject to the conditions set forth herein and in the Credit Agreement; and

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

AGREEMENT:

SECTION 1. 2021 TERM LOAN COMMITMENTS.

(a) On, from and after the Omnibus Amendment Date:

(i) each 2021 Term Lender shall hold 2021 Term Loan Commitments as set forth on Schedule I hereto, on the terms and subject to the conditions set forth below and in the Credit Agreement, as amended by this Omnibus Amendment Agreement (the "**Amended Credit Agreement**");

(ii) each 2021 Term Lender that holds Existing Loans hereby further agrees that the 2021 Term Loan Commitments as set forth on Schedule I hereto supersede, in their entirety, all Term Loan Commitments of such 2021 Term Lender under the Credit Agreement;

(iii) upon the incurrence of 2021 Term Loans pursuant to this Omnibus Amendment Agreement, such 2021 Term Loans shall, except as otherwise expressly set forth in the Amended Credit Agreement, be subject to the same terms and conditions (including repayment terms, voluntary prepayment terms, mandatory prepayment terms, and Applicable Margins) applicable to Term Loans as set forth in the Amended Credit Agreement; and

(iv) on (and subject to the occurrence of) the Omnibus Amendment Date, each 2021 Term Lender party hereto (A) acknowledges and agrees to make the 2021 Term Loans as provided in Omnibus Amendment Agreement on the terms, and subject to the conditions, set forth in Omnibus Amendment Agreement and (B) to the extent provided in Omnibus Amendment Agreement and the Amended Credit Agreement, shall have the rights and obligations of a Lender thereunder and under the other applicable Credit Documents.

SECTION 2. 2021 LC LOAN COMMITMENTS.

(a) On, from and after the Omnibus Amendment Date:

(i) each 2021 LC Lender shall hold 2021 LC Commitments as set forth on Schedule I hereto, on the terms and subject to the conditions set forth below and in the Amended Credit Agreement;

(ii) each 2021 LC Lender that holds Existing Loans hereby further agrees that the 2021 LC Commitments as set forth on Schedule I hereto supersede, in their entirety, all LC Commitments of such 2021 LC Lender under the Credit Agreement;

(iii) the 2021 LC Commitments pursuant to this Omnibus Amendment Agreement shall, except as otherwise expressly set forth in the Amended Credit Agreement, be subject to the same terms and conditions applicable to Letters of Credit as set forth in the Amended Credit Agreement; and

(iv) on (and subject to the occurrence of) the Omnibus Amendment Date, each 2021 LC Lender party hereto (A) acknowledges and agrees to make the 2021 LC Commitments as provided in Omnibus Amendment Agreement on the terms, and subject to the conditions, set forth in Omnibus Amendment Agreement and (B) to the extent provided in Omnibus Amendment Agreement and the Amended Credit Agreement, shall have the rights and obligations of a LC Lender thereunder and under the other applicable Credit Documents.

SECTION 3. AMENDMENTS TO CREDIT AGREEMENT. Pursuant to Section 9.9 of the Credit Agreement, each of the Borrower, the Guarantors, the Lenders, the Administrative Agent, and the First Lien Collateral Agent consents to the amendment of the Credit Agreement made as of the date hereof to:

(a) delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in Exhibit A-1 hereto;

(b) replace the Exhibits to the Credit Agreement in their entirety with the Exhibits in the form set forth in Exhibit A-2 hereto;

(c) add a new Schedule 2.2(b) to the Credit Agreement in the form set forth in Exhibit A-3 hereto; and

(d) replace Schedule 2.2(a) and Schedule 2.1(b)(ii)(C) to the Credit Agreement in their entirety with Schedule 2.2(a) and Schedule 2.1(b)(ii)(C), respectively, in the forms set forth in Exhibit A-4 hereto. Each Lender that holds Existing Loans and Existing Commitments hereby further agrees that the Commitments set forth in Schedule 2.2(a) to the Credit Agreement as amended by this Omnibus Amendment Agreement supersede, in their entirety, all Commitments of such Lenders under the Credit Agreement.

SECTION 4. AMENDMENTS TO COMMON TERMS AGREEMENT. Pursuant to Section 7.2 of the Common Terms Agreement, each of the Borrower, the Guarantors, the First Lien Collateral Agent and the Required First Lien Secured Debt Parties consents to the amendment of the Common Terms Agreement made as of the date hereof to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in Exhibit B hereto.

SECTION 5. AMENDMENTS TO DEPOSITARY AGREEMENT. Pursuant to Section 6.1 of the Depositary Agreement, each of the Borrower, the Guarantors, the Depositary Bank and the First Lien Collateral Agent consents to the amendment of the Depositary Agreement made as of the date hereof to:

(a) delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in Exhibit C-1 hereto; and

(b) replace Exhibit E to the Depositary Agreement in its entirety with Exhibit E in the form set forth in Exhibit C-2 hereto.

SECTION 6. REPRESENTATIONS AND WARRANTIES. In order to induce the Lenders party hereto to enter into this Omnibus Amendment Agreement and to amend the Credit Agreement, the Common Terms Agreement and the Depositary Agreement in the manner provided herein, each Obligor hereby represents and warrants that:

(a) the representations and warranties set forth in Article 4 of the Credit Agreement and in each other Credit Document, shall be true and correct in all material respects on and as of the Omnibus Amendment Date, and the representations and warranties which are contained in any other document furnished at any time under or in connection herewith or therewith were true and correct in all material respects when made, except, in each case, to the extent that such representations and warranties specifically refer to an earlier or specified date, in which case they shall be true and correct in all material respects as of such earlier or specified date (provided, that, in each case, to the extent any such representations are qualified by materiality, such representations shall be true and correct in all respects as of such earlier or specified date);

(b) both before and after giving effect to this Omnibus Amendment Agreement, no Default or Event of Default shall have occurred and be continuing; and

(c) this Omnibus Amendment Agreement has been duly authorized, executed and delivered by such Obligor and each of this Omnibus Amendment Agreement, the Credit Agreement, the Common Terms Agreement and the Depositary Agreement, as amended hereby, constitutes a legal, valid and binding obligation of such Obligor, enforceable against such Obligor in accordance with its terms, except to the extent that enforceability may be limited by (i) applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights, (ii) the effect of general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law), or (iii) implied covenants of good faith and fair dealing.

SECTION 7. EFFECTIVENESS. This Omnibus Amendment Agreement (including the amendments contained in Sections 1, 2, 3, 4 and 5 hereof) shall become effective on the date (the "**Omnibus Amendment Date**") on which the following conditions shall have been satisfied:

(a) Resolutions. Delivery to the Administrative Agent of a copy of one or more resolutions or other authorizations, in form and substance reasonably satisfactory to the Administrative Agent, of the Obligors certified by a Responsible Officer of Holdings or Borrower, as applicable, as being in full force and effect on the Omnibus Amendment Date, authorizing, as applicable and among other things, the delivery and performance of this Omnibus Amendment Agreement and any other Credit Document to be entered into on the Omnibus Amendment Date and any instruments or agreements required hereunder or thereunder to which any of the Obligors is a party.

(b) Incumbency. Delivery to the Administrative Agent and the Depositary Agent of a certificate, in form and substance reasonably satisfactory to the Administrative Agent, from the Obligors, signed by the appropriate authorized officer or manager of the Obligors and dated as of the Omnibus Amendment Date, as to the incumbency of the natural Persons authorized to execute and deliver this Omnibus Amendment Agreement and any instruments or agreements required hereunder or thereunder to which an Obligor is a party.

(c) Formation Documents. Delivery to the Administrative Agent of (i) copies of the articles of incorporation, certificate of incorporation, charter or other state certified constituent documents of each Obligor, certified by the secretary of state of such Obligor's state of formation, and (ii) copies of the limited liability company operating agreement or other comparable constituent documents, if applicable, of each Obligor, certified by an authorized officer of such Obligor, as applicable, as being true, correct and complete on the Omnibus Amendment Date.

(d) Good Standing Certificates. Delivery to the Administrative Agent of good standing certificates in a form customarily issued by (i) the secretary of state of the state in which the Obligors are formed or incorporated, as applicable, and (ii) in the case of Borrower, the Secretary of State of the State of California.

(e) Omnibus Amendment Certificate. Delivery to the Administrative Agent of a certificate, dated as of the Omnibus Amendment Date, duly executed by a Responsible Officer of Borrower, in substantially the form of the Closing Certificate provided on the Closing Date.

(f) Legal Opinions. Delivery to the Administrative Agent of legal opinions of counsel to the Obligors, in each case in form and substance reasonably satisfactory to the Administrative Agent.

(g) Omnibus Amendment Agreement and Major Project Contracts. Delivery to the Administrative Agent of (i) executed copies of this Omnibus Amendment Agreement and any supplements or amendments thereto, (ii) an executed copy of a Master Assignment and Assumption Agreement substantially in the form of Exhibit D and (iii) a certified list of, and true, correct and complete copies of, each Major Project Contract executed after the Closing Date and on or prior to the Omnibus Amendment Date (together with any supplements or amendments thereto), in the case of each of clauses (i) through (iii), all of which shall have been duly authorized, executed and delivered by the parties thereto.

(h) Representations and Warranties. (i) all representations and warranties set forth in Section 6 of this Omnibus Amendment Agreement shall be true and correct in all material respects (or true and correct in all respects in the case of representations and warranties qualified by materiality or Material Adverse Effect) on and as of the Omnibus Amendment Date with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects (or true and correct in all respects in the case of representations and warranties qualified by materiality or Material Adverse Effect) on and as of such earlier date), (ii) no Event of Default shall have occurred and be continuing or would occur at the time of and immediately after giving effect to the transactions contemplated hereunder, and (iii) the Administrative Agent shall have received an officer's certificate of the Borrower, dated the Omnibus Amendment Date, certifying compliance with the preceding clauses (i) and (ii).

(i) Consultant Reports. Delivery to the Administrative Agent of the Independent Engineer, Insurance Consultant, Reserve Consultant, Environmental Consultant and Market Consultant's reports, together with a reliance letter from each such Person in form and substance reasonably satisfactory to the Administrative Agent.

(j) Depositary Accounts. The Debt Service Reserve Account and shall have been funded in an amount equal to the Debt Service Reserve Requirement, with cash or one or more letters of credit.

(k) UCC Reports. Delivery to the Administrative Agent of a bring-down UCC report of a date no less recent than ten days before the Omnibus Amendment Date for each of the jurisdictions in which the UCC-1 financing statements and the fixture filings were filed in respect of the Collateral on the Closing Date, showing that the security interests created under the First Lien Collateral Documents, with respect to such Collateral, are prior to all other financing statements, future filings or other security documents wherein the security interest is perfected by filing or recording in respect of the Collateral.

(l) Payment of Taxes, Interest and Fees. All taxes, fees and other costs payable in connection with the execution, delivery, recordation and filing of the documents and instruments referred to in this Section 7 and due on the Omnibus Amendment Date shall have been paid in full or, as approved by the Lenders, provided for. Borrower shall have paid (or caused to be paid) all outstanding amounts due, as of the Omnibus Amendment Date, and owing to (i) the Lenders, Administrative Agent, First Lien Collateral Agent, the Issuing Banks, Coordinating Lead Arrangers or the Joint Lead Arrangers under any fee or other letter, including without limitation, pursuant to Section 2.3(a) of the Credit Agreement, (ii) the Lenders' attorneys and consultants (including the Independent Consultants) for all services rendered and billed at least one Banking Day prior to the Omnibus Amendment Date, (iii) the Depositary Agent under the Depositary Agreement and the Depositary and Collateral Agency Fee Letter and (iv) Administrative Agent for any other amounts required to be paid or deposited by Borrower on the Omnibus Amendment Date. In addition, Borrower shall have provided, to any Lender that has so requested in writing at least one Banking Day prior to the Omnibus Amendment Date, documentation reasonably satisfactory to Borrower and such Lender regarding the description or designation of any fees payable to such Lender pursuant to the foregoing clause (i); provided, that Borrower shall not be responsible for making any determination or verification with respect to the description or designation of fees requested by any such Lender, and shall not have any liability to any such Lender as a result of the delivery of such documentation.

(m) Notice of Borrowing. Borrower shall have delivered a Notice of Borrowing to Administrative Agent in accordance with the procedure specified in Section 2.1(a)(ii) of the Credit Agreement.

(n) Annual Operating Budget. The Lenders shall have received a copy of the Annual Operating Budget for calendar year 2022.

(o) Base Case Projections. Delivery to the Administrative Agent of the Base Case Projections of operating expenses and cash flow for the Projects in the form of Exhibit D hereto, which Base Case Projections shall be in form and substance satisfactory to the Administrative Agent.

(p) Know-your-Customer. At least three Banking Days prior to the Omnibus Amendment Date, the Agents and the Lenders shall have received all documentation and other information required by bank regulatory authorities or reasonably requested by any Agent or any Lender, at least seven Banking Days prior to the Omnibus Amendment Date, under or in respect of applicable "know-your-customer" and anti-money laundering rules and regulations, including the PATRIOT Act.

(q) Letter of Direction. Delivery to the Administrative Agent and the Depositary Agent of the Omnibus Amendment Date Funds Flow Memorandum (as defined in the Amended Credit Agreement).

(r) Notes. Delivery to the Administrative Agent, for the account of each Lender that has requested a Note prior to the Omnibus Amendment Date, such Lender's Notes duly executed and delivered by a Responsible Officer of the Borrower.

SECTION 8. EFFECT ON CREDIT DOCUMENTS.

(a) Reference to Credit Agreement. On and after the effectiveness of this Omnibus Amendment Agreement, each reference in the Credit Agreement to "this Agreement", "hereunder", "hereof", "herein" or words of like import referring to the Credit Agreement, and each reference in the other Credit Documents to the "Credit Agreement", "thereunder", "thereof" or words of like import referring to the Credit Agreement shall mean and be a reference to the Credit Agreement, as amended and supplemented by this Omnibus Amendment Agreement. The Borrower acknowledges and agrees that this Omnibus Amendment Agreement shall constitute a Credit Document for all purposes of the Credit Agreement.

(b) Reference to Common Terms Agreement. On and after the effectiveness of this Omnibus Amendment Agreement, each reference in the Common Terms Agreement to "this Agreement", "hereunder", "hereof", "herein" or words of like import referring to the Common Terms Agreement, and each reference in the other Credit Documents to the "First Lien Common Terms Agreement", "thereunder", "thereof" or words of like import referring to the Common Terms Agreement shall mean and be a reference to the Common Terms Agreement, as amended and supplemented by this Omnibus Amendment Agreement.

(c) Reference to Depositary Agreement. On and after the effectiveness of this Omnibus Amendment Agreement, each reference in the Depositary Agreement to "this Agreement", "hereunder", "hereof", "herein" or words of like import referring to the Depositary Agreement, and each reference in the other Credit Documents to the "Depositary Agreement", "thereunder", "thereof" or words of like import referring to the Depositary Agreement shall mean and be a reference to the Depositary Agreement, as amended and supplemented by this Omnibus Amendment Agreement.

(d) Effect on Credit Documents. Except as specifically amended by this Omnibus Amendment Agreement, the Credit Agreement, the Common Terms Agreement, the Depositary Agreement and the other Credit Documents shall remain in full force and effect.

(e) Credit Document. This Omnibus Amendment Agreement shall constitute a Credit Document under the terms of the Credit Agreement.

(f) Collateral and Guaranty Matters.

(i) Each of the Obligors party to the Security Agreement, the Depositary Agreement, the other First Lien Collateral Documents and the other Credit Documents, in each case as amended, supplemented or otherwise modified from time to time prior to the date hereof (x) acknowledges and agrees that all of its guaranties, pledges, grants of security interests and Liens and other obligations under the Credit Agreement, Security Agreement, the Depositary Agreement, the other First Lien Collateral Documents and the other Credit Documents to which it is a party are reaffirmed and remain in full force and effect on a continuous basis, (y) reaffirms each Lien granted by it to the Administrative Agent and/or First Lien Collateral Agent for the benefit of the First Lien Secured Parties and (z) acknowledges and agrees that the guaranties, pledges, grants of security interests and Liens contained in the Credit Agreement, Security Agreement, the Depositary Agreement, the other First Lien Collateral Documents and any other Credit Documents are, and shall remain, in full force and effect on and after the Omnibus Amendment Date.

(ii) The applicable Obligor will deliver such other documents, certificates and agreements and take all such further actions, in each case, that may be required under any applicable law or which the Administrative Agent and/or First Lien Collateral Agent may reasonably request to ensure the creation, validity, perfection and priority of the Liens on the Collateral created, or purported to be created, under the First Lien Collateral Documents.

(g) No Other Amendment or Waiver. The execution, delivery and performance of this Omnibus Amendment Agreement shall not constitute a waiver of any other provision of, or operate as a waiver of any other right, power or remedy of the Administrative Agent, the First Lien Collateral Agent or any Lender Party under, the Credit Agreement or any of the other Credit Documents. The amendment contained herein is limited to the specific provisions described and shall not be deemed to prejudice any rights not specifically addressed herein which the Administrative Agent, the Collateral Agent or any Lender Party may now have or may have in the future under the Credit Agreement or any other Credit Document.

SECTION 9. GOVERNING LAW. This Omnibus Amendment Agreement and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Omnibus Amendment Agreement and the transactions contemplated hereby or thereby, including the validity, interpretation, construction, breach, enforcement or termination hereof and thereof, shall be governed by, and construed in accordance with, the law of the State of New York without regard to the conflict of law rules thereof (other than Sections 5-1401 and 5-1402 of The New York General Obligations Law).

SECTION 10. WAIVER OF JURY TRIAL; CONSENT TO JURISDICTION. The "*Waiver of Jury Trial*" provisions set forth in Section 11.14 of the Credit Agreement and the "*Consent to Jurisdiction*" provisions set forth in Section 11.15 of the Credit Agreement, shall apply to this Omnibus Amendment Agreement, *mutatis mutandis*, as if fully set forth herein.

SECTION 11. DIRECTION. By its signature below, (a) each of the undersigned Lenders hereby instructs the Administrative Agent to (i) sign this Amendment, (ii) direct the Depositary Agent and Collateral Agent to sign this Amendment and (b) the Administrative Agent hereby instructs (i) the Depositary Agent and Collateral Agent to sign this Amendment and (ii) the Collateral Agent to (x) return that certain Irrevocable and Transferable Debt Service Reserve Letter of Credit issued by Coöperatieve Rabobank U.A., New York Branch to Latham & Watkins, LLP and (y) accept each DSR Letter of Credit and each amendment to the existing DSR Letters of Credit, in each case issued in connection with this Omnibus Amendment Agreement, for credit to the Debt Service Reserve Account in accordance with the Depositary Agreement.

SECTION 12. COUNTERPARTS. This Omnibus Amendment Agreement may be executed by one or more of the parties to this Omnibus Amendment Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. A set of the copies of this Omnibus Amendment Agreement signed by all the parties shall be maintained by the Borrower and the Administrative Agent. This Omnibus Amendment Agreement may be executed and delivered by electronic transmission with the same force and effect as if the same was a fully executed and delivered original manual counterpart. The words "execution", "execute", "signed", "signature", and words of like import in or related to any document signed or to be signed in connection with this Omnibus Amendment Agreement and the transactions contemplated hereby shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the parties hereto, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Omnibus Amendment Agreement as of the date first above written.

GEYSERS POWER COMPANY, LLC,
a Delaware limited liability company, as Borrower

By: /s/ Zamir Rauf
Name: Zamir Rauf
Title: Chief Financial Officer

GEYSERS INTERMEDIATE HOLDINGS LLC,
a Delaware limited liability company, as a Guarantor

By: /s/ Zamir Rauf
Name: Zamir Rauf
Title: Chief Financial Officer

GEYSERS COMPANY, LLC,
a Delaware limited liability company, as a Guarantor

By: /s/ Zamir Rauf
Name: Zamir Rauf
Title: Chief Financial Officer

WILD HORSE GEOTHERMAL, LLC,
a Delaware limited liability company, as a Guarantor

By: /s/ Zamir Rauf
Name: Zamir Rauf
Title: Chief Financial Officer

CALISTOGA HOLDINGS, LLC,
a Delaware limited liability company, as a Guarantor

By: /s/ Zamir Rauf
Name: Zamir Rauf
Title: Chief Financial Officer

MUFG BANK, LTD.,
as Administrative Agent

By: /s/ Lawrence Blat
Name: Lawrence Blat
Title: Authorized Signatory

[*Signature Page to Omnibus Amendment Agreement*]

MUFG UNION BANK, N.A.,
as First Lien Collateral Agent

By: /s/ Thaddeus Smith
Name: Thaddeus Smith
Title: Vice President

[*Signature Page to Omnibus Amendment Agreement*]

MUFG UNION BANK, N.A.,
as Depositary Bank

By: /s/ Thaddeus Smith
Name: Thaddeus Smith
Title: Vice President

[*Signature Page to Omnibus Amendment Agreement*]

MUFG UNION BANK, N.A.,
as a Lender

By: /s/ Carmelo Restifo
Name: Carmelo Restifo
Title: Director

[*Signature Page to Omnibus Amendment Agreement*]

BNP PARIBAS,
as a Lender

By: /s/ Aashish Mohan
Name: Aashish Mohan
Title: Managing Director

By: /s/ Olivier Catala
Name: Olivier Catala
Title: Director

[*Signature Page to Omnibus Amendment Agreement*]

CRÉDIT AGRICOLE CORPORATE & INVESTMENT BANK,
as a Lender

By: /s/ Evan Levy
Name: Evan Levy
Title: Managing Director

By: /s/ Kenneth Ricciardi
Name: Kenneth Ricciardi
Title: Director

[*Signature Page to Omnibus Amendment Agreement*]

MIZUHO BANK, LTD.,
as a Lender

By: /s/ Jonathan Kim
Name: Jonathan Kim
Title: Managing Director

[*Signature Page to Omnibus Amendment Agreement*]

NATIONAL BANK OF CANADA,
as a Lender

By: /s/ John Hunt
Name: John Hunt
Title: Authorized Signatory

By: /s/ Mark Williamson
Name: Mark Williamson
Title: Authorized Signatory

[*Signature Page to Omnibus Amendment Agreement*]

NATIXIS, NEW YORK BRANCH,
as a Lender

By: /s/ James B. Kaiser
Name: James B. Kaiser
Title: Managing Director - Head of Infrastructure & Energy Finance North America

By: /s/ Damien Auguste
Name: Damien Auguste
Title: Director - Infrastructure & Energy Finance, Americas

SUMITOMO MITSUI BANKING CORPORATION,
as a Lender

By: /s/ Juan Kreutz
Name: Juan Kreutz
Title: Managing Director

[*Signature Page to Omnibus Amendment Agreement*]

TRUIST BANK,
as a Lender

By: /s/ Justin Lien
Name: Justin Lien
Title: Director

[*Signature Page to Omnibus Amendment Agreement*]

COÖPERATIEVE RABOBANK U.A., NEW YORK BRANCH,
as a Lender

By: /s/ Claus Hertel
Name: Claus Hertel
Title: MD - Project Finance Officer

By: /s/ Paul de Waard
Name: Paul de Waard
Title: Vice President

[*Signature Page to Omnibus Amendment Agreement*]

COBANK, ACB,
as a Lender

By: /s/ Justin Merkowitz
Name: Justin Merkowitz
Title: Vice President

[*Signature Page to Omnibus Amendment Agreement*]

ING CAPITAL LLC,
as a Lender

By: /s/ Scott Hancock
Name: Scott Hancock
Title: Managing Director

By: /s/ Stephen Hughes
Name: Stephen Hughes
Title: Director

[*Signature Page to Omnibus Amendment Agreement*]

DZ BANK AG DEUTSCHE ZENTRAL-GENOSSENSCHAFTSBANK, NEW YORK BRANCH,
as a Lender

By: /s/ William A. Kersten
Name: William A. Kersten
Title: Director

By: /s/ John Hammarskjold
Name: John Hammarskjold
Title: Senior Vice President

[*Signature Page to Omnibus Amendment Agreement*]

METROPOLITAN LIFE INSURANCE COMPANY,
as a Lender

By: MetLife Investment Management, LLC, Its Investment Manager

By: /s/ John Tanyeri
Name: John Tanyeri
Title: Authorized Signatory

[*Signature Page to Omnibus Amendment Agreement*]

BRIGHTHOUSE LIFE INSURANCE COMPANY,
as a Lender

By: MetLife Investment Management, LLC, Its Investment Manager

By: /s/ John Tanyeri
Name: John Tanyeri
Title: Authorized Signatory

[*Signature Page to Omnibus Amendment Agreement*]

PENSIONSKASSE DES BUNDES PUBLICA,
as a Lender

By: MetLife Investment Management Limited, as Investment Manager

By: /s/ Geert Henckens
Name: Geert Henckens
Title: Authorized Signatory

[*Signature Page to Omnibus Amendment Agreement*]

METROPOLITAN TOWER LIFE INSURANCE COMPANY,
as a Lender

By: MetLife Investment Management, LLC, Its Investment Manager

By: /s/ John Tanyeri
Name: John Tanyeri
Title: Authorized Signatory

[*Signature Page to Omnibus Amendment Agreement*]

KOOKMIN BANK, NEW YORK BRANCH,
as a Lender

By: /s/ Woo Suk, Cha
Name: Woo Suk, Cha
Title: Head of IB Unit

[*Signature Page to Omnibus Amendment Agreement*]

BANK OF MONTREAL, CHICAGO BRANCH,
as a Lender

By: /s/ Darren Thomas
Name: Darren Thomas
Title: Director

[*Signature Page to Omnibus Amendment Agreement*]

CAIXABANK,
as a Lender

By: /s/ Berta Guadalupe Egaña
Name: Berta Guadalupe Egaña
Title: Structured Finance Assistant Director

By: /s/ María Luisa Cobos
Name: María Luisa Cobos
Title: Structured Finance Director

[*Signature Page to Omnibus Amendment Agreement*]

HSBC BANK USA, N.A.,
as a Lender

By: /s/ James Edmonds
Name: James Edmonds
Title: Director
ID: 22680

[*Signature Page to Omnibus Amendment Agreement*]

NATIONAL AUSTRALIA BANK LIMITED,
as a Lender

By: /s/ Henry Miller
Name: Henry Miller
Title: Director

[*Signature Page to Omnibus Amendment Agreement*]

SIEMENS FINANCIAL SERVICES, INC.,
as a Lender

By: /s/ Russell Nussbaum
Name: Russell Nussbaum
Title: Vice President

By: /s/ NICOLAS HINDEN
Name: NICOLAS HINDEN
Title: VICE PRESIDENT

[*Signature Page to Omnibus Amendment Agreement*]

BANKUNITED, N.A.,
as a Lender

By: /s/ Michael van Teeffelen
Name: Michael van Teeffelen
Title: SVP

[*Signature Page to Omnibus Amendment Agreement*]

AMALGAMATED BANK,
as a Lender

By: /s/ Shu Chen
Name: Shu Chen
Title: First Vice President

[*Signature Page to Omnibus Amendment Agreement*]

E.SUN COMMERCIAL BANK, LTD., LOS ANGELES BRANCH,
as a Lender

By: /s/ Mandy Yeh
Name: Mandy Yeh
Title: VP & General Manager

[*Signature Page to Omnibus Amendment Agreement*]

THE HUNTINGTON NATIONAL BANK,
as a Lender

By: /s/ Rochelle Thomas
Name: Rochelle Thomas
Title: Authorized Signer

[*Signature Page to Omnibus Amendment Agreement*]

Signed by **ALLIED IRISH BANKS, P.L.C.**)
acting by its duly authorised)
signatories)

/s/ Authorised signatory
(Authorised signatory)

/s/ Authorised signatory
(Authorised signatory)

AMERICAN FAMILY LIFE ASSURANCE COMPANY OF COLUMBUS,
as a Lender

By: Barings LLC, as Investment Adviser

By: /s/ Jennie Rose
Name: Jennie Rose
Title: Managing Director

[*Signature Page to Omnibus Amendment Agreement*]

BRIGHTHOUSE LIFE INSURANCE COMPANY,
as a Lender

By: Brighthouse Services, LLC, as adviser
By: Barings LLC, as Investment Adviser

By: /s/ Jennie Rose
Name: Jennie Rose
Title: Managing Director

[*Signature Page to Omnibus Amendment Agreement*]

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY,
as a Lender

By: Barings LLC, as Investment Adviser

By: /s/ Jennie Rose
Name: Jennie Rose
Title: Managing Director

[*Signature Page to Omnibus Amendment Agreement*]

BANK OF CHINA, NEW YORK BRANCH,
as a Lender

By: /s/ Raymond Qiao
Name: Raymond Qiao
Title: Executive Vice President

[*Signature Page to Omnibus Amendment Agreement*]

APPLE BANK FOR SAVINGS,
as a Lender

By: /s/ Dana R. MacKinnon
Name: Dana R. MacKinnon
Title: Senior Vice President

[*Signature Page to Omnibus Amendment Agreement*]

Exhibit A-1
Credit Agreement

[*Attached*]

~~Execution Version~~Final Form
Conformed to Omnibus Amendment

CREDIT AGREEMENT

Dated as of June 9, 2020

(as amended by the Omnibus Amendment, dated as of November 9, 2021)
among

GEYSERS POWER COMPANY, LLC,
as Borrower,

THE GUARANTORS PARTY HERETO,
as Guarantors,

MUFG BANK, LTD.
as Administrative Agent,

MUFG UNION BANK, N.A.
as First Lien Collateral Agent,

and

THE LENDERS AND ISSUING BANKS PARTIES HERETO

~~with~~With

COBANK, ACB, COÖPERATIEVE RABOBANK, U.A., NEW YORK BRANCH, ING CAPITAL LLC, **MIZUHO BANK, LTD.**, **MUFG UNION BANK, N.A., NATIONAL BANK OF CANADA**, **SUMITOMO MITSUI BANKING CORPORATION,** and ~~SUNTRUST ROBINSON HUMPHREY~~TRUIST SECURITIES, **INC.**
as Coordinating Lead Arrangers and Bookrunners,

CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK and **NATIXIS, NEW YORK BRANCH**
as Coordinating Lead Arrangers, Bookrunners, and Green Loan Coordinators,

BNP PARIBAS,
as Coordinating Lead Arranger, Bookrunner, and Syndication Agent,

~~COBANK, ACB, COÖPERATIEVE RABOBANK, U.A., NEW YORK BRANCH and ING CAPITAL LLC,~~
BANK OF CHINA, NEW YORK BRANCH, BANK OF MONTREAL, BARINGS, LLC, HSBC BANK USA, N.A., and KOOKMIN BANK, NEW YORK BRANCH,
as Joint Lead Arrangers,

THE HUNTINGTON NATIONAL BANK and NATIONAL AUSTRALIA BANK LIMITED,
as Senior Managing Agents



Geysers Geothermal Projects

$~~1,100,000,000~~1,750,000,000 Senior Secured Credit Facilities

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This CREDIT AGREEMENT, dated as of June 9, 2020 (this "**Agreement**"), is entered into among GEYSERS POWER COMPANY, LLC, a Delaware limited liability company, as borrower ("**Borrower**"), GEYSERS INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, as Holdings ("**Holdings**"), GEYSERS COMPANY, LLC, a Delaware limited liability company ("**Geysers Company**"), WILD HORSE GEOTHERMAL, LLC, a Delaware limited liability company ("**Wild Horse**") and CALISTOGA HOLDINGS, LLC, a Delaware limited liability company ("**Calistoga**", and, together with Holdings, Geysers Company, Wild Horse, and each subsidiary of an Obligor that becomes a "Guarantor" from time to time in accordance with the terms hereof, each a "**Guarantor**" and together, the "**Guarantors**"), THE FINANCIAL INSTITUTIONS LISTED ON SCHEDULE 2.2(a) OR WHO LATER BECOME A PARTY HERETO, as Lenders and Issuing Banks (the financial institutions party to this Agreement being collectively referred to as the "**Lenders**"), MUFG BANK, LTD., as administrative agent for the Lenders (together with its permitted successors and assigns in such capacity, "**Administrative Agent**") and MUFG UNION BANK, N.A. as First Lien Collateral Agent for the First Lien Secured Parties (together with its permitted successors and assigns in such capacity appointed pursuant to the Intercreditor Agreement, "**First Lien Collateral Agent**") with **COBANK, ACB, COÖPERATIEVE RABOBANK, U.A., NEW YORK BRANCH, ING CAPITAL LLC,** MIZUHO BANK, LTD., MUFG UNION BANK, N.A., NATIONAL BANK OF CANADA, SUMITOMO MITSUI BANKING CORPORATION, and ~~SUNTRUST ROBINSON HUMPHREY~~**TRUIST SECURITIES**, INC., as Coordinating Lead Arrangers and Bookrunners, CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK and NATIXIS, NEW YORK BRANCH , as Coordinating Lead ~~Arranger~~**Arrangers**, Bookrunners, and Green Loan Coordinators, BNP PARIBAS, as Coordinating Lead Arranger, Bookrunner, and Syndication Agent, ~~COBANK, ACB, COÖPERATIEVE RABOBANK, U.A.~~**BANK OF CHINA**, NEW YORK BRANCH ~~and ING CAPITAL LLC~~**, BANK OF MONTREAL, BARINGS, LLC, HSBC BANK USA, N.A., and KOOKMIN BANK, NEW YORK BRANCH**, as Joint Lead Arrangers **and THE HUNTINGTON NATIONAL BANK and NATIONAL AUSTRALIA BANK LIMITED, as Senior Managing Agents**.

WHEREAS:

(A) Borrower is the owner of thirteen geothermal electric generating facilities located in the Geysers area of Northern California (Sonoma and Lake Counties);

(B) Borrower desires that the Lenders, Issuing Banks and the other parties hereto agree to provide, upon the terms and subject to the conditions set forth herein and in the other Credit Documents, certain credit facilities, consisting of (i) a term loan facility of the Borrower in an aggregate principal amount of up to $~~900,000,000~~**1,500,000,000** (the loans thereunder, **including the 2021 Term Loans (as defined herein),** the "**Term Loans**"), (ii) a senior secured revolving letter of credit facility of the Borrower (the "~~Revolving~~ **LC Facility**") in an aggregate principal amount up to $~~130,622,000~~**250,000,000** (the commitments under ~~Revolving~~ LC Facility, ~~the "Revolving~~**including the 2021 LC Commitments (as defined herein), the "LC Commitments**"; the loans thereunder, the "~~Revolving~~ **LC Loans**"), the full amount thereof shall be available for the issuance of Revolving Letters of Credit~~, (ii) a senior secured letter of credit facility of the Borrower (the "DSR LC Facility") in an aggregate principal amount up to $53,000,000 (the commitments under the DSR LC Facility, the "DSR LC Commitments"), the full amount thereof shall be available for the issuance of~~ **and/or** DSR Letters of Credit~~ and (iv) a senior secured letter of credit facility of the Borrower (the "PPA LC Facility") in an aggregate principal amount up to $16,378,000 (the commitments under the PPA LC Facility, the "PPA LC Commitments" (together with the Revolving LC Commitments and the DSR LC Commitments, the "LC Commitments")) the full amount thereof shall be available for the issuance of PPA Letters of Credit;~~;

(C) The credit facilities provided hereunder will be secured by, among other things, the grant to First Lien Collateral Agent, for the benefit of the First Lien Secured Parties, of a first priority Lien on the Collateral (subject to Permitted Liens); and

(D) The Lenders are willing to provide the credit facilities described herein upon the terms and subject to the conditions set forth herein and in the other Credit Documents, and the Lenders have, on or prior to the Closing Date, unanimously approved the execution of this Agreement.

NOW, **THEREFORE**, in consideration of the agreements herein and in the other Credit Documents and in reliance upon the representations and warranties set forth herein and therein, the parties hereto agree as follows:

1. DEFINITIONS

1.1 Definitions

Unless otherwise defined in Exhibit A or otherwise expressly provided in this Agreement, capitalized terms used herein shall have the meanings provided in the First Lien Common Terms Agreement or, if not in the First Lien Common Terms Agreement, in the Intercreditor Agreement.

1.2 Rules of Interpretation

Except as otherwise expressly provided, the rules of interpretation set forth in Exhibit A shall apply to this Agreement and the other Credit Documents.

2. THE CREDIT FACILITIES

2.1 Term Loan Facility

(a) Term Loans; Term Loan Commitments.

(i) The aggregate amount of the Term Loan Commitments on the Closing Date ~~is~~**was** $900,000,000 **which amount increased as of the Omnibus Amendment Date to an amount equal to $1,500,000,000** (the "**Total Term Loan Commitment**"). ~~Each~~**On the Closing Date, each** Lender holding a Term Loan Commitment (a "**Term Lender**") **made a Loan to the Borrower in the amount of its respective Term Loan Commitment as of such date. Each Lender holding a 2021 Term Loan Commitment** severally agrees, on the terms and conditions hereinafter set forth, to make a Loan to the Borrower on the ~~Closing~~**Omnibus Amendment** Date in an amount not to exceed such Lender's **2021** Term Loan Commitment at such time. Amounts borrowed under this Section 2.1(a), when repaid or prepaid, may not be reborrowed.

(ii) Notice of Borrowing. Borrower shall request any Loans to be funded on the Closing Date or Borrowing Date, as applicable, by delivering to Administrative Agent a written notice in the form of Exhibit C-1, appropriately completed (a "**Notice of Borrowing**"), at or before 1:00 p.m. (New York City time) at least one Banking Day prior to the Closing Date or Borrowing Date, as applicable.

(A) Each Lender shall, before 12:00 noon (New York City time) on the date of such Borrowing, make available by wire transfer for the account of its Lending Office to the account of the Administrative Agent, in same day funds, such Lender's ratable portion of such Borrowing, in accordance with the respective Commitments of such Lender. After the Administrative Agent's receipt of such funds and upon fulfillment or waiver of the applicable conditions set forth in Section 3.2, the Administrative Agent shall make such funds available to the Borrower (1) in the case of a Borrowing of Term Loans to be made on the Closing Date, as directed by the Borrower pursuant to the terms of, and in accordance with, the Funds Flow Memorandum and (2) in the case of a Borrowing of ~~Incremental~~**the 2021** Term Loans **to be made on the Omnibus Amendment Date**, as directed by the Borrower pursuant to the terms and in accordance with, ~~**the funds flow memorandum relating to the Incremental Term Loans**~~**directed by the Borrower pursuant to the terms of, and in accordance with, the Omnibus Amendment Date Funds Flow Memorandum**.

(B) Each Notice of Borrowing shall be irrevocable and binding on the Borrower from and after the Banking Day prior to the Borrowing. In the case of any Borrowing that the related Notice of Borrowing specifies is to be comprised of LIBOR Loans, the Borrower shall indemnify each applicable Lender against any actual and documented out-of-pocket loss, cost or expense (excluding loss of anticipated profits and indirect losses) incurred by such Lender as a result of any failure to fulfill on or before the date specified in such Notice of Borrowing for such Borrowing the applicable conditions set forth in Section 3.2, including any loss (excluding loss of anticipated profits and indirect losses), cost or expense incurred by reason of the liquidation or redeployment of deposits or other funds acquired by such Lender to fund the Loans to be made by such Lender as part of such Borrowing when such Loan, as a result of such failure, is not made on such date.

(C) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's ratable portion of such Borrowing, the Administrative Agent may assume that such Lender has made such portion available to the Administrative Agent on the date of such Borrowing in accordance with clause (A) of this Section 2.1(a)(ii) and the Administrative Agent may, in its sole discretion and in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If and to the extent that such Lender shall not have so made such ratable portion available to the Administrative Agent, the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each day from such date of Borrowing until the date such amount is paid to the Administrative Agent, at the Base Rate. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent shall promptly notify the Borrower and the Borrower shall immediately pay such corresponding amount to the Administrative Agent together with interest thereon, for each day from the date of such Borrowing until the date such amount is paid to the Administrative Agent, at the rate payable hereunder for Base Rate Loans.

(D) The failure of any Lender to make the Loans to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing. Nothing in this Section 2.1(a)(ii) shall prejudice any rights that the Borrower may have against a Defaulting Lender.

(b) ~~Incremental Term Loan Facilities~~[Reserved].

~~(i) The Borrower may, at its sole discretion, by written notice to the Administrative Agent, from time to time after the Closing Date, on one or more occasions, arrange or request from one or more Lenders, other banks or other entities an incremental facility for term loans ("Incremental Term Loans") in an aggregate principal amount not to exceed the Incremental Term Loan Cap at the time of incurrence (each new facility, an "Incremental Term Loan Facility") and/or an increase in the total Term Loan Commitments in an aggregate principal amount not to exceed the Incremental Term Loan Cap at the time of incurrence (each, an "Incremental Term Loan Commitment"), used solely for the purposes set forth in Section 5.1(b) or to make a distribution to the Sponsor. Upon the receipt of such notice by the Administrative Agent, the Administrative Agent shall deliver a copy thereof to each Lender. Each such Lender may, in its sole discretion, either agree to provide all or a portion of the offered amount of such Incremental Term Loan Facility or Incremental Term Loan Commitment, as applicable or decline to provide such Incremental Term Loan Facility or Incremental Term Loan Commitment (and any Lender that does not deliver a notice within a period of fifteen days after the date of notice by the Borrower shall be deemed to have declined to provide such Incremental Term Loan Facility or Incremental Term Loan Commitment, as applicable), it being acknowledged and agreed that no Lender is required to provide any such Incremental Term Loan Facility or Incremental Term Loan Commitment. Any Incremental Term Loan Facility or Incremental Term Loan Commitment may be incurred in an amount that is less than the amount set forth by the Borrower in its notice.~~

(ii) Notwithstanding the foregoing, no increase under clause (i) above shall become effective under this Section 2.1(b) unless the following the conditions have been satisfied:

(A) no Event of Default shall have occurred and be continuing or would result after giving effect to the incurrence of such Incremental Term Loans;

(B) such Incremental Term Loans, shall have a maturity date no earlier than the Term Maturity Date;

(C) the Borrower shall have delivered to the Administrative Agent an updated amortization schedule reasonably satisfactory to the Administrative Agent which amortization schedule shall replace the amortization then set forth in Schedule 2.1(b)(ii)(C) and shall provide that the Incremental Term Loans shall (1) amortize on the same dates as the Term Loans and (2) amortize at the same amortization percentage applicable to amortization on the Term Loans;

(D) the principal amount of the Incremental Term Loans remaining outstanding on the Maturity Date, taken together with the principal amount of the Term Loans outstanding on the Maturity Date, shall equal the (1) the payment on the Maturity Date in respect of the Term Loans under the amortization schedule set forth on Schedule 2.1(b)(ii)(C) as of the date of the incurrence of the applicable Incremental Term Loan Facility multiplied by (2) a fraction, (x) the numerator of which shall be the sum of the Term Loans and any Incremental Term Loans outstanding as of the date of incurrence of the Incremental Term Loan Facility plus the applicable Incremental Term Loan Facility incurred and (y) the denominator of which shall be the Term Loans and any Incremental Term Loans outstanding as of the date of incurrence of the applicable Incremental Term Loan Facility; provided that in no event shall the payment on the Term Maturity Date in respect of the Term Loans under the amortization schedule set forth on Schedule 2.1(b)(ii)(C) as of the date of the incurrence of any Incremental Term Loan Facility exceed $525,000,000;

(E) the representations, covenants, defaults and other provisions relating to such Incremental Term Loan Facility shall be no more favorable in any material respect to the Incremental Term Loan Lenders as the representations, covenants, defaults and other provisions applying in favor of the Term Loans (other than administrative provisions and conditions precedent relating to the incurrence thereof) (or this Agreement shall be amended by the Borrower and the Administrative Agent (without the consent of any Lender) to add such representations, covenants, defaults and other provisions applicable to such Incremental Term Loan Facility);

(F) the Administrative Agent shall have received a certificate of an authorized officer of the Borrower certifying that the conditions set forth in this clause (ii) have been satisfied; and

~~(G) all other terms and documentation in respect thereof, to the extent not materially consistent with the existing Term Loans shall otherwise be reasonably satisfactory to the Administrative Agent.~~

~~(iii) Any Indebtedness incurred pursuant to this Section 2.1(b) shall be effected pursuant to one or more joinder agreements (substantially in the form of Exhibit I hereto, a "Lender Joinder Agreement") executed and delivered by the Borrower, each entity providing such Indebtedness (or its representative) and the Administrative Agent, and each of which shall be recorded in the Register. Each Lender Joinder Agreement may, without the consent of any other Lenders, effect such amendments to this Agreement and the First Lien Collateral Documents as may be necessary or appropriate, to effect the provisions of this Section 2.1(b), including any amendments necessary to implement the increased Term Loan Commitment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Lender Joinder Agreement delivered pursuant to this Section 2.1(b), this Agreement and the First Lien Collateral Documents shall be deemed amended to the extent contemplated by the Lender Joinder Agreement (and to the extent not materially consistent with the then existing Term Loans in a manner reasonably satisfactory to the Administrative Agent) in order to reflect the existence of such Indebtedness.~~

(c) Provisions Relating to all Credit Facilities.

(i) Loan Interest. Subject to Section 2.4(c), Borrower shall pay interest on the unpaid principal amount of each Loan from the Closing Date until the repayment or prepayment thereof at one of the following rates per annum:

(A) With respect to the principal portion of a Term Loan which is, and during such periods as such Term Loan is, a Base Rate Term Loan, at a rate per annum equal to the Base Rate (such rate to change from time to time as the Base Rate shall change) *plus* the Applicable Margin.

(B) With respect to the principal portion of an LC Loan which is, and during such periods as such LC Loan is, a Base Rate LC Loan, at a rate per annum equal to the Base Rate (such rate to change from time to time as the Base Rate shall change) *plus* the Applicable Margin.

(C) With respect to the principal portion of such Term Loan which is, and during such periods as such Term Loan is, a LIBOR Term Loan, at a rate per annum during each Interest Period for such LIBOR Term Loan equal to the LIBO Rate *plus* the Applicable Margin.

(D) With respect to the principal portion of such LC Loan which is, and during such periods as such LC Loan is, a LIBOR LC Loan, at a rate per annum during each Interest Period for such LIBOR LC Loan equal to the LIBO Rate *plus* the Applicable Margin.

(d) Loan Principal Payment.

(i) On each Principal Repayment Date commencing on the Principal Repayment Date occurring on ~~September 30, 2020~~**December 31, 2021**, Borrower shall repay to Administrative Agent, for the account of each Term Lender, the aggregate unpaid principal amount of the Term Loan made by such Term Lender in installments in accordance with the amortization schedule set forth on Schedule 2.1(b)(ii)(C) (as updated from time to time in accordance with Section 2.1(b)(ii)(C)), with any remaining unpaid principal, interest, fees and costs due and payable on the Maturity Date.

(ii) The Borrower shall repay to the Administrative Agent for the ratable account of each of the LC Lenders on the LC Maturity Date the aggregate principal amount of the LC Loans then outstanding owing to such LC Lender, together with accrued and unpaid interest to the date of such repayment on the aggregate principal amount repaid.

(e) Interest Provisions Relating to All Loans.

(i) Applicable Interest Rate. The basis for determining the interest rate with respect to any Loan may be changed from time to time as specified in a Notice of Conversion of Loan Type delivered pursuant to Section 2.1(g). If on any day a Loan is outstanding with respect to which notice has not been delivered to Administrative Agent in accordance with the terms of this Agreement specifying the applicable basis for determining the rate of interest, then for that day such Loan shall bear interest determined by reference to the Base Rate. Borrower shall not request, and the Lenders shall not be obligated to make, LIBOR Loans at any time an Event of Default exists. Administrative Agent shall promptly notify each Lender of the contents of each Notice of Conversion of Loan Type.

(ii) Interest Payment Dates. Borrower shall pay accrued interest on the unpaid principal amount of each Loan (A) in the case of each Base Rate Loan, on each Quarterly Date, (B) in the case of each LIBOR Loan, on the last day of each Interest Period related to such LIBOR Loan and, with respect to Interest Periods longer than three months, the last Banking Day of each third month in which such LIBOR Loan is outstanding, and (C) in all cases, upon repayment or prepayment (to the extent thereof and including any Optional Prepayments or Mandatory Prepayments), upon conversion from one Type of Loan to another Type of Loan and at maturity (whether by acceleration or otherwise).

(iii) LIBOR Loan Interest Periods.

(A) Each Interest Period selected by Borrower for all LIBOR Loans shall be one, three or six months. Notwithstanding anything to the contrary in the preceding sentence, (1) any Interest Period which would otherwise end on a day which is not a Banking Day shall be extended to the next succeeding Banking Day unless such next Banking Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Banking Day, (2) any Interest Period which begins on the last Banking Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Banking Day of a calendar month, (3) Borrower may not select Interest Periods which would leave a greater principal amount of Loans subject to Interest Periods ending after a date upon which Loans are or may be required to be repaid (including the Maturity Date and each Principal Repayment Date) than the principal amount of Loans scheduled to be outstanding after such date, (4) any Interest Period for a Term Loan which would otherwise end after the Maturity Date shall end on the Maturity Date, (5) LIBOR Loans for each Interest Period shall be in the minimum amount of $500,000 or an integral multiple of $100,000 in excess thereof, (6) Borrower may not at any time have outstanding more than six different Interest Periods relating to LIBOR Loans, (7) ~~Borrower and the Administrative Agent (at the direction of the Incremental Term Loan Lenders) may mutually agree to have an initial non-standard Interest Period with respect to Incremental Term Loans solely to maintain fungibility with existing applicable Term Loans in connection with the enactment of an Incremental Term Loan Facility~~**the Borrower may select an initial Interest Period after the Omnibus Amendment Date applicable to the Term Loans borrowed on the Omnibus Amendment Date that ends on November 30, 2021,** and (8) the Interest Period applicable to the Loans borrowed on the Closing Date may have an initial non-standard Interest Period ending on June 30, 2020.

(B) Borrower may contact Administrative Agent at any time prior to the end of an Interest Period for a quotation of Interest Rates in effect at such time for given Interest Periods, and Administrative Agent shall promptly provide such quotation. Subject to Section 2.1(e)(iii)(A), Borrower may select an Interest Period telephonically within the time periods specified in Section 2.1(g), which selection shall be irrevocable on and after commencement of the applicable Minimum Notice Period. Borrower shall confirm such telephonic notice to Administrative Agent by hand delivery or facsimile or other electronic transmission on the day such notice is given by delivery to Administrative Agent of a notice in substantially the form of Exhibit C-2, appropriately completed (a "**Confirmation of Interest Period Selection**"). If Borrower fails to notify Administrative Agent of the next Interest Period for any LIBOR Loans in accordance with this Section 2.1(e)(iii)(B), such Loans shall automatically convert to Base Rate Loans on the last day of the current Interest Period therefor. Administrative Agent shall as soon as practicable (and, in any case, within two Banking Days after delivery of a Confirmation of Interest Period Selection) notify Borrower of each determination of the Interest Rate applicable to each Loan.

(iv) Interest Computations. All computations of interest on Base Rate Loans shall be based upon a year of 365 days or, in the case of a leap year, 366 days, shall be payable for the actual days elapsed (including the first day but excluding the last day), and shall be adjusted in accordance with any changes in the Base Rate to take effect on the beginning of the day of such change in the Base Rate. All computations of interest on LIBOR Loans shall be based upon a year of 360 days and shall be payable for the actual days elapsed (including the first day but excluding the last day). Borrower agrees that all computations by Administrative Agent of interest shall be conclusive and binding in the absence of manifest error.

(f) Promissory Notes. The obligation of Borrower to repay the Loans made by a Lender and to pay interest thereon at the rates provided herein shall, upon the written request of such Lender, be evidenced by promissory notes in the form of Exhibit B-1 (individually, a "**Term Note**" and, collectively, the "**Term Notes**")~~,~~ **and** Exhibit B-2 (individually, ~~a~~**an** "~~**Revolving** **LC Note**~~" and, collectively, the "~~**Revolving LC Notes"), Exhibit B-3 (individually, a "DSR LC Note" and, collectively, the "DSR LC Notes"), and Exhibit B-4 (individually, a "PPA LC Note" and, collectively, the "PPA** **LC Notes**") each payable to such requesting Lender (or its registered assigns) and in the principal amount of such Lender's Term Loan Commitment~~, Revolving LC Commitment, DSR LC Commitment~~ or ~~PPA~~ LC Commitment, respectively. Borrower authorizes each such requesting Lender to record on the schedule annexed to such Lender's Note or Notes, the date and amount of each Loan made by such requesting Lender, and each payment or prepayment of principal thereunder and agrees that all such notations shall constitute prima facie evidence of the matters noted; provided, that in the event of any inconsistency between the records or books of Administrative Agent and any Lender's records or Notes, the records of Administrative Agent shall be conclusive and binding in the absence of manifest error. Borrower further authorizes each such requesting Lender to attach to and make a part of such requesting Lender's Note or Notes continuations of the schedule attached thereto as necessary. No failure to make any such notations, nor any errors in making any such notations, shall affect the validity of Borrower's obligations to repay the full unpaid principal amount of the Loans or the duties of Borrower hereunder or thereunder. Upon the payment in full in cash of the aggregate principal amount of, and all accrued and unpaid interest on, the **applicable** Loans **or upon exchange of any Notes**, the Lenders holding such Notes shall promptly mark the applicable Notes cancelled and return such cancelled Notes to Borrower.

(g) Conversion of Loans. Subject to Section 2.1(e)(i), Borrower may convert Loans from one Type of Loan to another Type of Loan; provided, that (x) any conversion of LIBOR Loans into Base Rate Loans shall be effective on, and only on, the first day after expiration of an Interest Period for such LIBOR Loans, and (y) Loans shall be converted only in amounts of $500,000 and increments of $100,000 in excess thereof. Borrower shall request such a conversion by delivering to Administrative Agent a written notice in the form of Exhibit C-3, appropriately completed (a "**Notice of Conversion of Loan Type**"), which contains or specifies, among other things:

(i) the Loans, or portion thereof, which are to be converted;

(ii) the Type of Loans into which such Loans, or portion thereof, are to be converted;

(iii) if such Loans are to be converted into LIBOR Loans, the initial Interest Period selected by Borrower for such Loans (which Interest Period shall be selected in accordance with Section 2.1(e)(iii));

(iv) the proposed date of the requested conversion (which shall be a Banking Day and otherwise in accordance with this Section 2.1(g)); and

(v) if Base Rate Loans are to be converted to LIBOR Loans, a certification by Borrower that no Event of Default has occurred and is continuing.

Borrower shall so deliver each Notice of Conversion of Loan Type so as to provide at least the applicable Minimum Notice Period. Any Notice of Conversion of Loan Type may be modified or revoked by Borrower through the Banking Day prior to the Minimum Notice Period, and shall thereafter be irrevocable. Each Notice of Conversion of Loan Type shall be delivered in the manner provided in Section 11.1. Administrative Agent shall promptly notify each Lender of the contents of each Notice of Conversion of Loan Type.

(h) Prepayments.

(i) Terms of All Prepayments.

(A) Upon the prepayment of any Loan (whether such prepayment is an Optional Prepayment or a Mandatory Prepayment), Borrower shall pay to Administrative Agent for the account of the Lender which made such Loan or Hedge Bank, as applicable, (1) all accrued interest to the date of such prepayment on the amount of such Loan prepaid, (2) all accrued fees to the date of such prepayment relating to the amount of such Loan being prepaid, (3) to the extent required by the terms of the applicable Interest Rate Agreement, all Hedge Breaking Fees owed by Borrower to such Hedge Bank as a result of such prepayment, and (4) if such prepayment is the prepayment of a LIBOR Loan on a day other than the last day of an Interest Period for such LIBOR Loan, all Liquidation Costs incurred by such Lender as a result of such prepayment (pursuant to the terms of Section 2.7).

(B) Notwithstanding the foregoing, but only in respect of any Mandatory Prepayment, Borrower shall have the right, by giving five Banking Days' notice to Administrative Agent, in lieu of prepaying a LIBOR Loan on a day other than the last day of an Interest Period for such LIBOR Loan, to deposit or cause Administrative Agent to deposit into an account to be held by Depositary Agent (which account shall be subjected to the Lien of the First Lien Collateral Documents) an amount equal to the LIBOR Loans to be prepaid. Such funds shall be held in such account until the expiration of the Interest Period applicable to the LIBOR Loan to be prepaid at which time the amount deposited in such account shall be used to prepay such LIBOR Loan and any interest accrued on such amount shall be deposited into the Revenue Account. The deposit of amounts into such account shall not constitute a prepayment of Loans and all Loans to be prepaid using the proceeds from such account shall continue to accrue interest at the then applicable interest rate for such Loans until actually prepaid. All amounts in such account shall only be invested in Permitted Investments as directed by and at the expense and risk of Borrower.

(C) Except as otherwise specifically set forth herein (including Section 2.5(a)), (1) all prepayments of Term Loans shall be applied to reduce the remaining payments required under Section 2.1(d)(i) (I) with respect to Mandatory Prepayments, on a pro rata basis to remaining amortization payments and the payments at the final maturity thereof and (II) with respect to Optional Prepayments, as directed by the Borrower, (2) any prepayment of Term Loans or LC Loans of any class or tranche, respectively, shall be applied first to any Term Loans or LC Loans of any class or tranche, as applicable, that are Base Rate Loans and then to any Term Loans or LC Loans of any class or tranche, as applicable, that are LIBOR Loans.

(ii) Optional Prepayments.

(A) Borrower may, at its option and without premium or penalty, upon three Banking Days' notice to Administrative Agent (which notice may state that it is conditioned upon the effectiveness of another credit facility or facilities or other agreement(s) providing the source of funds for such Optional Prepayment, in which case such notice may be revoked by Borrower by providing written notice to Administrative Agent at least one Banking Day prior to the proposed date of the Optional Prepayment if one or more of such conditions is not satisfied), prepay (1) any Term Loans in whole or from time to time in part in minimum amounts of $1,000,000 or an incremental multiple of $1,000,000 in excess thereof (provided, that such minimum amounts shall not apply to a prepayment of all outstanding Term Loans) or (2) any LC Loans of any class or tranche in whole or from time to time in part in minimum amounts of $500,000 or an incremental multiple of $100,000 in excess thereof (provided, that such minimum amounts shall not apply to a prepayment of all LC Loans of any class or tranche or except to the extent that such LC Loan of any class or tranche is being repaid pursuant to clause ~~**Twelfth**~~**Thirteenth** of Section 3.1(b) (*Revenue Account Waterfall*) of the Depositary Agreement) (each, an "**Optional Prepayment**").

(B) Any Optional Prepayments shall be applied (1) *first*, ratably to any outstanding LC Loans, if any, until all LC Loans have been repaid in full; and (2) *second*, subject to Section 2.1(h)(i) and Section 2.1(h)(ii)(A), as Borrower may elect in its sole discretion.

(iii) Mandatory Prepayments. Borrower shall make the following mandatory prepayments (each, a "**Mandatory Prepayment**"):

(A) as and when contemplated by (1) Section 3.4(d) of the Depositary Agreement, within thirty days after the date on which the balance on deposit in the Excess LP Prepayment Sub-Account (as defined in the Depositary Agreement) equals or exceeds $10,000,000, (2) Section 3.5(d) of the Depositary Agreement, within thirty days after the date on which the balance on deposit in the Excess ADP Prepayment Sub-Account (as defined in the Depositary Agreement) equals or exceeds $10,000,000, and (3) Section 3.6(b) of the Depositary Agreement, within thirty days after receipt of Excess Contract Termination Proceeds (as defined in the Depositary Agreement); and

(B) in the event of any termination of all the LC Commitments in accordance with this Agreement, Borrower shall, on the date of such termination, terminate any outstanding Revolving Letter of Credit~~, PPA Letter of Credit~~ or DSR Letter of Credit, as applicable, and/or cash collateralize any outstanding Revolving Letter of Credit~~, PPA Letter of Credit~~ or DSR Letter of Credit, as applicable, in the amount of the applicable LC Exposure. If, as a result of any partial reduction of the LC Commitments, the aggregate ~~Revolving~~ LC Exposure~~, DSR LC Exposure or PPA LC Exposure, as applicable,~~ would exceed the aggregate ~~Revolving~~ LC Commitments~~, DSR LC Commitments or PPA LC Commitments, as applicable,~~ after giving effect thereto, then Borrower shall, on the date of such reduction, cash collateralize the applicable Letters of Credit in an amount equal to the amount of such excess.

Any Mandatory Prepayments shall be applied (x) *first*, to outstanding ~~Term Loans and Incremental~~ Term Loans and outstanding LC Loans and outstanding Drawing Payments, pro rata, until all Term Loans, LC Loans and Drawing Payments have been repaid in full, (y) *second,* to the Cash Collateralization of any outstanding Letters of Credit and (z) *third*, to all other First Lien Obligations due and payable under the Credit Documents.

(iv) Reduction of Commitments.

(A) Borrower may at any time permanently terminate, or from time to time permanently reduce, the LC Commitments; provided, that (1) each reduction of the LC Commitments shall be in an amount that is an integral multiple of $100,000 and not less than $1,000,000 (or, if less, the remaining amount of the LC Commitments) and (2) Borrower shall not voluntarily terminate or reduce the LC Commitments, if, after giving effect to any concurrent prepayment of LC Loans in accordance with this Section 2.1(h), the ~~Revolving LC Exposure, DSR LC Exposure or PPA~~ LC Exposure would exceed the Total ~~Revolving LC Commitments, Total DSR LC Commitments or Total PPA~~ LC Commitments.

(B) Borrower shall notify Administrative Agent in writing of any election to terminate or reduce Commitments under the foregoing clauses (A) at least three Banking Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any such notice, Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by Borrower pursuant to this clause (B) shall be irrevocable. Any termination or reduction of Commitments shall be permanent; provided, that a notice of termination of Commitments delivered by Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by Borrower (by notice to Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Each reduction of Commitments shall be made ratably among the Lenders participating in the applicable Loan facility in accordance with their respective Proportionate Shares.

(i) Register. Administrative Agent on behalf of Borrower shall maintain, at its address referred to in Section 11.1, a register for the recordation of the names and addresses of the Lenders, the Commitments and Loans of each Lender from time to time and the name of each Lender which holds a Note (the "**Register**"). The Register shall be available for inspection by Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice. Administrative Agent shall record in the Register (i) the Commitments and the Loans from time to time of each Lender, (ii) the interest rates applicable to all Loans and the effective dates of all changes thereto, (iii) the Interest Period for each LIBOR Loan, (iv) the date and amount of any principal or interest due and payable or to become due and payable from Borrower to each Lender hereunder, (v) each repayment or prepayment in respect of the principal amount of the Loans of each Lender, (vi) the amount of any sum received by Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof, and (vii) such other information as Administrative Agent may determine is necessary for the administering of the Loans and this Agreement. Any such recording shall be conclusive and binding in the absence of manifest error; provided, that neither the failure to make any such recordation, nor any error in such recordation, shall affect Borrower's First Lien Obligations in respect of any applicable Loans or otherwise; and provided, further, that in the event of any inconsistency between the Register and any Lender's records, the Register shall govern absent manifest error.

(j) Re-Borrowing. Borrower may not re-borrow the principal amount of any Term Loan repaid or prepaid pursuant to this Agreement. Any prepaid LC Loans may be re-borrowed. The LC Commitments shall not be reduced as a result of any prepayment. To the extent that any LC Commitment was reduced as a result of any issuance of LC Loans, and so long as the Borrower shall have satisfied the requirements of for LC Loans, Section 3.2 and Section ~~2.2(c)(ii), (b)(ii) or (c~~2.2(a)(ii), such LC Commitment shall be reinstated as a result of any prepayment of such LC Loans made in accordance with Section 2.1(h)(ii).

2.2 Letter of Credit ~~Facilities~~Facility

(a) ~~Revolving~~ LC Commitments; Issuance of ~~Revolving~~ Letters of Credit. The initial Dollar amount of ~~each Lender's Revolving LC Commitment on the Closing Date is set forth under the caption "Revolving LC Commitments" on Schedule 2.2(a). The aggregate amount of the Revolving~~the aggregate LC Commitments on the Closing Date ~~is $130,622,000~~was $200,000,000. The aggregate amount of the LC Commitments on the Omnibus Amendment Date is $250,000,000 (the "**Total ~~Revolving~~ LC Commitment**", and each Lender holding such ~~Revolving~~ LC Commitments, a "~~Revolving~~ **LC Lender**"). All of the ~~Revolving~~ LC Commitments shall be available for the issuance of standby letters of credit; provided that the LC Exposure of any Issuing Bank shall not exceed its Issuing Bank Limit. Subject to the terms and conditions set forth in this Agreement, Borrower may request the issuance of (x) an irrevocable standby letter of credit substantially in the forms set forth in Exhibit B-~~5~~3 or otherwise reasonably satisfactory to such ~~Revolving~~ Issuing Bank issuing such Letter of Credit (a "**Revolving Letter of Credit**") or (y) an irrevocable standby letter of credit substantially in the forms set forth in Exhibit B-4 or otherwise reasonably satisfactory to the applicable Issuing Bank issuing such Letter of Credit (a "DSR Letter of Credit"), in any case, for its own account, at any time and from time to time prior to the applicable Maturity Date.

(i) Notice of Issuance of ~~Revolving~~ Letter of Credit, Amendment, Renewal, Extension; Certain Conditions.

(A) To request the issuance of a ~~Revolving~~ Letter of Credit (or the amendment, renewal (other than an automatic renewal in accordance with clause (B) below) or extension of an outstanding ~~Revolving~~ Letter of Credit), Borrower shall hand deliver or transmit by telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the applicable ~~Revolving~~ Issuing Bank) to ~~such~~**the Administrative Agent and (1) the** Revolving Issuing Bank ~~and Administrative Agent~~**with respect to any such Revolving Letter of Credit or, as applicable, (2) each DSR Issuing Bank with respect to DSR Letters of Credit** (three Banking Days in advance of the requested date of issuance, amendment, renewal or extension or, with respect to any issuance to take place on the ~~Closing~~**Omnibus Amendment** Date, one Banking Day in advance of the ~~Closing~~**Omnibus Amendment** Date) a Notice of LC Activity requesting the issuance of a ~~Revolving~~ Letter of Credit, or identifying the ~~Revolving~~ Letter of Credit to be amended, renewed or extended, and specifying **whether such Letter of Credit is a Revolving Letter of Credit or DSR Letter of Credit,** the date of issuance, amendment, renewal or extension (which shall be a Banking Day at least three Banking Days after the form of such ~~Revolving~~ Letter of Credit or amendment, renewal or extension has been agreed by Borrower, the applicable ~~Revolving~~ Issuing Bank and Administrative Agent or, with respect to any issuance, amendment, renewal or extension to take place on the Closing Date, one Banking Day in advance of the Closing Date), the date on which such ~~Revolving~~ Letter of Credit is to expire and such other information as shall be necessary to issue, amend, renew or extend such ~~Revolving~~ Letter of Credit. If requested by a ~~Revolving~~ Issuing Bank, Borrower also shall submit a letter of credit application on such ~~Revolving~~ Issuing Bank's standard form in connection with any request for a ~~Revolving~~ Letter of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by Borrower to, or entered into by Borrower with, the applicable ~~Revolving~~ Issuing Bank relating to a ~~Revolving~~ Letter of Credit, the terms and conditions of this Agreement shall control. **Notwithstanding anything to contrary, the Borrower shall make any request for issuance, amendment, renewal or extension for any DSR Letter of Credit simultaneously to all the DSR Issuing Banks under this Agreement such that the stated amount of the DSR Letter of Credit of each individual DSR Issuing Bank is equal to its Proportionate Share of the Stated Amount of all DSR Letters of Credit.**

(B) Each ~~Revolving~~ Letter of Credit shall expire at or prior to the close of business on the earlier of (1) the date one year after the date of the issuance of such ~~Revolving~~ Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) or such other date as ~~the Revolving~~**applicable** Issuing Bank may agree, and (2) five Banking Days prior to the ~~Revolving~~**LC** Maturity Date; provided, that any ~~Revolving~~ Letter of Credit with a one-year tenor shall provide for the automatic renewal thereof for additional one-year periods (which, in no event, shall extend beyond the date referred to in clause (2) of this clause (B)), and provided, further, that a Revolving Letter of Credit may expire after the ~~Revolving~~**LC** Maturity Date to the extent that such Revolving Letter of Credit is Cash Collateralized to a mutually agreed level as between the Borrower and such Revolving Issuing Bank or back-stopped pursuant to arrangements acceptable to the relevant Revolving Issuing Bank during the period commencing on such ~~Revolving~~**LC** Maturity Date until such later stated expiry date occurring after such ~~Revolving~~**LC** Maturity Date. For the avoidance of doubt, the obligation of the ~~Revolving~~ LC Lenders to make ~~Revolving~~ LC Loans shall terminate on the ~~Revolving~~**LC** Maturity Date.

(ii) ~~Revolving~~ LC Loans.

(A) If a Revolving Issuing Bank makes any Drawing Payment, Borrower shall reimburse such Drawing Payment by paying to Administrative Agent an amount equal to such Drawing Payment in Dollars, not later than 12:00 p.m., New York City time, on the **date that is the** second Banking Day following the date Borrower receives notice of such Drawing Payment; provided, that ~~so long as no Event of Default under Section 7.1(a) or Section 6.1(i) (*Bankruptcy*) of the First Lien Common Terms Agreement has occurred and is continuing~~, to the extent Borrower does not so reimburse the Drawing Payment ~~within one Banking Day~~**by such date**, the ~~Revolving~~ LC Lenders shall be irrevocably and unconditionally obligated to fund participations in the Revolving LC Reimbursement Obligations on a pro rata basis based on their ~~respective Revolving~~**Proportionate Share of the** LC Commitments. Such amount shall be reduced, if necessary, such that the aggregate amount of applicable ~~Revolving~~ LC Exposure does not exceed the aggregate applicable Total ~~Revolving~~ LC Commitments of such ~~Revolving~~ LC Lender, with the amount of such Drawing Payment that is not covered by ~~Revolving~~ LC Loans becoming due and payable on demand. With respect to any Revolving LC Reimbursement Obligation that is not financed with a ~~Revolving~~ LC Loan because ~~an Event of Default under Section 7.1(a) or Section 6.1(i) (*Bankruptcy*) of the First Lien Common Terms Agreement (with respect to Borrower) has occurred and is continuing~~**it was not reimbursed in accordance with this clause (A),** such Revolving LC Reimbursement Obligation shall be due and payable on demand (together with interest) and shall bear interest as provided in Section 2.4(c). The ~~Revolving~~ LC Loans made pursuant to this Section 2.2(a)(ii)(A) shall initially be Base Rate Loans.

(B) If Borrower fails to reimburse any Drawing Payment not covered or financed by Revolving LC Loans as contemplated by clause (A), then Administrative Agent shall promptly notify the applicable Revolving Issuing Bank(s) of the applicable Drawing Payment and the payment then due from Borrower. Promptly following receipt by Administrative Agent of any payment from Borrower pursuant to this paragraph, Administrative Agent shall distribute such payment to the applicable Revolving Issuing Bank(s).

(C) On the Revolving Maturity Date, the Borrower shall repay to Administrative Agent, for the account of each applicable Revolving LC Lender, the aggregate unpaid principal amount of the Revolving LC Loans (including all fees, interest and other amounts accrued in connection therewith).

(b) DSR LC Commitments; Issuance of DSR Letters of Credit. The initial Dollar amount of each Lender's DSR LC Commitment on the Closing Date is set forth under the caption "DSR LC Commitments" on Schedule 2.2(a). The aggregate amount of the DSR LC Commitments on the Closing Date is $53,000,000 (the "Total DSR LC Commitment", and each Lender holding such DSR LC Commitments, a "DSR LC Lender"). Subject to the terms and conditions set forth in this Agreement, Borrower may request the issuance of an irrevocable letter of credit substantially in the form of Exhibit B-6 (the "DSR Letter of Credit") for its own account, at any time and from time to time prior to the applicable DSR Maturity Date. The Stated Amount of the DSR Letters of Credit shall never exceed the Total DSR LC Commitment.

(i) Notice of Issuance of DSR Letter of Credit; Amendment, Renewal, Extension; Certain Conditions.

(A) To request the issuance of a DSR Letter of Credit (or the amendment, renewal (other than an automatic renewal in accordance with clause (B) below) or extension of an outstanding DSR Letter of Credit), Borrower shall hand deliver or transmit by telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the applicable DSR Issuing Bank) to such DSR Issuing Bank and Administrative Agent (three Banking Days in advance of the requested date of issuance, amendment, renewal or extension or, with respect to any issuance to take place on the Closing Date, one Banking Day in advance of the Closing Date) a Notice of LC Activity requesting the issuance of a DSR Letter of Credit, or identifying the DSR Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Banking Day at least three Banking Days after the form of such DSR Letter of Credit or amendment, renewal or extension has been agreed by Borrower, the applicable DSR Issuing Bank and Administrative Agent or, with respect to any issuance to take place on the Closing Date, one Banking Day in advance of the Closing Date), the date on which such DSR Letter of Credit is to expire and such other information as shall be necessary to issue, amend, renew or extend such DSR Letter of Credit. If requested by a DSR Issuing Bank, Borrower also shall submit a DSR Letter of Credit application on such DSR Issuing Bank's standard form in connection with any request for a DSR Letter of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by Borrower to, or entered into by Borrower with, the applicable DSR Issuing Bank relating to a DSR Letter of Credit, the terms and conditions of this Agreement shall control.

~~(B) A DSR Letter of Credit shall be issued, amended, renewed or extended only if, after giving effect to such issuance, amendment, renewal or extension, the total DSR LC Exposure shall not exceed the Total DSR LC Commitment and the DSR LC Exposure of such DSR Issuing Bank shall not exceed the DSR LC Commitments of such DSR Issuing Bank.~~

~~(C) Each DSR Letter of Credit shall expire at or prior to the close of business on the earlier of (x) the date one year after the date of the issuance of such DSR Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension), and (y) the applicable DSR Maturity Date; provided that any DSR Letter of Credit with a one-year tenor may provide for the automatic renewal thereof for additional one-year periods (which, in no event, shall extend beyond the date referred to in clause (y) of this clause (C)); provided, further, that upon the date of such expiry (taking into account the preceding proviso), each such DSR Letter of Credit shall be surrendered by the beneficiary or transferee of such DSR Letter of Credit to the applicable DSR Issuing Bank for cancellation, all DSR LC Loans (including all fees, interest and other amounts accrued in connection therewith) made or deemed to have been made with respect to such DSR Letter of Credit shall be repaid in full, and all DSR LC Commitments of such DSR Issuing Bank shall be terminated.~~

~~(ii) DSR LC Loans~~

(B) ~~(A)~~ If a DSR Issuing Bank makes any Drawing Payment, Borrower shall reimburse such Drawing Payment by paying to Administrative Agent an amount equal to such Drawing Payment in Dollars, not later than 12:00 p.m., New York City time, on the **date that is the second** Banking Day immediately following the date Borrower receives notice of such Drawing Payment; provided, that ~~so long as no Event of Default under Section 7.1(a) or Section 6.1(i) (*Bankruptcy*) of the First Lien Common Terms Agreement has occurred and is continuing~~ any Drawing Payment shall be deemed to be a request by Borrower for a Borrowing in an aggregate amount equal to the amount of DSR LC Reimbursement Obligations with respect to the DSR Letters of Credit ~~(a "DSR LC Loan")~~ and~~, to the extent so financed,~~ such DSR LC Reimbursement Obligations shall be discharged and replaced by the resulting ~~DSR~~ LC Loan owing to the ~~DSR~~ LC Lender which issued the 22 Letter of Credit giving rise to such DSR LC Reimbursement Obligation in its capacity as the DSR Issuing Bank. Such requested amount shall be reduced, if necessary, such that the aggregate amount of applicable ~~DSR~~ LC Exposure does not exceed the aggregate applicable Total ~~DSR~~ LC Commitments **or Issuing Bank Limit** of such DSR Issuing Bank, with the amount of such Drawing Payment that is not covered by ~~DSR~~ LC Loans becoming due and payable on demand. ~~With respect to any DSR LC Reimbursement Obligation that is not financed with a DSR LC Loan because an Event of Default under Section 7.1(a) or Section 6.1(i) (*Bankruptcy*) of the First Lien Common Terms Agreement has occurred and is continuing, such DSR LC Reimbursement Obligation shall be due and payable on demand (together with interest) and shall bear interest as provided in Section 2.4(c)~~ **Notwithstanding anything to the contrary, Borrower may not elect to reimburse a Drawing Payment for some but not all the DSR Issuing Banks**. The ~~DSR~~ LC Loans made pursuant to this Section ~~2.2(b)(ii)(A)~~**2.2(a)(ii)(B)** shall initially be Base Rate Loans.

(C) ~~(B)~~ If Borrower fails to reimburse any Drawing Payment not covered or financed by ~~DSR~~ LC Loans as contemplated by ~~Section 2.2(b)(ii)(A),~~clause (A) or (B) then Administrative Agent shall promptly notify the applicable ~~DSR~~ Issuing Bank(s) of the applicable Drawing Payment and the payment then due from Borrower. Promptly following receipt by Administrative Agent of any payment from Borrower pursuant to this paragraph, Administrative Agent shall distribute such payment to the applicable ~~DSR~~ Issuing Bank(s).

~~(C) In the event that multiple DSR Issuing Banks have issued DSR Letters of Credit, Administrative Agent shall allocate any DSR LC Loan in respect of the DSR Letters of Credit among the DSR Letters of Credit such that such DSR LC Loan is borne pro rata among the DSR Issuing Banks based on the relative Stated Amount (immediately prior to the making of such DSR LC Loan) of DSR Letters of Credit held by each such DSR Issuing Bank.~~

(D) On the Revolving Maturity Date, the Borrower shall repay to Administrative Agent, for the account of each applicable ~~DSR~~ LC Lender, the aggregate unpaid principal amount of the ~~DSR~~ LC Loans (including all fees, interest and other amounts accrued in connection therewith).

(b) **Existing Letters of Credit. Each party hereto hereby acknowledges and agrees that certain letters of credit have been issued under the Credit Agreement prior to the Omnibus Amendment Date and remain outstanding hereunder as of the Omnibus Amendment Date, which letters of credit are set forth on Schedule 2.2(b) (as may be updated from time to time with the consent of the applicable Issuing Bank, the Administrative Agent and the Borrower, and each letter of credit set forth therein, an "Existing Letter of Credit"). The Borrower hereby instructs the Administrative Agent to reflect the transfer of each such Existing Letter of Credit to the facility contemplated by this Agreement. Each Existing Letter of Credit shall constitute a Letter of Credit for all purposes of this Agreement and the other Credit Documents; provided, that, with respect to an Existing Letter of Credit, the Borrower shall not have to comply with the requirements of Section 2.2(a)(i)(A) and Section 3.2 with respect to the initial issuance of a Letter of Credit. Subject to the occurrence of the Omnibus Amendment Date, the applicable Issuing Banks shall maintain each Existing Letter of Credit in accordance with its terms until the expiration date applicable to such Existing Letter of Credit.**

(c) PPA LC Commitments; Issuance of PPA Letters of Credit. The initial Dollar amount of each Lender's PPA LC Commitment on the Closing Date is set forth under the caption "PPA LC Commitments" on Schedule 2.2(a). The aggregate amount of the PPA LC Commitments on the Closing Date is $16,378,000 (the "Total PPA LC Commitment", and each Lender holding such PPA LC Commitments, a "PPA LC Lender", and together with the Revolving LC Lenders and the DSR LC Lenders, the "LC Lenders"). Subject to the terms and conditions set forth in this Agreement, Borrower may request the issuance of an irrevocable letter of credit substantially in the form of Exhibit B-5 or otherwise reasonably satisfactory to such PPA Issuing Bank (the "PPA Letter of Credit", and together with the Revolving Letters of Credit and the DSR Letters of the Credit, the "Letters of Credit") for its own account, at any time and from time to time prior to the applicable PPA Maturity Date.

(i) Notice of Issuance of PPA Letter of Credit, Amendment, Renewal, Extension; Certain Conditions.

(A) To request the issuance of a PPA Letter of Credit (or the amendment, renewal (other than an automatic renewal in accordance with clause (B) below) or extension of an outstanding PPA Letter of Credit), Borrower shall hand deliver or transmit by telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the applicable PPA Issuing Bank) to the PPA Issuing Bank and Administrative Agent (three Banking Days in advance of the requested date of issuance, amendment, renewal or extension or, with respect to any issuance to take place on the Closing Date, one Banking Day in advance of the Closing Date) a Notice of LC Activity requesting the issuance of a PPA Letter of Credit, or identifying the PPA Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Banking Day at least three Banking Days after the form of such PPA Letter of Credit or amendment, renewal or extension has been agreed by Borrower, the PPA Issuing Bank and Administrative Agent or, with respect to any issuance to take place on the Closing Date, one Banking Day in advance of the Closing Date), the date on which such PPA Letter of Credit is to expire and such other information as shall be necessary to issue, amend, renew or extend such PPA Letter of Credit. If requested by the PPA Issuing Bank, Borrower also shall submit a PPA Letter of Credit application on the PPA Issuing Bank's standard form in connection with any request for a PPA Letter of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by Borrower to, or entered into by Borrower with, the PPA Issuing Bank relating to a PPA Letter of Credit, the terms and conditions of this Agreement shall control.

~~(B) A PPA Letter of Credit shall be issued, amended, renewed or extended only if, after giving effect to such issuance, amendment, renewal or extension, the PPA LC Exposure shall not exceed the Total PPA LC Commitment and the PPA LC Exposure of the PPA Issuing Bank shall not exceed the PPA LC Commitments of the PPA Issuing Bank.~~

~~(C) Each PPA Letter of Credit shall expire at or prior to the close of business on the earlier of (1) the date one year after the date of the issuance of such PPA Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) or such other date as the PPA Issuing Bank may agree, and (2) the applicable PPA Maturity Date; provided that any PPA Letter of Credit with a one-year tenor may provide for the automatic renewal thereof for additional one-year periods (which, in no event, shall extend beyond the date referred to in clause (2) of this clause (C)); provided, further, that a PPA Letter of Credit may expire after the PPA Maturity Date to the extent that such PPA Letter of Credit is Cash Collateralized to a mutually agreed level as between the Borrower and such PPA Issuing Bank or back-stopped pursuant to arrangements acceptable to the relevant PPA Issuing Bank during the period commencing on such PPA Maturity Date until such later stated expiry date occurring after such PPA Maturity Date.~~

(c) ~~(ii) PPA LC Loans~~[Reserved].

~~(A) If the PPA Issuing Bank makes any Drawing Payment, Borrower shall reimburse such Drawing Payment by paying to Administrative Agent an amount equal to such Drawing Payment in Dollars, not later than 12:00 p.m., New York City time, on the second Banking Day following the date Borrower receives notice of such Drawing Payment; provided, that so long as no Event of Default under Section 7.1(a) or Section 6.1(i) (*Bankruptcy*) of the First Lien Common Terms Agreement has occurred and is continuing, any Drawing Payment shall be deemed to be a request by Borrower for a Borrowing in an aggregate amount equal to the amount of PPA LC Reimbursement Obligations with respect to the PPA Letters of Credit (a "PPA LC Loan") and, to the extent so financed, such PPA LC Reimbursement Obligations shall be discharged and replaced by the resulting PPA LC Loan owing to the PPA LC Lender which issued the Letter of Credit giving rise to such PPA LC Reimbursement Obligation in its capacity as the PPA Issuing Bank. Such requested amount shall be reduced, if necessary, such that the aggregate amount of applicable PPA LC Exposure does not exceed the aggregate applicable Total PPA LC Commitments of the PPA Issuing Bank, with the amount of such Drawing Payment that is not covered by PPA LC Loans becoming due and payable on demand. With respect to any PPA LC Reimbursement Obligation that is not financed with a PPA LC Loan because an Event of Default under Section 7.1(a) or Section 6.1(i) (*Bankruptcy*) of the First Lien Common Terms Agreement has occurred and is continuing, such PPA LC Reimbursement Obligation shall be due and payable on demand (together with interest) and shall bear interest as provided in Section 2.4(c). The PPA LC Loans made pursuant to this Section 2.2(c)(ii)(A) shall initially be Base Rate Loans.~~

~~(B) If Borrower fails to reimburse any Drawing Payment not covered or financed by PPA LC Loans as contemplated by Section 2.2(c)(ii)(A), then Administrative Agent shall promptly notify the PPA Issuing Bank of the applicable Drawing Payment and the payment then due from Borrower. Promptly following receipt by Administrative Agent of any payment from Borrower pursuant to this paragraph, Administrative Agent shall distribute such payment to the PPA Issuing Bank.~~

~~(C) On the Maturity Date, the Borrower shall repay to Administrative Agent, for the account of the PPA LC Lender, the aggregate unpaid principal amount of the PPA LC Loans (including all fees, interest and other amounts accrued in connection therewith).~~

(d) Reimbursement Obligations Absolute. The obligation of Borrower to reimburse any Drawing Payment as provided in Section 2.2 shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by an Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, (iv) any amendment or waiver of or any consent to departure from all or any terms of any of the Credit Documents, (v) the existence of any claim, setoff, defense or other right which Borrower may have at any time against the beneficiary of such Letter of Credit (or any Persons for whom such beneficiary may be acting), the applicable Issuing Bank, Administrative Agent, any Lender or any other Person, whether in connection with this Agreement, the transactions contemplated hereby, by any other Credit Document or by any unrelated transaction, (vi) any breach of contract or dispute among or between Borrower, an Issuing Bank, Administrative Agent, any Lender or any other Person, (vii) any non-application or misapplication by the beneficiary of a Letter of Credit of the proceeds of any Drawing Payment or any other act or omission of such beneficiary in connection with such Letter of Credit, (viii) any failure to preserve or protect any Collateral, any failure to perfect or preserve the perfection of any Lien thereon, or the release of any of the Collateral securing the performance or observance of the terms of this Agreement or any of the other Credit Documents, or (ix) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.2(d), constitute a legal or equitable discharge of, or provide a right of setoff against, Borrower's obligations hereunder; provided, that in each case, payment by an Issuing Bank shall not have constituted gross negligence or willful misconduct. Neither Administrative Agent, the Lenders nor the applicable Issuing Bank, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of an Issuing Bank; provided, that nothing contained herein shall be construed to excuse an Issuing Bank from liability to Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by Borrower to the extent permitted by applicable law) suffered by Borrower that are determined by a court having jurisdiction to have been caused by (x) such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof, or (y) such Issuing Bank's refusal to issue a Letter of Credit in accordance with the terms of this Agreement. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of an Issuing Bank, such Issuing Bank shall be deemed to have exercised care in each such determination and each refusal to issue a Letter of Credit. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, an Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(e) Disbursement Procedures. An Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. Each Issuing Bank shall promptly notify Administrative Agent and Borrower by telephone (confirmed by telecopy or other electronic transmission) of such demand for payment and whether such Issuing Bank has made or shall make a Drawing Payment thereunder; provided, that any failure to give or delay in giving such notice shall not relieve Borrower of its obligation to reimburse the applicable Issuing Bank with respect to any such Drawing Payment.

(f) Interim Interest. If an Issuing Bank shall make any Drawing Payment, then, unless Borrower shall reimburse such Drawing Payment in full by 4:00 p.m. (New York time) on the second Banking Day after the date such Drawing Payment is made, the unpaid amount thereof shall bear interest, for each day from and including the date such Drawing Payment is made to but excluding the date that Borrower reimburses such Drawing Payment (including by the making of a Borrowing), at the rate per annum then applicable to Base Rate LC Loans or LIBOR LC Loans, at the election of Borrower, for Drawing Payments under a Letter of Credit; provided, that if such Drawing Payment is not reimbursed by Borrower when due or otherwise discharged pursuant to Section 2.22.2(c)(a)(ii), (b)(ii) or (c)(ii), then Section 2.4(c) shall apply. Interest accrued pursuant to this Section 2.2(f) shall be for the account of the applicable Issuing Bank.

(g) Additional Issuing Banks. From time to time, Borrower may by notice to Administrative Agent designate one or more other Lenders or other financial institutions (in addition to the Issuing Banks and their respective Affiliates) that agree (in their sole discretion) to act in such capacity and is reasonably satisfactory to Administrative Agent as a Revolving Issuing Bank~~,~~ or DSR ~~Issuing Bank or PPA~~ Issuing Bank, as applicable. Each such additional Issuing Bank shall execute a counterpart of this Agreement in such capacity upon the approval of Administrative Agent (which approval shall not be unreasonably withheld or delayed) and shall thereafter be a Revolving Issuing Bank~~,~~ or DSR ~~Issuing Bank or PPA~~ Issuing Bank, as applicable, hereunder for all purposes. The Register shall be updated following such execution.

(h) Reporting. Unless otherwise requested by Administrative Agent, each Issuing Bank shall (i) provide to Administrative Agent copies of any notice received from Borrower pursuant to Section 2.2 no later than the next Banking Day after receipt thereof, and (ii) report in writing to Administrative Agent (A) on or prior to each Banking Day on which such Issuing Bank expects to issue, amend, renew or extend any Letter of Credit, the date of such issuance, amendment, renewal or extension, and the aggregate face amount of the Letters of Credit to be issued, amended, renewed or extended by it and outstanding after giving effect to such issuance, amendment, renewal or extension occurred (and whether the amount thereof changed), and such Issuing Bank shall be permitted to issue, amend, renew or extend such Letter of Credit if Administrative Agent shall not have advised such Issuing Bank that such issuance, amendment renewal or extension would not be in conformity with the requirements of this Agreement, (B) on each Banking Day on which such Issuing Bank makes any Drawing Payment, the date of such Drawing Payment and the amount of such Drawing Payment, and (C) on any other Banking Day, such other information as Administrative Agent shall reasonably request, including but not limited to prompt verification of such information as may be requested by Administrative Agent.

(i) Replacement of an Issuing Bank. An Issuing Bank may be replaced at any time by written agreement among Borrower, Administrative Agent and the successor Issuing Bank. Administrative Agent shall notify the Lenders of any such replacement of an Issuing Bank. At the time any such replacement shall become effective, Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.3(c), (f) or (h), as applicable, and any unreimbursed obligations and other First Lien Obligations owed to such Issuing Bank in its capacity as such. From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the replaced Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter by such successor Issuing Bank, and (ii) references herein to the term "Issuing Bank", and~~,~~ as applicable, "Revolving Issuing Bank~~,~~" or "DSR Issuing Bank~~" or "PPA Issuing Bank~~" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. Upon the replacement of an Issuing Bank hereunder, (x) all outstanding Letters of Credit issued by the replaced Issuing Bank shall be cancelled and returned to the replaced Issuing Bank and (y) any Cash Collateral pledged to the First Lien Collateral Agent for the account of any such Issuing Bank shall be released by the First Lien Collateral Agent upon written confirmation from the Issuing Bank of the Issuing Bank's receipt of originals of all Letters of Credit and any and all amendments thereto issued by such Issuing Bank and payment by the Borrower of all First Lien Obligations owing to such Issuing Bank as contemplated by this Section 2.2(i).

(j) Non-Fronted Obligations. For certainty, ~~each of~~ the ~~PPA Letters of Credit and the~~ DSR Letters of Credit are intended to be non-fronted letters of credit, such that the ~~PPA~~ LC Lender ~~or the DSR LC Lender, as applicable,~~ with respect to any ~~PPA Letter of Credit or~~ DSR Letter of Credit~~, as applicable,~~ is the same entity as, or an Affiliate of~~, the PPA~~ Issuing Bank ~~or DSR Issuing Bank, as applicable,~~ that has issued such ~~PPA Letter of Credit or such~~ DSR Letter of Credit. **Each of the Administrative Agent and Borrower agree that in the event that Borrower has provided any DSR Letters of Credit to support the Debt Service Reserve Requirement, it shall instruct the First Lien Collateral Agent to draw on such DSR Letters of Credit *pro rata* among all DSR Letters of Credit. To the extent that any DSR Letter of Credit is drawn on a non-pro rata basis, each other DSR Issuing Bank shall be irrevocably and unconditionally obligated to fund participations in the overdrawn DSR LC Reimbursement Obligations on a pro rata basis based on their Proportionate Share of the LC Commitments. The First Lien Collateral Agent hereby agrees to draw on such DSR Letter of Credit only on a pro rata basis as notified by the Administrative Agent or the Borrower to the First Lien Collateral Agent.**

2.3 Fees

(a) Agents' and Arranger's Fees. Borrower shall pay to Administrative Agent, First Lien Collateral Agent, and Depositary Agent, as applicable, solely for (i) Administrative Agent's account the fees and other amounts described in the Agency Fee Letter, and (ii) Depositary Agent's and First Lien Collateral Agent's account the fees and other amounts described in the schedule of fees agreed among Borrower, First Lien Collateral Agent and Depositary Agent (the "**Depositary and Collateral Agency Fee Letter**").

(b) ~~Revolving~~ LC Commitment Fees. On each Quarterly Date, Borrower shall pay to Administrative Agent the following commitment fees, in each case, payable quarterly in arrears, and for the benefit of the ~~Revolving~~ LC Lenders, accruing from the Closing Date or the first day of the Payment Period, as the case may be, a commitment fee for such quarter (or portion thereof) then ending equal to 0.50% per annum on the average daily balance of the aggregate undrawn ~~Revolving~~ LC Commitments (calculated on an actual/360-day basis).

(c) Revolving LC Fees. On each Quarterly Date, Borrower shall pay to Administrative Agent~~:~~**:**

(i) for the benefit of the ~~Revolving~~ LC Lenders, accruing from the Closing Date or the first day of the Payment Period, as the case may be, a letter of credit participation fee on all outstanding Revolving Letters of Credit (the "**Revolving LC Fee**") for such quarter (or portion thereof) then ending at a per annum rate equal to the Applicable Margin then in effect with respect to LIBOR Loans under the ~~Revolving~~ LC Commitments, on the face amount of each such Revolving Letter of Credit. Such fee shall be shared ratably among the ~~Revolving~~ LC Lenders ~~holding~~**based on such** Revolving ~~LC Commitments~~**Lender's Proportionate Share of the Stated Amounts of all Revolving Letters of Credit** (other than Defaulting Lenders) and calculated on an actual/360-day basis, payable quarterly in arrears~~:~~**; and**

~~(d) Revolving Letter of Credit Fronting Fee. The Borrower shall pay to the Administrative Agent for the account of each Issuing Bank a fronting fee (the "Revolving Letter of Credit Fronting Fee") until the Revolving Maturity Date, payable quarterly in arrears on each Quarterly Date occurring after the Closing Date, and the Revolving Maturity Date at the rate per annum on the difference between the average daily Stated Amount of all undrawn Revolving Letters of Credit issued by such Issuing Bank for such quarter (or portion thereof), minus such Issuing Bank's pro rata portion of such Stated Amount that corresponds to its pro rata portion of the Revolving LC Commitments, as agreed to between the Borrower and such Issuing Bank.~~

~~(e) DSR LC Commitment Fees. On each Quarterly Date, Borrower shall pay to Administrative Agent the following commitment fees, in each case, payable quarterly in arrears, and for the benefit of the DSR LC Lenders, accruing from the Closing Date or the first day of the Payment Period, as the case may be, a commitment fee for such quarter (or portion thereof) then ending equal to 0.50% per annum on the average daily balance of the aggregate undrawn DSR LC Commitments (calculated on an actual/360-day basis).~~

(ii) ~~(f) DSR LC Fees. On each Quarterly Date, Borrower shall pay to Administrative Agent,~~ for the benefit of the ~~DSR~~ LC Lenders **who has issued, either directly or through an Affiliate, a DSR Letter of Credit**, accruing from the Closing Date or the first day of the Payment Period, as the case may be, a letter of credit participation fee on all outstanding DSR Letters of Credit **issued by such LC Lender (or its Affiliate)** (the "**DSR LC Fee**") for such quarter (or portion thereof) then ending at a per annum rate equal to the Applicable Margin then in effect with respect to LIBOR Loans under the ~~DSR~~ LC Commitments, on the face amount of each such DSR Letter of Credit. Such fee shall be shared ratably among the ~~DSR~~ LC Lenders ~~holding DSR LC Commitments~~**who have issued, or who have Affiliates who have issued, DSR Letters of Credit** (other than Defaulting Lenders) and calculated on an actual/360-day basis, payable quarterly in arrears.

(d) Revolving Letter of Credit Fronting Fee. The Borrower shall pay to the Administrative Agent for the account of each Issuing Bank a fronting fee (the "Revolving Letter of Credit Fronting Fee") until the LC Maturity Date, payable quarterly in arrears on each Quarterly Date occurring after the Closing Date, and on the Revolving Maturity Date at the rate per annum on the difference between the average daily Stated Amount of all undrawn Revolving Letters of Credit issued by such Issuing Bank for such quarter (or portion thereof), minus such Issuing Bank's Proportionate Share of such Stated Amount, as agreed to between the Borrower and such Issuing Bank.

~~(g) PPA LC Commitment Fees. On each Quarterly Date, Borrower shall pay to Administrative Agent the following commitment fees, in each case, payable quarterly in arrears, and for the benefit of the PPA LC Lenders, accruing from the Closing Date or the first day of the Payment Period, as the case may be, a commitment fee for such quarter (or portion thereof) then ending equal to 0.50% per annum on the average daily balance of the aggregate undrawn PPA LC Commitments (calculated on an actual/360-day basis).~~

~~(h) PPA LC Fees. On each Quarterly Date, Borrower shall pay to Administrative Agent, for the benefit of the PPA LC Lender, accruing from the Closing Date or the first day of the Payment Period, as the case may be, a letter of credit participation fee on all outstanding PPA Letters of Credit (the " PPA LC Fee") for such quarter (or portion thereof) then ending at a per annum rate equal to the Applicable Margin then in effect with respect to LIBOR Loans under the PPA LC Commitments, on the face amount of each such PPA Letter of Credit. Such fee shall be shared ratably among the PPA LC Lenders holding PPA LC Commitments (other than Defaulting Lenders) and calculated on an actual/360-day basis, payable quarterly in arrears.~~

2.4 Other Payment Terms

(a) Place and Manner. Except as otherwise provided in the Agency Fee Letter, Depositary and Collateral Agency Fee Letter or any other provision contained in any of the Credit Documents, Borrower shall make all payments due to any Lender, any Issuing Bank, First Lien Collateral Agent, Depositary Agent or Administrative Agent hereunder to Administrative Agent, for the account of such Lender, such Issuing Bank, First Lien Collateral Agent, Depositary Agent or Administrative Agent (as the case may be), to the account in the name of MUFG Bank, Ltd., Bank Name: MUFG Bank, Ltd., ABA No. 026-009-632, Account No: 9777-0191, Account Name: Loan Operations Department, Attention: Agency Desk, Reference: Geysers or such other account as Administrative Agent shall notify Borrower from time to time, in Dollars and in immediately available funds not later than 12:00 p.m., New York City time, on the date on which such payment is due. Any payment made after such time on any day shall be deemed received on the Banking Day after such payment is received. Administrative Agent shall disburse to each Lender, each Issuing Bank, First Lien Collateral Agent or Depositary Agent (as the case may be) each such payment received by Administrative Agent for such Lender, such Issuing Bank or First Lien Collateral Agent (as the case may be), such disbursement to occur on the day such payment is received if received by 12:00 p.m., New York City time, or if otherwise reasonably possible, or otherwise on the next Banking Day.

(b) Date. Whenever any payment due hereunder shall fall due on a day other than a Banking Day, such payment shall be made on the next succeeding Banking Day, and such extension of time shall be included in the computation of interest or fees, as the case may be, without duplication of any interest or fees so paid in the next subsequent calculation of interest or fees payable.

(c) Default Interest. Notwithstanding anything to the contrary herein, upon the occurrence and during the continuation of any Event of Default, the outstanding principal amount of overdue Loans and amounts due under outstanding Letters of Credit (without duplication) and, to the extent permitted by applicable Legal Requirements, any accrued and overdue but unpaid interest payments thereon and any accrued and overdue but unpaid fees, and other overdue amounts hereunder, shall thereafter bear interest 31 (including post-petition interest in any proceeding under applicable Bankruptcy Laws) payable upon demand, and the LC Fees shall be increased, at a rate that is (i) 2% per annum in excess of the interest rate or LC Fee, as applicable, then otherwise payable under this Agreement with respect to the LC Loans, or (ii) in the case of any such fees and other amounts, at a rate that is 2% per annum in excess of the interest rate then otherwise payable under this Agreement for Base Rate Loans (the "**Default Rate**"); provided, that in the case of LIBOR Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective, such LIBOR Loans shall thereupon become Base Rate Loans and shall thereafter bear interest payable upon demand at a rate that is 2% per annum in excess of the interest rate then otherwise payable under this Agreement for Base Rate Loans, (it being understood that from and after the date on which all continuing Events of Default have been waived by the Lenders pursuant to Section 9.9, the Default Rate shall no longer apply).

(d) Net of Taxes, Etc.

(i) Taxes. Any and all payments to or for the benefit of any Lender Party by or on behalf of any Obligor hereunder or under any other Credit Document shall be made free and clear of and without deduction or withholding, setoff or counterclaim of any kind whatsoever, except as required by applicable law. If any Taxes are required to be deducted or withheld from or in respect of any sum payable by or on behalf of any Obligor hereunder or under any other Credit Document to any Lender Party, (A) if such Tax is an Indemnified Tax, the sum payable shall be increased as may be necessary so that after all required deductions or withholdings (including deductions or withholdings applicable to additional sums payable under this Section 2.4(d)), such Lender Party receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (B) the relevant Obligor shall make (or cause to be made) such deductions or withholdings, and (C) the relevant Obligor shall pay (or cause to be paid) the full amount deducted or withheld to the relevant taxation authority or other authority in accordance with applicable Legal Requirements. In addition, Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(ii) Tax Indemnity. Borrower shall indemnify each Lender Party for and hold it harmless against the full amount of Indemnified Taxes and Other Taxes (including any Indemnified Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 2.4(d)) paid by any Lender Party or its Affiliates, or any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally asserted. Payments by Borrower pursuant to this indemnification shall be made within thirty days from the date such Lender Party makes written demand therefor (submitted through Administrative Agent), which demand shall be accompanied by a certificate describing in reasonable detail the basis thereof.

(iii) Notice. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by or on behalf of Borrower pursuant to this Section 2.4(d), Borrower shall furnish to Administrative Agent, at its address referred to in Section 11.1, the original or a certified copy of a receipt evidencing payment thereof or, if such receipt is not obtainable, other evidence of such payment reasonably satisfactory to Administrative Agent.

(iv) Conduit Financing. Notwithstanding anything to the contrary contained in this Section 2.4(d), if a Lender Party is a conduit entity participating in a conduit financing arrangement (as defined in Section 7701(l) of the Code and the Treasury Regulations issued thereunder) with respect to any payments made by Borrower under this Agreement and under any Note, Borrower shall not be obligated to pay additional amounts to such Lender Party pursuant to this Section 2.4(d) to the extent that the amount of Indemnified Taxes exceeds the amount that would have otherwise been payable were such Lender Party not a conduit entity participating in a conduit financing arrangement.

(v) Reimbursement by Lender Parties. If any Lender Party receives an indemnification payment pursuant to Section 2.4(d)(ii) and if such Lender Party is able, in its sole discretion exercised in good faith, to apply or otherwise take advantage of any refund or tax credit arising out of or in conjunction with any Indemnified Taxes or Other Taxes which give rise to such indemnification, such Lender Party shall, to the extent that in its sole discretion exercised in good faith, it can do so without prejudice to the retention of the amount of such refund or credit and without any other adverse tax consequences for such Lender Party, reimburse to Borrower at such time as such tax refund or credit shall have actually been received by such Lender Party such amount as the Lender Party shall, in its sole discretion exercised in good faith, have determined to be attributable to the relevant Taxes or Other Taxes and as will leave such Lender Party in no better or worse position than it would have been in if the payment of such Taxes or Other Taxes had not been required; provided, that if the Lender Party is required to repay all or any portion of any refund or any interest thereon to such Governmental Authority or to forfeit all or any portion of such credit, then, upon the request of such Lender Party, Borrower agrees to repay such Lender Party, as soon as reasonably practicable, the amount of the refund required to be paid to such Governmental Authority by such Lender Party or the amount of such credit that is required to be forfeited, in each case *plus* any penalties, interest or other charges imposed by such Governmental Authority with respect to such refund or credit, as the case may be. Nothing in this Section 2.4(d)(v) shall oblige any Lender Party to disclose to Borrower or any other Person any information regarding its tax affairs or tax computations, or shall interfere with Lender Party's absolute discretion to arrange its tax affairs in whatever manner it thinks fit. In particular, no Lender Party shall be under any obligation to claim relief from its corporate profits or similar tax liability in credits or deductions available to it and, if it does claim, the extent, order and manner in which it does so shall be at its absolute discretion.

(vi) Survival of Obligations. The obligations of Obligors under this Section 2.4(d) shall survive the termination of this Agreement and the repayment of Borrower's First Lien Obligations hereunder.

(e) Application of Payments. Except as otherwise expressly provided herein or in the other Credit Documents, payments made under this Agreement or the other Credit Documents and other amounts received by Administrative Agent, First Lien Collateral Agent, 33 Depositary Agent, the Issuing Banks or the Lenders under this Agreement or the other Credit Documents shall first be applied to any fees, costs, charges or expenses payable to Administrative Agent, First Lien Collateral Agent, Depositary Agent, the Issuing Banks or the Lenders hereunder or under the other Credit Documents, next to any accrued but unpaid interest then due and owing, then to outstanding principal then due and owing or otherwise to be prepaid, and to all ordinary course settlement payments and termination payments then due and payable under any Interest Rate Agreement and Cash Collateralize outstanding LC Exposure (in each case, such application to be made on a pro rata basis among such applicable Persons), and any surplus then remaining shall be paid to Borrower or its successors or assigns or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

(f) Withholding Exemption Certificates.

(i) Any Lender Party that is entitled to an exemption from or reduction of withholding tax with respect to payments made under any Credit Document shall deliver to Borrower and the Administrative Agent, at the time or times reasonably requested by Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender Party, if reasonably requested by Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Legal Requirements or reasonably requested by Borrower or the Administrative Agent as will enable Borrower or the Administrative Agent to determine whether or not such Lender Party is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.4(f)(ii)(A), 2.4(f)(ii)(B), and 2.4(f)(ii)(D) below) shall not be required if in the Lender Party's reasonable judgment such completion, execution or submission would subject such Lender Party to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender Party that is a U.S. Person shall deliver to Borrower and the Administrative Agent on or prior to the date on which such Lender Party becomes a Lender Party under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender Party is exempt from U.S. federal backup withholding tax;

(B) any Non-U.S. Lender Party shall, to the extent it is legally entitled to do so, deliver to Borrower and the Administrative Agent (in such number of copies as shall be requested by the Recipient) on or prior to the date on which such Non-U.S. Lender Party becomes a Lender Party under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Non-U.S. Lender Party claiming the benefits of an income tax treaty to which the United States is a party (I) with respect to payments of interest under any Credit Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "interest" article of such tax treaty, and (II) with respect to any other applicable payments under any Credit Document, IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Non-U.S. Lender Party claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (I) a certificate substantially in the form of Exhibit H-1 to the effect that such Non-U.S. Lender Party is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of Borrower (or if the Borrower is an entity that is disregarded as separate from its regarded owner for U.S. federal income tax purposes, such regarded owner) within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "**U.S. Tax Compliance Certificate**"), and (II) executed copies of IRS Form W-8BEN or W-8BEN-E; or

(4) to the extent a Non-U.S. Lender Party is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit H-2 or Exhibit H-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided, that if the Non-U.S. Lender Party is a partnership and one or more direct or indirect partners of such Non-U.S. Lender Party are claiming the portfolio interest exemption, such Non-U.S. Lender Party may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit H-4 on behalf of each such direct and indirect partner;

(C) any Lender Party shall, to the extent it is legally entitled to do so, deliver to Borrower and the Administrative Agent (in such number of copies as shall be requested by the Recipient) on or prior to the date on which such Lender Party becomes a Lender Party under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender Party under any Credit Document would be subject to U.S. federal withholding tax imposed by FATCA if such Lender Party were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender Party shall deliver to Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower or the Administrative Agent as may be necessary for Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender Party has complied with such Lender Party's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender Party agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) Defaulting Lender. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article 7 or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.2 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to Cash Collateralize each Issuing Bank's LC Exposure (if any) with respect to such Defaulting Lender in accordance with Section 2.4(g)(iii); *third*, as Borrower may request (so long as no Default or Event of Default exists), to the funding of any Term Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fourth*, if so determined by the Administrative Agent and Borrower, to be held in a deposit account and released pro rata in order to (A) satisfy such Defaulting Lender's potential future funding obligations with respect to Term Loans under this Agreement and (B) Cash Collateralize any Issuing Bank's future LC Exposure (if any) with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement; *fifth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *sixth*, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *seventh*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided, that if such payment is a payment of the principal amount of any Term Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, such payment shall be applied solely to pay the Term Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Term Loans are held by the Lenders pro rata in accordance with the Term Loan Commitments. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Cash Collateral. At any time that there shall exist a Defaulting Lender, within one Banking Day following the written request of the Administrative Agent or a Issuing Bank (with a copy to the Administrative Agent) the Borrower shall Cash Collateralize each Issuing Bank's LC Exposure (other than the LC Exposure of any Issuing Bank that is the Defaulting Lender or its Affiliate) with respect to such Defaulting Lender (determined after giving effect to Section 2.4(g)(iii)(B) and any Cash Collateral provided by such Defaulting Lender).

(A) Grant of Security Interest. The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the First Lien Collateral Agent, for the benefit of the applicable Issuing Bank, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lenders' obligation to fund participations in respect of Letters of Credit, to be applied pursuant to clause (B) below. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the First Lien Collateral Agent and an Issuing Bank as herein provided, or that the total amount of such Cash Collateral is less than 102.5% of the Stated Amount of such Letters of Credit, the Borrower shall, promptly upon demand by the Administrative Agent, pay or provide to the First Lien Collateral Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(B) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 2.4(g) in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of Letters of Credit (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(C) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce the applicable Issuing Bank's LC Exposure shall not be held as Cash Collateral pursuant to this Section 2.4(g) following (1) the elimination of the LC Exposure (including by the termination of Defaulting Lender status of the applicable Lender) or (2) the determination by the Administrative Agent and the applicable Issuing Bank that there exists excess Cash Collateral; provided, that, subject to the other provisions of this Section 2.4(g), the Person providing Cash Collateral and the applicable Issuing Bank may agree that Cash Collateral shall be held to support future anticipated LC Exposure or other obligations; provided, further, that to the extent that such Cash Collateral was provided by the Borrower, such Cash Collateral shall remain subject to the security interest granted pursuant to the Credit Documents.

(iv) Certain Fees. Notwithstanding anything herein to the contrary, no Defaulting Lender shall be entitled to receive any ~~**Commitment Fee**~~**commitment fee** for any period during which that Lender is a Defaulting Lender (and Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(v) Termination or Transfer of Interest Rate Agreements. During the period that any Lender is a Defaulting Lender, such Lender (or any of its Affiliates) shall, at Borrower's option, not be permitted to be a Hedge Bank with respect to any Permitted Interest Rate Agreement, and to the extent such Lender (or its Affiliate) is a Hedge Bank, Borrower may, at its sole option, require such Hedge Bank to terminate or transfer its Permitted Interest Rate Agreements to an existing Lender (or its Affiliate). Any transfer of a Permitted Interest Rate Agreement, if required by the Borrower, shall be subject to the following conditions: (A) the Lender (or its Affiliate) as Hedge Bank and as transferor (the "**Transferor Hedge Provider**") and the transferee (the "**Transferee Hedge Provider**") shall enter into a novation agreement (based on the ISDA standard form novation agreement); (B) the calculation of the pricing of such novation (including any payment to be made between the Transferor Hedge Provider and the Transferee Hedge Provider) shall be acceptable to the Transferor Hedge Provider (unless it, or its Affiliates is a Defaulting Lender) and Transferee Hedge Provider in their reasonable discretion; and (C) the Transferor Hedge Provider shall bear all costs and expenses (including legal costs and expenses) in relation to any such transfer.

(vi) Defaulting Lender Cure. If Borrower, the Administrative Agent and each Issuing Bank agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Term Loans to be held pro rata by the Lenders in accordance with the Term Loan Commitments, whereupon such Lender will cease to be a Defaulting Lender; provided, that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

2.5 Pro Rata Treatment

(a) Borrowings, Commitment Reductions, Etc. Except as otherwise provided herein, (i) each Borrowing consisting of Loans or each Drawing Payment under any Letters of Credit or each reduction of Commitments shall be made or allocated among the Lenders pro rata according to their respective Proportionate Shares of such Loans or Commitments, as the case may be, (ii) each payment of principal of and interest on Term Loans and LC Loans shall be made or shared among the Lenders holding such Loans pro rata according to their respective unpaid principal amounts of such Loans held by such Lenders, (iii) each payment of commitment fees shall be shared among the Lenders pro rata according to (A) their respective Proportionate Shares of the Commitments held by such Lenders to which such fees apply, and (B) in respect of each Lender which becomes a party to this Agreement hereunder after the Closing Date, the date upon which such Lender so became a party hereunder, and (iv) each payment of **Revolving** LC Fees shall be made or shared among the Lenders holding such Loans pro rata according to their respective Proportionate Shares of ~~the Commitments held by such Lenders to which such fees apply~~**Stated Amounts of all Revolving Letters of Credit**.

(b) Sharing of Payments, Etc. If any Lender or Issuing Bank shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) on account of its Loans or participations in Drawing Payments **of Revolving Letters of Credit** resulting in such Lender or Issuing Bank receiving payment of a greater proportion of the aggregate amount of its Loans or participations in Drawing Payments **of Revolving Letters of Credit** and accrued interest thereon under the applicable facility than the proportion received by any other Lender or Issuing Bank with respect to such facility (other than the application of funds arising from the existence of a Defaulting Lender), then the Lender or Issuing Bank receiving such greater proportion shall forthwith purchase from the other Lenders or Issuing Bank such participations in the Loans or Drawing Payments, as the case may be, as shall be necessary to cause such purchasing Lender or Issuing Bank to share the excess payment ratably with each of them; provided, that (i) the foregoing shall not apply to any assignments by a Lender or Issuing Bank in accordance with Section 9.14, (ii) the foregoing shall not apply to any upfront fees, arranging fees or agency fees and (iii) if all or any portion of such excess payment is thereafter recovered from such purchasing Lender or Issuing Bank, such purchase from such Lender or Issuing Bank shall be rescinded and each other Lender or Issuing Bank shall repay to the purchasing Lender of Issuing Bank the purchase price to the extent of such recovery together with an amount equal to such other Lender's or Issuing Bank's proportionate share of the applicable facility (according to the proportion of (A) the amount of such other Lender's or Issuing Bank's required repayment to (B) the total amount so recovered from the purchasing Lender or Issuing Bank) of any interest or other amount paid or payable by the purchasing Lender or Issuing Bank in respect of the total amount so recovered. Borrower agrees that any Lender or Issuing Bank so purchasing a participation from another Lender or Issuing Bank pursuant to this Section 2.5(b) may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of setoff) with respect to such participation as fully as if such Lender or Issuing Bank was the direct creditor of Borrower in the amount of such participation.

2.6 Change of Circumstances

(a) Inability to Determine Rates; Effect of Benchmark Transition Event.

~~**Benchmark Replacement.**~~ Notwithstanding anything to the contrary herein or in any other Credit Document~~, upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, the Administrative Agent and the Borrower may, by mutual agreement, amend this Agreement by replacing the LIBO Rate with a Benchmark Replacement. Any such amendment with respect to a~~:

(i) Replacing LIBOR. On March 5, 2021 the Financial Conduct Authority ("FCA"), the regulatory supervisor of LIBOR's administrator ("IBA"), announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1-month, 3-month, 6-month and 12-month LIBOR tenor settings. On the earlier of (A) the date that all Available Tenors of LIBOR have either permanently or indefinitely ceased to be provided by IBA or have been announced by the FCA pursuant to public statement or publication of information to be no longer representative and (B) the Early Opt-in Effective Date, if the then-current Benchmark is LIBOR, the Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Credit Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Credit Document. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a quarterly basis.

~~(i)~~ **Replacing Future Benchmarks. Upon the occurrence of a** Benchmark Transition Event ~~will become effective at~~ **, the Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder and under any Credit Document in respect of any Benchmark setting at or after** 5:00 p.m. on the fifth ~~Banking~~**(5th) Business** Day after the ~~Administrative Agent has posted such proposed amendment to all Lenders and the Borrower~~**date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Credit Document (other than any Benchmark Replacement Conforming Changes made pursuant to Section 2.6(a)(iii) below)** so long as the Administrative Agent has not received, by such time, written notice of objection to such ~~amendment~~**Benchmark Replacement** from Lenders comprising the Required Lenders. ~~Any such amendment with respect to an Early Opt-in Election will become effective on the date that Lenders comprising the Required Lenders have delivered to~~ **At any time that the administrator of the then-current Benchmark has permanently or indefinitely ceased to provide such Benchmark or such Benchmark has been announced by the regulatory supervisor for the administrator of such Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored, the Borrower may revoke any request for a borrowing of, conversion to or continuation of Loans to be made, converted or continued that would bear interest by reference to such Benchmark until the Borrower's receipt of notice from** the Administrative Agent ~~written notice that such Required Lenders accept such amendment. No replacement of the LIBO Rate with~~**that** a Benchmark Replacement ~~pursuant to this Section 2.6(a) will occur prior to the applicable Benchmark Transition Start Date.~~**has replaced such Benchmark, and, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans . During the period referenced in the foregoing sentence, the component of the Base Rate based upon the Benchmark will not be used in any determination of the Base Rate.**

(ii) Benchmark Replacement Conforming Changes. In connection with the implementation **and administration** of a Benchmark Replacement, the Administrative Agent~~, with the written consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed),~~ will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Credit Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(iii) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (A) ~~any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date and Benchmark Transition Start Date, (B)~~ the implementation of any Benchmark Replacement~~,~~ **and** (~~C~~**B**) the effectiveness of any Benchmark Replacement Conforming Changes ~~and (D) the commencement or conclusion of any Benchmark Unavailability Period~~. Any determination, decision or election that may be made by the Administrative Agent or**, if applicable, any Lender (or group of** Lenders**)** pursuant to this Section ~~2.6(a)~~, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their ~~commercially reasonable~~**sole** discretion **and without consent from any other party hereto**, except, in each case, as expressly required pursuant to this Section ~~2.6(a)~~.

(iv) ~~Benchmark~~ Unavailability ~~Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a LIBOR Loan of, conversion to or continuation of LIBOR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans. During any Benchmark Unavailability Period, the component of Base Rate based upon the LIBO Rate will not be used in any determination of Base Rate.~~**of Tenor of Benchmark. At any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate (including Term SOFR or LIBOR), then the Administrative Agent may remove any tenor of such Benchmark that is unavailable or non-representative for Benchmark (including Benchmark Replacement) settings and (B) the Administrative Agent may reinstate any such previously removed tenor for Benchmark (including Benchmark Replacement) settings.**

(b) Illegality. If any Lender reasonably determines that, after the Closing Date, the adoption of any Governmental Rule, any change in any Governmental Rule or the application or requirements thereof (whether such change occurs in accordance with the terms of such Governmental Rule as enacted, as a result of amendment, or otherwise), any change in the interpretation or administration of any Governmental Rule by any Governmental Authority, or compliance by any Lender or Borrower with any request or directive (whether or not having the force of law, but if not having the force of law, being of a type with which a Lender customarily complies) of any Governmental Authority; provided, that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith, and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", (regardless of the date enacted, adopted or issued, a "**Change in Law**") shall make it unlawful or impossible for any Lender to make or maintain any LIBOR Loan, or results in a Governmental Authority imposing material restrictions on the authority of the Lenders to purchase, sell or take deposits of Dollars in the pursuant to the preceding sentence prior to the notice thereof by such Lender to Borrower through Administrative Agent, (1) Borrower's right to request the making of or conversion to, and the Lender's obligations to make or convert to, LIBOR Loans shall be suspended until such Lender notifies Borrower and Administrative Agent that the circumstances giving rise to such determination no longer exist, and (2) Borrower shall, upon demand from such Lender (with a copy to Administrative Agent), either (I) pursuant to Section 2.1(g) convert any then outstanding LIBOR Loans into Base Rate Loans at the end of the current Interest Periods for such Loans, or (II) immediately repay LIBOR Loans pursuant to Section 2.1(h) or convert LIBOR Loans into Base Rate Loans if such Lender shall notify Borrower that such Lender may not lawfully continue to fund and maintain such Loans. Upon any such conversion, Borrower shall also pay accrued interest on the amount so converted. Any conversion or prepayment of LIBOR Loans made pursuant to the preceding sentence prior to the last day of an Interest Period for such Loans shall be deemed a prepayment thereof for purposes of Section 2.7.

(c) Increased Costs. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement) or any Issuing Bank; or

(ii) impose on any Lender or any Issuing Bank or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letters of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost (other than any cost relating to any Taxes) to such Lender or such other Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender, such Issuing Bank or such other Recipient of participating in, issuing or maintaining any Letters of Credit (or of maintaining its obligation to participate in or to issue any Letters of Credit), or to reduce the amount of any sum received or receivable by such Lender, Issuing Bank or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, Issuing Bank or other Recipient, Borrower shall pay to such Lender, Issuing Bank or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, Issuing Bank or other Recipient, as the case may be, for such additional costs incurred or reduction suffered (without duplication and after netting out the effect of any benefits resulting therefrom).

(d) Capital Requirements.

(i) If any Lender or Issuing Bank reasonably determines that any Change in Law affecting such Lender or Issuing Bank or any Lending Office of such Lender or such Lender's or Issuing Bank's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's or Issuing Bank's capital or on the capital of such Lender's or Issuing Bank's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by any Issuing Bank, to a level below that which such Lender or Issuing Bank or such Lender's or Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or Issuing Bank's policies and the policies of such Lender's or Issuing Bank's holding company with respect to capital adequacy), then from time to time Borrower shall pay to such Lender or Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or Issuing Bank or such Lender's or Issuing Bank's holding company for any such reduction suffered (without duplication and after netting out the effect of any benefits resulting therefrom).

(ii) Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including eurocurrency funds or deposits (currently known as "Eurocurrency Liabilities" in Regulation D), additional interest on the unpaid principal amount of each LIBOR Loan equal to the actual costs of such reserves allocated to such Loan by such Lender; provided, that such costs shall be applied consistently across all other similar loans of such Lender, as determined by such Lender in good faith, which determination shall be conclusive absent manifest error. Such additional interest shall be due upon the occurrence of event giving rise to, or the imposition of, as applicable, the reserve requirement, and payable on each date on which interest is payable on such Loan; provided, that such Lender shall provide Borrower at least ten days' prior notice (with a copy to the Administrative Agent) of such additional interest. If a Lender fails to give notice ten days prior to the relevant interest payment date, such failure shall not excuse Borrower's obligation to pay such additional interest, however, such additional interest shall be only payable ten days from receipt of such notice.

(e) Notice; Participating Lenders' Rights. Each Lender shall notify Borrower of any event occurring after the date of this Agreement that will entitle such Lender to compensation pursuant to this Section 2.6(e), promptly, and in no event later than 180 days after the principal officer of such Lender responsible for administering this Agreement obtains knowledge thereof; provided, that any Lender's failure to notify Borrower within such 180 day period shall not relieve Borrower of its obligation under this Section 2.6(e) with respect to claims arising prior to the end of such period, but shall relieve Borrower of its obligations under this Section 2.6(e) with respect to the time between the end of such period and such time as Borrower receives notice from the applicable Lender as provided herein; and provided, further, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180 day period referred to above shall be extended to include the period of retroactive effect thereof. No Person purchasing from a Lender a participation in any Commitment (as opposed to an assignment) shall be entitled to any payment from or on behalf of Borrower pursuant to Section 2.6(c) or Section 2.6(d) which would be in excess of the applicable proportionate amount (based on the portion of the Commitment in which such Person is participating) which would then be payable to such Lender if such Lender had not sold a participation in that portion of the Commitment.

2.7 Funding Losses

If Borrower shall (a) repay or prepay any LIBOR Loans on any day other than the last day of an Interest Period for such Loans (whether an Optional Prepayment or a Mandatory Prepayment), (b) fail to convert any Loans into LIBOR Loans in accordance with a Notice of Conversion of Loan Type delivered to Administrative Agent (whether as a result of the failure to satisfy any applicable conditions or otherwise) after such Notice of Conversion of Loan Type has become irrevocable, (c) fail to continue a LIBOR Loan in accordance with a Confirmation of Interest Period Selection delivered to Administrative Agent, or (d) fail to make any prepayment in accordance with any notice of prepayment delivered to Administrative Agent, then Borrower shall, within ten days after demand by any Lender, reimburse such Lender for all reasonable costs and losses incurred by such Lender as a result of such repayment, prepayment or failure ("**Liquidation Costs**"). Borrower understands that such costs and losses may include losses incurred by a Lender as a result of funding and other contracts entered into by such Lender to fund LIBOR Loans (other than non-receipt of the margin applicable to such LIBOR Loans). Each Lender demanding payment under this Section 2.7 shall deliver to Borrower a certificate setting forth in reasonable detail the basis for and the amount of costs and losses for which demand is made. Such a certificate so delivered to Borrower shall, in the absence of manifest error, be conclusive and binding as to the amount of such loss for purposes of this Agreement.

2.8 Alternate Office; Minimization of Costs; Replacement of Lenders

(a) To the extent reasonably possible, each Lender shall designate an alternative Lending Office with respect to its LIBOR Loans and otherwise take any reasonable actions to reduce any liability of Borrower to any Lender under Sections 2.4(d), 2.6(c), 2.6(d) or Section 2.7, or to avoid the unavailability of any Type of Loans under Section 2.6(b) so long as (in the case of the designation of an alternative Lending Office) such Lender, in the reasonable judgment of such Lender, determines that (i) such designation would not subject the Lender to any unreimbursed cost or otherwise be disadvantageous to such Lender in any material respect, and (ii) such actions would eliminate or reduce liability to such Lender; provided, that no Lender shall be required to designate an alternative Lending Office if such designation requires internal credit approval until such time as such Lender receives such internal credit approval. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or actions within ten Banking Days of demand thereof to Borrower.

(b) If and with respect to each occasion that any Lender has failed to consent to a proposed amendment, waiver, discharge or termination which pursuant to the terms of Section 9.9 requires the consent of all of the Lenders affected and with respect to which the Required Lenders shall have granted their consent, a Lender either makes a demand for compensation pursuant to Sections 2.4(d), 2.6(c) or 2.6(d) or is unable to fund LIBOR Loans pursuant to Section 2.6(b) or is a Defaulting Lender, then Borrower may, upon at least five Banking Days' prior irrevocable written notice to each of such Lender and Administrative Agent, in whole permanently replace the Loans and Commitments of such Lender. Such replacement Lender shall upon the effective date of replacement purchase Borrower's First Lien Obligations hereunder owed to such replaced Lender for the aggregate amount thereof and shall thereupon for all purposes become a "Lender" hereunder. Such notice from Borrower shall specify an effective date for the replacement of such Lender's Loans and Commitments, which date shall not be later than the fourteenth day after the day such notice is given. On the effective date of any replacement of such Lender's Loans and Commitments pursuant to this Section 2.8(b), Borrower shall pay to Administrative Agent for the account of such Lender (i) any fees due to such Lender to the date of such replacement, (ii) the principal of and accrued interest on the principal amount of outstanding Loans held by such Lender to the date of such replacement (such amount to be represented by the purchase of Borrower's First Lien Obligations hereunder of such replaced Lender by the replacing Lender and not as a prepayment of such Loans), and (iii) the amount or amounts due to such Lender pursuant to each of Sections 2.4(c), 2.6(c) or 2.6(d), as applicable, and any other amount then payable hereunder to such Lender. Borrower shall remain liable to such replaced Lender for any Liquidation Costs that such Lender sustains or incurs as a consequence of the purchase of such Lender's Loans (unless such Lender has defaulted on its obligation to fund a Loan hereunder). Upon the effective date of the purchase of any Lender's Loans owed to such Lender and termination of such Lender's Commitments pursuant to this Section 2.8(b), such Lender shall cease to be a Lender hereunder. No such termination of any such Lender's Commitments and the purchase of such Lender's Loans pursuant to this Section 2.8(b) shall affect (x) any liability or obligation of Borrower or any other Lender to such terminated Lender, or any liability or obligation of such terminated Lender to Borrower or any other Lender, which accrued on or prior to the date of such termination, or (y) such terminated Lender's rights hereunder in respect of any such liability or obligation. Nothing in this Section 2.8(b) shall be deemed to prejudice any rights that Borrower may have against any Lender that is a Defaulting Lender.

(c) Upon written notice to Administrative Agent, any Lender may designate a Lending Office other than the Lending Office most recently designated to Administrative Agent and may assign all of its interests under the Credit Documents and its Notes (if any) to such Lending Office; provided, that, such designation and assignment do not at the time of such designation and assignment increase the reasonably foreseeable liability of Borrower under Sections 2.4(d), 2.6(c) or 2.6(d) or make an Interest Rate option unavailable pursuant to Section 2.6(b).

3. CONDITIONS PRECEDENT

3.1 Conditions Precedent to the Closing Date

The obligation of the Lenders to make the Term Loans or LC Loans on the Closing Date, as applicable, under this Agreement, and the obligation of any Issuing Bank to issue any Letter of Credit hereunder on the Closing Date is subject to the prior satisfaction of each of the following conditions (unless waived in writing by Administrative Agent with the consent of the Lenders) (the date such conditions precedent are so satisfied or waived being referred to as the "**Closing Date**"):

(a) Resolutions. Delivery to the Administrative Agent of a copy of one or more resolutions or other authorizations, in form and substance reasonably satisfactory to the Administrative Agent, of the Obligors certified by a Responsible Officer of Holdings or Borrower, as applicable, as being in full force and effect on the Closing Date, authorizing, as applicable and among other things, the Borrowings herein provided for, the granting or continuation of the Liens under the First Lien Collateral Documents, delivery and performance of this Agreement and the other Closing Date Credit Documents and any instruments or agreements required hereunder or thereunder to which any of the Obligors is a party.

(b) Incumbency. Delivery to the Administrative Agent and the Depositary Agent of a certificate, in form and substance reasonably satisfactory to the Administrative Agent, from the Obligors, signed by the appropriate authorized officer or manager of the Obligors and dated as of the Closing Date, as to the incumbency of the natural Persons authorized to execute and deliver this Agreement and the other Closing Date Credit Documents and any instruments or agreements required hereunder or thereunder to which an Obligor is a party.

(c) Formation Documents. Delivery to the Administrative Agent of (i) copies of the articles of incorporation, certificate of incorporation, charter or other state certified constituent documents of each Obligor, certified by the secretary of state of such Obligor's state of formation, and (ii) copies of the limited liability company operating agreement or other comparable constituent documents, if applicable, of each Obligor, certified by an authorized officer of such Obligor, as applicable, as being true, correct and complete on the Closing Date.

(d) Good Standing Certificates. Delivery to the Administrative Agent of good standing certificates in a form customarily issued by (i) the secretary of state of the state in which the Obligors are formed or incorporated, as applicable, and (ii) in the case of Borrower, the Secretary of State of the State of California.

(e) Third Party Approvals. Delivery to the Administrative Agent of copies of any approval by any Governmental Authority reasonably required in connection with any transaction herein contemplated or contemplated in any other Credit Document, which the Administrative Agent may reasonably have requested in connection herewith.

(f) Credit Documents and Major Project Contracts. Delivery to the Administrative Agent of (i) executed copies of this Agreement, the First Lien Common Terms Agreement, and each other Credit Document (other than the Interest Rate Agreements) to be executed on the Closing Date and any supplements or amendments thereto and (ii) a certified list of, and true, correct and complete copies of, each Major Project Contract executed on or prior to the Closing Date (together with any supplements or amendments thereto), in the case of each of clauses (i) and (ii), all of which shall have been duly authorized, executed and delivered by the parties thereto, and all of which shall be certified by a Responsible Officer of Borrower as being true, complete and correct and in full force and effect (to the extent provided therein) on the Closing Date pursuant to the certificate delivered pursuant to Section 3.1(g).

(g) Closing Certificate. Delivery to the Administrative Agent of a certificate, dated as of the Closing Date, duly executed by a Responsible Officer of Borrower, in substantially the form of Exhibit F-1.

(h) Legal Opinions. Delivery to the Administrative Agent of legal opinions of counsel to the Obligors entering into Financing Documents entered into as of the Closing Date, in each case in form and substance reasonably satisfactory to the Administrative Agent.

(i) Insurance. Insurance complying with terms and conditions set forth in Exhibit K shall be in full force and effect and the Administrative Agent and the Insurance Consultant shall have received (i) a certificate from Borrower's insurance broker(s), dated as of the Closing Date, in form and substance reasonably satisfactory to the Administrative Agent, (A) identifying underwriters, type of insurance, insurance limits and policy terms, (B) listing the special provisions required as set forth in Exhibit K, (C) describing the insurance obtained, and (D) stating that such insurance is in full force and effect and that all premiums then due thereon have been paid and that, in the opinion of such broker(s), such insurance complies with the terms and conditions set forth in Exhibit K, and (ii) certified copies of all policies evidencing such insurance (or a binder, commitment or certificates signed by the insurer or a broker authorized to bind the insurer).

(j) Consultant Reports. Delivery to the Administrative Agent of the Independent Engineer, Insurance Consultant, Reserve Consultant, Environmental Consultant and Market Consultant's reports, together with a reliance letter from each such Person in form and substance reasonably satisfactory to the Administrative Agent.

(k) Depositary Accounts. The Depositary Accounts shall have been established and the Debt Service Reserve Account and shall have been funded in an amount equal to the Debt Service Reserve Requirement, with cash or a letter of credit.

(l) Payment of Taxes, Interest and Fees. All taxes, fees and other costs payable in connection with the execution, delivery, recordation and filing of the documents and instruments referred to in this Section 3.1 and due on the Closing Date shall have been paid in full or, as approved by the Lenders, provided for. Borrower shall have paid (or caused to be paid) all outstanding amounts due, as of the Closing Date, and owing to (i) the Lenders, Administrative Agent, First Lien Collateral Agent, the Issuing Banks, Coordinating Lead Arrangers or the Joint Lead Arrangers under any fee or other letter, including without limitation the Agency Fee Letter, the Depositary and Collateral Agency Fee Letter or pursuant to Section 2.3(a), (ii) the Lenders' attorneys and consultants (including the Independent Consultants) for all services rendered and billed at least one Banking Day prior to the Closing Date, (iii) the Depositary Agent under the Depositary Agreement and the Depositary and Collateral Agency Fee Letter and (iv) Administrative Agent for any other amounts required to be paid or deposited by Borrower on the Closing Date. In addition, Borrower shall have provided, to any Lender that has so requested in writing at least one Banking Day prior to the Closing Date, documentation reasonably satisfactory to Borrower and such Lender regarding the description or designation of any fees payable to such Lender pursuant to the foregoing clause (i); provided, that Borrower shall not be responsible for making any determination or verification with respect to the description or designation of fees requested by any such Lender, and shall not have any liability to any such Lender as a result of the delivery of such documentation.

(m) Financial Statements. Delivery to the Administrative Agent of (i) accurate and complete copies of (A) the audited balance sheets of the Borrower for the years ended December 31, 2017, December 31, 2018 and December 31, 2019, and (B) audited statements of cash flows of the Borrower for the years ended December 31, 2016, December 31, 2017, December 31, 2018 and December 31, 2019, and (ii) together with a certificate from the appropriate Responsible Officer of Borrower, dated as of the Closing Date, stating that, since December 31, 2019, there has occurred no event or circumstance which could reasonably be expected to have a Material Adverse Effect.

(n) UCC Reports. Delivery to the Administrative Agent of a UCC report of a date no less recent than ten days before the Closing Date for each of the jurisdictions in which the UCC-1 financing statements and the fixture filings are intended to be filed in respect of the Collateral, showing that upon due filing or recordation (assuming such filing or recordation occurred on the date of such respective reports), as the case may be, the security interests created under the First Lien Collateral Documents, with respect to such Collateral, will be prior to all other financing statements, future filings or other security documents wherein the security interest is perfected by filing or recording in respect of the Collateral, together with evidence of release of the Projects from all liens other than Permitted Liens and payoff of any debt for borrowed money of the Obligors.

(o) Base Case Projections. Delivery to the Administrative Agent of the Base Case Projections of operating expenses and cash flow for the Projects in the form of Schedule 3.1(o), which Base Case Projections shall be in form and substance satisfactory to the Administrative Agent.

(p) Reorganization. Delivery to the Administrative Agent of a certificate by the Borrower certifying that the structure set forth in Schedule 3.1(p) is the Obligor's corporate structure as of the Closing Date, together with documents evidencing that such corporate structure has been effectuated.

(q) Flood Determination. Delivery to the Administrative Agent of a completed "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination for the real property relating to each of the Projects.

(r) Representations and Warranties. Each representation and warranty of Borrower and each other Obligor under the Credit Documents shall be true and correct as of the Closing Date, except to the extent that such representations and warranties are stated to be made as of a specific date, in which case they shall be true and correct as of such date.

(s) Absence of Litigation. The absence of any action, suit, investigation or proceeding pending or, to the knowledge of the Borrower, threatened in any court or before any arbitrator or Governmental Authority that could reasonably be expected to have a Material Adverse Effect.

(t) No Default. No Default or Event of Default shall have occurred and be continuing as of the Closing Date.

(u) Annual Operating Budget. The Lenders shall have received a copy of the Annual Operating Budget for calendar year 2020.

(v) Notice of Borrowing. Borrower shall have delivered the Notice of Borrowing to Administrative Agent in accordance with the procedure specified in Section 2.1(a)(ii).

(w) Know-your-Customer. At least three Banking Days prior to the Closing Date, the Agents and the Lenders shall have received (i) all documentation and other information required by bank regulatory authorities or reasonably requested by any Agent or any Lender, at least seven Banking Days prior to the Closing Date, under or in respect of applicable "know-your-customer" and anti-money laundering rules and regulations, including the PATRIOT Act and (ii) to the extent that Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, Borrower shall deliver a Beneficial Ownership Certification.

(x) Release Letter. Substantially concurrently with the transactions contemplated hereby, all Indebtedness of the Obligors (other than Permitted Debt), together with all accrued and unpaid interest thereon and all applicable make-whole or other premiums payable in connection therewith, concurrently with the consummation of the transactions contemplated hereby, has been prepaid, redeemed or defeased in full or otherwise satisfied and extinguished, in each case, on terms reasonably satisfactory to the Administrative Agent, and all commitments relating thereto terminated and all Liens on security interests related thereto shall have been terminated or released, in each case, on terms reasonably satisfactory to the Administrative Agent.

(y) Consents. Delivery to the Administrative Agent of executed copies of the Consent for the (i) Administrative Services Agreement, dated as of the date hereof, between Calpine Administrative Services Company, Inc. and the Borrower, Geysers Company, Wild Horse and Calistoga, (ii) the O&M Agreement, and (iii) the Third Amended and Restated Power Purchase and Sale Agreement.

3.2 Conditions Precedent to Credit Events

The obligation of any Lenders to make the LC Loans after the Closing Date or to issue, amend or renew Letters of Credit after the Closing Date is subject to the prior satisfaction of each of the following conditions (unless waived in writing by Administrative Agent with the consent of the Lenders) (any date such conditions precedent are so satisfied or waived being referred to as a "**Borrowing Date**"):

(a) Representations and Warranties. Each representation and warranty made by or on behalf of Borrower or any Obligor in any of the Credit Documents shall be true and correct in all material respects (or, in the case of any such representations and warranties qualified as to materiality, in all respects) as if made on the date of such Credit Event, unless such representation or warranty expressly relates solely to an earlier date; provided, that this Section 3.2(a) shall not be a condition to reinstating the Stated Amount of any Letter of Credit upon remibursement thereof.

(b) No Default. No Event of Default shall have occurred and be continuing or shall result from such Credit Event.

(c) Borrowing Notice; Notice of LC Activity. In respect of any Borrowing of Term Loans, Borrower shall have delivered a Notice of Borrowing to Administrative Agent in accordance with the procedures specified in Section 2.1(a)(ii). In respect of any Letter of Credit issuance, amendment or renewal, Borrower shall have delivered a Notice of LC Activity to Administrative Agent in accordance with the procedures specified in Section 2.2.

4. REPRESENTATIONS AND WARRANTIES

Each Obligor makes each representation and warranty set forth in Article 3 (*Representations and Warranties*) of the First Lien Common Terms Agreement and each of the following supplemental representations and warranties set forth in this Article 4, on the Closing Date and as of the date of each Credit Event (unless such representation and warranty is stated to be made as of a specific date), in favor of, the First Lien Collateral Agent, each of the Lender Parties and each other party hereto:

4.1 Organization

(a) Each Obligor is (i) a limited liability company duly formed, validly existing and in good standing under the laws of the state of its formation, and (ii) is duly qualified as a foreign limited liability company, in each other jurisdiction in which such qualification is required by law in light of the business it conducts and the property it owns or leases and in light of the transactions contemplated by this Agreement, except where the failure to be so qualified or be in good standing could not reasonably be expected to have a Material Adverse Effect.

(b) Borrower and each Obligor has all requisite limited liability company power and authority to (i) own or hold under lease and operate the property it purports to own or hold under lease, (ii) carry on its business as now being conducted and as now proposed to be conducted in respect of the Projects, and (iii) execute, deliver and perform each Credit Document to which it is a party and perform its obligations thereunder.

4.2 Authorization; No Conflict

Each Obligor has duly authorized, executed and delivered each Credit Document to which such Obligor is a party (or such Credit Documents have been duly and validly assigned to such Obligor and such Obligor has authorized the assumption thereof, and has assumed the obligations of the assignor thereunder) and neither any Obligor's execution and delivery thereof nor its consummation of the transactions contemplated thereby nor its compliance with the terms thereof

(a) violate in any material respect any of its Governing Documents,

(b) violate any Legal Requirement applicable to or binding on such Obligor or any of such Obligor's properties in a manner which could reasonably be expected to result in a Material Adverse Effect,

(c) violate in any respect or result in any breach of or constitute any default under, or result in or require the creation of any Lien (other than Permitted Liens) upon any of its property under, any agreement or instrument to which it is a party or by which it or any of its properties may be bound or affected which, in each case, could reasonably be expected to result in a Material Adverse Effect, or

(d) require any consent or approval of any Person, and with respect to any Governmental Authority, does or will require any registration with, or notice to, or any other action of, with or by any applicable Governmental Authority, in each case which has not already been obtained and disclosed in writing to Administrative Agent (except (i) any Permits that are not yet Applicable Permits, (ii) for those that are required by securities, regulatory or applicable law in connection with an exercise of remedies, (iii) as set forth on Schedule 3.2(d) of the First Lien Common Terms Agreement and the filing of any required continuation statements, (iv) for those that, by the terms of the First Lien Collateral Documents, are not required to be obtained or completed or are required to be obtained or completed only after the Closing Date, or (v) for those the absence of which could not reasonably be expected to have a Material Adverse Effect).

4.3 Enforceability

Each of the Credit Documents and, except as otherwsie permitted by Section 6.2, the Major Project Contracts to which each Obligor is a party is a legal, valid and binding obligation of such Obligor, enforceable against such Obligor in accordance with its terms, except to the extent that enforceability may be limited by (a) applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights, (b) the effect of general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law), or (c) implied covenants of good faith and fair dealing.

4.4 Energy Regulatory

(a) Each of the Obligors is in compliance with the FPA and PUHCA, except to the extent such Obligor is not subject to, or is exempt from, the FPA or PUHCA or where failure to be in such compliance could not reasonably be expected to have a Material Adverse Effect. Borrower is a "public utility" within the meaning of the FPA, and has authorization from FERC under Section 205 of the FPA to engage in wholesale sales of electric energy, capacity, and certain ancillary services at market-based rates and has received such waivers and authorizations as are customarily granted to market-based rate sellers by FERC, including blanket authorization to issue securities and assume liabilities pursuant to Section 204 of the FPA. No Obligor is, nor solely as a result of the execution, delivery and performance of, and the consummation of the transactions contemplated by the Credit Documents shall be or become, a "public utility," a "transmitting utility," or an "electric utility" within the meaning of the FPA. No Obligor is, nor solely as a result of the execution, delivery and performance of, and the consummation of the transactions contemplated by the Credit Documents shall be or become, subject to state regulation of rates or to state financial or organizational requirements for utilities.

(b) Borrower is an Exempt Wholesale Generator with respect to its ownership and operation of all of the Projects and such status remains in effect. Each of the Obligors is not a "holding company" under PUHCA or is a "holding company" under PUHCA solely with respect to one or more Exempt Wholesale Generators, "qualifying facilities" (as defined in 18 C.F.R § 292.101(b)(1)) or "foreign utility companies" (as defined under PUHCA), and each of the Obligors is not subject to, or is exempt from, regulation under the federal access to books and records, accounting and recordkeeping and reporting requirements under PUHCA.

(c) None of the Lender Parties or any of their respective "affiliates" (as defined in PUHCA and applicable FERC regulations), solely by virtue of the Obligors' or any of their respective Subsidiaries' ownership or operation of the Projects, the sale or transmission of electricity therefrom or the execution, delivery and performance of or the consummation of the transactions contemplated by any Credit Document or Major Project Contracts, shall be or become subject to, or not exempt from, regulation under PUHCA, the FPA or any state law or regulation respecting the rates of electric utilities or the financial and organizational regulation of electric utilities; provided, that any exercise of remedies under the First Lien Collateral Documents that results in the direct or indirect ownership or control of the Projects or of a Project by any Lender Party or any of its "affiliates" (as defined in PUHCA and applicable FERC regulations) may subject such Lender Party and its "affiliates" (as defined in PUHCA and applicable FERC regulations) to regulation under PUHCA, the FPA or any state law or regulation respecting the rates of electric utilities or the financial and organizational regulation of electric utilities.

4.5 Adverse Change

As of the Closing Date, since December 31, 2019 there has occurred no event or circumstance which could reasonably be expected to have a Material Adverse Effect.

4.6 Investment Company Act

Borrower is not an investment company or a company controlled by an investment company, within the meaning of the Investment Company Act of 1940, as amended. Borrower is not a "covered fund" under Section 13 of the Bank Holding Company Act of 1956, as amended, as such term is defined in the final regulations issued on December 10, 2013 implementing Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (commonly known as the "Volcker Rule").

4.7 ERISA

As of the Closing Date, except as would not (individually or in the aggregate) reasonably be expected to have a Material Adverse Effect, no ERISA Event has occurred or is reasonably expected to occur. Except as would not (individually or in the aggregate) reasonably be expected to have a Material Adverse Effect, (a) neither Holdings or its Subsidiaries has incurred or reasonably expect to incur liability under Title IV of ERISA with respect to the termination of or withdrawal from any ERISA Plan or Multiemployer Plan and (b) each ERISA Plan that is intended to be qualified under Section 401 of the Code is so qualified and nothing has occurred, whether by action or failure to act, which would reasonably be expected to result in the loss of such qualification.

4.8 Permits

(a) As of the Closing Date, other than the Permits required under Section 3.2(d) of the First Lien Common Terms Agreement, the Obligors currently have all material Permits under existing Legal Requirements.

(b) Each Obligor is in compliance with all of its Applicable Permits except to the extent such noncompliance could not reasonably be expected to have a Material Adverse Effect.

4.9 Environmental Matters

Except as set forth in Schedule 4.9 and as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, Holdings, and each of its Subsidiaries are in compliance with all applicable Environmental Laws and Applicable Permits required under Environmental Laws to conduct their businesses and operations as currently conducted.

4.10 Litigation

(a) Except as set forth on Schedule 4.10(a), as of the Closing Date, no action, suit, proceeding or investigation has been instituted or, to Borrower or any Obligor's knowledge, threatened in writing against Borrower or any Obligor that could reasonably be expected to have a Material Adverse Effect.

(b) Except as set forth on Schedule 4.10(b), Borrower has no knowledge of any order, judgment or decree that has been issued or proposed to be issued by any Governmental Authority that, as a result of the leasing, ownership, operation or maintenance of the Projects by any Obligor, the sale of electricity or steam therefrom by any Obligor or the entering into of any Credit Document or any transaction contemplated hereby or thereby, could reasonably be expected to cause or deem the Lenders, Administrative Agent, First Lien Collateral Agent, the Issuing Banks, Coordinating Lead Arrangers, Joint Lead Arrangers or any Affiliate of any of them to be subject to, or not exempted from, regulation under PUHCA, the FPA or treated as a public utility under the laws of the State of California as presently constituted and as construed by the courts of California respecting the rates or the financial or organizational regulation of electric utilities.

(c) As of the date of each Credit Event occurring after the Closing Date, no action, suit, proceeding or investigation has been instituted or, to Borrower's knowledge, threatened in writing against any Obligor, which could reasonably be expected to have a Material Adverse Effect and which have not been disclosed by Borrower to Administrative Agent.

4.11 Labor Disputes.

No labor dispute with the employees of the Borrower or any Subsidiary exists or, to the knowledge of the Borrower, is imminent that would reasonably be expected to have a Material Adverse Effect.

4.12 Major Project Contracts

As of the Closing Date, copies of all of the Major Project Contracts executed on or prior to such date have been delivered to Administrative Agent. As of the Closing Date, there are no services or materials required for development, construction, operation and maintenance of the Projects in accordance with the Specified Major Project Contracts, other than those (a) to be provided under the Project Contracts, (b) that are not material to the development, construction, operation and maintenance of the Projects or (c) that can reasonably be expected to be commercially available at or for delivery to the Projects on commercially reasonable terms. As of the Closing Date, there is no default or event of default under the Material Project Contracts (other than any such default or event of default arising from or relating to the bankruptcy filing by Pacific Gas & Electric Company in the Northern District of California under Chapter 11 of the Bankruptcy Law), which could reasonably be expected to have a Material Adverse Effect.

4.13 Disclosures

(a) None of this Agreement, the other Credit Documents, any certificate or other information or documentation (other than the Annual Operating Budget or the Base Case Projections and other forward-looking statements, the Market Consultant's report, the conclusions drawn by the Independent Engineer in its report, the conclusions drawn by the Insurance Consultant in its report and the information contained in any other reports provided by the Coordinating Lead Arrangers' consultants (it being understood and agreed that Borrower will be solely responsible for the contents of any information, documentation or other materials delivered by it or on its behalf to the preparers of such study and/or reports) and any other forward-looking statements) furnished or verified by Borrower to the Coordinating Lead Arrangers, Joint Lead Arrangers, Administrative Agent, First Lien Collateral Agent, or the Lenders, or to any consultant submitting a report to Administrative Agent, Coordinating Lead Arrangers, Joint Lead Arrangers or the Lenders, by or, to Borrower's knowledge, on behalf of Borrower with respect to the Projects, in connection with the transactions contemplated by this Agreement or the other Credit Documents, contained (when taken as a whole and at the time of delivery or verification thereof) any untrue statement of a material fact or omitted (when taken as a whole and at the time of delivery or verification thereof) to state a material fact necessary in order to make the statements contained herein or therein not misleading under the circumstances in which they were made at the time such statements were made (other than any information that was corrected or updated in writing to the Coordinating Lead Arrangers, or Joint Lead Arrangers prior to the Closing Date).

(b) The Annual Operating Budget or the Base Case Projections and the other forward-looking statements and *pro forma* financial information contained in the materials provided by the Borrower and referenced in paragraph (a) above (other than, in each case, any assumptions or projections therein provided by any third-party consultant) **(i)** are based upon good faith estimates and assumptions believed by management of the Borrower to be reasonable in light of the conditions existing at the time they were made **and (ii) as of the date delivered, updated or supplemented are consistent in all material respects with the provisions of the Project Contracts executed on or prior to such date**, it being recognized by the Coordinating Lead Arrangers, Joint Lead Arrangers, Administrative Agent, First Lien Collateral Agent, ~~or~~**and** the Lenders, that **(x)** such information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount~~.~~ **and (y) such Annual Operating Budget and the Base Case Projections are subject to significant uncertainties and contingencies, many of which are beyond the control of Borrower, and Borrower makes no representation or warranty as to (1) the attainability of such Annual Operating Budget and the Base Case Projections or as to whether such Annual Operating Budget and the Base Case Projections shall be achieved and (2) any assumptions or projections therein provided by any third-party consultant.**

4.14 Taxes

Holdings and its Subsidiaries have accurately prepared and timely filed all federal, state and other tax returns that are required to be filed by them and have paid or made provision for the payment of all taxes, assessments, governmental or other similar charges, including without limitation, all sales and use taxes and all taxes which they are obligated to withhold from amounts owing to their respective employees, creditors and third parties, with respect to the periods covered by such tax returns (whether or not such amounts are shown as due on any tax return), except any amounts that an Obligor is contesting in good faith for which appropriate reserves have been provided in accordance with GAAP or where the failure to so accurately prepare, file or pay would not reasonably be expected to have a Material Adverse Effect. No deficiency assessment with respect to a proposed adjustment of the Borrower's or any of the Subsidiaries' federal, state, or other taxes is pending or, to the Borrower's knowledge, threatened, which would reasonably be expected to have a Material Adverse Effect. There is no material tax Lien, whether imposed by any federal, state, or other taxing authority, outstanding against the assets, properties or business of the Borrower or any of its Subsidiaries, which would reasonably be expected to have a Material Adverse Effect.

As of the date hereof, Borrower is an entity that is disregarded as separate from its regarded owner for U.S. federal income tax purposes.

4.15 Governmental Regulation

No consent, approval, authorization or order of, or registration, qualification or filing with any court or regulatory authority or other governmental agency or instrumentality (including but not limited to, prior authorization from FERC under Sections 203 or 204 of the FPA) is required in connection with the consummation by the Borrower and the other Obligors of the transactions contemplated by the Credit Documents, except such consents, approvals, authorizations, registrations or qualifications (a) as have been obtained or made, (b) as may be required under state securities or "blue sky" laws in connection with the transactions contemplated by the Credit Documents, (c) as may be required in connection with an exercise of remedies under the First Lien Collateral Documents, or (d) the failure of which to obtain or make would not reasonably be expected to have a Material Adverse Effect.

4.16 Regulation U, Etc.

No Obligor is engaged principally, or as one of its principal activities, in the business of extending credit for the purpose of "buying", "carrying" or "purchasing" margin stock (each as defined in Regulations T, U or X of the Federal Reserve Board), and no part of the proceeds of the Loans shall be used by any Obligor for the purpose of "buying", "carrying" or "purchasing" any such margin stock or for any other purpose which violates the provisions of the regulations of the Federal Reserve Board.

4.17 ~~Projections~~[Reserved]

~~**Borrower has prepared the Annual Operating Budget and the Base Case Projections and is responsible for developing the assumptions on which such Annual Operating Budget and the Base Case Projections are based; and such Annual Operating Budget and the Base Case Projections (a) as of the date delivered, updated or supplemented are based on reasonable assumptions (including as to all legal and factual matters material to the estimates set forth therein), and (b) as of the date delivered, updated or supplemented are consistent in all material respects with the provisions of the Project Contracts executed on or prior to such date (it being understood that such Annual Operating Budget and the Base Case Projections are subject to significant uncertainties and contingencies, many of which are beyond the control of Borrower, and Borrower makes no representation or warranty as to (a) the attainability of such Annual Operating Budget and the Base Case Projections or as to whether such Annual Operating Budget and the Base Case Projections shall be achieved and (b) any assumptions or projections therein provided by any third-party consultant).**~~

4.18 Financial Statements

In the case of each financial statement of Holdings and its Subsidiaries and accompanying information delivered by Borrower under (a) Section 3.1(m), each such financial statement and information has been prepared in conformity with GAAP and fairly presents, in all material respects, the financial position of Holdings and its Subsidiaries described therein for each of the periods then ended, subject, if applicable, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments, the absence of footnote disclosure and the exclusion of income tax impacts, and (b) Section 5.3, each such financial statement and information has been prepared in conformity with GAAP and fairly presents, in all material respects, the financial position of Holdings and its Subsidiaries described therein for each of the periods then ended, subject, if applicable, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments, the absence of footnote disclosure and the exclusion of income tax impacts.

4.19 No Default

No Default or Event of Default which has not been disclosed to Administrative Agent in writing has occurred and is continuing.

4.20 Title and Liens

The Obligors have good title in fee simple to all real property owned by them and good title to all personal property owned by them, in each case free and clear of all liens, encumbrances and defects (other than Permitted Liens), except where the failure to possess such title would not reasonably be expected to have a Material Adverse Effect. The Obligors have a good leasehold interest in any real property held under lease by the Obligors, in each case free and clear of all liens, encumbrances and defects (other than Permitted Liens), except where the failure to possess such interests would not reasonably be expected to have a Material Adverse Effect. The Borrower and the Guarantors have a good and valid interest in any real property held by the Borrower and the Guarantors under easements, rights-of-way, permits or licenses, in each case free and clear of all liens, encumbrances and defects (other than Permitted Liens), except where the failure to possess such interests would not reasonably be expected to have a Material Adverse Effect. The Borrower and the Guarantors possess all real property rights and interests necessary to operate and maintain all of the electrical generation facilities of the Borrower and the Guarantors as currently operated and maintained, except where the failure to possess such rights and interests would not reasonably be expected to have a Material Adverse Effect.

4.21 Intellectual Property

Except as disclosed in Schedule 4.21, Holdings and its Subsidiaries own or possess sufficient trademarks, trade names, patent rights, copyrights, licenses, approvals, trade secrets and other similar rights (collectively, "**Intellectual Property Rights**") reasonably necessary to conduct their businesses as now conducted, in each case, except where the failure to own or possess such Intellectual Property Rights would not reasonably be expected to have a Material Adverse Effect, and the expected expiration of any of such Intellectual Property Rights would not reasonably be expected to have a Material Adverse Effect. Neither Holdings nor any of its Subsidiaries has received any notice of infringement or conflict with asserted Intellectual Property Rights of others, which could reasonably be expected to have a Material Adverse Effect.

4.22 Collateral

The respective liens and security interests granted to First Lien Collateral Agent (for the benefit of the First Lien Secured Parties) pursuant to the First Lien Collateral Documents (a) constitute as to personal property included in the Collateral a valid security interest, and (b) constitute as to real property included in the Collateral, upon the execution of the Mortgages in accordance with Section 4.13 (*Post-Closing Covenant*) of the First Lien Common Terms Agreement and the recording of the Mortgages in the appropriate filing office, a valid lien of record and security interest in such Collateral. The security interest granted to First Lien Collateral Agent (for the benefit of the First Lien Secured Parties) pursuant to the First Lien Collateral Documents in the Collateral consisting of personal property shall be perfected (x) with respect to any property that can be perfected by filing, upon the filing of financing statements in the filing offices identified in Schedule 4.22, (y) with respect to any property that can be perfected by control, upon execution of the Control Agreements (as defined in the Depositary Agreement) or the Depositary Agreement, as applicable, and (z) with respect to any property (if any) that can be perfected by possession, upon First Lien Collateral Agent receiving possession thereof, and in each case such security interest shall be, as to Collateral perfected under the UCC or otherwise as aforesaid and to the extent provided therein, superior and prior to the rights of all third Persons now existing or hereafter arising whether by way of mortgage, lien, security interests, encumbrance, assignment or otherwise, except for Permitted Liens. Except to the extent possession of portions of the Collateral is required for perfection and except for the Collateral covered by the Mortgages, all such action as is necessary has been taken to establish and perfect First Lien Collateral Agent's rights in and to the Collateral in existence on such date to the extent First Lien Collateral Agent's security interest can be perfected by filing, including any recording, filing, registration, giving of notice or other similar action. As of the Closing Date, no filing, recordation, re-filing or re-recording other than those listed on Schedule 4.22 hereto is necessary to perfect and maintain the perfection of the interest, title or Liens of the First Lien Collateral Documents, and as soon as reasonably practicable after the Closing Date all such filings or recordings shall have been made to the extent First Lien Collateral Agent's security interest can be perfected by filing except for the Collateral secured by the Mortgages, which filings in respect of the Mortgages shall be made in accordance with Section 4.13 (*Post-Closing Covenant*) of the First Lien Common Terms Agreement. Borrower has properly delivered or caused to be delivered, or provided control (to the extent providing control is possible using commercially reasonable efforts), to First Lien Collateral Agent with respect to all Collateral that permits perfection of the Lien and security interest described above by possession or control.

4.23 Sanctions and Anti-Corruption Laws

(a) Neither Holdings nor any of its Subsidiaries, nor any director, officer, employee or, to the knowledge of the Borrower or any of its Subsidiaries, an Affiliate of the same is an individual or entity (i) located, organized or resident in a country or territory that is the subject of Sanctions (including, currently, Crimea, Cuba, Iran, North Korea and Syria (each a "**Sanctioned Country**")); (ii) on any applicable U.S. sanctions list administered or enforced by the Office of Foreign Assets Control of the U.S. Department of Treasury; (iii) currently listed by the European Union sanctions laws and regulations as they appear in the following link (as the same may be updated from time to time upon ten days' notice from the Administrative Agent to Borrower if such link no longer displays such then-current European Union sanctions laws and regulations): https://eeas.europa.eu/topics/common-foreign-security-policy-cfsp/8442/consolidated-list-of-sanctions_en; (iv) currently listed by United Nations sanctions laws and regulations as they appear in the following link (as the same may be updated from time to time upon ten days' notice from the Administrative Agent to Borrower if such link no longer displays such then-current United Nations sanctions laws and regulations): https://www.un.org/securitycouncil/content/un-sc-consolidated-list, or on any applicable U.S. sanctions list administered or enforced by the Office of Foreign Assets Control of the U.S. Department of Treasury (**any such trade embargoes, financial or economic sanctions,** collectively, "**Sanctions**"); or (v) individually or in the aggregate owned 50% or greater by or, as relevant under applicable Sanctions, controlled by the foregoing ((i) through (v) collectively, "**Sanctioned Persons**").

(b) (i) None of Holdings nor its Subsidiaries or Affiliates, nor any of their respective officers, directors or employees, in their capacities as such, or any representative or agent thereof, have violated, and the Borrower's and Guarantors' participation in the transactions contemplated by the Credit Documents shall not violate, the Foreign Corrupt Practices Act of 1977 (the "FCPA") as amended, the Bribery Act 2010 of the United Kingdom, any law, rule, or regulation promulgated to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed on December 17, 1997, or any other applicable anti-bribery or anti-corruption law (collectively, the "**Anti-Corruption Laws**"); (ii) Holdings and its Subsidiaries have instituted, maintain and enforce, and shall continue to maintain and enforce, policies and procedures designed to promote and ensure compliance with Anti-Corruption Laws; and (iii) neither Holdings nor its Subsidiaries shall use, directly or indirectly the proceeds of the offering in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value to any person in violation of any applicable Anti-Corruption Laws. The operations of Holdings and its Subsidiaries are and have been conducted at all times in material compliance with all applicable anti-money laundering laws, including applicable federal, state, international, foreign or other laws or regulations regarding anti-money laundering, including Title 18 U.S. Code Sections 1956 and 1957, the Patriot Act and the Bank Secrecy Act, as amended by Title III of the Patriot Act (collectively, the "**Anti-Money Laundering Laws**"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving Holdings or any of its Subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to Holdings or any of its Subsidiaries' knowledge, threatened.

4.24 Solvency

Immediately after giving effect to the transactions to occur on the Closing Date and immediately following the occurrence of each other Credit Event, (a) the fair value of the assets of the Obligors, on a consolidated basis, shall exceed the debts and liabilities, direct, subordinated, contingent or otherwise, of the Obligors, (b) the present fair saleable value of the property of the Obligors shall be greater than the amount that will be required to pay the probable liability, on a consolidated basis, of the Obligors on their debts and other liabilities, direct, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured, (c) the Obligors shall, on a consolidated basis, be able to pay their debts and liabilities, direct, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured (after giving effect to any guarantees and credit support), and (d) the Obligors shall, on a consolidated basis, not have unreasonably small capital with which to conduct the business in which they are engaged as such business is now conducted and is proposed to be conducted following the Closing Date. For purposes of this Section 4.24 (x) "able to pay their debts and liabilities, direct, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured (after giving effect to any guarantees and credit support)" means that such Person shall be able to generate enough cash from operations, asset dispositions or refinancings, or a combination thereof, to meet its obligations as they become due, and (y) the amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

4.25 Insurance

Holdings has caused its Subsidiaries to have insurance coverage in at least the amounts and against such risks as required by Section 4.11 (*Maintenance of Insurance*) of the First Lien Common Terms Agreement.

4.26 Beneficial Ownership Regulation

To the extent that Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, the information included in the Beneficial Ownership Certification is true and correct.

5. AFFIRMATIVE COVENANTS

Each Obligor covenants and agrees that until the Discharge of First Lien Obligations under this Agreement and the other Credit Documents (other than those contingent First Lien Obligations that are intended to survive the termination of this Agreement and the other applicable Credit Documents), it shall perform or observe or cause to be performed or observed (as applicable) each of the obligations set forth in Article 4 (*Affirmative Covenants*) of the First Lien Common Terms Agreement and each of the following supplemental obligations set forth in this Article 5:

5.1 Use of Proceeds and Letters of Credit

(a) Borrower shall not request any Credit Event, and Borrower shall not use, and shall take reasonable steps to ensure that its directors, officers, and employees shall not use, the proceeds of any Credit Event, directly or indirectly (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in material violation of any Anti-Corruption Laws and Anti-Money Laundering Laws or (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person or in any Sanctioned Country in violation of any applicable Sanctions.

(b) The Obligors will use the net proceeds from the Term Loans **(including the 2021 Term Loans)** to (i) make a distribution to the Sponsor, including to repay existing Indebtedness of the Sponsor in order to cause the release of Liens on Holdings, Borrower, the Project Companies (other than Permitted Liens), (ii) pay costs and expenses incurred in connection with the Loan Transactions, (iii) working capital and general corporate purposes of the Obligors (including to purchase the CoBank Service Share) and (iv) fund the Debt Service Reserve Account and the Major Maintenance Reserve Account.

(c) Revolving Letters of Credit shall be available to provide credit support in respect of the working capital needs of any Obligors and the other obligations of the Obligors associated with the Projects (including credit support obligations of the Obligors under the PPAs) and fund the Debt Service Reserve Account and the Major Maintenance Reserve Account.

(d) DSR Letters of Credit shall be available to fund the Debt Service Reserve Account.

~~**(i) PPA Letters of Credit shall be available to provide credit support in respect of the working capital needs of any Obligors and the other obligations of the Obligors associated with the Projects (including credit support obligations of the Obligors under the PPAs).**~~

5.2 Special Purpose Entity

(a) Each Obligor shall conduct in all material respects its business solely in its own name (or the name of another Obligor) through its duly authorized directors, officers or agents so as not to mislead others as to the identity of such Obligor with which those other entities (other than any Obligor) are concerned, and particularly shall avoid the appearance of conducting business on behalf of any other entity (other than any other Obligor) or that such Obligor's assets are available to pay the creditors of such other entity (other than any other Obligor) or the assets of any other entity (other than any other Obligor) are available to pay the creditors of such Obligor. Without limiting the generality of the foregoing, all material written communications of each Obligor shall be made solely in the name of such Obligor (or another Obligor).

(b) Each Obligor shall comply in all material respects with all organizational formalities to maintain its existence separate from that of the Sponsor, each Affiliate of the Sponsor and any unaffiliated entity.

(c) Except to the extent provided in the Depositary Agreement, each Obligor shall keep its assets and its liabilities wholly separate from those of all other entities (other than any other Obligor).

5.3 Operating Plan and Reports

(a) On the Closing Date (as delivered pursuant to Section 3.1(u) (in the case of the calendar year 2020), and on or before sixty days prior to the beginning of each calendar year commencing on calendar year 2021), Borrower shall submit a budget to the Administrative Agent, detailed by month, of anticipated revenues and anticipated expenditures under all applicable waterfall levels set forth in clauses First through Fourth of Section 3.1(b) (*Revenue Account Waterfall*) of the Depositary Agreement, each such budget to include Debt Service, proposed dividend distributions, Major Maintenance, Capital Expenditures, reserves and all anticipated O&M Costs (including reasonable allowance for contingencies) for the ensuing calendar year (or, in the case of the initial Annual Operating Budget, partial calendar year) (each such annual operating plan and budget, including the initial Annual Operating Budget, an "**Annual Operating Budget**"). Notwithstanding the foregoing, this Agreement shall not restrict any deviation by the Obligors from the Annual Operating Budget.

(b) Borrower shall deliver to Administrative Agent within sixty days of the end of each fiscal quarter, a summary operating report with respect to the Projects, which shall include, with respect to the period most recently ended, the information set forth on the Template Operating Report, which information shall include a level of detail on a month-by-month basis and consolidated revenue generated.

5.4 Financial Reports

(a) The Borrower shall deliver to the Administrative Agent:

(i) within 120 days after the end of each fiscal year (commencing with fiscal year ending on December 31, 2020), audited annual financial statements of Borrower and its consolidated Subsidiaries prepared in accordance with GAAP as in effect from time to time;

(ii) within ninety days after the end of each of the first three fiscal quarters of each fiscal year (commencing on the fiscal quarter ending June 30, 2020), unaudited quarterly financial statements (comprised of a balance sheet, income statement, and cash flow statement) of the Borrower and its consolidated Subsidiaries (but, with respect to the fiscal quarter ending June 30, 2020, such financial statements may exclude the results of operations of, or the assets held by, Geysers Company, Wild Horse and Calistoga, which will become direct wholly owned Subsidiaries of the Borrower on the Closing Date) prepared in accordance with GAAP as in effect from time to time (subject to changes resulting from audit and normal year-end adjustments and the absence of footnote disclosure);

(iii) at the time of providing the information required by Section 5.4(a)(i), a certificate signed by a Responsible Officer of the Borrower certifying that to such Responsible Officer's knowledge, no Default, Event of Default, CTA Default or CTA Event of Default has occurred and is continuing or, if any Default, Event of Default, CTA Default or CTA Event of Default has occurred and is continuing, a brief description of the nature thereof and the corrective actions that the Borrower or Guarantor, as applicable, has taken or proposes to take with respect thereto (other than litigation strategy).

(b) Notwithstanding the foregoing, the financial information and other documents referred to in the preceding paragraph may be those of any direct or indirect parent of the Borrower; provided, that if there are material differences (as determined in good faith by the Borrower) between the consolidated results of operations and financial condition of such parent and its consolidated Subsidiaries, on the one hand, and of the Borrower and its consolidated Subsidiaries, on the other hand, the quarterly and annual information required by the preceding paragraph will include a discussion of such material differences in reasonable detail as determined in good faith by the Borrower.

(c) The Borrower shall be deemed to have satisfied its obligation to deliver information referred to in this Section 5.4 by (i) filing or furnishing such information with the SEC for public availability or (ii) posting such information on a website (which may be nonpublic and may be password-protected) hosted by the Borrower or by a third party, in each case within the applicable time periods specified herein.

(d) To the extent that any information required by this Section 5.4 is not delivered to the Administrative Agent within the applicable time periods specified herein and such information is subsequently delivered, the Borrower will be deemed to have satisfied its obligations under this Section 5.4 with respect to such information and any CTA Default or CTA Event of Default with respect thereto shall be deemed to have been cured and any acceleration of any First Lien Obligations resulting therefrom shall be deemed to have been rescinded so long as such rescission would not conflict with any applicable judgment or decree.

5.5 Debt Service Coverage Ratio

No later than 45 days after each Principal Repayment Date, Borrower shall calculate and deliver to Administrative Agent the Debt Service Coverage Ratio for the Calculation Period of such Principal Repayment Date.

5.6 Additional Consents

The Borrower and the Guarantors shall use commercially reasonably efforts to obtain from each counterparty to each Major Project Contract that is in effect as of the Closing Date a Consent within ninety days following the Closing Date. Concurrently with or promptly after entering into any Replacement Major Project Contract that is also a Major Project Contract after the Closing Date, the Borrower or the Guarantor, as applicable, shall use commercially reasonable efforts to obtain from the counterparty under such Replacement Major Project Contract that is also a Major Project Contract, and deliver or cause to be delivered to the First Lien Collateral Agent, a Consent.

5.7 Lender Meetings

Borrower shall, upon the request of Administrative Agent or Required Lenders, participate in a meeting of Administrative Agent and Lenders (which, unless an Event of Default has occurred and is continuing, shall be limited to no more than once during each fiscal year) to be held telephonically at such time as may be agreed to by Borrower and Administrative Agent.

5.8 Interest Rate Hedging

From and after the date that is twenty Banking Days following the ~~Closing~~**Omnibus Amendment** Date, the Borrower shall, on each Principal Repayment Date until the Maturity Date, have in effect one or more Interest Rate Agreements with respect to an effective notional amount equal to at least 75% of the Projected Notional Principal Amount of the sum of Term Loans and Additional Ratio Indebtedness (excluding any Additional Ratio Indebtedness that bears interest at a fixed rate); provided, that if, at any time, Borrower incurs any ~~Incremental Term Loan Facility or such~~ Additional Ratio Indebtedness and, as a result of such incurrence, Borrower would not be in compliance with the terms of this Section 5.8, then Borrower shall be deemed not to be in default of this Section 5.8 so long as Borrower is in compliance with the terms of this Section 5.8 within twenty Banking Days of the incurrence of such ~~Incremental Term Loan Facility~~**Additional Ratio Indebtedness**. Interest Rate Agreements with respect to Term Loans shall be entered into with Hedge Banks pursuant to clause (a) of the definition thereof and Interest Rate Agreements with respect to Additional Ratio Indebtedness shall be entered into with Hedge Banks.

5.9 Insurance

Borrower shall maintain or cause to be maintained in all material respects on its behalf in effect at all times the types of insurance required pursuant to Exhibit K, in the amounts and on the terms and conditions specified therein, from the quality of insurers specified in such Exhibit or other insurance companies of recognized responsibility reasonably satisfactory to the Administrative Agent.

5.10 Notices

Borrower shall promptly, upon acquiring notice or giving notice (except as otherwise specified below), as the case may be, or obtaining knowledge thereof (except as otherwise specified below), give written notice (with copies of any underlying notices, papers, files or related documentation except as otherwise specified below) to Administrative Agent of:

(a) any litigation pending or, to any Obligor's knowledge, threatened in writing against any Obligor as to which an adverse determination is reasonably probable and which involves material claims against any Obligor or the Projects in excess of $10,000,000 individually or $50,000,000 in the aggregate per calendar year or which could reasonably be expected to have a Material Adverse Effect, such notice to include reasonable details about such litigation other than litigation strategy and related documentation subject to attorney-client-privilege;

(b) any dispute or disputes for which written notice has been received by any Obligor which may exist between any Obligor and any Governmental Authority and which involve (a) claims which could reasonably be expected to have a Material Adverse Effect, or (b) revocation, modification, failure to renew or the like of any Applicable Permit which could reasonably be expected to have a Material Adverse Effect;

(c) any Default, Event of Default, CTA Default or CTA Event of Default (together with a statement of a Responsible Officer of Borrower setting forth the details of such Default, Event of Default, CTA Default or CTA Event of Default and the action which the applicable Obligor has taken and proposes to take with respect thereto);

(d) any casualty, damage or loss to the Projects, whether or not insured, through fire, theft, other hazard or casualty, or any act or omission of (a) any Obligor, its employees, agents, contractors, consultants or representatives for which a mandatory prepayment is required in respect of the First Lien Obligations or (b) to any Obligor's knowledge, any other Person if such casualty, damage or loss could reasonably be expected to have a Material Adverse Effect;

(e) any (i) early termination (other than expiration in accordance with its terms and any applicable Consent) or default of which any Obligor has knowledge or written notice thereof under any Major Project Contract which could reasonably be expected to have a Material Adverse Effect and (ii) material Project Contract Modification (with copies of all such Project Contract Modifications whether or not requiring approval of Administrative Agent or the Required Lenders pursuant to Section 6.2);

(f) any written claim of events of force majeure under any Major Project Contract which could reasonably be expected to have a Material Adverse Effect together with reasonable details with respect to such claim;

(g) initiation of any condemnation proceedings involving a portion of (i) the Projects or (ii) the Project Sites, in each case, which could reasonably be expected to have a Material Adverse Effect;

(h) promptly, but in no event later than fifteen Banking Days after any Obligor has knowledge of the execution and delivery thereof, a copy of each Additional Major Project Contracts;

(i) promptly, but in no event later than thirty days after the receipt thereof by any Obligor, copies of (i) any material amendment, supplement or other material modification to any material Applicable Permit received by any Obligor, and (ii) all notices relating to the Projects received by any Obligor from, or delivered by any Obligor to, any Governmental Authority (other than routine correspondence given or received in the ordinary course of business relating to routine aspects of owning, financing, operating, maintaining or using the Projects) which could reasonably be expected to have a Material Adverse Effect;

(j) any unscheduled or forced outage of the Projects (taken as a whole) causing a reduction of at least 50 MW of capacity, which continues for more than twenty consecutive days;

(k) the occurrence of any ERISA Event that, individually or together with all other ERISA Events that have occurred, would reasonably be expected to result in a Material Adverse Effect; and

(l) the occurrence of any event or circumstance specific to any Obligor or the Projects that is not a matter of general public knowledge and that could reasonably be expected to have a Material Adverse Effect; provided, that, solely for purposes of this Section 5.10(l), clause (ii) of the proviso in the definition of Material Adverse Effect shall be disregarded.

In addition, Borrower shall provide, with reasonable promptness, to Administrative Agent any other material information (other than litigation strategy and related documentation subject to attorney-client-privilege) with respect to any Obligor or the Projects as is reasonably requested by Administrative Agent or any Lender (which request shall be made through Administrative Agent).

6. NEGATIVE COVENANTS

Each Obligor covenants and agrees that until the Discharge of First Lien Obligations under this Agreement and the other Credit Documents (other than those contingent First Lien Obligations that are intended to survive the termination of this Agreement and the other applicable Credit Documents), it shall perform or observe or cause to be performed or observed (as applicable) each of the obligations set forth in Article 5 (*Negative Covenants*) of the First Lien Common Terms Agreement and each of the following supplemental obligations set forth in this Article 6:

6.1 Regulations

Borrower shall not directly or indirectly apply any part of the proceeds of any Loan, any cash equity contributions received by Borrower or other funds or revenues to the "buying", "carrying" or "purchasing" of any margin stock within the meaning of Regulations T, U or X of the Federal Reserve Board, or any regulations, interpretations or rulings thereunder.

6.2 Amendments to Major Project Contracts

(a) No Obligor shall, without the prior written consent of the Required Lenders, (such consent not to be unreasonably withheld, conditioned or delayed), amend or otherwise modify any Major Project Contract or give any consent, waiver or approval (other than consents, waivers or approvals in the ordinary course of business consistent with past practices, where applicable) (each such amendment or modification being referred to herein as a "**Project Contract Modification**") thereunder (including any waiver of any default under or breach of any Major Project Contract), or agree in any manner to any other amendment, modification or change of any term or condition of any Major Project Contract; provided, that the foregoing shall not restrict any of the following: (i) the extension of the term of a Major Project Contract on substantially the same terms and conditions then in effect (or on more favorable terms and conditions to such Obligor), (ii) ministerial or administrative amendments, modifications, waivers, consents and approvals, (iii) replacement of any Major Project Contract as permitted by Section 6.2(d) or (iv) any Project Contract Modification that could not reasonably be expected to have a Material Adverse Effect (as certified by the Borrower in an officer's certificate of a Responsible Officer).

(b) No Obligor shall, without the prior written consent of Administrative Agent, such consent not to be unreasonably withheld, amend, supplement, waive or otherwise modify the organizational documents of such Obligor, if the result could reasonably be expected to have a Material Adverse Effect on the Lenders or their rights or remedies under the Credit Documents in any material respect.

(c) If applicable, the Required Lenders and Administrative Agent shall use good faith efforts to respond to each request pursuant to this Section 6.2 as soon as possible and in all events within thirty days of its receipt of written notification thereof.

(d) No Obligor shall without the prior written consent of the Required Lenders (acting in consultation with the Independent Engineer), such consent not to be unreasonably withheld, conditioned or delayed, enter into any Additional Major Project Contract; provided, that the foregoing shall not restrict the entry by an Obligor into an Additional Major Project Contract so long as the entry by the applicable Obligor into such Additional Major Project Contract could not reasonably be expected to have a Material Adverse Effect (as certified by the Borrower in an officer's certificate signed by a Responsible Officer). In connection with the entry by a Obligor into any Additional Major Project Contract, the Obligor shall: (A) deliver copies of all such Additional Major Project Contracts to the Administrative Agent prior to entering into such Additional Major Project Contract and (B) (1) use commercially reasonable efforts to enter into a Consent as specified in Section 5.6 and (2) deliver copies of any such Consent to Administrative Agent and First Lien Collateral Agent following the execution thereof.

7. EVENTS OF DEFAULT; REMEDIES

7.1 Events of Default

The CTA Events of Default set forth in Article 6 (*Events of Default*) of the First Lien Common Terms Agreement shall constitute Events of Default under this Agreement, subject to all of the provisions of such Article 6 (*Events of Default*) in the First Lien Common Terms Agreement, and each of the following events or occurrences set forth in this Article 7 shall be a supplemental Event of Default (each, an "**Event of Default**") hereunder:

(a) Failure to Make Payments. Borrower shall fail to pay, in accordance with the terms of this Agreement (a) any principal on any Loan on the date that such sum is due, (b) any interest on any Loan within five Banking Days after the date such sum is due, (c) any scheduled fee, cost, charge or sum due hereunder within five Banking Days of the date that such sum is due, or (d) any other fee, cost, charge or other sum due under this Agreement within thirty days after written notice to Borrower that such sum is due.

(b) Cross-Payment Default. An event of default (howsoever defined) shall occur with respect to an Obligor which is caused by a failure to pay principal or interest beyond the applicable grace period in respect of (i) any Indebtedness for borrowed money of such Obligor, which would entitle the lender(s) under such Indebtedness to cause the principal amounts in excess of $50,000,000 in the aggregate to become immediately due or (ii) any Permitted Commodity Hedge Agreement or Permitted Interest Rate Agreement of such Obligor and, in the case of this clause (ii), which would entitle the counterparty under such agreement to demand an early termination amount (howsoever defined in such Commodity Hedge Agreement or Interest Rate Agreement) and such early termination amount that would result from a liquidation, acceleration or early termination of such Permitted Commodity Hedge Agreement or Permitted Interest Rate Agreement is in excess of $50,000,000.

(c) Cross-Acceleration.

(i) An event of default (howsoever defined) shall occur with respect to any Obligor under any Indebtedness for borrowed money of such Obligor, having drawn principal amounts in excess of $50,000,000 in the aggregate and shall have continued beyond the applicable grace period, the effect of which has been to cause the entire amount of such Indebtedness to become due and such Indebtedness remains unpaid or the acceleration of its stated maturity unrescinded.

(ii) An event of default (howsoever defined) shall occur with respect to Any Permitted Commodity Hedge Agreement or Permitted Interest Rate Agreement and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, such Permitted Commodity Hedge Agreement or Permitted Interest Rate Agreement, and, in addition, the early termination amount (howsoever defined in such Permitted Commodity Hedge Agreement or Permitted Interest Rate Agreement) resulting from the occurrence of such liquidation, acceleration or early termination that is due and payable by Obligor (if any) is in excess of $50,000,000.

(d) ERISA Event. One or more ERISA Events shall have occurred that, when taken together with any other ERISA Events that have occurred, would reasonably be expected to have a Material Adverse Effect;

(e) Breach of Terms of Agreement.

(i) Defaults without Cure Periods. Any Obligor shall fail to perform or observe any of the covenants set forth in Sections 5.1, 5.10(c) (but excluding any obligation thereunder in respect of any Default or CTA Default) or Article 6.

(ii) Defaults with Cure Periods. Any Obligor shall fail to perform or observe any of the covenants set forth in (A) Section 5.9 and such failure shall continue unremedied for a period of fifteen Banking Days after Borrower receives written notice thereof from Administrative Agent or (B) Section 5.2 and such failure shall continue unremedied for a period of thirty days after Borrower receives written notice thereof from Administrative Agent.

(iii) Other Defaults. Any Obligor shall fail to perform or observe any of its covenants set forth hereunder not otherwise specifically provided for in Section 7.1(e)(i), Section 7.1(e)(ii) or elsewhere in this Article 7, and such failure shall continue unremedied for a period of thirty days after such Obligor receives written notice thereof from Administrative Agent; provided, that if (A) such failure cannot be cured within such thirty-day period, (B) such failure is susceptible of cure within ninety days, (C) such Obligor is proceeding with diligence and in good faith to cure such failure, (D) the existence of such failure has not had and could not, after considering the nature of the cure, be reasonably expected to have a Material Adverse Effect, and (E) Administrative Agent shall have received an officer's certificate signed by a Responsible Officer to the effect of clauses (i), (ii), (iii), and (F) above and stating what action such Obligor is taking to cure such failure, then such thirty-day cure period shall be extended to such date, not to exceed a total of ninety days, as shall be necessary for such Obligor diligently to cure such failure.

(f) Regulatory Status.

(i) Any Obligor shall become a public utility under the laws of the State of California as presently constituted and as construed by the courts of California, and in each case, such event could reasonably be expected to have a Material Adverse Effect.

(ii) FERC has issued an order determining that any Obligor that is a "public utility" under the FPA is no longer entitled to make sales at wholesale of electric energy, capacity and certain ancillary services at market-based rates and/or is no longer entitled to associated waivers and blanket authorizations under FERC regulations, including blanket authorization to issue securities and assume liabilities pursuant to Section 204 of the FPA, if loss of such Obligor's authorization from FERC under the FPA to make sales at wholesale of electric energy, capacity and certain ancillary services at market-based rates and/or associated waivers and blanket authorizations under FERC regulations, including blanket authorization to issue securities and assume liabilities pursuant to Section 204 of the FPA, could reasonably be expected to have a Material Adverse Effect.

(g) Change of Control. A Change of Control shall have occurred.

(h) Unenforceability. At any time after the execution and delivery thereof, any material provision of this Agreement shall cease to be in full force and effect (other than by reason of the satisfaction in full or release of Borrower's First Lien Obligations hereunder or any other termination of this Agreement in accordance with the terms hereof) or this Agreement shall be declared null and void by a Governmental Authority of competent jurisdiction.

(i) Misstatements; Omissions. Any representation or warranty made or deemed made by any Obligor in any Credit Document to which it is a party or in any separate written statement or certificate required to be delivered to Administrative Agent, Depositary Agent, First Lien Collateral Agent, or any Lender hereunder or under any other Credit Document to which it is a party, shall be untrue in any material respect as of the time made; provided, that misrepresentations which are capable of being remedied, are made or deemed made after the Closing Date, the untruth of which could not reasonably be expected to have a Material Adverse Effect, shall not be deemed to be an Event of Default if such misrepresentation is cured, corrected or otherwise remedied within thirty days (or if such incorrect representation, warranty, written statement or certificate is not susceptible to cure within thirty days, and such Obligor is proceeding with diligence and in good faith to cure such default and such default is susceptible to cure, such thirty day cure period shall be extended as may be necessary to cure such incorrect representation, warranty, written statement or certificate, such extended period not to exceed ninety days in the aggregate (inclusive of the original thirty-day period)) from the date a Responsible Officer of Borrower acquires knowledge thereof such that such representation or warranty (as cured, corrected or remedied) has not resulted in a Material Adverse Effect, then such false or incorrect representation, warranty, written statement or certification shall not constitute a Default or an Event of Default for purposes of the Credit Documents.

(j) Specified Major Project Contract Defaults. (i) Any Specified Major Project Contract shall terminate or shall be declared null and void (except (a) upon fulfillment of the parties' obligations thereunder or (b) upon the scheduled expiration of the term of such Specified Major Project Contract) and such termination is reasonably expected to have a Material Adverse Effect, (ii) any provision in any Specified Major Project Contract shall for any reason cease to be valid and binding on any party thereto (other than Borrower), other than any such failure to be valid and binding which could not reasonably be expected to have a Material Adverse Effect or (iii) performance shall be breached under any Specified Major Project Contract and such breach is reasonably expected to have a Material Adverse Effect except, in the case of the foregoing clauses (i) , (ii), or (iii) to the extent that (x) such provision is restored or replaced by a replacement provision in form and substance reasonably acceptable to Administrative Agent within a 120-day period thereafter, or (y) Borrower enters into a Replacement Major Project Contract within 120 days thereafter.

7.2 Remedies

Subject to the terms and conditions of the Intercreditor Agreement, upon the occurrence and during the continuation of an Event of Default, Administrative Agent shall, upon the direction of the Required Lenders, without further notice of default, presentment or demand for payment, protest or notice of non-payment or dishonor, or other notices or demands of any kind, all such notices and demands (other than notices expressly required by the Credit Documents) being waived, exercise any or all of the following rights and remedies, in any combination or order that the Required Lenders may elect, in addition to such other rights or remedies as the First Lien Secured Parties may have hereunder, under the First Lien Collateral Documents or at law or in equity:

(a) No Further Loans or Letters of Credit. Cancel all Commitments, refuse, and Administrative Agent, the Issuing Banks and the Lenders shall not be obligated, to continue any Loans, make any additional Loans, or make any payments, or permit the making of payments, from any Depositary Account or any Loan proceeds or other funds held by Administrative Agent or First Lien Collateral Agent under the Credit Documents or on behalf of Borrower; provided, that in the case of an Event of Default occurring under Section 6.1(i) (*Bankruptcy*) of the First Lien Common Terms Agreement, all such Commitments shall be cancelled and terminated without further act of Administrative Agent, First Lien Collateral Agent, or any First Lien Secured Party.

(b) Cure by Agents. Without any obligation to do so, make disbursements or Loans to or on behalf of Borrower or disburse amounts from any Depositary Account to cure (i) any Default or Event of Default hereunder, and (ii) any default and render any performance under any Major Project Contract as the Required Lenders in their sole discretion may consider necessary or appropriate, whether to preserve and protect the Collateral or the First Lien Secured Parties' interests therein or for any other reason. All sums so expended, together with interest on such total amount at the Default Rate (but in no event shall the rate exceed the maximum lawful rate), shall be repaid by Borrower to Administrative Agent or First Lien Collateral Agent, as the case may be, on demand and shall be secured by the Credit Documents, notwithstanding that such expenditures may, together with amounts advanced under this Agreement, exceed the aggregate amount of the Total Term Loan Commitment.

(c) Acceleration. Declare and make all or a portion of the sums of accrued and outstanding principal and accrued but unpaid interest remaining under this Agreement, together with all unpaid fees, costs (including Liquidation Costs and Hedge Breaking Fees) and charges due hereunder or under any other Credit Document, immediately due and payable and require Borrower immediately, without presentment, demand, protest or other notice of any kind, all of which Borrower hereby expressly waives, to pay Administrative Agent or the First Lien Secured Parties an amount in immediately available funds equal to the aggregate amount of any outstanding First Lien Obligations of Borrower under this Agreement and the other Credit Documents; provided, that in the event of an Event of Default occurring under Section 6.1(i) (*Bankruptcy*) of the First Lien Common Terms Agreement, all such amounts shall become immediately due and payable without further act of Administrative Agent, the Issuing Banks, First Lien Collateral Agent, or the First Lien Secured Parties.

(d) Cash Collateral; Letters of Credit.

(i) Pursuant to the terms of the First Lien Common Terms Agreement and the Collateral and Intercreditor Agreement, vote in favor of the First Lien Collateral Agent taking action to declare, apply or execute upon any amounts on deposit in any Depositary Account, or any proceeds or any other moneys of Borrower on deposit with Administrative Agent, First Lien Collateral Agent, Depositary Agent or any First Lien Secured Party in the manner provided in the UCC and other relevant statutes and decisions and interpretations thereunder with respect to Cash Collateral; or draw upon any letter of credit held by First Lien Collateral Agent as security. Without limiting the foregoing, each of Administrative Agent, First Lien Collateral Agent and Depositary Agent shall have all rights and powers with respect to the Loan proceeds, draws upon any Letter of Credit, the Depositary Accounts and the contents of the Depositary Accounts as it has with respect to any other Collateral and may apply, or cause the application of, such amounts to the payment of interest, principal, fees, costs, charges or other amounts due or payable to Administrative Agent, First Lien Collateral Agent, Depositary Agent or the First Lien Secured Parties with respect to the Loans in such order as the Required Lenders may elect in their sole discretion. Borrower shall not have any rights or powers with respect to such amounts.

(ii) Make demand upon the Borrower to, and forthwith upon such demand the Borrower shall, pay to the Administrative Agent on behalf of the Lenders in same day funds at the Administrative Agent's account, to the extent not already funded, an amount equal to 102.5% of the aggregate LC Exposure; provided, that upon the occurrence of any Default or Event of Default under Section 6.1(i) (*Bankruptcy*) of the First Lien Common Terms Agreement, the Borrower shall be obligated to pay to the Administrative Agent on behalf of the Lenders in same day funds at the Administrative Agent's account, to the extent not already funded, an amount equal to 102.5% of the aggregate LC Exposure, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by the Borrower.

(e) Possession of Projects. Pursuant to the terms of the First Lien Common Terms Agreement and the Collateral and Intercreditor Agreement, vote in favor of the First Lien Collateral Agent taking action to enter into possession of the Projects or operate and maintain the Projects, and all sums expended by Administrative Agent, First Lien Collateral Agent or Depositary Agent in so doing, together with interest on such total amount at the Default Rate, shall be repaid by Borrower to Administrative Agent, First Lien Collateral Agent or Depositary Agent, as the case may be, upon demand and shall be secured by the Credit Documents, notwithstanding that such expenditures may, together with amounts advanced under this Agreement, exceed the aggregate amount of the Total Term Loan Commitment.

(f) Remedies under Credit Documents. Take (or vote in favor of the taking) other action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement and the other Credit Documents.

8. SCOPE OF LIABILITY

Except as set forth in this Article 8, notwithstanding anything in this Agreement or the other Credit Documents to the contrary, none of the Lender Parties shall have any claims with respect to the transactions contemplated by the Credit Documents against Sponsor or any of its Affiliates (other than Borrower or any other Obligor), shareholders, officers, directors or employees (collectively, the "**Non-Recourse Persons**") and the Lender Parties' recourse against Borrower and the Non-Recourse Persons shall be limited to the Obligors, the Collateral, the Projects, all Project Revenues, all Loan proceeds, Insurance Proceeds, Eminent Domain Proceeds, and all income or revenues of the foregoing as and to the extent provided herein and in the First Lien Collateral Documents; provided, that the foregoing provision of this Article 8 shall not (a) constitute a waiver, release or discharge of any of the Indebtedness, or of any of the terms, covenants, conditions, or provisions of this Agreement or any other Credit Document and the same shall continue (but without personal liability to the Non-Recourse Persons) until fully paid, discharged, observed, or performed, (b) limit or restrict the right of Administrative Agent, First Lien Collateral Agent or any other Lender Party (or any assignee, beneficiary or successor to any of them) to name the Obligors or any other Person as a defendant in any action or suit for a judicial foreclosure or for the exercise of any other remedy under or with respect to this Agreement or any other Collateral Document or Credit Document, or for injunction or specific performance, so long as no judgment in the nature of a deficiency judgment shall be enforced against any Non-Recourse Person, except as set forth in this Article 8, (c) in any way limit or restrict any right or remedy of Administrative Agent, First Lien Collateral Agent or any other Lender Party (or any assignee or beneficiary thereof or successor thereto) with respect to, and each of the Non-Recourse Persons shall remain fully liable to the extent that it would otherwise be liable for its own actions with respect to, any fraud, willful misrepresentation (which shall not include innocent or negligent misrepresentation), or misappropriation of Project Revenues, Loan proceeds, Insurance Proceeds, Eminent Domain Proceeds or any other earnings, revenues, rents, issues, profits or proceeds from or of the Collateral, that should or would have been paid as provided herein or paid or delivered to Administrative Agent, First Lien Collateral Agent or any other Lender Party (or any assignee or beneficiary thereof or successor thereto) towards any payment required under this Agreement or any other Credit Document, (d) affect or diminish or constitute a waiver, release or discharge of any specific written obligation, covenant, or agreement in respect of the transactions contemplated by the Credit Documents made by any of the Non-Recourse Persons or any security granted by the Non-Recourse Persons in support of the obligations of such Persons under any First Lien Collateral Document or Project Contract (or as security for the obligations of any Obligor), or (e) limit the liability of (i) any Person who is a party to any Project Contract or has issued any certificate or other statement in connection therewith with respect to such liability as may arise by reason of the terms and conditions of such Project Contract (but subject to any limitation of liability in such Project Contract), certificate or statement or (ii) any Person rendering a legal opinion pursuant to this Agreement (including Section 3.1(h)), in each case under this clause (e) relating solely to such liability of such Person as may arise under such referenced agreement, instrument or opinion. The limitations on recourse set forth in this Article 8 shall survive the termination of this Agreement, the termination of all Commitments and the Interest Rate Agreements to which any Lender Party is a party and the indefeasible payment in full in cash and performance in full of Borrower's First Lien Obligations hereunder and under the other Credit Documents.

9. AGENTS; SUBSTITUTION

9.1 Appointment, Powers and Immunities

(a) In order to expedite the transactions contemplated by this Agreement, (i) **Bank of China, New York Branch, Bank of Montreal, Barings, LLC, HSBC Bank USA, N.A., and Kookmin Bank, New York Branch, are hereby appointed to act as the Joint Lead Arrangers, (ii)** CoBank, ACB, Coöperatieve Rabobank, U.A., New York Branch ~~and~~, ING Capital LLC ~~are hereby appointed to act as the Joint Lead Arrangers, (ii)~~, Mizuho Bank, Ltd., **MUFG Union Bank, N.A**., National Bank of Canada ~~and~~, Sumitomo Mitsui Banking Corporation **and Truist Securities, Inc.** are hereby appointed to act as the Coordinating Lead Arrangers and Bookrunners, (iii) Crédit Agricole Corporate and Investment Bank and Natixis, New York Branch are hereby appointed to act as the **Coordinating Lead Arrangers, Bookrunners and** Green Loan Coordinators, (iv) BNP Paribas is hereby appointed to act as the Syndication Agent, Coordinating Lead Arranger, and Bookrunner, (v) **The Huntington National Bank and National Australia Bank Limited are hereby appointed to act as Senior Managing Agents, (vi)** MUFG Bank, Ltd. is hereby appointed to act as the Administrative Agent **and** (~~v~~**vii**) MUFG Union Bank, N.A. is hereby appointed to act as the Coordinating Lead Arranger, Bookrunner and First Lien Collateral Agent. None of Administrative Agent, First Lien Collateral Agent, Coordinating Lead Arrangers, Joint Lead Arrangers nor any of their respective Related Parties shall have any duties or responsibilities except those expressly set forth in this Agreement or in any other Credit Document, or be a trustee or a fiduciary for any Lender Party, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into the Credit Documents or otherwise exist against any Agent, Coordinating Lead Arranger, or Joint Lead Arranger (other than those implied as a matter of applicable law that are not capable of being waived). Notwithstanding anything to the contrary contained herein, none of Administrative Agent, First Lien Collateral Agent, Coordinating Lead Arrangers, Joint Lead Arrangers or any of their respective Related Parties shall be liable as such for any action taken or omitted by any of them except for its or their own gross negligence or willful misconduct, or required to take any action which is contrary to this Agreement or any other Credit Documents or any Legal Requirement or exposes Administrative Agent, First Lien Collateral Agent, Coordinating Lead Arrangers, Joint Lead Arrangers or any of their respective Related Parties (as the case may be) to any liability. None of the Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent, Administrative Agent, the Lenders nor any of their respective Related Parties shall be required to ascertain or to make any inquiry concerning the performance or observance by the Obligors of any of the terms, conditions, covenants or agreements contained in any Credit Document, or be responsible for (x) any recitals, statements, representations or warranties made by any other Person contained in this Agreement or the contents of any document delivered in connection herewith, the other Credit Documents or in any certificate or other document referred to or provided for in, or received by the Coordinating Lead Arrangers, Joint Lead Arrangers, Administrative Agent, First Lien Collateral Agent or any other Lender Party under this Agreement or any other Credit Document, (y) any failure by any Obligor or its Affiliates to perform their respective obligations hereunder or thereunder, or (z) the failure, delay in performance or breach by any Lender or Issuing Bank of any of its obligations hereunder or as a result of any information provided by any Lender or Issuing Bank, or to any Lender or Issuing Bank on account of the failure of or delay in performance or breach by any other Lender or Issuing Bank or any Obligor of any of its obligations hereunder or in connection herewith. Each of Administrative Agent, First Lien Collateral Agent, Coordinating Lead Arranger, and Joint Lead Arranger may execute any and all duties hereunder by or through agents, employees or any sub-agent appointed by it, and neither shall be responsible for the negligence or misconduct of any such agents or attorneys-in-fact selected by it with reasonable care.

(b) Without limiting the generality of the foregoing, (i) Administrative Agent may treat the payee of any Note as the holder thereof until Administrative Agent receives written notice of the assignment or transfer thereof signed by such payee and in form satisfactory to Administrative Agent, (ii) each of Administrative Agent and First Lien Collateral Agent may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by them in accordance with the advice of such counsel, accountants or experts, (iii) none of First Lien Collateral Agent, Administrative Agent, Syndication Agent, Bookrunners, Green Loan Coordinators, Coordinating Lead Arrangers, **Senior Managing Agents** and Joint Lead Arrangers makes any warranty or representation to any other Lender Party for any statements, warranties or representations made in or in connection with any Credit Document, (iv) none of First Lien Collateral Agent, Administrative Agent, Syndication Agent, Bookrunners, Green Loan Coordinators, Coordinating Lead Arrangers, **Senior Managing Agents** and Joint Lead Arrangers shall have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of any Credit Document on the part of any party thereto, to inspect the property (including the books and records) of the Obligors or any other Person or to ascertain or determine whether a Material Adverse Effect exists or is continuing, and (v) none of First Lien Collateral Agent, Administrative Agent**,** the Syndication Agent, Bookrunners, Green Loan Coordinators, Coordinating Lead Arrangers, **Senior Managing Agents** or Joint Lead Arrangers shall be responsible to any other Lender Party for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of any Credit Document or any other instrument or document furnished pursuant hereto. Except as otherwise provided under this Agreement and the other Credit Documents, each of Administrative Agent and First Lien Collateral Agent shall take such action with respect to the Credit Documents as shall be directed by the Required Lenders or, if expressly so provided, all Lenders, and shall exercise such powers, rights and remedies hereunder and under the other Credit Documents as are specifically delegated or granted to such Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. The Lenders hereby acknowledge that no Agent shall be under any duty to take any discretionary action permitted to be taken by it pursuant to the provisions of this Agreement unless it shall be requested in writing to do so by the Required Lenders. The Lenders further acknowledge and agree that so long as an Agent shall make any determination to be made by it hereunder or under any other Credit Document in good faith, such Agent shall have no liability in respect of such determination to any Person.

(c) No Agent shall have, by reason hereof or of any of the other Credit Documents, a fiduciary relationship in respect of any Lender; and nothing herein or in any of the other Credit Documents, expressed or implied, is intended to or shall be so construed as to impose upon any Agent any obligations in respect hereof or of any of the other Credit Documents except as expressly set forth herein or therein. Each Lender agrees to be bound by the terms and limitations of (i) any "use of work products" or similar agreement entered into by the Administrative Agent in connection with the Independent Consultant reports and reliance letters delivered in connection therewith or (ii) any reliance letter required to be countersigned by the Administrative Agent on behalf of the Lenders. In connection with any direction by the Lenders of the First Lien Collateral Agent under the Credit Documents, including but not limited to the Intercreditor Agreement, the First Lien Collateral Agent may request the Administrative Agent determine whether the Required Lenders (or other applicable requisite percentage of First Lien Secured Parties under the Intercreditor Agreement) have consented to any such direction or action of the First Lien Collateral Agent.

(d) Each Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees, and may consult with the applicable Independent Consultants in the exercise of such powers, rights and remedies and the performance of such duties. To the extent of any conflict or inconsistencies between the functions, responsibilities, duties, obligations or liabilities of the Depositary Agent set forth in this Article 9 and those set forth in the Depositary Agreement, the terms of the Depositary Agreement shall govern.

(e) Any Agent may perform any and all of its duties and exercise its rights and powers under this Agreement or under any other Credit Document by or through any one or more sub-agents appointed by such Agent. Any such Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. The exculpatory, indemnification and other provisions of this Section 9.1(e) and of Section 9.5 shall apply to any of the Affiliates of each Agent and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as an Agent. All of the rights, benefits, and privileges (including the exculpatory and indemnification provisions) of this Section 9.1(e) and of Section 9.5 shall apply to any such sub-agent and to the Affiliates of any such sub-agent and shall apply to their respective activities as sub-agent as if such sub-agent and Affiliates were named herein. Notwithstanding anything herein to the contrary, with respect to each sub-agent appointed by an Agent, (i) such sub-agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory rights and rights to indemnification) and shall have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of the Obligors and the Lenders, (ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub-agent, (iii) such sub-agent shall only have obligations to the applicable Agent and not to any Obligor, Lender or any other Person, and no Obligor, Lender or any other Person shall have any rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub-agent, and (iv) the applicable Agent shall not be responsible for the negligence or misconduct of any of its sub-agents except to the extent that a court of competent jurisdiction determines in a final, non-appealable judgment that such selecting Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

9.2 Reliance

Each of Administrative Agent, First Lien Collateral Agent, Coordinating Lead Arranger, and Joint Lead Arranger, shall be entitled to rely upon any certificate, notice or other document (including any cable, telegram, facsimile, electronic mail or telex) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by it. First Lien Collateral Agent, Administrative Agent, Coordinating Lead Arrangers, and Joint Lead Arrangers shall in all cases be fully protected in acting, or refraining from acting, in accordance with written instructions signed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided herein or under the other Credit Documents) or otherwise, and, except as otherwise specifically provided herein, such instructions and any action or inaction pursuant thereto shall be binding on all the Lenders. As to any other matters not expressly provided for by this Agreement, neither First Lien Collateral Agent nor Administrative Agent shall be required to take any action or exercise any discretion, but shall be required to act or to refrain from acting upon instructions of the Required Lenders or, where expressly provided, all Lenders (except that neither First Lien Collateral Agent nor Administrative Agent shall be required to take any action which exposes First Lien Collateral Agent or Administrative Agent (as the case may be) to personal liability or which is contrary to this Agreement, any other Credit Document or any Legal Requirement). Each of First Lien Collateral Agent and Administrative Agent shall in all cases (including when any action by First Lien Collateral Agent or Administrative Agent (as the case may be) alone is authorized hereunder, if First Lien Collateral Agent or Administrative Agent (as the case may be) elects in its sole discretion to obtain instructions from the Required Lenders) be fully protected in acting, or in refraining from acting, hereunder or under any other Credit Document in accordance with the instructions of the Required Lenders (or, where so expressly stated, all Lenders), and such instructions of the Required Lenders (or all Lenders, where applicable) and any action taken or failure to act pursuant thereto shall be binding on all of the Lender Parties.

9.3 Non-Reliance

Each Lender represents that it has, independently and without reliance on the Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent, Administrative Agent, or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of the financial condition and affairs of the Obligors and its own decision to enter into this Agreement and agrees that it shall, independently and without reliance upon the Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent, Administrative Agent, or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own appraisals and decisions in taking or not taking action under this Agreement. Each of Administrative Agent, Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent and any Lender shall not be required to keep informed as to the performance or observance by any Obligor or its Affiliates under this Agreement or any other document referred to or provided for herein or to make inquiry of, or to inspect the properties or books of any Obligor or its Affiliates.

9.4 Defaults; Material Adverse Effect

None of the Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent and Administrative Agent shall be deemed to have knowledge or notice of the occurrence of any Default, Event of Default or Material Adverse Effect, unless such Person has received a notice from a Lender or Borrower, referring to this Agreement, describing such Default, Event of Default or Material Adverse Effect and indicating that such notice is a notice of the occurrence of such Default, Event of Default or Material Adverse Effect (as the case may be). If Administrative Agent receives such a notice of the occurrence of a Default, Event of Default or Material Adverse Effect, Administrative Agent shall give notice thereof to the Lenders. Each of First Lien Collateral Agent and Administrative Agent shall take such action with respect to such Default, Event of Default or Material Adverse Effect as is provided in Article 3, Article 7 or the terms of the Credit Documents, including but not limited to the Intercreditor Agreement, or if not provided for in Article 3, Article 7 or such Credit Documents, as the Administrative Agent or First Lien Collateral Agent shall be reasonably directed by the Required First Lien Secured Parties; provided, that unless and until Administrative Agent or First Lien Collateral Agent shall have received such directions, each of Administrative Agent and First Lien Collateral Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default, Event of Default or Material Adverse Effect as it shall deem advisable in the best interest of the First Lien Secured Parties.

9.5 Indemnification

Without limiting the First Lien Obligations of Borrower hereunder, each Lender severally agrees to indemnify the Coordinating Lead Arrangers, Joint Lead Arrangers, each Agent and their respective officers, directors, shareholders, controlling Persons, employees, agents and servants, ratably in accordance with their Proportionate Shares for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against such Agent, the Coordinating Lead Arrangers, Joint Lead Arrangers, or such Person in any way relating to or arising out of this Agreement or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or the enforcement of any of the terms hereof or thereof or of any such other documents, or any action taken or omitted by it or any of them under this Agreement or any other Credit Document, to the extent the same shall not have been reimbursed by Borrower; provided, that no Lender shall be liable to an Agent the Syndication Agent, Bookrunners, Coordinating Lead Arrangers, or Joint Lead Arrangers for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements found in a final non-appealable judgment by a court of competent jurisdiction to have resulted primarily from the gross negligence or willful misconduct of such Agent, such Coordinating Lead Arrangers, Joint Lead Arrangers or any of their Related Parties. The obligations of the Lenders under this Section 9.5 shall survive payment of all First Lien Obligations and the resignation or replacement of any Agent. An Agent or any such Person shall be fully justified in refusing to take or to continue to take any action hereunder or under any other Credit Document unless it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Without limitation of the foregoing, each Lender agrees to reimburse each Agent, the Coordinating Lead Arrangers, Joint Lead Arrangers, or any such Person promptly upon demand for its Proportionate Share of any out-of-pocket expenses (including reasonable counsel fees and compensation of agents and employees paid for services rendered on behalf of the Lenders, but limited in the case of legal expenses, to the actual and reasonable and documented expenses of one counsel for the Agents, and, if necessary, one firm of local counsel in each appropriate jurisdiction where any action to realize upon any part of the Collateral is necessary, in each case for the Agents (and, in the case of an actual or perceived conflict of interest where the Agents affected by such conflict informs the Borrower of such conflict, of another firm of counsel for such affected Agent) incurred by such Agent, Coordinating Lead Arrangers, Joint Lead Arrangers, or any such Person in connection with the preparation, execution, administration or enforcement of, or legal advice in respect of rights or responsibilities under, the Credit Documents, to the extent that such Agent, Coordinating Lead Arrangers, Joint Lead Arrangers, or any such Person is not reimbursed for such expenses by Borrower).

9.6 Successor Agent

Any Agent may resign at any time by notifying the Lenders and Borrower, in accordance with this Section 9.6 or the provisions of the Intercreditor Agreement, as applicable. Upon any such resignation of either Administrative Agent or First Lien Collateral Agent, the Required Lenders shall have the right, with the consent of Borrower (such consent not to be unreasonably withheld or delayed) to appoint a successor Administrative Agent or First Lien Collateral Agent (as the case may be). Subject to the provisions of the Intercreditor Agreement, if no successor Administrative Agent or First Lien Collateral Agent (as the case may be) shall have been so appointed by the Required Lenders and shall have accepted such appointment, within fifteen days after the retiring Administrative Agent's or First Lien Collateral Agent's (as the case may be) giving of notice of resignation or the Lenders' removal of the retiring Administrative Agent or First Lien Collateral Agent (as the case may be), the retiring Administrative Agent and First Lien Collateral Agent (as the case may be) may, on behalf of the Lender Parties, with the consent of Borrower (such consent not to be unreasonably withheld or delayed), appoint a successor Administrative Agent or First Lien Collateral Agent (as the case may be) hereunder, which shall be a Lender, if any Lender shall be willing to serve, and otherwise shall be a commercial bank having a combined capital and surplus of at least $500,000,000 or an Affiliate of any such bank. Upon the acceptance of any appointment as Administrative Agent or First Lien Collateral Agent (as the case may be) under the Credit Documents by a successor Administrative Agent or First Lien Collateral Agent (as the case may be), such successor Administrative Agent or First Lien Collateral Agent (as the case may be) shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent or First Lien Collateral Agent (as the case may be), and the retiring Administrative Agent or First Lien Collateral Agent (as the case may be) shall be discharged from its duties and obligations as Administrative Agent or First Lien Collateral Agent (as the case may be) only under the Credit Documents. After any retiring Administrative Agent's or First Lien Collateral Agent's resignation hereunder as Administrative Agent or First Lien Collateral Agent (as the case may be), the provisions of this Article 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent or First Lien Collateral Agent (as the case may be) under the Credit Documents. In addition to the foregoing, if a Lender becomes, and during the period it remains, a Defaulting Lender, an Issuing Bank may, upon prior written notice to Borrower and Administrative Agent, resign as an Issuing Bank effective at the close of business New York time on a date specified in such notice (which date may not be less than twenty Banking Days after the date of such notice); provided, that such resignation by the applicable Issuing Bank shall have no effect on the validity or enforceability of any Letter of Credit then outstanding or on the obligations of Borrower or any Lender under this Agreement with respect to any such outstanding Letter of Credit or otherwise to such Issuing Bank. Anything herein to the contrary notwithstanding, if at any time the Required Lenders determine that the Person serving as Administrative Agent is a Defaulting Lender, the Required Lenders (determined after giving effect to Section 9.9) may by notice to Borrower and such Person remove such Person as Administrative Agent and appoint a replacement Administrative Agent hereunder. Such removal shall, to the fullest extent permitted by applicable law, be effective on the earlier of (a) the date a replacement Administrative Agent is appointed, and (b) the date which is five Banking Days after the giving of such notice by the Required Lenders (regardless of whether a replacement Administrative Agent has been appointed).

9.7 Authorization

Each of the Lenders and each assignee of any such Lender hereby irrevocably authorizes each of Administrative Agent, First Lien Collateral Agent, the Coordinating Lead Arrangers, Joint Lead Arrangers, and Issuing Banks to take such actions on behalf of such Lender or assignee and to exercise such powers as are specifically delegated to such Person in such capacity by the terms and provisions hereof and of the other Credit Documents, together with such actions and powers as are reasonably incidental thereto, and each Lender and each assignee or any such Lender hereby agrees to be bound by any such actions. Without limiting the generality of the foregoing, Administrative Agent is hereby expressly authorized by the Lenders and Issuing Banks, without hereby limiting any implied authority, (a) to receive on behalf of the Lenders and the Issuing Banks all payments of principal of and interest on the Loans, all payments in respect of Drawing Payments and all other amounts due to the Lenders and the Issuing Banks hereunder, and promptly to distribute to each Lender or Issuing Bank its proper share of each payment so received (and any such payments not so distributed by Administrative Agent within one Banking Day of receipt thereof shall bear interest (at Administrative Agent's expense) at a rate equal to the greater of (i) the Federal Funds Rate, and (ii) a rate reasonably determined by Administrative Agent in accordance with banking industry rules on interbank compensation); (b) to give notice on behalf of each of the Lenders of any Event of Default specified in this Agreement of which Administrative Agent has actual knowledge acquired in connection with the performance of its duties as Administrative Agent hereunder; (c) to distribute to each Lender copies of all notices, financial statements and other materials delivered by Borrower pursuant to this Agreement as received by Administrative Agent; and (d) to enter into (and each of the Lenders, Issuing Banks, Coordinating Lead Arrangers, and Joint Lead Arrangers hereby agree to be bound by the terms of and direct the Administrative Agent to enter into) a use of work product agreement in the form of Exhibit J on behalf of each Lender, Issuing Banks, Coordinating Lead Arrangers, and Joint Lead Arrangers. Each of Administrative Agent and First Lien Collateral Agent is further authorized by the Lender Parties to release Liens on property that the Obligors are permitted to sell or transfer pursuant to the terms of this Agreement or the other Credit Documents and to enter into agreements supplemental hereto for the purpose of curing any formal defect, inconsistency, omission or ambiguity in this Agreement or any Credit Document to which it is a party.

9.8 Other Roles

With respect to its Commitment, the Loans made by it and any Note issued to it, each of the Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent, Administrative Agent and Issuing Banks in its individual capacity shall have the same rights and powers under the Credit Documents as any other Lender and may exercise the same as though it were not a Coordinating Lead Arranger, Joint Lead Arranger, First Lien Collateral Agent, Administrative Agent or Issuing Bank. The term "Lender" or "Lenders" shall, unless otherwise expressly indicated, include each of the Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent, Administrative Agent and Issuing Banks in its individual capacity. Each of the Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent, Administrative Agent, Issuing Banks and their respective Affiliates may accept deposits from, lend money to, and generally engage in any kind of business with Borrower or any other Person, without any duty to account therefor to the Lenders. For the avoidance of doubt, MUFG Union Bank, N.A. may act as both First Lien Collateral Agent and as Depositary Agent, notwithstanding any potential or actual conflict of interest presented by the foregoing. Each of the Lenders hereby waives any claim against each of the Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent, Administrative Agent, Issuing Banks, Borrower and any of their respective Affiliates based upon any conflict of interest that such Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent, Administrative Agent, Issuing Bank or any of their respective Affiliates may have with regard to acting as an agent, arranger or Issuing Bank hereunder and acting in such other roles.

9.9 Amendments; Waivers

(a) Unanimous Consent. Subject to the provisions of this Section 9.9, unless otherwise specified in this Agreement or another Credit Document, the Required Lenders (or Administrative Agent or First Lien Collateral Agent upon written direction or consent of the Required Lenders) and the Obligors may enter into agreements, waivers or supplements hereto for the purpose of adding, modifying or waiving any provisions to the Credit Documents or changing in any manner the rights of the Lenders or the Obligors hereunder or thereunder or waiving any Default or Event of Default; provided, that notwithstanding anything to the contrary set forth herein, any amendment modification, termination or consent to, of or under any First Lien Collateral Document permitted pursuant to this Section 9.9 shall be subject to the applicable terms of the Intercreditor Agreement and no such supplemental agreement shall, without the consent of all of the Lenders affected thereby or, with respect to clauses (~~i~~ii) and (iii), all of the Lenders affected thereby and all of the Hedge Banks affected thereby:

(i) increase the amount of the Commitment of any Lender hereunder;

(ii) amend any provision of this Section 9.9;

(iii) release (A) all or substantially all of the Collateral (other than (1) pursuant to Section 5.9 (*Limitation on Asset Dispositions*) of the First Lien Common Terms Agreement, (2) in respect of any Casualty Event or Event of Eminent Domain, or (3) as otherwise expressly permitted hereby or under any other Credit Document) from the Lien of any of the First Lien Collateral Documents or (B) release all or substantially all of the guaranties of the Guarantors pursuant to the Credit Documents (except as expressly permitted hereby or under any other Credit Document);

(iv) extend the Maturity Dates or reduce the principal amount of any outstanding Loans or Notes or reduce the rate or change the time of payment of interest due on any Loan; provided, that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" contained in Section 2.4(c) or to waive any obligation of Borrower to pay interest at the Default Rate;

(v) reduce the amount or extend the payment date for any amount due, whether principal or interest (but not prepayment);

(vi) add, modify or waive any provisions to the Credit Documents so as to subordinate the Loans to any other Indebtedness;

(vii) amend or modify the definition of "Required First Lien Secured Parties" (as defined in the Intercreditor Agreement); provided, that, additional extensions of credit pursuant hereto ~~(including any Incremental Term Loans)~~ shall be included in the definition of "Required First Lien Secured Parties" on substantially the same basis as the Loans and Commitments included on the Closing Date; or

(viii) modify the order of application of any prepayment of Term Loans or LC Loans from the application thereof set forth in the applicable provisions of Section 2.1(h) of this Agreement or Section 4.1 (*Applications of Proceeds*) of the Intercreditor Agreement; provided, that the Required Lenders may waive, in whole or in part, any prepayment so long as the application as between Loans, of any portion of such prepayment which is still required to be made is not altered.

(b) Affected Party Consent. Notwithstanding anything to the contrary herein, no agreement, waiver or supplement hereto shall add, modify or waive any provisions to the Credit Documents, or change in any manner the rights of the Lenders, Hedge Banks or the Obligors hereunder or thereunder, so as to:

(i) amend or modify any provision set forth in Sections 2.1(h)(i), 2.1(h)(ii), 2.1(h)(iii), 2.4(d)(i), 2.4(e), 2.5(a) or 2.5(b) in a manner that would alter the pro rata sharing of payments with respect to the applicable Loan facility without the prior written consent of each Lender adversely affected thereby;

(ii) change the order of priority of payments set forth in Section 4.1 (*Applications of Proceeds*) of the Intercreditor Agreement or Section 3.1(b) (*Revenue Account Waterfall*) of the Depositary Agreement, without the prior written consent of each Lender adversely affected thereby;

(iii) amend, modify or otherwise affect the rights or duties of Administrative Agent, First Lien Collateral Agent, Depositary Agent or an Issuing Bank without the prior written consent of Administrative Agent, Depositary Agent, First Lien Collateral Agent or such Issuing Bank, as applicable, acting as such at the effective date of such agreement;

(iv) amend the definition of "Lenders" or reduce the percentage specified in the definition "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the prior written consent of each Lender adversely affected thereby;

(v) change the relative priority or the extent of the security interest granted in favor of any Lender or Hedge Bank as compared to the priority or the extent of the security interest granted in favor of any other Lender or Hedge Bank, without the prior written consent of each Lender or Hedge Bank adversely affected thereby; or

(vi) otherwise subordinate the First Lien Obligations of Borrower in respect of the Interest Rate Agreements to any other First Lien Obligations of Borrower hereunder, without the prior written consent of each Hedge Bank adversely affected thereby.

~~Notwithstanding the foregoing, without the consent of any Lender or Issuing Bank, the Administrative Agent may enter into amendments in connection with Incremental Term Loan Facilities as set forth in Section 2.1(b).~~

(c) Defaulting Lenders. Anything herein to the contrary notwithstanding, during such period as a Lender is a Defaulting Lender, to the fullest extent permitted by applicable law, such Lender shall not be entitled to vote in respect of amendments and waivers hereunder and the Commitment and the outstanding Loans or other extensions of credit of such Lender hereunder shall not be taken into account in determining whether the Required Lenders or all of the Lenders, as required, have approved any such amendment or waiver (and the definition of "Required Lenders" shall automatically be deemed modified accordingly for the duration of such period), except that (i) without the consent of such Defaulting Lender (A) the Commitment of any Defaulting Lender may not be increased or extended, (B) any amount due to any Defaulting Lender, whether principal or interest, may not be reduced, and (C) the payment date for any amount due to such Defaulting Lender, whether principal or interest, may not be extended, and (ii) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

(d) Minor Defects. Notwithstanding the other provisions of this Section 9.9, Borrower, Administrative Agent and First Lien Collateral Agent may (but shall have no obligation to) amend or supplement the Credit Documents without the consent of any other Lender Party for the purpose of (i) curing any ambiguity, defect or inconsistency, (ii) making any change that would provide any additional rights or benefits to the Lender Parties or that does not adversely affect the legal rights hereunder of any Lender Party, and (iii) making, completing or confirming any grant of Collateral permitted or required by this Agreement, any of the Credit Documents or the Intercreditor Agreement or any release of any Collateral that is otherwise permitted under the terms of this Agreement and the Credit Documents.

9.10 Withholding Tax

Each Lender Party shall severally indemnify the Administrative Agent, within ten days after demand therefor, for (a) any taxes (including any interest, additions to tax or penalties applicable thereto) attributable to such Lender Party for whatever reason (but, if such taxes are Indemnified Taxes and Other Taxes, only to the extent that Borrower has not already indemnified the Administrative Agent for such taxes and without limiting the obligation of Borrower to do so), and (b) any taxes (including any interest, additions to tax or penalties applicable thereto) attributable to such Lender Party's failure to comply with the provisions of Section 9.13 relating to the maintenance of a Participant Register (as defined in Section 9.13 below), in each case, that are payable or paid by the Administrative Agent in connection with any Credit Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender Party by the Administrative Agent shall be conclusive absent manifest error. Each Lender Party hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender Party under any Credit Document or otherwise payable by the Administrative Agent to the Lender Party from any other source against any amount due to the Administrative Agent under this Section 9.10. The obligations of the Lender Parties under this Section 9.10 shall survive the payment of all First Lien Obligations and the resignation or replacement of Administrative Agent.

If any Lender or Issuing Bank sells, assigns, grants participation in, or otherwise transfers its rights under this Agreement, the purchaser, assignee, Participant or transferee, as applicable, shall comply and be bound by the terms of Section 2.4(f) and this Section 9.10 as though it were such Lender or Issuing Bank.

9.11 General Provisions as to Payments

Administrative Agent shall promptly distribute to each Lender, subject to the terms of any separate agreement between Administrative Agent and such Lender, its pro rata share of each payment of principal and interest payable to the Lenders on the Loans and of fees hereunder received by Administrative Agent for the account of the Lenders and of any other amounts owing under the Loans. The payments made for the account of each Lender shall be made, and distributed to it, for the account of (a) its domestic Lending Office in the case of payments of principal of, and interest on, its Base Rate Loans, (b) its domestic or foreign Lending Office, as each Lender may designate in writing to Administrative Agent, in the case of LIBOR Loans, and (c) its domestic Lending Office, or such other Lending Office as it may designate for the purpose from time to time, in the case of payments of fees and other amounts payable hereunder.

9.12 Substitution of Lender

Should any Lender fail to make a Loan in violation of its obligations under this Agreement (a "**Non-Advancing Bank**"), Administrative Agent shall (a) in its sole discretion fund the Loan on behalf of the Non-Advancing Bank, or (b) cooperate and consult with Borrower or any other Lender to find another Person that shall be acceptable to Administrative Agent and that shall be willing to assume the Non-Advancing Bank's obligations under this Agreement (including the obligation to make the Loan which the Non-Advancing Bank failed to make but without assuming any liability for damages for failing to have made such Loan or any previously required Loan). Subject to the provisions of the next following sentence, such Person shall be substituted for the Non-Advancing Bank hereunder upon execution and delivery to Administrative Agent of an agreement acceptable to Administrative Agent by such Person assuming the Non-Advancing Bank's obligations (including its Commitments) under this Agreement, and all interest and fees which would otherwise have been payable to the Non-Advancing Bank shall thereafter be payable to such Person. Nothing in (and no action taken pursuant to) this Section 9.12 shall relieve the Non-Advancing Bank from any liability it might have to Borrower or to the other Lenders as a result of its failure to make any Loan.

9.13 Participation.

Any Lender may, without the consent of Borrower, Administrative Agent or any Issuing Bank, sell participations to one or more banks or other entities (a "**Participant**") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans and Drawing Payments owing to it); provided, that (a) no such sale of a participation shall alter such Lender's or Borrower's obligations hereunder, (b) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (c) Borrower and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement, and (d) any agreement or instrument (oral or written) pursuant to which any Lender may grant a participation in its rights with respect to its Commitment (or Loans made hereunder) shall provide that, with respect to such Commitment (or Loans made hereunder), subject to the following proviso, such Lender shall retain the sole right and responsibility to exercise the rights of such Lender, and enforce the obligations of Borrower relating to such Commitment (or Loans made hereunder), including the right to approve any amendment, modification or waiver of any provision of this Agreement or any other Credit Document and the right to take action to have the First Lien Obligations hereunder (or any portion thereof) declared due and payable pursuant to Article 7; provided, that (e) such agreement may provide that the participant may have rights to approve or disapprove decreases in Loans, interest rates or fees, lengthening of maturity of any Loans, extending the payment date for any amount due under Article 2 or releasing all or a material portion of the Collateral (other than (i) pursuant to Section 5.9 (*Limitation on Asset Dispositions*) of the First Lien Common Terms Agreement, (ii) in respect of any Casualty Event or Event of Eminent Domain, or (iii) as otherwise expressly permitted hereby or under any other Credit Document), and (w) no other agreement (oral or written) with respect to such Participant may exist between such Lender and such Participant. Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.6, 2.7, and 2.4(d) (subject to the requirements and limitations therein, including the requirements under Section 2.4(f) (it being understood that the documentation required under Section 2.4(f) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 9.14; provided, that such Participant (x) agrees to be subject to the provisions of Section 2.8 as if it were an assignee under this Section 9.13; and (y) shall not be entitled to receive any greater payment under Sections 2.6, 2.7 and 2.4(d), with respect to any participation, than its participating Lender would have been entitled to receive. No recipient of a participation in any Commitment or Loans of any Lender shall have any rights under this Agreement or shall be entitled to any reimbursement for Indemnified Taxes, Other Taxes, increased costs or reserve requirements under Sections 2.6 or 2.7 or any other indemnity or payment rights against Borrower (but shall be permitted to receive from the Lender granting such participation a proportionate amount which would have been payable to the Lender from whom such Person acquired its participation as provided in this Section 9.13). Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Credit Documents (the "**Participant Register**"); provided, that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Credit Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations and Section 1.163-5(b) of the United States Proposed Treasury Regulations (or any amended or successor version). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

9.14 Transfer of Commitment

(a) Notwithstanding anything else herein to the contrary, any Lender, after receiving Administrative Agent's prior written consent (such consent not to be unreasonably withheld) and (so long as no Event of Default has occurred and is continuing) after receiving Borrower's prior written consent (such consent not to be unreasonably withheld solely with respect to a sale, assignment, transfer, negotiation or disposal to a commercial bank, financial institution or an insurance company but such consent may be withheld in Borrower's sole discretion with respect to a sale, assignment, transfer, negotiation or disposal to any other Eligible Assignee), may from time to time, at its option, sell, assign, transfer, negotiate or otherwise dispose of a portion of one or more of its Commitments (including, for purposes of this Section 9.14, Loans made hereunder) (including the Lender's interest in this Agreement and the other Credit Documents) to one or more banks, financial institutions, or Eligible Assignees; provided, that (i) no Lender (including any assignee of any Lender) may assign any portion of its Commitment (including Loans) (A) in an amount less than $5,000,000 (unless to another Lender), or (B) in an amount which leaves the assigning Lender with a Commitment (including Loans) of less than $5,000,000 (in each case based on the original principal amount of the Commitment assigned) after giving effect to such assignment and all previous assignments (except that a Lender may be left with no Commitment or Loans if it assigns its entire Commitment); (ii) without the consent of the Borrower or any other Party, any Lender may assign all or any portion of its Commitments to another Lender, an Affiliate of a Lender; (iii) no consent of the Borrower shall be required in the case of primary syndication of the Loans and Commitments within sixty days after the Closing Date, to institutions that have been identified by the Syndication Agent and accepted by the Borrower (in its reasonable discretion) prior to the Closing Date and (iv) Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten Banking Days after having received notice thereof. An assignee shall not be entitled to receive any greater payment under any of Sections 2.4(d), 2.6 and 2.7.

(b) No such assignment shall be made to (i) Borrower or any of Borrower's Affiliates or Subsidiaries, or (ii) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute a Defaulting Lender or a Subsidiary thereof. In the event of any such assignment, (A) the assigning Lender's Proportionate Share shall be reduced and its obligations hereunder released by the amount of the Proportionate Share assigned to the new Lender, (B) the parties to such assignment shall execute and deliver an appropriate agreement evidencing such sale, assignment, transfer or other disposition, in form and substance reasonably satisfactory to Administrative Agent and Borrower, (C) the parties to the sale, assignment, transfer or other disposition, excluding Borrower, shall collectively pay to Administrative Agent an administrative fee of $3,500; provided, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment, (D) at the assigning Lender's option, Borrower shall execute and deliver, to such new Lender, Notes in the forms attached hereto as Exhibit B-1, as requested, in a principal amount equal to such new Lender's Commitment, but only if it shall also be executing and exchanging with the assigning Lender a replacement note for any Note in an amount equal to the Commitment retained by the assigning Lender, if any; provided, that Borrower shall have received for cancellation the existing Note held by such assigning Lender, and (E) Administrative Agent shall amend Schedule 2.2(a) to reflect the Proportionate Shares of the Lenders following such assignment. Thereafter, such new Lender shall be deemed to be a Lender and shall have all of the rights and duties of a Lender (except as otherwise provided in this Article 9), in accordance with its Proportionate Share, under each of the Credit Documents. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in Section 2.1(i).

(c) Disqualified Institution. Any assignments and participations to Disqualified Institutions are void ab initio unless such assignment or participation, as the case may be, has been approved by the Borrower, in which case such assignee or participant shall not be considered a Disqualified Institutions solely for such particular assignment or participation, as the case may be. In case of such assignments not approved by the Borrower, the assignee who is a Disqualified Institutions shall be deleted from the Register upon written notification from the Borrower. Except for notifying the Lenders with a list of Disqualified Institutions, Administrative Agent shall have no responsibility or liability to monitor or enforce such list of Disqualified Institutions.

9.15 Laws

Notwithstanding the foregoing provisions of this Article 9, no sale, assignment, transfer, negotiation or other disposition of the interests of any Lender hereunder or under the other Credit Documents shall be allowed if it would require registration under the federal Securities Act of 1933, as then amended, any other federal securities laws or regulations or the securities laws or regulations of any applicable jurisdiction. Borrower shall, from time to time at the request and expense of Administrative Agent, execute and deliver to Administrative Agent, or to such party or parties as Administrative Agent may designate, any and all further instruments as may in the opinion of Administrative Agent be reasonably necessary or advisable to give full force and effect to such sale, assignment, transfer, negotiation or disposition which would not require any such registration.

9.16 Assignability as Collateral

Notwithstanding any other provision contained in this Agreement or any other Credit Document to the contrary, any Lender may assign all or any portion of the Loans or Notes held by it to the Federal Reserve Bank, any other central banking authorities in accordance with applicable law and the United States Treasury as collateral security; provided, that any payment in respect of such assigned Loans or Notes made by Borrower to or for the account of the assigning or pledging Lender in accordance with the terms of this Agreement shall satisfy Borrower's obligations hereunder in respect of such assigned Loans or Notes to the extent of such payment. No such assignment shall release the assigning Lender from its obligations hereunder and in no event shall the Federal Reserve Bank, any other central banking authorities in accordance with applicable law or the United States Treasury be considered a "Lender" hereunder.

9.17 Notices to Lenders

Administrative Agent promptly shall deliver all material documents, instruments and notices that it receives hereunder and under the other Credit Documents to each Lender. Except as expressly provided in this Agreement or the other Credit Documents, Borrower shall not be required to deliver any documents, instruments or notices directly to the Lenders.

9.18 First Lien Collateral Agent

First Lien Collateral Agent shall: (a) forward promptly to Administrative Agent any notice delivered to First Lien Collateral Agent pursuant to any Consent; (b) have the right, but not the obligation, to (i) refuse any item for credit to any Depositary Account except as required by the terms of the Credit Documents, (ii) refuse to honor any request for transfer in relation to any Depositary Account that is not consistent with the Credit Documents, (iii) charge to any Depositary Account all applicable charges related to maintaining such Depositary Accounts, and (iv) pay fees, interest and other charges owing by the Obligors as provided herein and in the other Credit Documents; (c) except as otherwise provided herein and in the Depositary Agreement (including by the provision of standing instructions therein), take all actions and make all determinations with respect to the Collateral, the First Lien Collateral Documents (including as to the advisability of taking additional steps to perfect, or cause the perfection of, any security interest) and the other Credit Documents to which it is a party as directed in writing by Administrative Agent (acting in accordance with Section 9.7); and (d) have the right at any time to seek clarification and instructions concerning the administration of the Credit Documents from Administrative Agent, legal counsel selected by it in good faith with reasonable care or any court of competent jurisdiction and shall be fully protected in relying upon such instructions.

9.19 Right to Realize on Collateral

Notwithstanding anything contained in any of the Credit Documents to the contrary notwithstanding, the Obligors, the Administrative Agent, the First Lien Collateral Agent and each Lender hereby agree that: (a) no Lender or Agent shall have any right individually to realize upon any of the Collateral, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by the Administrative Agent, on behalf of Lenders, in accordance with the terms hereof, and all powers, rights and remedies under the First Lien Collateral Documents may be exercised solely by the First Lien Collateral Agent, on behalf of the First Lien Secured Parties and (b) in the event of a foreclosure by the First Lien Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition, the First Lien Collateral Agent or any Lender may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and the First Lien Collateral Agent, as agent for and representative of the First Lien Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless Required Lenders shall otherwise agree in writing), shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the First Lien Obligations as a credit on account of the purchase price for any Collateral payable by the First Lien Collateral Agent at such sale or other disposition.

9.20 Depositary Agent The Depositary Agent is an intended third party beneficiary of, and entitled to enforce on its respective behalf and for its own benefit and, if applicable, the benefit of the other First Lien Secured Parties, the provisions of this Agreement that purport to grant the Depositary Agent rights, privileges and benefits, entitlements, immunities, indemnities and/or benefits. Each Lender hereby (a) acknowledges that it has received and reviewed a copy of the Depositary Agreement and agrees to be bound by the terms thereof, and (b) authorizes and directs (i) the appointment of MUFG Union Bank, N.A. to act as the initial depositary agent under the Credit Documents, and (ii) the Depositary Agent to execute the Depositary Agreement and to take such actions as are contemplated by the terms of the Depositary Agreement. The Depositary Agent has, and shall have, no obligations under this Agreement.

9.21 Erroneous Payments

(a) If the Administrative Agent (x) notifies a Lender or Issuing Bank, or any Person who has received funds on behalf of a Lender or Issuing Bank (any such Lender, Issuing Bank or other recipient (and each of their respective successors and assigns), a "Payment Recipient") that the Administrative Agent has determined in its reasonable discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from the Administrative Agent) received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Issuing Bank or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and (y) demands in writing the return of such Erroneous Payment (or a portion thereof) (provided, that, without limiting any other rights or remedies (whether at law or in equity), the Administrative Agent may not make any such demand under this clause (a) with respect to an Erroneous Payment unless such demand is made within 30 days of the date of receipt of such Erroneous Payment by the applicable Payment Recipient), such Erroneous Payment shall at all times remain the property of the Administrative Agent pending its return or repayment as contemplated below in this Section 9.21 and held in trust for the benefit of the Administrative Agent, and such Lender or Issuing Bank shall use commercially reasonable efforts to (or, with respect to any Payment Recipient who received such funds on its behalf, shall use commercially reasonable efforts to cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter (or such later date as the Administrative Agent may, in its sole discretion, specify in writing), return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the Administrative Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender, Issuing Bank or any Person who has received funds on behalf of a Lender or Issuing Bank (and each of their respective successors and assigns), agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender or Issuing Bank, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

(i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender or Issuing Bank shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 9.21(b).

For the avoidance of doubt, the failure to deliver a notice to the Administrative Agent pursuant to this Section 9.21(b) shall not have any effect on a Payment Recipient's obligations pursuant to Section 9.21(a) or on whether or not an Erroneous Payment has been made.

(c) Each Lender and Issuing Bank hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender or Issuing Bank under any Credit Document, or otherwise payable or distributable by the Administrative Agent to such Lender or Issuing Bank under any Credit Document with respect to any payment of principal, interest, fees or other amounts, against any amount that the Administrative Agent has demanded to be returned under immediately preceding clause (a).

(d)

(i) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor in accordance with immediately preceding clause (a), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "Erroneous Payment Return Deficiency"), upon the Administrative Agent's notice to such Lender at any time, then effective immediately (with the consideration therefor being acknowledged by the parties hereto), (A) such Lender shall be deemed to have assigned its Loans (but not its Commitments) with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Class") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the "Erroneous Payment Deficiency Assignment") (on a cashless basis and such amount calculated at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance)), and is hereby (together with the Borrower) deemed to execute and deliver an assignment and assumption agreement (or, to the extent applicable, an agreement incorporating an assignment and assumption agreement by reference pursuant to the Platform as to which the Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent (but the failure of such Person to deliver any such Notes shall not affect the effectiveness of the foregoing assignment), (B) the Administrative Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (C) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender, (D) the Administrative Agent and the Borrower shall each be deemed to have waived any consents required under this Agreement to any such Erroneous Payment Deficiency Assignment, and (E) the Administrative Agent will reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement.

(ii) Subject to Section 11.17 (but excluding, in all events, any assignment consent or approval requirements (whether from the Borrower or otherwise)), the Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency owing by the applicable Lender (x) shall be reduced by the proceeds of prepayments or repayments of principal and interest, or other distribution in respect of principal and interest, received by the Administrative Agent on or with respect to any such Loans acquired from such Lender pursuant to an Erroneous Payment Deficiency Assignment (to the extent that any such Loans are then owned by the Administrative Agent) and (y) may, in the sole discretion of the Administrative Agent, be reduced by any amount specified by the Administrative Agent in writing to the applicable Lender from time to time.

(e) The parties hereto agree that (x) irrespective of whether the Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender or Issuing Bank, to the rights and interests of such Lender or Issuing Bank, as the case may be) under the Credit Documents with respect to such amount (the "Erroneous Payment Subrogation Rights") (provided that the Loan Parties' First Lien Obligations under the Credit Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such First Lien Obligations in respect of Loans that have been assigned to the Administrative Agent under an Erroneous Payment Deficiency Assignment) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any First Lien Obligations owed by the Borrower or any other Loan Party; provided that this Section 9.21 shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the First Lien Obligations of the Borrower relative to the amount (and/or timing for payment) of the First Lien Obligations that would have been payable had such Erroneous Payment not been made by the Administrative Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower for the purpose of making such Erroneous Payment.

(f) **To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on "discharge for value" or any similar doctrine.**

(g) **Each party's obligations, agreements and waivers under this Section 9.21 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender or Issuing Bank, the termination of the Commitments and/or the repayment, satisfaction or discharge of all First Lien Obligations (or any portion thereof) under any Credit Document.**

10. INDEPENDENT CONSULTANTS

10.1 Removal and Fees

Administrative Agent, in its reasonable discretion, may remove from time to time, any one or more of the Independent Consultants (other than the Independent Engineer) and Administrative Agent may appoint replacements, which, so long as no Default or Event of Default shall have occurred and be continuing, shall be reasonably acceptable to Borrower. Notice of any replacement such Independent Consultant shall be given by Administrative Agent to Borrower, the Lenders and to the Independent Consultant being replaced. All reasonable fees and expenses of the Independent Consultants (whether the original ones or replacements) shall be paid by Borrower pursuant to agreements reasonably acceptable to Borrower; provided, that no such acceptance shall be required at any time an Event of Default shall have occurred and be continuing.

10.2 Certification of Dates

Administrative Agent will request that the Independent Consultants act diligently in the issuance of all letters required to be delivered by the Independent Consultants hereunder, if their issuance is appropriate. Borrower shall provide the Independent Consultants with reasonable notice of the expected occurrence of any dates or events requiring the issuance of such letters.

11. MISCELLANEOUS

11.1 Addresses

Any communications between the parties hereto or notices provided herein to be given may be given to the following addresses:

If to Administrative Agent:

MUFG Bank, Ltd., as Administrative Agent
1221 Avenue of the Americas, 6th Floor
New York, NY 10020
Attention: Lawrence Blat / Peter Chi
Telephone: (212) 405-6621 / (213) 236-4128
E-mail: lawrence.blat@mufgsecurities.com;
agencydesk@us.sc.mufg.jp
With a copy to: PChi@us.mufg.jp

If to First Lien Collateral Agent:

MUFG Union Bank, N.A.,
350 California Street, 17th Floor
San Francisco, CA 94104
Attention: ~~Corporate Trust~~**Institutional Agency Services**
Email: ~~SFCT~~**thaddeus.smith**@unionbank.com~~;~~
~~**Cc: sonia.flores@unionbank.com**~~

If to Borrower:

Geysers Power Company, LLC
717 Texas Avenue, Suite 11.043C
Houston, Texas 77002
Telephone: (832) 325-1581
Facsimile: (832) 325-1582
Attn: Chief Legal Officer

If to Holdings:

Geysers Intermediate Holdings LLC
717 Texas Avenue, Suite 11.059C
Houston, Texas 77002
Telephone: (832) 325-5039
Facsimile: (832) 325-5040
Attn: Chief Legal Officer

If to Geysers Company:

Geysers Company, LLC
717 Texas Avenue, Suite 11.059A
Houston, Texas 77002
Telephone: (832) 325-5045
Facsimile: (832) 325-5046
Attn: Chief Legal Officer

If to Calistoga:

Calistoga Holdings, LLC
717 Texas Avenue, Suite 11.059B
Houston, Texas 77002
Telephone: (832) 325-5031
Facsimile: (832) 325-5032
Attn: Chief Legal Officer

If to Wild Horse:

Wild Horse Geothermal, LLC
717 Texas Avenue, Suite 11.050B
Houston, Texas 77002
Telephone: (832) 325-5063
Facsimile: (832) 325-5064
Attn: Chief Legal Officer

All such notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service (including Federal Express, UPS, DHL and other similar overnight delivery services), (c) if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (d) if sent by facsimile with receipt confirmed by telephone, or (e) by ~~Electronic Transmission (as defined below)~~**electronic transmission**. Notice so given shall be effective upon receipt by the addressee, except that communication or notice so transmitted by facsimile or other direct written electronic means shall be deemed to have been validly and effectively given on the day (if a Banking Day and, if not, on the next following Banking Day) on which it is transmitted if transmitted before 4:00 p.m., recipient's time, and if transmitted after that time, on the next following Banking Day; provided, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving of thirty days' notice to the other parties in the manner set forth above.

Borrower may deliver to Administrative Agent, First Lien Collateral Agent or Depositary Agent, as the case may be, any Borrowing certificate, collateral report or other material that Borrower is required to deliver to Administrative Agent, First Lien Collateral Agent or Depositary Agent (as the case may be) hereunder or under the other Credit Documents, by e-mail or other electronic transmission.

11.2 Right to Set-Off

If an Event of Default shall have occurred and be continuing, subject to the Intercreditor Agreement (which may limit the rights specified in this Section 11.2), each Lender Party is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by such Lender Party to or for the credit or the account of Borrower, against any and all obligations of Borrower, now or hereafter existing under this Agreement or any other Credit Document held by such Lender Party, irrespective of whether or not such Lender Party shall have made any demand under this Agreement or such other Credit Document and although the obligations may be unmatured; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (a) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.4(g) and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Banks, and the Lenders, and (b) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the First Lien Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender Party under this Section 11.2 are in addition to other rights and remedies (including other rights of set-off) that such Lender Party may have.

11.3 Delay and Waiver

No delay or omission to exercise any right, power or remedy accruing to the Lender Parties upon the occurrence of any Default, Event of Default or Material Adverse Effect or any breach or Default of Borrower or any other Obligor or unsatisfied condition precedent under this Agreement or any other Credit Document shall impair any such right, power or remedy of the Lender Parties, nor shall it be construed to be a waiver of any such breach or Default or unsatisfied condition precedent, or an acquiescence therein, or of or in any similar breach or Default or unsatisfied condition precedent thereafter occurring, nor shall any waiver of any single Default, Event of Default, Material Adverse Effect or other breach or Default or unsatisfied condition precedent be deemed a waiver of any other Default, Event of Default, Material Adverse Effect or other breach or Default or unsatisfied condition precedent theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of Administrative Agent, First Lien Collateral Agent or any other Lender Party of any Default, Event of Default, Material Adverse Effect or other breach or default or unsatisfied condition precedent under this Agreement or any other Credit Document, or any waiver on the part of Administrative Agent, First Lien Collateral Agent or any other Lender Party of any provision or condition of this Agreement or any other Credit Document, must be in writing and shall be effective only to the extent in such writing specifically set forth. All remedies, either under this Agreement or any other Credit Document or by law or otherwise afforded to Administrative Agent, First Lien Collateral Agent, Issuing Banks or any other Lender Party, shall be cumulative and not alternative.

11.4 Costs, Expenses and Attorneys' Fees; Syndication.

Borrower shall pay to each of the Agents, Coordinating Lead Arrangers, and Joint Lead Arrangers all of their respective actual, reasonable and documented out-of-pocket costs and expenses (net of any costs and expenses paid prior to the Closing Date), in connection with the preparation, negotiation, closing and administering of this Agreement and the documents contemplated hereby but limited, in the case of legal expenses, to the actual, reasonable and documented expenses of Latham & Watkins LLP (or in the case of an actual or perceived conflict of interest, such other counsel reasonably acceptable to the Required Lenders and, prior to the delivery of a notice of a Trigger Event that has not been withdrawn, reasonably acceptable to the Borrower) for all Agents, Coordinating Lead Arrangers, and Joint Lead Arrangers taken as a whole and, if necessary, one firm in the State of California for all Agents, Coordinating Lead Arrangers, and Joint Lead Arrangers taken as a whole (and, in the case of an actual or perceived conflict of interest where the Agent, Coordinating Lead Arranger, or Joint Lead Arranger affected by such conflict informs the Borrower of such conflict, of another firm of counsel for such affected Agent, Coordinating Lead Arranger, or Joint Lead Arranger); provided, that Borrower shall not be required to pay the fees of the other attorneys of the Agents, Coordinating Lead Arrangers, and Joint Lead Arrangers). Borrower shall reimburse the Agents for all costs and expenses, including actual, reasonable and documented attorneys' fees and actual, reasonable and documented expert, consultant and advisor fees and expenses, expended or incurred by the Agents for their actual, reasonable and documented out-of-pocket expenses, but limited, in the case of legal expenses, to the actual, reasonable and documented expenses of Latham & Watkins LLP (or in the case of an actual or perceived conflict of interest, such other counsel reasonably acceptable to the Required Lenders and, prior to the delivery of a notice of a Trigger Event that has not been withdrawn, reasonably acceptable to the Borrower) for all Agents taken as a whole and, if necessary, one firm of local counsel in the State of California, in each case for all Agents taken as a whole (and, in the case of an actual or perceived conflict of interest where the Agent affected by such conflict informs the Borrower of such conflict, of another firm of counsel for such affected Agent), in enforcing this Agreement or the other Credit Documents in connection with a Default or Event of Default, in actions for declaratory relief in any way related to this Agreement, protecting its rights and interests under any First Lien Collateral Document, in collecting any sum which becomes due on the Notes or under the Credit Documents, in any restructuring of the Loans or otherwise relating to the occurrence of any Default or Event of Default.

11.5 Entire Agreement

This Agreement and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. Except as otherwise expressly provided, in the event of any conflict between the terms, conditions and provisions of this Agreement and any such agreement, document or instrument, the terms, conditions and provisions of this Agreement shall prevail.

11.6 Governing Law

THIS AGREEMENT AND ANY OTHER CREDIT DOCUMENT (UNLESS OTHERWISE EXPRESSLY PROVIDED FOR THEREIN), SHALL BE GOVERNED BY, AND CONSTRUED UNDER, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CONFLICTS OF LAWS (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

11.7 Severability

In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

11.8 Headings

Article, Section and Paragraph headings have been inserted in this Agreement as a matter of convenience for reference only and it is agreed that such headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

11.9 Accounting Terms

All accounting terms not specifically defined herein shall be construed in accordance with GAAP and practices consistent with those applied in the preparation of the financial statements submitted by Borrower to Administrative Agent, and all financial data submitted pursuant to this Agreement shall be prepared in accordance with such principles and practices.

11.10 No Partnership, Etc.

Neither the Administrative Agent nor any Lender has any fiduciary relationship with or duty to any Obligor arising out of or in connection with this Agreement or any of the other Credit Documents, and the relationship between Administrative Agent and Lenders, on one hand, and Borrower, on the other hand, in connection herewith or therewith shall be solely that of creditor and debtor. Nothing contained in this Agreement, the Notes or in any of the other Credit Documents shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership by or between the Lenders and Borrower or any other Person. None of the Coordinating Lead Arrangers, Joint Lead Arrangers, Administrative Agent, First Lien Collateral Agent or the Lenders shall be in any way responsible or liable for the debts, losses, obligations or duties of Borrower or any other Person with respect to the Projects or otherwise. All obligations to pay real property or other taxes, assessments, insurance premiums, and all other fees and charges arising from the ownership, operation or occupancy of the Projects (if any) and to perform all obligations and other agreements and contracts relating to the Projects shall be the sole responsibility of the Obligors.

11.11 Mortgage/Collateral Documents

Certain guaranties of the Loans shall be secured in part by the Mortgages encumbering certain properties in the State of California solely to the extent provided therein. Reference is hereby made to the Mortgages and the other First Lien Collateral Documents for the provisions, among others, relating to the nature and extent of the security provided thereunder, the rights, duties and obligations of the Obligors and the rights of Administrative Agent, First Lien Collateral Agent and the other Lender Parties with respect to such security.

11.12 Limitation on Liability

No claim shall be made by any Obligor against the Coordinating Lead Arrangers, Joint Lead Arrangers, Green Loan Coordinators, **Senior Managing Agents,** Administrative Agent, First Lien Collateral Agent, Depositary Agent, the Lenders, Issuing Banks or any of their respective Affiliates, directors, employees, attorneys or agents for any loss of profits, business or anticipated savings, special or punitive damages or any indirect or consequential loss whatsoever in respect of any breach or wrongful conduct (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or the other Credit Documents or any act or omission or event occurring in connection therewith, and each Obligor hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor, in each case, except to the extent such claim is based on gross negligence or willful misconduct of such Person. No claim shall be made by any Syndication Agent, Bookrunners, Green Loan Coordinator, Coordinating Lead Arranger, Joint Lead Arranger, **Senior Managing Agent,** Administrative Agent, First Lien Collateral Agent, Depositary Agent, Lender or Issuing Bank against any Obligor or any of their respective Affiliates, directors, employees, attorneys or agents for any loss of profits, business or anticipated savings, special or punitive damages or any indirect or consequential loss whatsoever in respect of any breach or wrongful conduct (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or the other Credit Documents or any act or omission or event occurring in connection therewith, and each of the Syndication Agent, Bookrunner, Green Loan Coordinator, Coordinating Lead Arranger, Joint Lead Arranger, **Senior Managing Agent,** Administrative Agent, First Lien Collateral Agent, Depositary Agent, the Lenders and Issuing Banks hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor, in each case, except to the extent such claim is based on gross negligence or willful misconduct of such Person.

11.13 Indemnity

Borrower agrees to indemnify the Coordinating Lead Arrangers, Joint Lead Arrangers, and the Agents, the Lenders, Issuing Banks and each of their respective directors, trustees, officers, employees, Affiliates, and agents (each such Person being called an "**Indemnitee**") against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (other than Taxes), including reasonable and documented counsel fees, charges and disbursements, but limited, in the case of legal expenses, to the actual, reasonable and documented expenses of one counsel for the Indemnitees taken as a whole, and, if necessary, one firm of local counsel in each material jurisdiction, in each case for the Indemnitees taken as a whole (and in the case of an actual or perceived conflict of interest where the Indemnitee affected by such conflict informs the Borrower of such conflict, of another firm of counsel for such affected Indemnitee), incurred by or asserted against any Indemnitee (collectively, "**Subject Claims**") arising out of, in any way connected with, or as a result of (a) the execution or delivery of this Agreement or any other Credit Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto and thereto of their respective obligations hereunder or thereunder or the consummation of the other transactions contemplated hereby, (b) the use of the proceeds of the Loans or the use of any Letter of Credit, or (c) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto (other than claims solely as between the Indemnitees); provided, that such indemnity shall not, as to any Indemnitee, be available to the extent that (i) the applicable Subject Claim results from the gross negligence or willful misconduct of such Indemnitee, as determined by the final judgment of a court of competent jurisdiction, or (ii) such Subject Claims arise out of any dispute solely among Indemnitees (other than claims against any Indemnitee in its capacity or in fulfilling its role as Agent under this Agreement and the other Credit Documents, and other than any claims involving any act or omission on the part of the Borrower or any Guarantor). Subject to and without limiting the generality of the foregoing sentence, Borrower agrees to indemnify each Indemnitee against, and hold each Indemnitee harmless from, any and all Subject Claims arising out of, in any way connected with, or as a result of (x) any claim or enforcement action under Environmental Laws alleging a violation of Environmental Laws issued to or against Obligors or the Projects, or (y) any Release or threatened Release of Hazardous Substances at, under, on or from the Projects, or, to the extent related in any way to any Project, any property to which any Obligor has sent Hazardous Substances for treatment, storage or disposal; provided, that such indemnity shall not, as to any Indemnitee, be available to the extent that the applicable Subject Claim results from (i) the gross negligence or willful misconduct of such Indemnitee or any of its Affiliates employees, or agents, as determined by the final judgment of a court of competent jurisdiction or (ii) any act or omission by any Indemnitee or any of its Affiliates, employees, or agents, occurring on or after the date of foreclosure on any Collateral. The provisions of this Section 11.13 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the First Lien Obligations under this Agreement or any other Credit Document, the invalidity or unenforceability of any term or provision of this Agreement or any other Credit Document, or any investigation made by or on behalf of any Indemnitee. All amounts due under this Section 11.13 shall be payable within thirty days at the written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested. This Section 11.13 shall not apply to Taxes. Each of the Indemnitees, on behalf of itself and its respective directors, trustees, officers, employees, Affiliates, and agents, agrees to provide Borrower with written notice of a proposed compromise or settlement of any Subject Claim specifying in detail the nature and amount of such proposed settlement or compromise. Each such Indemnitee shall consult with Borrower before compromising or settling such Subject Claim for at least thirty days after Borrower receives such notice of intended compromise or settlement and shall take into consideration any views or issues communicated by Borrower in connection with such compromise or settlement. Such Indemnitee shall act in good faith and reasonably, taking into account the interests of Borrower, in agreeing to any compromise or settlement.

11.14 Waiver of Jury Trial

ADMINISTRATIVE AGENT, FIRST LIEN COLLATERAL AGENT, THE LENDERS, THE HEDGE BANKS, THE ISSUING BANKS AND THE OBLIGORS HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ADMINISTRATIVE AGENT, FIRST LIEN COLLATERAL AGENT, THE LENDERS, THE HEDGE BANKS, THE ISSUING BANKS, OR THE OBLIGORS. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE OBLIGORS, ADMINISTRATIVE AGENT, FIRST LIEN COLLATERAL AGENT, THE LENDERS, THE HEDGE BANKS AND THE ISSUING BANKS TO ENTER INTO THIS AGREEMENT.

11.15 Consent to Jurisdiction

Administrative Agent, First Lien Collateral Agent, the Lenders, the Hedge Banks, the Issuing Banks and the Obligors agree that any legal action or proceeding by or against any Obligor or with respect to or arising out of this Agreement, the Notes, or any other Credit Document may be brought in or removed to the courts of the State of New York, in and for the County of New York, or of the United States of America for the Southern District of New York, as Administrative Agent may elect. By execution and delivery of this Agreement, the Lenders, the Hedge Banks, the Issuing Banks, Administrative Agent, First Lien Collateral Agent and the Obligors accept, for themselves and in respect of their property, generally and unconditionally, the jurisdiction of the aforesaid courts. Administrative Agent, First Lien Collateral Agent, the Lenders, the Hedge Banks, the Issuing Banks and the Obligors irrevocably consent to the service of process out of any of the aforementioned courts in any manner permitted by law. Nothing herein shall affect the right of Administrative Agent to bring legal action or proceedings in any other competent jurisdiction, including judicial or non-judicial foreclosure of the Mortgages. Administrative Agent, First Lien Collateral Agent, the Lenders, the Hedge Banks, the Issuing Banks and the Obligors further agree that the aforesaid courts of the State of New York and of the United States of America shall have exclusive jurisdiction with respect to any claim or counterclaim of any Obligor based upon the assertion that the rate of interest charged by the Lenders on or under this Agreement, the Loans or the other Credit Documents is usurious. Administrative Agent, First Lien Collateral Agent, the Lenders, the Hedge Banks, the Issuing Banks and the Obligors hereby waive any right to stay or dismiss any action or proceeding under or in connection with the Projects, this Agreement or any other Credit Document brought before the foregoing courts on the basis of *forum non-conveniens*.

11.16 Knowledge and Attribution

References in this Agreement and the other Credit Documents to the "knowledge", "best knowledge" or facts and circumstances "known to" the Obligors, and all like references, mean facts or circumstances of which a Responsible Officer of the applicable Obligor has actual knowledge.

11.17 Successors and Assigns

The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Borrower may not assign or otherwise transfer any of its rights under this Agreement, and the Lenders may not assign or otherwise transfer any of their rights under this Agreement except as provided in Article 9.

11.18 Counterparts

This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in one or more duplicate counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Delivery of an executed counterpart to this Agreement by facsimile transmission or electric transmission in ".pdf" format shall be as effective as delivery of a manually signed original.

11.19 Usury

Nothing contained in this Agreement or the Notes shall be deemed to require the payment of interest or other charges by Borrower or any other Person in excess of the amount which the holders of the Notes may lawfully charge under applicable usury laws. In the event that the Lenders shall collect moneys which are deemed to constitute interest which would increase the effective Interest Rate to a rate in excess of that permitted to be charged by applicable Legal Requirements, all such sums deemed to constitute interest in excess of the legal rate shall, upon such determination, at the option of the Lenders, be returned to Borrower or credited against the principal balance then outstanding.

11.20 Survival

All representations, warranties, covenants and agreements made herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement and the other Credit Documents shall be considered to have been relied upon by the parties hereto and shall survive the execution and delivery of this Agreement, the other Credit Documents and the making of the Loans. Notwithstanding anything in this Agreement or implied by law to the contrary, the agreements of the Obligors set forth in Sections 2.1(f), 2.4(d), 2.6(c), 2.6(d), 11.4, 11.13 and 11.22 and the agreements of the Lenders set forth in Sections 9.1, 9.5, 9.8 and 11.22 shall survive the payment and performance of the Loans and the other First Lien Obligations under this Agreement and the other Credit Documents and the reimbursement of any amounts drawn hereunder, and the termination of this Agreement.

11.21 Patriot Act Notice

Each Lender, First Lien Collateral Agent (for itself and not on behalf of any other Person, including any Lender), Administrative Agent (for itself and not on behalf of any other Person, including any Lender) and Issuing Bank (for itself and not on behalf of any other Person, including any Lender) hereby notifies the Obligors and Sponsor that, pursuant to the requirements of the USA Patriot Act (2001 H.R. 3162 (signed into law October 26, 2001)) (the "**Patriot Act**"), it is required to obtain, verify and record information that identifies the Obligors and Sponsor which information includes the name, address, the tax identification number and other identifying information that shall allow such Lender, First Lien Collateral Agent, Administrative Agent or Issuing Bank, as applicable, to identify the Obligors and Sponsor in accordance with the Patriot Act.

11.22 Treatment of Certain Information; Confidentiality

Each Lender, each Hedge Bank and each Agent agrees (on behalf of itself and each of its Affiliates, directors, officers, members, employees, agents and third party service providers and representatives) to keep confidential any nonpublic information supplied to it by Borrower or any other Obligor; provided, that nothing herein shall limit the disclosure of any such information: (a) to the extent such information is required to be disclosed by any Governmental Rule or judicial or administrative process, or to any Governmental Authority in connection with a tax audit or dispute or otherwise; (b) to counsel for any of the Lenders or any Agent; (c) to banking, securities exchange or other regulatory or supervisory authorities, auditors or accountants having proper jurisdiction and authority to require such disclosure; (d) to any Agent or any other Lender; (e) to any entity in connection with a securitization or proposed securitization of, among other things, all or a part of any amounts payable to or for the benefit of any Lender or its Affiliates under the Credit Documents so long as such entity agrees to keep such information confidential in a manner consistent with this Section 11.22; (f) in connection with the exercise of any remedies hereunder or under any of the other Credit Documents, including without limitation upon the occurrence of any Event of Default and any enforcement or collection proceedings resulting therefrom or in connection with the negotiation of any restructuring or "work-out", whether or not consummated, of the obligations of Borrower under this Agreement or the obligations of any Obligor or Major Project Participant under any other Credit Document or any suit, action or proceeding relating to this Agreement or any other Credit Document or the enforcement of rights hereunder or thereunder, so long as such Major Project Participant agrees to keep such information confidential in a manner consistent with this Section 11.22; (g) to the Independent Engineer, the Market Consultant, the Reserve Consultant, the Insurance Consultant, the Environmental Consultant or to other experts engaged by Administrative Agent or any Lender in accordance with the provisions of this Agreement and in connection with the transactions contemplated hereby so long as such expert agrees to keep such information confidential in a manner consistent with this Section 11.22; (h) to any assignee or Participant (or prospective assignee or Participant) so long as such assignee or Participant (or prospective assignee or Participant) agrees to keep such information confidential in a manner consistent with this Section 11.22, (i) with the consent of Borrower or the relevant Obligor; (j) in connection with the collateral assignment of all or any portion of the Loans or Notes held by it to the Federal Reserve Bank, any other central banking authorities in accordance with applicable law and the United States Treasury as collateral security; or (k) to credit insurers of the Lenders in connection with the transactions contemplated hereby so long as such credit insurers agree to keep such information confidential in a manner consistent with this Section 11.22. In no event shall any Lender, Administrative Agent or First Lien Collateral Agent be obligated or required to return any materials furnished by Borrower. Notwithstanding the foregoing provisions of this Section 11.22, the foregoing obligation of confidentiality shall not apply to any such information that (x) was known to any Lender or Agent prior to the time it received such confidential information from Borrower or its Affiliates, (y) becomes part of the public domain independently of any act of any Lender or Agent not permitted hereunder (through publication or otherwise), or (z) is received by any Lender or any Agent, as applicable, without restriction as to its disclosure or use, from a Person other than an Obligor. Notwithstanding anything to the contrary set forth herein or in any other agreement to which the parties hereto are parties or by which they are bound, any obligations of confidentiality contained herein and therein, as they relate to the transactions contemplated by this Agreement (the "**Loan Transactions**"), shall not apply to the federal tax structure or federal tax treatment of the Loan Transactions, and each party hereto (and any employee, representative, or agent of any party hereto) may disclose to any and all Persons, without limitation of any kind, the federal tax structure and federal tax treatment of the Loan Transactions. The preceding sentence is intended to cause the Loan Transactions not to be treated as having been offered under conditions of confidentiality for purposes of Section 1.6011-4(b)(3) (or any successor provision) of the Treasury Regulations promulgated under Section 6011 of the Code and shall be construed in a manner consistent with such purpose. In addition, each party hereto acknowledges that it has no proprietary or exclusive rights to any tax concept, tax matter or tax idea related to the Loan Transactions. Nothing herein shall permit the disclosure of such confidential information to Disqualified Institutions by any party under the Agreement (or any Person receiving information under this Section 11.22) unless agreed to by Borrower.

11.23 Communications

(a) Delivery.

(i) Each Obligor hereby agrees that it shall use all reasonable efforts to provide to Administrative Agent all information, documents and other materials that it is obligated to furnish to Administrative Agent pursuant to this Agreement and any other Credit Document, including all notices, requests, financial statements, financial and other reports, certificates and other information materials (collectively, the "**Communications**"), by transmitting the Communications in an electronic/soft medium in a format reasonably acceptable to Administrative Agent at the address referenced on Section 11.1. Nothing in this Section 11.23 shall prejudice the right of the Coordinating Lead Arrangers, Joint Lead Arrangers, any Lender or Borrower to give any notice or other communication pursuant to this Agreement or any other Credit Document in any other manner specified in this Agreement or any other Credit Document.

(ii) Administrative Agent agrees that receipt of the Communications by Administrative Agent at the email address referenced in Section 11.1 shall constitute effective delivery of the Communications to Administrative Agent for purposes of the Credit Documents. Each Lender agrees that notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform (as defined below) shall constitute effective delivery of the Communications to such Lender for purposes of the Credit Documents. Each Lender agrees (A) to notify Administrative Agent in writing (including by electronic communication) from time to time of such Lender's email address to which the foregoing notice may be sent by electronic transmission, and (B) that the foregoing notice may be sent to such email address.

(b) Posting. Borrower further agrees that Administrative Agent may make the Communications available to the Lenders by posting the Communications on IntraLinks, SyndTrak or a substantially similar electronic transmission system (the "**Platform**").

(c) The Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the accuracy or completeness of the Communications or the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall Administrative Agent, Collateral Agent, Syndication Agent, any other Agent, Coordinating Lead Arranger, or Joint Lead Arrangers or any of their Affiliates or any of their respective officers, directors, employees, agents advisors or representatives (collectively, the "**Agent Parties**") have any liability to any Obligor, any Lender or any other Person or entity for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of such Obligor's or such Person's transmission of Communications through the internet, except to the extent the liability of any Agent Party is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted primarily from such Agent Party's gross negligence or willful misconduct.

11.24 Acknowledgement and Consent to Bail-In of Affected Financial Institutions

Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Credit Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership shall be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Credit Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

11.25 Certain ERISA Matters

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender hereto, to, and (y) covenants, from the date such Person became a Lender hereto to the date such Person ceases being a Lender hereto, for the benefit of, the Administrative Agent and its Affiliates and not, for the avoidance of doubt, to or for the benefit of the Borrower, that at least one of the following is and shall be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) of one or more Benefit Plans in connection with the Loans, the Letters of Credit, the Commitments or this Agreement;

(ii) the prohibited transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable so as to exempt from the prohibitions of Section 406 of ERISA and Section 4975 of the Code such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of sub-section (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (i) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (ii) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (A) represents and warrants, as of the date such Person became a Lender hereto, and (B) covenants, from the date such Person became a Lender hereto to the date such Person ceases being a Lender hereto, for the benefit of, the Administrative Agent and its Affiliates and not, for the avoidance of doubt, to or for the benefit of the Borrower, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Credit Document or any documents related hereto or thereto).

11.26 Keepwell

Each Qualified ECP Guarantor hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Obligor to honor all of its obligations to (a) the First Lien Secured Parties under the First Lien Collateral Documents in respect of Swap Obligations that are First Lien Obligations and (b) the guaranty provided within the Intercreditor Agreement; provided, that each Qualified ECP Guarantor shall only be liable under this Section 11.26 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 11.26, or otherwise under the First Lien Collateral Documents, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount. The obligations of each Qualified ECP Guarantor under this Section 11.26 shall remain in full force and effect until the termination of this Agreement. Each Qualified ECP Guarantor intends that this Section 11.26 constitute, and this Section 11.26 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Obligor for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

11.27 Security Agreement and Intercreditor Agreement

Each Lender hereby acknowledges and agrees on behalf of itself that the Lien priorities and other matters related to the Credit Documents and the Collateral are subject to and governed by the Security Agreement, Intercreditor Agreement and the other First Lien Collateral Documents. Each Lender, by delivering its signature page hereto, funding its Loans on the Closing Date and/or executing an assignment and assumption agreement, in form and substance reasonably satisfactory to the Administrative Agent, (as applicable) shall be deemed to have (a) acknowledged receipt of, consented to and approved of the Security Agreement, the Intercreditor Agreement, the Depositary Agreement and the other First Lien Collateral Documents and (b) authorized and directed the Administrative Agent and the First Lien Collateral Agent to perform their respective obligations thereunder.

11.28 Acknowledgement Regarding Any Supported QFCs

To the extent that the Financing Documents provide support, through a guarantee or otherwise, for a Swap Obligation or any other agreement or instrument that is a QFC (such support, "**QFC Credit Support**" and each such QFC a "**Supported QFC**"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "**U.S. Special Resolution Regimes**") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Financing Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a "**Covered Party**") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party shall be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Financing Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Financing Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

11.29 Climate Bonds Standard and Certification Scheme

The Loan Parties obtained a certification of the Term Loans under the applicable standards of the then-applicable "Climate Bonds Standard and Certification Scheme", and obtained a post-issuance certification of the Term Loans under such standards on June 4, 2021. The Obligors will use commercially reasonable efforts to (a) obtain on or prior to the ~~Closing~~**Omnibus Amendment** Date certification of the Term Loans under the applicable standards of the Climate Bonds Standard and Certification Scheme and, within twelve months after the ~~Closing~~**Omnibus Amendment** Date, obtain a post-issuance certification of the Term Loans under the applicable standards of the Climate Bonds Standard and Certification Scheme and (b) comply in all material respects with the reporting requirements set forth in Section 2.4 of the Green Financing Framework; provided, that, notwithstanding the foregoing or anything in this Agreement or any other Financing Document to the contrary, no failure by any Obligor to comply with this Section 11.29, any terms of the Climate Bonds Standard and Certification Scheme or any reporting requirements or any other terms of the Green Financing Framework shall (i) constitute a Default, a CTA Default, an Event of Default or a CTA Event of Default under this Agreement or any other Financing Document, (ii) give rise to any claim, liability, remedy or other cause of action (including any remedy of specific performance), (iii) operate in any matter to limit, restrict or otherwise affect the use of proceeds of the Term Loans or (iv) otherwise affect Obligor's right or ability to take any actions otherwise permitted under this Agreement or any other Financing Document.

11.30 Electronic Execution

The words "execution," "execute", "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation assignments, amendments or other Notices of Borrowing, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

11.31 Climate Loan Disclaimer

The certification of the Loans by the Climate Bonds Initiative is based solely on the Climate Bond Standard and ~~Certification and~~ does not, and is not intended to, make any representation or give any assurance with respect to any other matter relating to the Loans or any Project~~.~~**, including but not limited to the Information Memorandum, the transaction documents, the Borrower or the management of the Borrower.**

The certification of the Loans **as Climate Bonds** by the Climate Bonds Initiative was addressed solely to the board of directors of the Borrower and is not a recommendation to any person to purchase, hold or sell the Loans and such certification does not address the market price or suitability of the Loans for a particular investor. The certification also does not address the merits of the decision by the Borrower or any third party to participate in any Project and does not express and should not be deemed to be an expression of an opinion as to the Borrower or any aspect of any Project (including but not limited to the financial viability of any Project)~~.~~ **other than with respect to conformance with the Climate Bond Standard.**

In issuing or monitoring, as applicable, the certification, the Climate Bonds Initiative has assumed and relied upon and will assume and rely upon the accuracy and completeness in all material respects of the information supplied or otherwise made available to the Climate Bonds Initiative. The Climate Bonds Initiative does not assume or accept any responsibility to any person for independently verifying (and it has not verified) ~~any~~**such** information ~~received by it~~ or to undertake (and it has not undertaken) any independent evaluation of any Project or the Borrower. In addition, the Climate Bonds Initiative does not assume any obligation to conduct (and it has not conducted) any physical inspection of any Project. The certification **may only be used with the Loans and may not be used for any other purpose without the Climate Bonds Initiative's prior written consent.**

The certification does not and is not in any way intended to address the likelihood of timely payment of interest when due on the Loans and/or the payment of principal at maturity or any other date.

The certification may be withdrawn at any time in the Climate Bonds ~~Initiative's~~**Initiative's** sole and absolute discretion and there can be no assurance that such certification will not be withdrawn. ~~References to Loans certified by the Climate Bonds Initiatives do not imply that the Loans and First Lien Obligations hereunder are a "security" and it is the intent of the parties to treat Loans hereunder as loans.~~

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DEFINITIONS

"2021 LC Commitement" has the meaning assigned to such term in the Omnibus Amendment.

"2021 Term Loans" has the meaning assigned to such term in the Omnibus Amendment.

"2021 Term Loan Commitment" has the meaning assigned to such term in the Omnibus Amendment.

"**Additional Major Project Contract**" has the meaning given in the First Lien Common Terms Agreement.

"**Administrative Agent**" has the meaning given in the preamble hereto.

"**Administrative Services Agreement**" has the meaning given in the First Lien Common Terms Agreement.

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

"**Affiliate**" has the meaning given in the Intercreditor Agreement.

"**Agency Fee Letter**" means that certain letter agreement regarding fees, dated June 9, 2020, by and among Administrative Agent and Borrower.

"**Agent(s)**" means the Administrative Agent, the First Lien Collateral Agent and the Depositary Agent.

"**Agent Parties**" has the meaning given in Section 11.23(c).

"**Agreement**" has the meaning given in the preamble hereto.

"**Annual Operating Budget**" has the meaning given in Section 5.3(a).

"**Anti-Corruption Laws**" has the meaning given in Section 4.23(b).

"**Anti-Money Laundering Laws**" has the meaning given in Section 4.23(b).

"**Applicable Margin**" means, for any period, in respect of Base Rate Loans and respect of LIBOR Loans, the applicable rate per annum set forth below in respect of such period.

Term Period	**Base Rate Loans**	**LIBOR Loans**
From the ~~Closing~~**Omnibus Amendment** Date until the third anniversary of the ~~Closing~~**Omnibus Amendment** Date	~~1.00~~**0.62** **5**%	~~2.00~~**1.6** **25**%
From the third anniversary of the ~~Closing~~**Omnibus Amendment** Date until the sixth anniversary of the ~~Closing~~**Omnibus Amendment Date**	~~1.125~~**0.7** **5**%	~~2.125~~**1.** **75**%
From and after the sixth anniversary of the ~~Closing~~**Omnibus Amendment Date**	~~1.250~~**0.8** **75**%	~~2.250~~**1.** **875**%

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate, any tenor for such Benchmark that is or may be used for determining the length of an Interest Period or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date.

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

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

"**Banking Day**" means any day other than a Saturday, Sunday or other day on which commercial banks are or Administrative Agent is authorized or required to be closed in the State of California or the State of New York and, where such term is used in any respect relating to a LIBOR Loan, which is also a day on which dealings in U.S. Dollar deposits are carried out in the London interbank market

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

"**Base Case Projections**" means a projection of operating results for the Projects, showing at a minimum Borrower's reasonable good faith estimates, as of the ~~Closing~~**Omnibus Amendment** Date, of revenues, O&M Costs, Major Maintenance, Capital Expenditures, the Debt Service Coverage Ratio, and sources and uses of revenues over the forecast period, which ~~**projection is attached as Schedule 3.1(o)**~~**projections were delivered pursuant to Section 7(o) of the Omnibus Amendment**.

"**Base Rate**" means, for any day, the greatest of (a) the prime rate published in the Wall Street Journal, (b) the Federal Funds Rate for such day *plus* 0.50%, and (c) 1.00%. Any change in the Base Rate due to a change in the prime rate, bank prime rate or the Federal Funds Rate shall be effective from and including the effective date of such change in the prime rate, bank prime rate, the Federal Funds Rate, as the case may be.

"**Base Rate LC Loan**" means an LC Loan that shall bear interest at the rate set forth in Section 2.1(c)(i)(D).

"**Base Rate Loans**" means, collectively, the Base Rate Term Loans and the Base Rate LC Loans.

"**Base Rate Term Loan**" means a Term Loan which bears interest as provided in Section 2.1(c)(i)(A).

"Benchmark" means, initially, LIBO Rate; provided that if a replacement of the Benchmark has occurred pursuant to Section 2.6(a), then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate . Any reference to "Benchmark" shall include, as applicable, the published component used in the calculation thereof.

"Benchmark Replacement" means, for any Available Tenor:

(a) **For purposes of clause (i) of Section 2.6(a), the first alternative set forth below that can be determined by the Administrative Agent:**

(i) **the sum of: (A) Term SOFR and (B) 0.11448% (11.448 basis points) for an Available Tenor of one-month's duration, 0.26161% (26.161 basis points) for an Available Tenor of three-months' duration, and 0.42826% (42.826 basis points) for an Available Tenor of six-months' duration, or**

(ii) ~~"Benchmark Replacement" means~~ the sum of: (~~a) the alternate benchmark rate (which may include Term SOFR) that has been selected and agreed by both the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the relevant Governmental Authority or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to LIBO Rate for both U.S. Dollar-denominated syndicated credit facilities and (b) the Benchmark Replacement Adjustment; provided, that, if the Benchmark Replacement as so determined would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement.~~**A) Daily Simple SOFR and (B) the spread adjustment selected or recommended by the Relevant Governmental Body for the replacement of the tenor of LIBO Rate with a SOFR-based rate having approximately the same length as the interest payment period specified in clause (i) of Section 2.6(a); and**

~~**"Benchmark Replacement Adjustment" means, with respect to any replacement of LIBO Rate with an Unadjusted Benchmark Replacement for each applicable Interest Period, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected and agreed by both the Administrative Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of LIBO Rate with the applicable Unadjusted Benchmark Replacement by the relevant Governmental Authority or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of LIBO Rate with the applicable Unadjusted Benchmark Replacement for U.S. Dollar-denominated syndicated credit facilities at such time.**~~

(b) **For purposes of clause (ii) of Section 2.6(a), the sum of (i) the alternate benchmark rate and (ii) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by the Administrative Agent and the Borrower as the replacement for such Available Tenor of such Benchmark giving due consideration to the then-prevailing market convention or any evolving market convention, including any applicable recommendations made by the Relevant Governmental Body, for U.S. dollar-denominated broadly syndicated credit facilities at such time;**

provided that, if the Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Credit Documents.

"**Benchmark Replacement Conforming Changes**" means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "**Business Day," the definition of "**Interest Period," timing and frequency of determining rates and making payments of interest ~~and other~~**, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical,** administrative **or operational** matters) that the Administrative Agent decides~~, with the consent of the Borrower (not to be unreasonably withheld, conditioned or delayed), may be~~ **are** appropriate to reflect the adoption and implementation of such Benchmark Replacement ~~and to~~**that** permit the administration thereof by the Administrative Agent in a manner substantially consistent with **the prevailing** market practice **for U.S. dollar-denominated broadly syndicated credit facilities** (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent ~~determines~~**decides** that no market practice for the administration of ~~the~~**such** Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides~~, with the consent of the Borrower (not to be unreasonably withheld, conditioned or delayed),~~ is reasonably necessary in connection with the administration of this Agreement **and the other Credit Documents**).

~~"Benchmark Replacement Date" means the earlier to occur of the following events with respect to the LIBO Rate:~~

~~(a) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event," the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of the LIBO Rate permanently or indefinitely ceases to provide the LIBO Rate; or~~

~~(b) in the case of clause (c) of the definition of "Benchmark Transition Event," the date of the public statement or publication of information referenced therein.~~

~~"Benchmark Transition Event" means the occurrence of one or more of the following events with respect to the LIBO Rate:~~

~~(a) a public statement or publication of information by or on behalf of the administrator of the LIBO Rate announcing that such administrator has ceased or will cease to provide the LIBO Rate, permanently or indefinitely; provided, that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBO Rate;~~

~~(b)~~ **"Benchmark Transition Event" means, with respect to any then-current Benchmark other than LIBO Rate, the occurrence of** a public statement or publication of information by ~~the~~**or on behalf of the administrator of the then-current Benchmark, the** regulatory supervisor for the administrator of ~~the LIBO Rate, the U.S.~~**such Benchmark, the Board of Governors of the** Federal Reserve System**, the Federal Reserve Bank of New York**, an insolvency official with jurisdiction over the administrator for ~~the LIBO Rate~~**such Benchmark**, a resolution authority with jurisdiction over the administrator for ~~the LIBO Rate~~**such Benchmark** or a court or an entity with similar insolvency or resolution authority over the administrator for ~~the LIBO Rate, which states that the~~**such Benchmark, announcing or stating that (a) such** administrator ~~of the LIBO Rate~~ has ceased or will cease **on a specified date** to provide ~~the LIBO Rate~~ **all Available Tenors of such Benchmark,** permanently or indefinitely~~;~~**,** provided~~,~~ that, at the time of such statement or publication, there is no successor administrator that will continue to provide ~~the LIBO Rate; or~~**any Available Tenor of such Benchmark or (b) all Available Tenors of such Benchmark are or will no longer be representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored.**

~~(c) a public statement or publication of information by the regulatory supervisor for the administrator of the LIBO Rate announcing that the LIBO Rate is no longer representative.~~

~~"Benchmark Transition Start Date" means (a) in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the ninetieth day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than ninety days after such statement or publication, the date of such statement or publication) and (b) in the case of an Early Opt-in Election, the date specified by the Administrative Agent or the Required Lenders, as applicable, with the consent of the Borrower (not to be unreasonably withheld, conditioned or delayed), by notice to the Borrower, the Administrative Agent (in the case of such notice by the Required Lenders) and the Lenders.~~

~~"Benchmark Unavailability Period" means, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the LIBO Rate and solely to the extent that the LIBO Rate has not been replaced with a Benchmark Replacement, the period (a) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the LIBO Rate for all purposes hereunder in accordance with Sections 2.6(a)(i) through 2.6(a)(iv) and (b) ending at the time that a Benchmark Replacement has replaced the LIBO Rate for all purposes hereunder pursuant to Sections 2.6(a)(i) through 2.6(a)(iv).~~

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

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

"**Beneficially Owns**" shall have the corresponding meaning to the term "Beneficial Owner" as defined in Rule 13d-3 and Rule 13d-5 under the Exchange Act.

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

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

"**Bona Fide Debt Fund**" means any fund or investment vehicle that is primarily engaged in the making, purchasing, holding or otherwise investing in commercial loans, bonds and other similar extensions of credit or securities in the ordinary course.

"**Bookrunner**" means MUFG Union Bank, N.A., BNP Paribas, CoBank, ACB, Coöperatieve Rabobank, U.A., New York Branch, ING Capital LLC, Mizuho Bank, Ltd., MUFG Union Bank, N.A., National Bank of Canada, Sumitomo Mitsui Banking Corporation, Truist Securities, Inc., Crédit Agricole Corporate and Investment Bank, ~~Mizuho Bank Ltd., and~~ Natixis, New York Branch~~, National Bank of Canada, SunTrust Robinson Humphrey, Inc. and Sumitomo Mitsui Banking Corporation~~, each acting in its capacity as a Bookrunner under this Agreement.

"**Borrower**" has the meaning given in the preamble hereto.

"**Borrowing**" means a borrowing by Borrower of any Loan.

"**Borrowing Date**" has the meaning given in Section 3.2.

"**Calculation Period**" has the meaning given in the First Lien Common Terms Agreement.

"**Calistoga**" has the meaning given in the preamble hereto.

"**Capital Expenditures**" has the meaning given in the First Lien Common Terms Agreement.

"**Cash Collateralize**" means, with respect to any Letter of Credit or any other First Lien Obligation, the deposit of immediately available funds into a cash collateral account maintained with (or on behalf of) the applicable Issuing Bank on terms reasonably satisfactory to such Issuing Bank in an amount equal to 102.5% of the Stated Amount of such Letter of Credit or such other First Lien Obligation. "Cash Collateral", "Cash Collateralized", and "Cash Collateralization" shall have correlative meanings.

"**Casualty Event**" has the meaning given in the First Lien Common Terms Agreement.

"**Change in Law**" has the meaning given in Section 2.6(b).

"**Change of Control**" means the occurrence of one or more of the following events:

(a) the Borrower ceases to Beneficially Own 100% of the Equity Interests of the Project Companies on a fully diluted basis (except as permitted by the Financing Documents);

(b) the Sponsor ceases to own, directly or indirectly, at least 20% of the Equity Interests in the Borrower on a fully diluted basis;

(c) the Sponsor ceases to maintain, directly or indirectly, day-to-day operational control of the Borrower; or

(d) Holdings ceases to own, directly, 100% of the Equity Interests in the Borrower on a fully diluted basis;

provided, that no Change of Control will be deemed to have occurred in the case of clauses (b) or (c) above if the Borrower (x) is directly or indirectly controlled by one or more Persons, at least one of which (i) either (A) is a Qualified Operator or (B) has engaged the Sponsor or another Qualified Operator to operate the Projects; and (ii) has a tangible net worth (or has an Affiliate that has a tangible net worth) of at least $750,000,000); (y) obtains a ratings reaffirmation of at least two of the then-current ratings of any then-outstanding First Lien Secured Bond Debt in the capital markets (or, if such First Lien Secured Bond Debt has a rating at such time that is higher than the lowest Investment Grade rating, confirmation by at least two of S&P, Fitch, **Kroll** and Moody's that after such giving effect to the transaction such indebtedness has an Investment Grade rating); provided, that this clause (y) shall only apply if the Borrower has incurred First Lien Secured Bond Debt in the capital markets which requires such ratings reaffirmation, and (z) shall have provided the Administrative Agent with all information reasonably necessary for the Lenders and Issuing Banks to identify the Qualified Operator in accordance with the requirements of the PATRIOT Act (including applicable, and uniformly applied, "know your customer" regulations) and all other applicable anti-money laundering laws and anti-terrorism laws.

"**Climate Bonds Standard and Certification Scheme**" means a labelling scheme for bonds, loans and other debt instruments under the Climate Bonds Standard V~~2.1~~3.0, published by the Climate Bonds Initiative and as in effect on the Closing Date.

"**Closing Date**" has the meaning given in Section 3.1.

"**Closing Date Credit Document**" means any Credit Document to be entered into on the Closing

Date.

"**Collateral**" has the meaning given in the Intercreditor Agreement.

"**Collateral Agents**" has the meaning given in the Intercreditor Agreement.

"**Commitments**" means, with respect to each Lender, such Lender's Term Loan Commitment, ~~Revolving LC Commitment, PPA LC Commitment, DSR~~ LC Commitment and ~~Incremental Term Loan Commitment and~~ with respect to all Lenders, the Total Term Loan Commitment~~,~~ and the Total ~~Revolving~~ LC Commitment~~, the Total PPA LC Commitment, the Total DSR LC Commitment and the total Incremental Term Loan Commitments~~.

"**Commodity Exchange Act**" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"**Communications**" has the meaning given in Section 11.23(a).

"**Confirmation of Interest Period Selection**" has the meaning given in Section 2.1(e)(iii)(B).

"**Consent**" means (a) the consents to collateral assignment entered into on the Closing Date pursuant to Section 3.1(y) and (b) the consents to collateral assignment entered into after the Closing Date from the counterparties to all Major Project Contracts, in each case, to the extent required by the Credit Documents and in substantially the form of Exhibit E, with such changes as are reasonably acceptable to Administrative Agent.

"**Coordinating Lead Arrangers**" means MUFG Union Bank, N.A., **BNP Paribas, CoBank, ACB, Coöperatieve Rabobank, U.A., New York Branch, ING Capital LLC,** Mizuho Bank, Ltd., National Bank of Canada, Sumitomo Mitsui Banking Corporation, ~~SunTrust Robinson Humphrey~~**Truist Securities**, Inc., Crédit Agricole Corporate and Investment Bank~~,~~ and Natixis, New York Branch.

"**Covered Entity**" means any of the following:

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

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

§ 47.3(b); or

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

§ 382.2(b).

"**Covered Party**" has the meaning given in Section 11.28.

"**Credit Document**" means (a) the First Lien Common Terms Agreement, (b) this Agreement,

(c) the First Lien Collateral Documents, (d) the other financing and security agreements, documents and instruments delivered in connection with this Agreement (excluding, for the avoidance of doubt, (A) any Permitted Interest Rate Agreements and any Permitted Commodity Hedge Agreements and (B) any Second Lien Documents (other than the Intercreditor Agreement and the Depositary Agreement)), and (e) each other document designated as a Credit Document by the Borrower and the Administrative Agent.

"**Credit Event**" means the making or continuation of Term Loans in accordance with Section 2.1 or the issuance, amendment, renewal or extension of a Letter of Credit.

"**CTA Default**" has the meaning given in the First Lien Common Terms Agreement.

"**CTA Event of Default**" has the meaning given in the First Lien Common Terms Agreement.

"Daily Simple SOFR" means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent (which shall be substantially consistent with market practice for U.S. dollar-denominated broadly syndicated credit facilities and administratively feasible for the Administrative Agent) in accordance with the conventions for this rate recommended by the Relevant Governmental Body for determining "Daily Simple SOFR"; provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

"**Debt Service**" has the meaning given in the First Lien Common Terms Agreement.

"**Debt Service Coverage Ratio**" has the meaning given in the First Lien Common Terms Agreement.

"**Debt Service Reserve Account**" has the meaning given in the Depositary Agreement.

"**Debt Service Reserve Requirement**" means, as of any date, an amount equal to the amount of interest and commitment fees, and required amortization payments in respect of the Term Loans (net of any ordinary course hedge payments to be made under the Permitted Interest Rate Agreements with respect to the Term Loans) reasonably anticipated to be payable over the next six-month period (other than the final principal payment of the Loans on the final Maturity Date and excluding, for the avoidance of doubt, any principal required to be repaid pursuant to Section 2.1(h)(iii)).

"**Default**" means any event that is, or with the passage of time or the giving of notice or both, would be, an Event of Default.

"**Default Rate**" has the meaning given in Section 2.4(c).

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

"**Defaulting Lender**" means, subject to Section 2.4(g)(vi), any Lender that (a) has failed to

(i) fund all or any portion of its Loans within two Banking Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two Banking Days of the date when due, (b) has become the subject of a Bail-In Action, (c) has notified Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (d) has failed, within three Banking Days after written request by the Administrative Agent or Borrower, to confirm in writing to the Administrative Agent and Borrower that it shall comply with its prospective funding obligations hereunder; provided, that such Lender shall cease to be a Defaulting Lender pursuant to this clause (d) upon receipt of such written confirmation by the Administrative Agent and Borrower, or (e) has, or has a direct or indirect parent company that has, other than via an Undisclosed Administration, (i) become the subject of a proceeding under any Bankruptcy Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal or national regulatory authority acting in such a capacity; provided, that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (e) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.4(g)(vi) upon delivery of written notice of such determination to Borrower and each Lender).

"**Depositary Accounts**" has the meaning given in the Depositary Agreement.

"**Depositary Agent**" means MUFG Union Bank, N.A., not in its individual capacity but solely as depositary agent, bank and securities intermediary under the Depositary Agreement and its permitted successors and assigns.

"**Depositary Agreement**" has the meaning given in the Intercreditor Agreement and is substantially in the form of Exhibit D-2.

"**Depositary and Collateral Agency Fee Letter**" has the meaning given in Section 2.3(a).

"**Discharge of First Lien Obligations**" has the meaning given in the Intercreditor Agreement.

"**Disqualified Institutions**" means (a) those Persons identified by the Borrower or the Sponsor to the Administrative Agent in writing prior to the Closing Date (and such Persons' Affiliates clearly identifiable as such solely on the basis of their names (other than an Affiliate that is a Bona Fide Debt Fund)), (b) competitors of any Obligor separately identified by the Borrower or the Sponsor to the Administrative Agent in writing from time to time and (c) any Affiliate of any competitor described in clause (b) that is identified by the Borrower or the Sponsor to the Administrative Agent in writing from time to time or clearly identifiable solely by name as an Affiliate of such Person, other than an Affiliate of such Person that is a Bona Fide Debt Fund; provided, that no updates to the Disqualified Institution list shall be deemed to retroactively disqualify any parties that have previously acquired an assignment or participation in respect of the Loans or Commitments from continuing to hold or vote such previously acquired assignments and participations on the terms set forth herein for Lenders that are not Disqualified Institutions. Any supplement to the list of Disqualified Institutions pursuant to clause (b) or (c) above shall be made by the Borrower to the Administrative Agent in writing (including by email) and such supplement shall take effect three Banking Days after such notice is received by the Administrative Agent. The list of Disqualified Institutions shall be made available to any Lender, any Participant, prospective Lender or prospective Participant upon request to the Administrative Agent, subject to customary confidentiality requirements.

"**Division**" means the division of a limited liability company into two or more limited liability companies pursuant to a "plan of division" or similar method within the meaning of the Delaware Limited Liability Company Act.

"**Drawing Payment**" means any payment by an Issuing Bank honoring a drawing under a Letter of Credit.

"**DSR Issuing Bank**" means each Lender listed on Schedule 2.2(a) holding ~~DSR~~ LC Commitments and each other Lender designated as DSR Issuing Bank pursuant to Section ~~2.2(g)~~2.2(g), in each case in its capacity as an issuer of any DSR Letter of Credit hereunder, and its successors in such capacity pursuant to Section 2.2(i). A DSR Issuing Bank may, in its discretion, arrange for any DSR Letter of Credit to be issued by an Affiliate of such DSR Issuing Bank, in which case the term "DSR Issuing Bank" shall include any such Affiliate with respect to **the** DSR Letters of Credit issued by such Affiliate.

"**DSR LC ~~Commitments~~Fee**" has the meaning given in ~~the Recitals~~Section 2.3(c)(ii).

~~"DSR LC Exposure" means, with respect to any DSR Issuing Bank, at any time the sum of a) the aggregate principal amount of all DSR LC Loans owing to such DSR Issuing Bank in its capacity as a Lender, b) any unreimbursed drawing under any DSR Letter of Credit issued by such DSR Issuing Bank that have not yet been reimbursed at such time from the proceeds of DSR LC Loans or otherwise, and c) the Stated Amount of all DSR Letters of Credit issued by such DSR Issuing Bank outstanding at such time.~~

~~"DSR LC Facility" has the meaning given in the Recitals.~~

"**DSR ~~LC Fee~~Letter of Credit**" has the meaning given in Section ~~2.3(f)~~2.2(a).

~~"DSR LC Lender" has the meaning given in Section 2.2(b).~~

~~"DSR LC Loan(s)" has the meaning given in Section 2.2(b)(ii)(A).~~

~~"DSR LC Note" has the meaning given in Section 2.1(f).~~

"**DSR LC Reimbursement Obligation**" means the obligation of the Borrower to repay any Drawing Payments relating to any DSR Letter of Credit.

"Early Opt-in Effective Date" means, with respect to any Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt- in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.

~~"DSR Letter of Credit" has the meaning given in Section 2.2(b).~~

~~"DSR Maturity Date" means June 9, 2027.~~

"**Early Opt-in Election**" means the occurrence of:

~~(a) (i) a determination by the Administrative Agent or (ii) a notification by the Required Lenders to the Administrative Agent (with a copy to the Borrower) that the Required Lenders have determined that U.S. Dollar-denominated syndicated credit facilities being executed at such time, or that include language similar to that contained in Section 2.6(a) are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace the LIBO Rate; and~~

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

(b) ~~(i)~~ the joint election by the Administrative Agent ~~or (ii) the election by the Required Lenders, in each case, with the consent of the Borrower (not to be unreasonably withheld, conditioned or delayed), to declare that an Early Opt-in Election has occurred~~and the Borrower to trigger a fallback from LIBO Rate and the provision~~, as applicable,~~ by the Administrative Agent of written notice of such election to the ~~Borrower and the Lenders or by the Required Lenders of written notice of such election to the Administrative Agent~~.

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

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

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

"**Electronic Transmission**" has the meaning given in Section 11.1.

"**Eligible Assignee**" means a commercial bank, financial institution, insurance company, investment or mutual fund or other entity that is an "accredited investor" (as defined in Regulation D under the Securities Act) and which extends credit or buys loans in the ordinary course of business.

"**Eminent Domain Proceeds**" has the meaning given in the Depositary Agreement.

"**Environmental Consultant**" means West Yost Associates.

"**Environmental Law**" has the meaning given in the Intercreditor Agreement.

"**Equity Interests**" has the meaning given in the Intercreditor Agreement.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended.

"**ERISA Affiliate**" means any corporation or trade or business (whether or not incorporated) under common control with any of the Borrower or Guarantors within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

"**ERISA Event**" means (a) the occurrence of any "reportable event" as defined in Section 4043(c) of ERISA or the regulations issued thereunder, other than those events as to which the thirty-day notice period has been waived, with respect to an ERISA Plan, (b) any failure by any ERISA Plan to satisfy the minimum funding standard (within the meaning of Section 412 or 430 of the Code or Section 302 of ERISA) applicable to such ERISA Plan, in each case, whether or not waived, (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any ERISA Plan, the failure to make by its due date a required installment under Section 430(j) of the Code with respect to any ERISA Plan or the failure to make any required contribution to a Multiemployer Plan, (d) a determination that any ERISA Plan is, or is expected to be, in "at risk" status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code), (e) the incurrence by the Borrower or any Guarantor or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any ERISA Plan, (f) the receipt by the Borrower or any Guarantor or any ERISA Affiliate from the Pension Benefit Guaranty Corporation or a plan administrator of any notice relating to an intention to terminate any ERISA Plan or to appoint a trustee to administer any ERISA Plan under Section 4042 of ERISA, or the occurrence of any event or condition which could reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any ERISA Plan, (g) the incurrence by the Borrower or any Guarantor or any ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any ERISA Plan or Multiemployer Plan, (h) the receipt by the Borrower or any Guarantor or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any Guarantor or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent, or in endangered or critical status (within the meaning of Section 432 of the Code or Section 305 of ERISA), or (i) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could reasonably be expected to result in liability to the Borrower or any Guarantor.

"**ERISA Plan**" means any employee pension benefit plan (other than a Multiemployer Plan) that is maintained or is contributed to by the Borrower or any Guarantor or any ERISA Affiliate and is covered by Title IV of ERISA or is subject to minimum funding standards under Section 412 of the Code or Section 302 of ERISA and in respect of which the Borrower, the Guarantors or any ERISA Affiliate is (or if such plan were terminated the Borrower or any Guarantor would, under Section 4069 of ERISA, be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Erroneous Payment" has the meaning assigned to it in Section 9.21(a).

"Erroneous Payment Deficiency Assignment" has the meaning assigned to it in Section 9.21(d)(i).

"Erroneous Payment Impacted Class" has the meaning assigned to it in Section 9.21(d)(i).

"Erroneous Payment Return Deficiency" has the meaning assigned to it in Section 9.21(d)(i).

"Erroneous Payment Subrogation Rights" has the meaning assigned to it in Section 9.21(e).

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

"**Event of Default**" has the meaning given in Section 7.1.

"**Event of Eminent Domain**" has the meaning given in the Depositary Agreement.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, or any successor statute or statutes thereto.

"**Excluded Taxes**" means any of the following Taxes imposed on or with respect to a Lender Party or required to be withheld or deducted from a payment to a Lender Party, (a) Taxes imposed on or measured by net income (however denominated), franchise and branch profits taxes, which include Taxes imposed on or measured by the net income, net profits or capital of such Lender Party by any jurisdiction or any political subdivision or taxing authority thereof or therein as a result of a connection between such Lender Party and such jurisdiction or political subdivision, unless such connection results solely from such Lender Party's executing, delivering or performing its obligations or receiving a payment under, or enforcing, this Agreement or any Note, (b) any withholding Tax imposed by the United States that is in effect and would apply to amounts payable hereunder to such Lender Party at the time such Lender Party becomes a party to this Agreement (other than pursuant to an assignment request by Borrower under Section 2.8(b)) or at the time such Lender Party designates a new Lending Office (except to the extent that such Lender or other Lender Party (or its assignor, if any) was entitled, at the time of the designation of a new Lending Office (or assignment) to receive additional amounts from Borrower with respect to such withholding tax pursuant to Section 2.4(d)(i)), (c) Taxes attributable to such Lender Party's failure to comply with Section 2.4(f), and (d) any withholding taxes imposed under FATCA.

"**Exempt Wholesale Generator**" means an "exempt wholesale generator" under PUHCA.

"Existing Letter of Credit" has the meaning given in Section 2.2(b).

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

"FCA" has the meaning given in Section 2.6(a)(i).

"**FCPA**" has the meaning given in Section 4.23(b).

"**Federal Funds Rate**" means, for any day, the rate *per annum* equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System on such day, as published by the Federal Reserve Bank of New York on the Banking Day next succeeding such day; provided, that (a) if such day is not a Banking Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Banking Day as so published on the next succeeding Banking Day, and (b) if no such rate is so published on such next succeeding Banking Day, the Federal Funds Rate for such day shall be the average rate charged to Administrative Agent on such day on such transactions as determined by Administrative Agent.

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

"**FERC**" means the Federal Energy Regulatory Commission and its successors.

"**First Lien Collateral Agent**" has the meaning given in the preamble hereto.

"**First Lien Collateral Documents**" has the meaning given in the Intercreditor Agreement.

"**First Lien Common Terms Agreement**" means the First Lien Common Terms Agreement, to be dated the Closing Date (as amended, amended and restated, supplemented or otherwise modified from time to time), among the Obligors, the First Lien Secured Debt Representative and the First Lien Collateral Agent.

"**First Lien Secured Debt Representative**" has the meaning given in the Intercreditor Agreement.

"**First Lien Secured Parties**" has the meaning given in the Intercreditor Agreement.

"**Fitch**" has the meaning given in the First Lien Common Terms Agreement.

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

"**FPA**" means the Federal Power Act and rules and regulations promulgated by FERC thereunder.

"**Funds Flow Memorandum**" means the memorandum, dated as of June 9, 2020, delivered by Borrower to the Administrative Agent and the Depositary Agent with respect to the disbursement of funds on the Closing Date, attached to a letter of direction executed by the Borrower.

"**Geysers Company**" has the meaning given in the preamble hereto.

"**Governmental Authority**" has the meaning given in the Intercreditor Agreement. "**Governmental Rule**" has the meaning given in the Intercreditor Agreement.

"**Green Financing Framework**" means the Borrower's Green Financing Framework, dated as of June 2020.

"**Green Loan Coordinators**" means Crédit Agricole Corporate and Investment Bank, Natixis, New York Branch, each acting in its capacity as a Green Loan Coordinator under this Agreement.

"**Guarantor(s)**" has the meaning given in the preamble hereto.

"**Hazardous Substances**" means substances and materials regulated as hazardous, toxic, pollutants, or contaminants under Environmental Law.

"**Hedge Bank**" means (a) any Person that was, at the time of entering into an Interest Rate Agreement, an Agent, Coordinating Lead Arranger, Joint Lead Arranger, Term Lender, ~~**Revolving**~~ LC Lender, or any Affiliate thereof or (b) any other Person (other than any Affiliate of an Obligor) that was, at the time of entering into an Interest Rate Agreement, a commercial bank, investment bank, swap dealer, insurance company or any other financial institution, or any Affiliate thereof, whose long-term senior unsecured debt is rated at least BBB+ by S&P and Baa1 by Moody's.

"**Hedge Breaking Fee**" means all costs, fees and expenses incurred by any Obligor in connection with any unwinding, breach or termination of any Permitted Commodity Hedge Agreements and Permitted Interest Rate Agreements

"**Holdings**" has the meaning given in the preamble hereto.

~~**"Incremental Term Loan Cap" means, at any time after the Closing Date, an amount equal to (a) (i) $1,000,000,000 multiplied by (ii) a fraction (A) the numerator of which is equal to the then-current principal balance of the Term Loans and (B) the denominator of which is the Term Loans incurred on the Closing Date minus (b) the aggregate principal amount of all Term Loans and Incremental Term Loans outstanding at such time.**~~

~~"Incremental Term Loan Commitment" has the meaning given in Section 2.1(b)(i).~~

~~"Incremental Term Loan Facility" has the meaning given in Section 2.1(b)(i).~~

~~"Incremental Term Loan Lenders" means the lender providing Incremental Term Loan Commitments pursuant to Section 2.1(b)(i).~~

"~~Incremental Term Loans~~IBA" has the meaning given in Section ~~2.1(b)(i)~~2.6(a)(i).

"**Indebtedness**" has the meaning given in the Intercreditor Agreement.

"**Indemnified Taxes**" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Obligors under any Credit Document and (b) to the extent not otherwise described in (a), Other Taxes.

"**Indemnitee**" has the meaning given in Section 11.13.

"**Independent Consultants**" means, collectively, the Market Consultant, the Environmental Consultant, the Insurance Consultant, and the Independent Engineer.

"**Independent Engineer**" has the meaning given in the First Lien Common Terms Agreement.

"**Insurance Consultant**" means Aon Risk Consultants, Inc.

"**Intellectual Property Rights**" has the meaning given in Section 4.21.

"**Intercreditor Agreement**" has the meaning given in the First Lien Common Terms Agreement and is substantially in the form of Exhibit D-3.

"**Interest Period**" means, with respect to any LIBOR Loan, the time period selected by Borrower or provided for pursuant this Agreement which commences on the first day of such Loan, or the effective date of any conversion (as the case may be) and ends on the last day of such time period.

"**Interest Rate**" means the Base Rate or the LIBO Rate, as the case may be.

"**Interest Rate Agreement**" has the meaning given in the Intercreditor Agreement.

"**Interest Rate Determination Date**" means, with respect to any Interest Period, the second Banking Day prior to the first day of such Interest Period.

"**Interpolated Rate**" means, in relation to the LIBO Rate, the rate which results from interpolating on a linear basis between: (a) the applicable LIBO Rate for the longest period (for which that LIBO Rate is available) which is less than the Interest Period of the Loans; and (b) the applicable LIBO Rate for the shortest period (for which that LIBO Rate is available) which exceeds the Interest Period of the Loans, each as of approximately 11:00 a.m. (London, England time) on the Interest Rate Determination Date prior to the commencement of such Interest Period of the Loans.

"**Issuing Bank**" means, collectively, ~~the~~each DSR Issuing Bank~~, PPA Issuing Bank,~~ and Revolving Issuing Bank, as applicable.

"Issuing Bank Limit" means the limitation on the obligation of each Issuing Bank to issue Letters of Credit as identified in the column "Issuing Bank Limit" on Schedule 2.2(a) with respect to each Issuing bank.

"**Joint Lead Arrangers**" means ~~Cobank, ACB, Coöperatieve Rabobank, U.A.~~**Bank of China**, New York Branch ~~and ING Capital LLC~~, **Bank of Montreal, Barings, LLC, HSBC Bank USA, N.A., and Kookmin Bank, New York Branch**, each acting in its capacity as a Joint Lead Arranger under this Agreement.

"**LC Commitments**" has the meaning given in the Recitals.

~~"LC Exposure" means, collectively, the Revolving LC Exposure, the PPA LC Exposure, and the DSR LC Exposure.~~

"LC Exposure" means, with respect to any Issuing Bank, at any time the sum of (a) the aggregate amount of all LC Loans made by such Issuing Bank and in which no other LC Lender is required to participate that have not yet been repaid at such time, (b) any unreimbursed drawing under any Letter of Credit issued by such Issuing Bank that have not yet been reimbursed at such time from the proceeds of LC Loans or otherwise, and (c) the Stated Amount of all Letters of Credit issued by such Issuing Bank outstanding at such time.

"LC Facility" has the meaning given in the Recitals.

"LC Fees" means, collectively, the **DSR LC Fees and the** Revolving LC Fees~~, the DSR LC Fees, and the PPA LC Fees~~.

"**LC** ~~Lenders~~**Lender**" has the meaning given in Section ~~2.2(c)~~**2.2(a)**.

"LC Loans" ~~means, collectively, the Revolving LC Loans, the DSR LC Loans, and the PPA LC Loans~~**has the meaning given in the Recitals**.

"LC Maturity Date" means~~, the Revolving Maturity Date, the DSR Maturity Date and the PPA Maturity Date, as applicable~~ **November 9, 2028**.

"LC Note" has the meaning given in Section 2.1(f).

"**Legal Requirements**" has the meaning given in the Intercreditor Agreement.

~~"Lender Joinder Agreement" has the meaning given in Section 2.1(b)(iii).~~

"**Lender Parties**" means the Administrative Agent, Coordinating Lead Arrangers, Joint Lead Arrangers, the First Lien Collateral Agent, the Depositary Agent, any Issuing Bank, each Lender and each of their respective successors, transferees and assigns; provided, that no Affiliate of Sponsor shall be a "Lender Party" hereunder or under any other Credit Document.

"**Lender(s)**" has the meaning given in the preamble hereto.

"**Lending Office**" means, with respect to any Lender, the office designated in writing as such to Administrative Agent and Borrower from time to time.

"**Letter of Credit**" means a Revolving Letter of Credit~~,~~ **or** DSR ~~Letter of Credit, or the PPA~~ Letter of Credit, as applicable.

"**LIBO Rate**" means~~,~~ with respect to ~~any LIBOR Loan for any~~**each day during each** Interest Period **pertaining to a LIBOR Loan**, the rate per annum ~~determined by~~**equal to the London Interbank Offered Rate (or a comparable or successor rate which rate is approved by the** Administrative Agent**), as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time)** at approximately 11:00 a.m. (London time) on the ~~Interest Rate Determination Date by reference to London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for Dollars for a period equal in length to such Interest Period as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate) (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or, if the agreed page is replaced or service ceased to be available, Administrative Agent may specify another page or service displaying the appropriate rate after consultation with Borrower and the Lenders)~~**date that is two (2) Business Days prior to the beginning of the relevant Interest Period for deposits in Dollars** for a period equal to such Interest Period; provided~~,~~ that ~~(a),~~ to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, the "LIBO Rate" shall be the interest rate per annum determined by **the** Administrative Agent ~~to be the average of the rates per annum at which deposits in Dollars are offered for such Interest Period to major banks in the London interbank market in London, England by Administrative Agent at approximately 11:00 a.m. (London time) on the Interest Rate Determination Date or, in the case of the borrowing of Term Loans on the Closing Date, the Interpolated Rate and (b) in no event shall the LIBO Rate~~**through the use of straight-line interpolation by reference to two such rates, one of which shall be determined as if the length of the period of such deposits were the period of time for which the rate for such deposits are available is the period next shorter than the length of such Interest Period and the other of which shall be determined as if the period of time for which the rate for such deposits are available is the period next longer than the length of such Interest Period; provided, further, that at no time shall "LIBOR"** be less than ~~zero~~**0.00%**~~:~~

"**LIBOR LC Loan**" means an LC Loan that shall bear interest at the rate set forth in Section 2.1(c)(i)(D).

"**LIBOR Loans**" means the Loans, the interest in respect of which is determined by reference to the LIBO Rate.

"**LIBOR Term Loan**" means a Term Loan that bears interest as provided in Section 2.1(c)(i)(C).

"**Lien**" has the meaning given in the Intercreditor Agreement.

"**Liquidation Costs**" has the meaning given in Section 2.7.

"**Loan Transactions**" has the meaning given in Section 11.22.

"**Loans**" means the Term Loans and LC Loans.

"**Major Maintenance**" has the meaning given in the Depositary Agreement.

"**Major Maintenance Reserve Account**" has the meaning given in the Depositary Agreement.

"**Major Project Participants**" means any counterparty to a Major Project Contract.

"**Mandatory Prepayment**" has the meaning given in Section 2.1(h)(iii).

"**Market Consultant**" means PA Consulting Group, Inc.

"**Maturity Dates** " means, collectively, the Term Maturity Date~~,~~ **and** the Revolving Maturity Date~~, the PPA Maturity Date and the DSR Maturity Date~~.

"**Minimum Notice Period**" means (a) at least three Banking Days before the date of any Borrowing, continuation or conversion of a Type of Loan resulting in whole or in part in one or more LIBOR Term Loans, and (b) at least one Banking Day before any Borrowing or conversion of a Type of Loan resulting in whole or in part in one or more Base Rate Term Loans.

"**Moody's**" has the meaning given in the Intercreditor Agreement.

"**Multiemployer Plan**" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA subject to the provisions of Title IV of ERISA and in respect of which the Borrower and Guarantors or any ERISA Affiliate is an "employer" as defined in Section 3(5) of ERISA.

"**Non-Advancing Bank**" has the meaning given in Section 9.12.

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

"**Non-Recourse Persons**" has the meaning given in Article 8.

"**Non-U.S. Lender Party**" means each Lender or Issuing Bank, as applicable, that is not a U.S. Person.

"**Notes**" means, collectively, any Term Notes and any ~~**Revolving**~~ LC Notes.

"**Notice of Borrowing**" has the meaning given in Section 2.1(a)(ii).

"**Notice of Conversion of Loan Type**" has the meaning given in Section 2.1(g).

"**Notice of LC Activity**" means a request by Borrower in accordance with the terms of Section 2.2 and substantially in the form of Exhibit C-4.

"**O&M Costs**" has the meaning given in the First Lien Common Terms Agreement.

"**Obligors**" has the meaning given in the Intercreditor Agreement.

"Omnibus Amendment" has the meaning given in the First Lien Common Terms Agreement.

"Omnibus Amendment Date" has the meaning given in the First Lien Common Terms Agreement.

"Omnibus Amendment Date Funds Flow Memorandum" means the memorandum, dated as of November 9, 2021, delivered by Borrower to the Administrative Agent and the Depositary Agent with respect to the disbursement of funds on the Omnibus Amendment Date, attached to a letter of direction executed by the Borrower.

"**Optional Prepayment**" has the meaning given in Section 2.1(h)(ii).

"**Other Taxes**" means any present or future stamp, recording or documentary taxes and any other excise or property taxes, charges or similar levies (and interest, fines, penalties and additions related thereto) (not including income, branch profits or franchise taxes) that arise from any payment made hereunder or under any other Credit Document or from the execution or delivery or otherwise with respect to this Agreement or any other Credit Document.

"**Participant**" has the meaning given in Section 9.13.

"**Participant Register**" has the meaning given in Section 9.13.

"**PATRIOT Act**" has the meaning given in Section 11.21.

"**Payment Period**" means the three-month period commencing on a Quarterly Date and ending on the day prior to the next Quarterly Date.

"**Permit**" has the meaning given in the Intercreditor Agreement.

"**Permitted Commodity Hedge Agreement**" has the meaning given in the Intercreditor Agreement.

"**Permitted Debt**" has the meaning given in the First Lien Common Terms Agreement.

"**Permitted Interest Rate Agreement**" has the meaning given in the First Lien Common Terms Agreement.

"**Permitted Investments**" has the meaning given in the First Lien Common Terms Agreement.

"**Permitted Liens**" has the meaning given in the First Lien Common Terms Agreement.

"**Person**" has the meaning given in the Intercreditor Agreement.

"**Platform**" has the meaning given in Section 11.23(b).

"**PPA**" has the meaning given in the First Lien Common Terms Agreement.

~~"PPA Issuing Bank" means Coöperatieve Rabobank U.A., New York Branch and each other Lender designated as PPA Issuing Bank pursuant to Section 2.2(g), in each case in its capacity as an issuer of any PPA Letter of Credit hereunder, and its successors in such capacity pursuant to Section 2.2(i). A PPA Issuing Bank may, in its discretion, arrange for any PPA Letter of Credit to be issued by an Affiliate of such PPA Issuing Bank, in which case the term "PPA Issuing Bank" shall include any such Affiliate with respect to PPA Letters of Credit issued by such Affiliate.~~

~~"PPA LC Commitments" has the meaning given in the Recitals.~~

~~"PPA LC Exposure" means, with respect to the PPA Issuing Bank, at any time the sum of a) the aggregate principal amount of all PPA LC Loans owing the PPA Issuing Bank in its capacity as a Lender, b) any unreimbursed drawing under any PPA Letter of Credit issued by such PPA Issuing Bank that have not yet been reimbursed at such time from the proceeds of PPA LC Loans or otherwise, and c) the Stated Amount of all PPA Letters of Credit issued by such PPA Issuing Bank outstanding at such time.~~

~~"PPA LC Facility" has the meaning given in the Recitals.~~

~~"PPA LC Fee" has the meaning given in Section 2.3(h).~~

~~"PPA LC Lender" has the meaning given in Section 2.2(c).~~

~~"PPA LC Loan(s)" has the meaning given in the Section 2.2(c)(ii)(A).~~

~~"PPA LC Note" has the meaning given in Section 2.1(f).~~

~~"PPA LC Reimbursement Obligation" means the obligation of the Borrower to repay any Drawing Payments relating to any PPA Letter of Credit.~~

~~"PPA Letter of Credit" has the meaning given in Section 2.2(c).~~

~~"PPA Maturity Date" means June 9, 2027.~~

"**Principal Repayment Dates**" means (a) each Quarterly Date, and (b) the Maturity Date.

"**Project Companies**" means, collectively, Calistoga Holdings, LLC, a Delaware limited liability company, Geysers Company, LLC, a Delaware limited liability company, and Wild Horse Geothermal, LLC, a Delaware limited liability company, any other Person owning a Project, and their respective successors and assigns.

"**Project Contract Modification**" has the meaning given in Section 6.2(a).

"**Project Revenue**" has the meaning given in the Depositary Agreement.

"**Projected Notional Principal Amount**" means, with respect to any date, the aggregate principal amount of the Term Loans and Additional Ratio Indebtedness (excluding any Additional Ratio Indebtedness that bears interest at a fixed rate) that is projected to be outstanding through the Term Maturity Date on such date, as set forth in the Base Case Projections or in any projections delivered by the Borrower in connection with any ~~Incremental Term Loan Facility or~~ such Additional Ratio Indebtedness, after giving effect to any prepayments made since the delivery of the applicable projections.

"**Projects**" has the meaning give in the Intercreditor Agreement.

"**Proportionate Share**" means (a) in the context of voting in matters requiring the vote of all or a percentage of the Lenders and indemnification obligations of the Lenders under Section 9.5, with respect to each Lender at any time, a percentage equal to the quotient of (i) the sum of (A) the percentage interest of such Lender in the aggregate amount of all Commitments~~(~~ **and Loans (without duplication), and** as may be amended pursuant to Article 9), *multiplied by* the aggregate amount of all Commitments **and Loans (without duplication)** *plus* (B) (1) prior to the termination of the transactions under the Interest Rate Agreement, zero, and (2) thereafter, the percentage interest of such Lender (or its Affiliate) in the Interest Rate Agreements (as communicated in a written notice by such Lender to the Administrative Agent), *multiplied by* the Hedge Breaking Fees actually payable (and not on a "marked to market" basis) at such time (reasonably determined upon the close of the applicable voting period in accordance with the terms of such Interest Rate Agreement), *divided by* (ii) the sum of (A) the aggregate amount of all Commitments *plus* (B) (1) prior to the termination of the transactions under the Interest Rate Agreement, zero, and (2) thereafter, the Hedge Breaking Fees actually payable (and not on a "marked to market" basis) at such time (reasonably determined upon the close of the applicable voting period in accordance with the terms of such Interest Rate Agreement), and (b) with respect to each Lender at any time in the context of funding Loans, receiving payments, or any purpose under this Agreement other than as set forth in clause (a) above, **(i) as to any Term Lender,** the percentage participation of such **Term** Lender in the Total Term Loan Commitment, ~~Total Revolving LC Commitment, Total PPA LC Commitment or Total DSR LC Commitment, respectively,~~ as set forth on Schedule 2.2(a) (as may be amended pursuant to Article 9)~~.~~**, (ii) as to any LC Lender, a percentage equal to (1)(A) such LC Lender's LC Commitment as set forth on Schedule 2.2(a) (as may be amended pursuant to Article 9) less (B) its LC Exposure divided by (2)(A) the Total LC Commitment less (B) the total LC Exposure of all LC Lenders and (iii) as to any Issuing Bank at any time, the percentage that such Issuing Bank's Issuing Bank Limit less the stated amount of Letters of Credit issued by such Issuing Bank then constitutes of the Total LC Commitments for all Issuing Banks less the total stated amount of Letters of Credit issued by all Issuing Banks.**

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

"**PUHCA**" has the meaning given in the First Lien Common Terms Agreement.

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

"**QFC Credit Support**" has the meaning given in Section 11.28.

"**Qualified ECP Guarantor**" means, in respect of any Swap Obligation, each Obligor that has total assets exceeding $10,000,000 at the time the relevant guaranty or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another Person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"**Qualified Operator**" means any Person that has substantial (prior or current) experience as an owner, operator, or manager of power generation facilities totaling at least 1000 MW; provided, that, if the ratings reaffirmation requirement in clause (y) of the definition of "Change of Control" is not applicable as provided in the proviso therein, "Qualified Operator" shall mean any Person that either (x) has substantial (prior or current) experience as an owner, operator, or manager of geothermal facilities totaling at least 100 MW or (y) has engaged at least half of the individuals who, immediately prior to the occurrence of the event that would otherwise constitute a Change of Control, held the title of "Area Operator" in connection with the operation of the Projects.

"**Quarterly Date**" means the last Banking Day of each December, March, June, and September.

"**Recipient**" means any Lender Party.

"**Register**" has the meaning given in Section 2.1(i).

"**Regulation D**" means Regulation D of the Board of Governors of the Federal Reserve System (or any successor).

"**Related Parties**" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's Affiliates.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing in the environment.

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

"**Replacement Major Project Contract**" has the meaning given in the First Lien Common Terms Agreement.

"**Required First Lien Secured Parties**" has the meaning given in the Intercreditor Agreement.

"**Required Lenders**" means, at any time, Lenders having Proportionate Shares which in the aggregate exceed 50%. A Defaulting Lender shall be disregarded in determining Required Lenders at any time.

"**Reserve Consultant**" means GeothermEx, Inc.

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

"**Responsible Officer**" has the meaning given in the First Lien Common Terms Agreement.

"**Revenue Account**" has the meaning given in the Depositary Agreement. **"Revolving LC Fee" has the meaning given in Section 2.3(c)(i).**

"**Revolving Issuing Bank**" means Natixis, New York Branch**,** in its capacity as an issuer of any Revolving Letter of Credit hereunder, and its successors in such capacity pursuant to Section ~~2.2(i)~~2.2(i). A Revolving Issuing Bank may, in its discretion, arrange for any Revolving Letter of Credit to be issued by an Affiliate of such Revolving Issuing Bank, in which case the term "Revolving Issuing Bank" shall include any such Affiliate with respect to Revolving Letters of Credit issued by such Affiliate.

~~**"Revolving LC Commitments" has the meaning given in the Recitals.**~~

~~**"Revolving LC Exposure" means, with respect to any Revolving Issuing Bank, at any time the sum of a) the aggregate principal amount of all Revolving LC Loans owing to such Revolving Issuing Bank in its capacity as a Lender, b) any unreimbursed drawing under any Revolving Letter of Credit issued by such Revolving Issuing Bank that have not yet been reimbursed at such time from the proceeds of Revolving LC Loans or otherwise, and c) the Stated Amount of all Revolving Letters of Credit issued by such Revolving Issuing Bank outstanding at such time.**~~

~~**"Revolving LC Facility" has the meaning given in the Recitals.**~~

~~**"Revolving LC Fee" has the meaning given in Section 2.3(c).**~~

"**Revolving ~~LC Lender~~Letter of Credit**" has the meaning given in Section 2.2(a).

~~**"Revolving LC Loan(s)" has the meaning given in the Recitals.**~~

"**Revolving ~~LC Note~~Letter of Credit Fronting Fee**" has the meaning given in Section ~~2.1(f)~~2.3(d).

"**Revolving LC Reimbursement Obligation**" means the obligation of the Borrower to repay any Drawing Payments relating to any Revolving Letter of Credit.

~~**"Revolving Letter of Credit" has the meaning given in Section 2.2(a).**~~

~~**"Revolving Letter of Credit Fronting Fee" has the meaning given in Section 2.3(d).**~~

"**Revolving Maturity Date**" means ~~June~~November 9, ~~2027~~2028.

"**Sanctioned Country**" has the meaning given in Section 4.23(a).

"**Sanctioned Persons**" has the meaning given in Section 4.23(a).

"**Sanctions**" has the meaning given in Section 4.23(a).

"**Second Lien Documents**" has the meaning given in the Intercreditor Agreement.

"**Security Agreement**" means the First Lien Pledge and Security Agreement, dated as of the Closing Date, substantially in the form of Exhibit D-1, among the Obligors and First Lien Collateral Agent.

"Senior Managing Agent" means The Huntington National Bank and National Australia Bank Limited.

"**SOFR**" ~~**with respect to any day**~~ means **a rate per annum equal to** the secured overnight financing rate ~~**published**~~ for such ~~**day**~~**Business Day published** by the Federal Reserve Bank of New York~~**, as the administrator of the benchmark,**~~ (or a successor administrator~~**) on** **of the secured overnight financing rate) on the website of** the Federal Reserve Bank of New ~~**York's Website.**~~**York, currently at http://www.newyorkfed.org (or any successor source for the secured overnight financing rate identified as such by the administrator of the secured overnight financing rate from time to time).**

"**Specified Major Project Contract**" means, at any time, a Material Water Supply Agreement and/ or PPA that is a Major Project Contract at such time.

"**Sponsor**" has the meaning given in the Intercreditor Agreement.

"Stated Amount" means with respect to the Letters of Credit, the total amount available to be drawn thereunder at the time in question in accordance with the terms of the Letters of Credit. The Stated Amount of any Letter of Credit shall be reduced by the amount of Drawing Payments made in respect thereof.

"**Subject Claims**" has the meaning given in Section 11.13.

"**Subsidiary**" has the meaning given in the Intercreditor Agreement.

"**Supported QFC**" has the meaning given in Section 11.28.

"**Swap Obligation**" means any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act.

"**Syndication Agent**" means BNP Paribas, acting in its capacity as a Syndication Agent under this Agreement.

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

"**Template Operating Report**" means an operating report required by Section 5.3(b), in substantially the form of Exhibit G-1.

"**Term Lender**" has the meaning given in Section ~~**2.1(a)(i)**~~**(i)**.

"**Term Loan**" has the meaning given in the Recitals.

"**Term Loan Commitment**" means, at any time with respect to each Lender, such Lender's Proportionate Share of the Total Term Loan Commitment at such time.

"**Term Maturity Date**" means ~~June~~November 9, ~~2027~~2028.

"**Term Note**" has the meaning given in Section 2.1(f).

"**Term SOFR**" means, for the applicable corresponding tenor, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"**Third Amended and Restated Power Purchase and Sale Agreement**" has the meaning given in the First Lien Common Terms Agreement.

"**Total ~~DSR~~ LC Commitment**" has the meaning given in Section ~~2.2(b).~~

~~"Total PPA LC Commitment" has the meaning given in Section 2.2(c).~~

~~"Total Revolving LC Commitment" has the meaning given in Section~~ 2.2(a).

"**Total Term Loan Commitment**" has the meaning given in Section 2.1(a)~~2.1(a)(i)~~(i).

"**Transferee Hedge Provider**" has the meaning given in Section 2.4(g)(v).

"**Transferor Hedge Provider**" has the meaning given in Section 2.4(g)(v).

"**Type**" means the type of Loan, whether a Base Rate Loan or LIBOR Loan.

"**UK Financial Institution**" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended form time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"**UK Resolution Authority**" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

~~"Unadjusted Benchmark Replacement" means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.~~

"**Undisclosed Administration**" means in relation to a Lender or its direct or indirect parent company the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official by a supervisory authority or regulator under or based on the law in the country where such Lender or its direct or indirect parent company is subject to home jurisdiction supervision if applicable law requires that such appointment is not to be publicly disclosed.

"**U.S. Special Resolution Regime**" has the meaning given in Section 11.28.

"**U.S. Tax Compliance Certificates**" has the meaning given in Section 2.4(f)(ii)(B)(3).

"**Wild Horse**" has the meaning given in the preamble hereto.

"**Withdrawal Liability**" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part 1 of Subtitle E of Title IV of ERISA.

"**Write-Down and Conversion Powers**" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

RULES OF INTERPRETATION

1. The singular includes the plural and the plural includes the singular.

2. "or" is not exclusive.

3. A reference to a Governmental Rule includes any amendment or modification to such Governmental Rule, and all regulations, rulings and other Governmental Rules promulgated under such Governmental Rule.

4. A reference to a Person includes its permitted successors, permitted replacements and permitted assigns.

5. Accounting terms have the meanings assigned to them by GAAP, as applied by the accounting entity to which they refer.

6. The words "include", "includes" and "including" are not limiting.

7. A reference in a document to an Article, Section, Exhibit, Schedule, Annex or Appendix is to the Article, Section, Exhibit, Schedule, Annex or Appendix of such document unless otherwise indicated. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed incorporated by reference in such document. In the event of any conflict between the provisions of this Agreement (exclusive of the Exhibits, Schedules, Annexes and Appendices thereto) and any Exhibit, Schedule, Annex or Appendix thereto, the provisions this Agreement shall control.

8. Unless otherwise expressly provided, references to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) means such document, instrument or agreement, or replacement or predecessor thereto, as amended, amended and restated, modified and supplemented from time to time and in effect at any given time.

9. The words "hereof", "herein" and "hereunder" and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.

10. References to "days" means calendar days, unless the term "Banking Days" shall be used. References to a time of day means such time in New York, New York, unless otherwise specified.

11. The time period specified in Section 5.6, shall be extended (a) automatically to account for any period during which any applicable Obligor is unable, after exercising commercially reasonable efforts, to perform its obligations under such Section due to any circumstances existing in connection with the COVID-19 pandemic, or (b) as may otherwise be agreed by the Administrative Agent, acting reasonably.

12. If, at any time after the Closing Date, Moody's or S&P shall change its respective system of classifications, then any Moody's or S&P "rating" referred to herein shall be considered to be at or above a specified level if it is at or above the new rating which most closely corresponds to the specified level under the old rating system.

13. The Credit Documents are the result of negotiations between, and have been reviewed by the Obligors, each Affiliate of each Obligor, Administrative Agent, Coordinating Lead Arrangers, Joint Lead Arrangers, each Lender and their respective counsel. Accordingly, the Credit Documents shall be deemed to be the product of all parties thereto, and no ambiguity shall be construed in favor of or against the Obligors, any Affiliate of the Obligors, Administrative Agent or any Lender solely as a result of any such party having drafted or proposed the ambiguous provision.

14. For all purposes under the Credit Documents, in connection with any Division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

Exhibit B
Common Terms Agreement

[*Attached*]

~~Execution Version~~Final Form
Conformed to Omnibus Amendment

FIRST LIEN COMMON TERMS AGREEMENT

Dated as of June 9, 2020

(as amended by the Omnibus Amendment, dated November 9, 2021)

among

GEYSERS POWER COMPANY, LLC,
as Borrower,

GEYSERS INTERMEDIATE HOLDINGS LLC,
as Holdings,

THE GUARANTORS PARTY HERETO,
as Guarantors,

MUFG UNION BANK, N.A.,
as First Lien Collateral Agent,

and

THE FIRST LIEN SECURED DEBT REPRESENTATIVES PARTY HERETO

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This FIRST LIEN COMMON TERMS AGREEMENT, dated as of June 9, 2020 (this "**Agreement**"), is entered into among GEYSERS POWER COMPANY, LLC, a Delaware limited liability company, as borrower ("**Borrower**"), GEYSERS INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, as Holdings ("**Holdings**"), GEYSERS COMPANY, LLC, a Delaware limited liability company ("**Geysers Company**"), WILD HORSE GEOTHERMAL, LLC, a Delaware limited liability company ("**Wild Horse**"), and CALISTOGA HOLDINGS, LLC, a Delaware limited liability company ("**Calistoga**" and, together with Holdings, Geysers Company, Wild Horse, and each subsidiary of an Obligor that becomes a "Guarantor" from time to time in accordance with the terms hereof, each a "**Guarantor**" and together, the "**Guarantors**"), each FIRST LIEN SECURED DEBT REPRESENTATIVE party to this Agreement from time to time in accordance with the terms of this Agreement; and MUFG UNION BANK, N.A., as First Lien Collateral Agent for the First Lien Secured Parties (together with its permitted successors and assigns in such capacity appointed pursuant to the Intercreditor Agreement, "**First Lien Collateral Agent**").

WHEREAS:

(A) The Borrower is the owner of thirteen geothermal electric generating facilities located in the Geysers area of Northern California (Sonoma and Lake Counties); and

(B) The Obligors, the First Lien Secured Debt Representatives, and the First Lien Collateral Agent desire to enter into this Agreement in order to set out certain provisions regarding, among other things: (1) common representations and warranties of the Borrower; (2) common covenants of the Borrower; and (3) common events of default under certain First Lien Documents.

NOW, THEREFORE, In consideration of the forgoing, and for other good and valuable consideration, the receipt and adequacy of which are acknowledge, the parties hereto agree as follows:

1. DEFINITIONS

1.1 Definitions

Unless otherwise defined in Exhibit A or otherwise expressly provided in this Agreement, capitalized terms used herein shall have the meanings provided in the Intercreditor Agreement.

1.2 Rules of Interpretation

Except as otherwise expressly provided, the rules of interpretation set forth in Exhibit A shall apply to this Agreement.

2. FIRST LIEN SECURED DEBT OBLIGATIONS

2.1 Accession Agreements

(a) Each First Lien Secured Debt Representative that is not party to this Agreement on the date hereof shall enter into (i) a First Lien Common Terms Accession Agreement substantially in the form set out in Exhibit B and (ii) a CIA Accession Agreement.

(b) Each First Lien Common Terms Accession Agreement shall specify in Appendix A thereto:

(i) the identity of the relevant First Lien Secured Debt Representative;

(ii) the First Lien Secured Debt Obligations subject thereof; and

(iii) the First Lien Secured Debt Documents subject thereof.

(c) Each First Lien Common Terms Accession Agreement shall contain a certification from the Borrower that the conditions for the incurrence of such First Lien Secured Debt Obligations in the First Lien Secured Debt Documents have been satisfied (or waived by the applicable First Lien Secured Parties).

(d) Upon receipt of the relevant First Lien Common Terms Accession Agreement and compliance with the requirements of Section 5.3, the Borrower shall update Schedule 2.1(c) accordingly and shall deliver each such revised Schedule 2.1(c) to the First Lien Collateral Agent and each First Lien Secured Debt Representative.

2.2 Transfers and Holding of First Lien Secured Debt Obligations

(a) The First Lien Secured Debt Obligations may be held, sold, exchanged, traded, assigned, or otherwise transferred by each First Lien Secured Debt Holder as provided in the relevant First Lien Secured Debt Document. Any Person becoming a First Lien Secured Debt Holder from time to time in accordance with such First Lien Secured Debt Document shall be and become a First Lien Secured Debt Holder for the purposes of this Agreement and each Person ceasing to be a First Lien Secured Debt Holder from time to time in accordance with such First Lien Secured Debt Document shall cease to be a First Lien Secured Debt Holder for the purposes of this Agreement.

(b) Any First Lien Secured Debt Representative may be replaced in accordance with the relevant First Lien Secured Debt Document, and the First Lien Collateral Agent shall be notified promptly of any such replacement, which shall become effective only upon the replacement First Lien Secured Debt Representative executing and delivering to the First Lien Collateral Agent an agreement to be bound by the First Lien Common Terms Accession Agreement and the CIA Accession Agreement to which its predecessor was a party, and the Borrower shall amend Schedule 2.1(c) accordingly and shall deliver each such revised Schedule 2.1(c) to the First Lien Collateral Agent and each First Lien Secured Debt Representative.

2.3 Payment in Full of First Lien Secured Debt Obligations

(a) Upon the payment in full of all First Lien Secured Debt Obligations under (or defeasance thereof in accordance with the terms of) any First Lien Secured Debt Document (other than the First Lien Obligations thereunder that by their terms survive and with respect to which no claim has been made by the applicable First Lien Secured Debt Holder(s)) and the expiration or termination of all commitments and other obligations under such First Lien Secured Debt Document in accordance with the terms thereof and the cancellation and return by the Borrower of any outstanding letters of credit issued under such First Lien Secured Debt Document, the relevant First Lien Secured Debt Representative shall give notice thereof to the TLA Administrative Agent and the First Lien Collateral Agent, whereupon, without further action by any Person:

(i) the former First Lien Secured Debt Holders shall no longer be the First Lien Secured Debt Holders under this Agreement and shall no longer have any rights or obligations under this Agreement, except for those provisions that by their terms expressly survive termination;

(ii) the related First Lien Secured Debt Document shall no longer be the First Lien Secured Debt Document under this Agreement; and

(iii) such First Lien Secured Debt Representative, in such capacity, shall no longer be a First Lien Secured Debt Representative or a First Lien Secured Party.

3. REPRESENTATIONS AND WARRANTIES

Each Obligor makes the following representations and warranties in favor of the First Lien Secured Debt Holders as of the Closing Date:

3.1 Organization

(a) Each Obligor is (i) a limited liability company duly formed, validly existing and in good standing under the laws of the state of its formation and (ii) is duly qualified as a foreign limited liability company in each other jurisdiction in which such qualification is required by law in light of the business it conducts and the property it owns or leases and in light of the transactions contemplated by this Agreement, except where the failure to be so qualified or be in good standing could not reasonably be expected to have a Material Adverse Effect.

(b) Each Obligor has all requisite limited liability company power and authority to execute, deliver, and perform its obligations under this Agreement.

3.2 Authorization; No Conflict

Each Obligor has duly authorized, executed and delivered this Agreement and neither any Obligor's execution and delivery hereof, nor its consummation of the transactions contemplated hereby, nor its compliance with the terms hereof, shall:

(a) violate in any material respect any of its Governing Documents;

(b) violate any Legal Requirement applicable to or binding on such Obligor or any of such Obligor's properties in a manner which could reasonably be expected to result in a Material Adverse Effect;

(c) violate in any respect or result in any breach of or constitute any default under, or result in or require the creation of any Lien (other than Permitted Liens) upon any of its property under, any agreement or instrument to which it is a party or by which it or any of its properties may be bound or affected which, in each case, could reasonably be expected to result in a Material Adverse Effect; or

(d) require any consent or approval of any Person, and with respect to any Governmental Authority, does or will require any registration with, or notice to, or any other action of, with or by any applicable Governmental Authority, in each case which has not already been obtained and disclosed in writing to the TLA Administrative Agent (except (i) any Permits that are not yet Applicable Permits, (ii) for those that are required by securities, regulatory or applicable law in connection with an exercise of remedies, (iii) as set forth on Schedule 3.2(d) (iv) the filing of any required continuation statements, (v) for those that, by the terms of the First Lien Collateral Documents, are not required to be obtained or completed or are required to be obtained or completed only after the Closing Date, or (vi) for those the absence of which could not reasonably be expected to have a Material Adverse Effect).

4. AFFIRMATIVE COVENANTS

Each of the Obligors covenants and agrees that until the Discharge of First Lien Obligations, it shall perform or observe or cause to be performed or observed (as applicable) the obligations set forth in this Article 4.

4.1 Maintenance of Existence

Except to the extent permitted under this Agreement, each of the Obligors shall maintain its respective existence and obtain and maintain, or cause to be obtained or maintained, as the case may be, as and when needed, all franchises, permits, rights, privileges, licenses or government permissions necessary for the development and operation of the Projects and conduct of its business, except, in each case, where failure to do so would not reasonably be expected to result in a Material Adverse Effect.

4.2 Separate Existence

Each of the Obligors shall (a) maintain entity records and books of account separate from those of any other entity which is its Affiliate (other than any other Obligor), (b) not commingle its funds or assets with those of any other entity which is its Affiliate (other than any other Obligor), and (c) observe limited liability company formalities; provided, that notwithstanding the foregoing, the Obligors may (x) exchange or borrow spare parts, components for equipment and tools relating to the Projects from any Affiliate in accordance with the terms of the O&M Agreement or otherwise pursuant to an arm's-length transaction documented in writing (it being understood that, for purposes of this covenant, an exchange or borrowing of spare parts with an Affiliate based on net book value or Fair Market Value shall be deemed to be an arm's-length transaction) and (y) participate in shared insurance arrangements with Affiliates.

4.3 Maintenance of Books and Records; Inspection Rights

Each Obligor shall maintain adequate books, accounts, and records. Subject to the requirements of Governmental Rules, safety requirements, and existing confidentiality restrictions imposed upon any Obligor by any other Person, the Obligors shall grant the First Lien Collateral Agent, the TLA Administrative Agent or the Independent Engineer from time to time, and upon reasonable prior written notice to the Obligors, but no more than once per calendar year, reasonable access to the Projects, the Projects' material properties, and each Obligor's books and records; provided, that all such inspections are conducted during normal business hours in a manner that does not disrupt the operation of any Project.

4.4 Conduct of Business; Maintenance of Properties, Etc.

Except as otherwise permitted by this Agreement, the Obligors shall operate, manage, and maintain (or cause to be operated, managed, and maintained) (ordinary wear and tear excepted) each Project in a manner consistent with Prudent Industry Practices, except where the failure to so operate, manage, or maintain such Project would not reasonably be expected to result in a Material Adverse Effect.

4.5 Maintenance of Rights in Project Property

Except as otherwise permitted by this Agreement, each of the Obligors shall preserve and maintain good and valid title or valid leasehold or other rights to all of its respective properties and assets related to the Projects (subject, in all cases, to Permitted Liens), unless failure to preserve or maintain such title or rights would not reasonably be expected to result in a Material Adverse Effect.

4.6 Compliance with Laws

Each of the Obligors shall comply with all applicable laws and regulations (including any Environmental Laws) of any Governmental Authority having jurisdiction over such Obligor or its business and the operation of the Projects, except where the failure to comply would not reasonably be expected to result in a Material Adverse Effect.

4.7 Taxes, Other Government Charges and Utility Charges

Each Obligor shall:

(a) timely file all tax returns; and

(b) pay, or cause to be paid, prior to delinquency (after giving effect to any applicable extensions) all taxes, assessments and governmental charges of any kind that may at any time be lawfully assessed or levied against or with respect the Obligors or the Projects, including material sales and use taxes and real estate taxes, all material utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Projects, and all material assessments and charges lawfully made by any Governmental Authority for public improvements that may be secured by a Lien on the Projects,

except, in each case, (x) to the extent any such amounts payable are contested in good faith by appropriate proceedings commenced or to be commenced within the applicable time period provided under applicable Legal Requirements or (y) where the failure to file or effect such payment would not reasonably be expected to have a Material Adverse Effect.

4.8 Exercise of Rights

To the extent commercially reasonable under the circumstances in accordance with Prudent Industry Practices, each Obligor shall diligently pursue all rights and remedies under any insurance policy or Project Contract to which it is a party with respect to the receipt of Loss Proceeds or other compensation available to such Obligor upon the occurrence of a Casualty Event or Event of Eminent Domain, except, in each case, where any failure would not reasonably be expected to result in Material Adverse Effect.

4.9 Additional Guarantors

If (a) the Borrower acquires or creates a Subsidiary after the Closing Date that does not constitute an Excluded Subsidiary, i) any Subsidiary of the Borrower ceases to constitute an Excluded Subsidiary, or ii) any Excluded Subsidiary that is referred to in clause (b) of the definition thereof guarantees or pledges any property or assets to secure any First Lien Obligations in excess of $25,000,000, then such Subsidiary shall become a Guarantor under the Intercreditor Agreement and the other applicable First Lien Collateral Documents and shall execute a joinder to the Intercreditor Agreement and the other applicable First Lien Collateral Documents.

4.10 Covenant to Give Security over Additional Guarantors

Upon the formation or acquisition of any new Subsidiary by an Obligor (other than any Excluded Subsidiary) and the joinder of such Subsidiary pursuant to Section 4.9, such Obligor shall, at its expense:

(a) within 45 Business Days (or ninety days in the case of After-Acquired Real Property) after such joinder, furnish to the First Lien Collateral Agent and the First Lien Collateral Agent a description of the After-Acquired Real Property and personal properties of such Subsidiary, in reasonable detail necessary for the First Lien Collateral Agent to perfect a Lien on such properties;

(b) within 45 Business Days (or ninety days in the case of mortgages or deeds of trust) after such joinder, duly execute and deliver and cause such Subsidiary and any Obligor acquiring Capital Stock in such Subsidiary to duly execute and deliver to the First Lien Collateral Agent guaranties, guaranty supplements, pledges, assignments, security agreement supplements, intellectual property security agreement supplements and other security agreements as reasonably specified by the First Lien Collateral Agent (acting at the direction of the Directing Agent) over the applicable property (other than Excluded Assets) and mortgages or deeds of trust on any After-Acquired Real Property (as reasonably determined by the Borrower and its counsel), securing payment of all of the obligations of such Obligor or Subsidiary, respectively, under the First Lien Documents;

(c) within 45 Business Days (or ninety days in the case of mortgages or deeds of trust) after such joinder, take, and cause the Obligors and each such Subsidiary to take, whatever action (including the recording of mortgages, the filing of UCC financing statements, the giving of notices and the endorsement of notices on title documents) may be reasonably necessary to vest in the First Lien Collateral Agent (or any representative of the First Lien Collateral Agent designated by it) valid and subsisting Liens on the properties (other than Excluded Assets) purported to be subject to the mortgages, deeds of trust, pledges, assignments, security agreement supplements, intellectual property security agreements, intellectual property security agreement supplements and security agreements delivered pursuant to this paragraph, enforceable against all third parties in accordance with their terms; and

(d) within 45 Business Days (or ninety days in the case of mortgages or deeds of trust) (or such longer period as may be agreed by the First Lien Collateral Agent (acting at the direction of the Directing Agent, acting reasonably)) after such joinder, deliver to the First Lien Collateral Agent an opinion of counsel (containing customary exceptions and limitations) addressed to the First Lien Collateral Agent and the Directing Agent, as to, with respect to such mortgages or deeds of trust and otherwise (i) the matters contained in clause (b) above, with respect to due authorization, execution and delivery, (ii) such guaranties, guaranty supplements, mortgages, deeds of trust, pledges, assignments, security agreement supplements, intellectual property security agreements, intellectual property security agreement supplements and security agreements being legal, valid and binding obligations of the Obligor(s) party thereto enforceable in accordance with their terms, as to the matters contained in clause (c) above, (iii) such recordings, filings, notices, endorsements and other actions being sufficient to create valid perfected Liens on such properties, (iv) corporate formalities, and (v) such other matters as the First Lien Collateral Agent or the Directing Agent may reasonably request.

4.11 Maintenance of Insurance

The Obligors shall maintain insurance policies (or self-insurance) on their respective properties in at least such amounts and against at least such risks as are usually insured against by companies of a similar size engaged in the same or a similar business (in each case as determined by the Borrower) or otherwise in accordance with Prudent Industry Practices. The First Lien Collateral Agent shall be named as an additional insured and loss payee as its interests may appear, to the extent required by the First Lien Collateral Documents. Upon the request of the First Lien Collateral Agent, the Obligors shall furnish to the First Lien Collateral Agent all relevant information as to their property and liability insurance carriers.

4.12 Preservation of Rights; After-Acquired Real Property

(a) Each Obligor shall do or cause to be done all acts and things that may be required, or that the First Lien Collateral Agent from time to time may reasonably request, to assure and confirm that the First Lien Collateral Agent holds, for the benefit of the First Lien Secured Parties, duly created and enforceable and perfected Liens upon the Collateral (including with respect to any property or assets that are acquired or otherwise become Collateral after the Closing Date), in each case, as contemplated by, and with the Lien priority required under, this Agreement and the First Lien Collateral Documents.

(b) Upon the reasonable request of the First Lien Collateral Agent (acting at the direction of the Directing Agent) at any time and from time to time, each Obligor shall promptly execute, acknowledge and deliver such security documents, instruments, certificates, notices and other documents, and take such other actions the First Lien Collateral Agent (acting at the direction of the Directing Agent) may reasonably request, to create, perfect, protect, assure or enforce the Liens and benefits intended to be conferred, in each case as contemplated by this Agreement for the benefit of the First Lien Secured Parties and as otherwise consistent with the First Lien Collateral Documents.

(c) If, after the Closing Date, any Obligor acquires any real property or leasehold or other interest in real property that is not an Excluded Asset and is a Project Site or geothermal mineral lease, in each case, which is necessary or material to the operation of the Projects or that has a purchase price in excess of $10,000,000 (other than licenses, easements and similar types of property that are expressly excluded from any Mortgage by its terms) and is not covered by any Mortgage (any such Project Site and/or geothermal mineral lease, "**After-Acquired Real Property**"), then within ninety days after such acquisition, such Obligor shall, at its expense, execute, deliver and record a supplement to any Mortgage, reasonably satisfactory in form and substance to the First Lien Collateral Agent (acting at the direction of the Directing Agent, acting reasonably) and the Borrower, subjecting the After-Acquired Real Property to the Lien and security interest created by any Mortgage in favor of the First Lien Collateral Agent. If reasonably requested by the First Lien Collateral Agent (acting at the direction of the Directing Agent) and if such property is a Project Site, the Borrower shall, within ninety days after such acquisition, obtain surveys (only to the extent such surveys were obtained at the time the property was acquired) and an A.L.T.A. lender's extended coverage title insurance policy (or a customary marked, unconditional, binding title commitment to issue such policy) with respect to such Project Site, insuring the Lien of the First Lien Secured Parties in such Project Site in an amount equal to the lesser of the amount paid for such After- Acquired Real Property or the insured value of such After-Acquired Real Property, in each case subject only to Permitted Liens and other exceptions to title approved by the First Lien Collateral Agent (acting at the direction of the Directing Agent, acting reasonably) and with such changes as may be necessary or advisable (as reasonably determined by the Borrower and its counsel) to account for local law matters and (with respect to the additional title policy) in amounts determined in a manner consistent with the amount of the Title Policy and to the extent reasonably requested by the First Lien Collateral Agent (acting at the direction of the Directing Agent, acting reasonably), an engineering report and a non-invasive environmental assessment report (provided, that an invasive environmental assessment report shall only be provided if requested by the TLA Administrative Agent after such has been recommended by a non-invasive environmental assessment report), each in scope, form and substance reasonably satisfactory to the First Lien Collateral Agent (acting at the direction of the Directing Agent, acting reasonably); provided, that to the extent that any Obligor has otherwise received any of the foregoing items with respect to such property, such items shall, promptly after the receipt thereof, be delivered to the First Lien Collateral Agent.

4.13 Post-Closing Covenant

(a) The Borrower shall deliver to the First Lien Collateral Agent, within ninety days after the ~~Closing~~**Omnibus Amendment** Date, in connection with the Obligors' real property on the ~~Closing~~**Omnibus Amendment** Date (in each case, to the extent not constituting Excluded Assets):

(i) **amendments to the existing** Mortgages on each Obligor's interest in the Project Sites and any leasehold interests in geothermal mineral rights; **and**

(ii) ~~A~~**date-down and modification endorsements to** lender's **existing** A.L.T.A. extended coverage policy of title insurance (**together with such date-down and modification endorsements,** the "**Title Policy**") with respect to the land upon which each Project Site is located including all real property improvements of the applicable Obligor, thereon ~~**with any standard coverage exception acceptable to the First Lien Collateral Agent (at the direction of the Directing Agent, acting reasonably), together with such endorsements thereto as are requested by the First Lien Collateral Agent (acting at the direction of the Directing Agent, acting reasonably) and otherwise available in the applicable state, or the unconditional and irrevocable commitment of the Title Insurer to issue such policy, in**~~**amending the insurance amount to** an amount equal to 50% of the aggregate principal amount of the Term Loans (as defined in the TLA Credit Agreement) **on the Omnibus Amendment Date**, for the Project Sites (with such reinsurance as is requested by the First Lien Collateral Agent (acting at the direction of the Directing Agent, acting reasonably)) issued by the applicable Title Insurer in form and substance satisfactory to the TLA Administrative Agent, insuring (or agreeing to insure), among other things, that the Mortgages**, as amended,** shall constitute a valid first lien on Borrower's interest in the Project Sites, free and clear of all Liens and exceptions to title whatsoever, other than (A) the Title Exceptions and other Permitted Liens, and (B) such Liens or other exceptions to title as are reasonably satisfactory to the TLA Administrative Agent~~;~~ **.**

~~(iii) a local counsel opinion relating to perfection of the deeds of trust and other customary real estate matters addressed to the First Lien Secured Parties; and~~

~~(iv) an A.L.T.A. survey of the Project Sites (which survey shall be sufficient to remove all standard survey exceptions from the Title Policies and issue the endorsements required in Section 4.13(a)(ii) and in form and substance reasonably satisfactory to the TLA Administrative Agent and the Title Insurer).~~

~~(b) In respect of the real property interest of any Obligor consisting of leasehold interests in geothermal mineral rights that require consent of the lessor or owner to provide a mortgage, the Borrower shall use commercially reasonable efforts for 120 days after the Closing Date to obtain consent to the granting of a first-priority security interest in favor of the First Lien Collateral Agent in the applicable Obligor's interest in the leasehold interests in geothermal mineral rights relating to the Projects;~~ provided~~, that no such Obligor shall be required to (i) incur external legal expenses in excess of a reasonable amount (as determined in good faith by the Borrower), (ii) pay any fees, agree to any modification of the terms of such leases or agree to any conditions in connection with any such efforts, in each case as set forth in this Agreement, or (iii) otherwise take any action to overcome circumstances existing due to the COVID-19 pandemic, solely to the extent such circumstances detract from the Borrower's ability, after exercising commercially reasonable efforts, to comply with this Section 4.13.~~

(b) ~~(c)~~ Notwithstanding anything in this Agreement or the TLA Credit Agreement to the contrary, at least twenty days prior to the execution of any Mortgage in respect of any After-Acquired **Real** Property with a "Building" (as defined in the Flood Laws) located on it and owned by an Obligor, Borrower shall deliver to the First Lien Collateral Agent and to the TLA Administrative Agent (who shall post such documents for the TLA Lenders) (i) a completed "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination for such real property subject to such Mortgage and (ii) if any such After-Acquired Real Property is in a Flood Zone with respect to which flood insurance has been made available under the Flood Laws, a policy of flood insurance in compliance with the Flood Laws and a Borrower notice regarding flood insurance, provided, that, each Obligor's obligation to grant a Mortgage in respect of such After-Acquired **Real** Property within the applicable period specified under this Agreement shall be automatically extended for so long as is required to ensure compliance with the requirements of this clause.

5. NEGATIVE COVENANTS

Each of the Obligors covenants and agrees that until the Discharge of First Lien Obligations, it shall perform or observe or cause to be performed or observed (as applicable) the obligations set forth in this Article 5.

5.1 Restricted Payments

(a) The Obligors shall not, and shall not permit any Excluded Subsidiary (other than a Non-Recourse Subsidiary) to, directly or indirectly make any Restricted Payment other than:

(i) the payment of any dividend or distribution or the consummation of any redemption within sixty days after the date of declaration of the dividend or distribution or giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend or redemption payment would have complied with the provisions of this Agreement;

(ii) the purchase, redemption, defeasance or other acquisition or retirement for value of Indebtedness of any Obligor or any Excluded Subsidiary that is by its terms contractually subordinated to the First Lien Obligations or to any Guarantee with the net cash proceeds from a substantially concurrent incurrence of Permitted Debt;

(iii) Permitted Tax Distributions;

(iv) payments pursuant to related party contracts, agreements or understandings existing on the Closing Date or entered into after the Closing Date in accordance with this Agreement (including, in each case, any transactions or arrangements entered into thereunder from time to time (if any)), and amendments thereto or replacements thereof in accordance with this Agreement~~)~~;

(v) payments from any Non-Recourse Subsidiary Account;

(vi) **(A)** Restricted Payments using the net proceeds pursuant to the First Lien Documents **(including the net proceeds of the 2021 Term Loans on the Omnibus Amendment Date)** and **(B)** any netting payments on the Closing Date of intercompany balances between the Obligors on one hand, and Calpine and its Affiliates (excluding the Obligors) on the other;

(vii) Restricted Payments from the Distribution Suspense Account if the following conditions (such conditions, the "**Restricted Payment Conditions**") shall have been satisfied as of the date of such Restricted Payment:

(A) no Default (as defined in the TLA Credit Agreement), Event of Default (as defined in the TLA Credit Agreement), CTA Default or CTA Event of Default has occurred and is continuing or would occur and be continuing as a consequence of such Restricted Payment;

(B) all amounts then-required to be on deposit in the Debt Service Reserve Account and, if applicable, each Additional Debt Service Reserve Account and the Major Maintenance Reserve Account are on deposit therein;

(C) the Debt Service Coverage Ratio for the Calculation Period of the most recent Quarterly Date is greater than or equal to 1.2 to 1.0;

(D) such Restricted Payment shall be made within sixty days after the end of the preceding fiscal quarter;

(E) no ~~Revolving~~ LC Loans (as defined in the TLA Credit Agreement) shall be outstanding on the date of such Restricted Payment; and

(F) the Borrower has delivered to the First Lien Collateral Agent an officer's certificate of the Borrower to the effect that all conditions for a Restricted Payment on the date of such Restricted Payment have been satisfied;

(viii) any amounts paid in reimbursement of Fronted Equity Contributions;

(ix) any insurance proceeds received by the Obligors in respect of any event occurring prior to the Closing Date;

(x) any proceeds of Commercial Tort Claims (as referenced in the First Lien Security Agreement) or contractual claims related to any wildfires that have occurred prior to the Closing Date;

(xi) the proceeds of any ~~Incremental~~**2021** Term Loans (as defined in the ~~TLA Credit Agreement);~~**Omnibus Amendment) on the Omnibus Amendment Date;**

(xii) the proceeds of any Additional Ratio Indebtedness;

(xiii) ~~any amounts on deposit in a Collateral Account that are replaced by an Acceptable Sponsor Letter of Credit pursuant to Sections 3.3, 3.4, 3.5 or 3.7 of~~**Restricted Payments in accordance with** the Depositary Agreement; and

(xiv) the proceeds of any Indebtedness incurred pursuant to Section 5.3(a)(xvi) so long as permitted by the debt instruments governing such Indebtedness.

(b) For the avoidance of doubt, the Obligors and any such Excluded Subsidiaries shall not be prohibited from receiving contributions of equity from time to time.

5.2 Investments

None of the Obligors shall make any Investments other than Permitted Investments.

5.3 Incurrence of Indebtedness and Issuance of Preferred Stock

(a) None of the Obligors shall, nor shall any of the Obligors permit any Excluded Subsidiary (other than Non-Recourse Subsidiaries) to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "**incur**") any Indebtedness other than the following items of Indebtedness (collectively, "**Permitted Debt**"):

(i) Indebtedness incurred under the TLA Credit Agreement (including any **additional or** incremental facilities thereunder) and any other Indebtedness constituting First Lien Obligations under the Intercreditor Agreement;

(ii) Indebtedness constituting Second Lien Obligations under the Intercreditor Agreement solely to the extent such Second Lien Obligations relate to Indebtedness of the Obligors and/or any Subsidiary of any Obligor in respect of one or more Permitted Commodity Hedge Agreements;

(iii) Additional Ratio Indebtedness;

(iv) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business of the Obligors or any such Excluded Subsidiaries;

(v) Indebtedness in respect of Permitted Commodity Hedge Agreements and/or Permitted Interest Rate Agreements;

(vi) Indebtedness incurred for Required Modifications, so long as immediately after giving effect to the incurrence of such Indebtedness, (A) no Event of Default (as defined in the TLA Credit Agreement) or CTA Event of Default has occurred and is continuing or will result from such incurrence and (B) no Material Adverse Effect has occurred and is continuing or could reasonably be expected to result from such incurrence;

(vii) Refinancing Indebtedness so long as, (A) no Event of Default (as defined in the TLA Credit Agreement) or CTA Event of Default shall have occurred and be continuing or would result from the incurrence of such Refinancing Indebtedness, (B) such Refinancing Indebtedness ranks *pari passu* in all respects with all other First Lien Obligations, (C) the weighted average life to maturity of such Refinancing Indebtedness shall be no less than the remaining weighted average life to maturity of the First Lien Secured Debt Obligations being refinanced, (D) the final maturity date of such Refinancing Indebtedness shall occur on or after the final maturity date of the Indebtedness that is being refinanced, (E) the net cash proceeds of such Refinancing Indebtedness are used to redeem or prepay any First Lien Secured Debt Obligations (as selected by the Borrower) on a pro rata basis within each such tranche of First Lien Secured Debt Obligations being redeemed or prepaid, and pay all interest, premiums, fees and expenses (including interest rate hedge breakage costs), and reserves (including any incremental increase in the Debt Service Reserve Requirement (as defined in the TLA Credit Agreement) resulting from the incurrence of such Refinancing Indebtedness), (F) the aggregate principal amount of any Refinancing Indebtedness shall not exceed the aggregate amount of debt that is being refinanced, plus interest, premiums, fees and expenses (including interest rate hedge breakage costs), any amounts required to fund any debt service reserve account thereunder and any incremental increase in the Debt Service Reserve Requirement (as defined in the TLA Credit Agreement), (G) the representative of the holders of such Refinancing Indebtedness shall have acceded to this Agreement pursuant to Section 2.1 and to the Intercreditor Agreement, and (H) the Borrower shall have certified as to the satisfaction of the foregoing conditions in clauses (A) to (F);

(viii) Indebtedness (other than for borrowed money) incurred pursuant to the terms of any Project Contract, that is either not more than ninety days past due or being contested in good faith;

(ix) trade or other similar Indebtedness (other than for borrowed money) incurred in the ordinary course of business of the Obligors, that is either not more than ninety days past due or being contested in good faith;

(x) contingent liabilities, to the extent otherwise constituting Indebtedness, including those relating to (A) the acquisition of goods, supplies or merchandise in the normal course of business or normal trade credit, (B) the endorsement of negotiable instruments received in the normal course of its business, and (C) contingent liabilities incurred with respect to any Applicable Permit, Financing Document or Project Contract;

(xi) Finance Lease Obligations and any other Indebtedness (including purchase money obligations incurred to finance the purchase price of discrete items of equipment not comprising an integral part of the Projects that extend only to the equipment being financed), in an aggregate amount of secured principal not exceeding $10,000,000 at any one time outstanding;

(xii) Indebtedness incurred in respect of workers' compensation claims, self-insurance obligations, bankers' acceptances, and performance and surety bonds in the ordinary course of business;

(xiii) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Indebtedness is covered within five Business Days;

(xiv) Indebtedness arising from netting services, overdraft protection, cash management obligations, and otherwise in connection with deposit, securities, and commodities accounts in the ordinary course of business;

(xv) the incurrence by any Obligor of intercompany Indebtedness between or among the Obligors;

(xvi) additional Indebtedness of any Obligor in an aggregate principal amount not to exceed $80,000,000 at any time outstanding the proceeds of which shall be used to finance the development, construction, ownership, operation or maintenance of energy storage and**/or** carbon sequestration projects owned by the Obligors so long as no Event of Default (as defined in the TLA Credit Agreement) or CTA Event of Default shall have occurred and be continuing or would result from the incurrence of such indebtedness;

(xvii) to the extent constituting Indebtedness, purchase of the CoBank Service Share;

(b) For purposes of determining compliance with Section 5.3:

(i) in the event that an item of Indebtedness meets the criteria of more than one of the categories of Permitted Debt described in Section 5.3, the Borrower shall be permitted to classify such item of Indebtedness on the date of its incurrence, or later reclassify such item of Indebtedness, in any manner that complies with Section 5.3;

(ii) all Indebtedness shall be denominated in U.S. Dollars; and

(iii) the amount of any Indebtedness outstanding as of any date will be:

(A) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue discount;

(B) the principal amount of the Indebtedness, in the case of any other Indebtedness; and

(C) in respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the lesser of:

(1) the Fair Market Value of such assets at the date of determination; and

(2) the amount of the Indebtedness of the other Person.

(c) None of the Obligors shall, nor shall the Obligors permit any Excluded Subsidiary (other than Non-Recourse Subsidiaries) to, issue any Disqualified Capital Stock.

5.4 Subsidiaries

The Borrower shall not create any Subsidiaries other than the Guarantors and Excluded Subsidiaries.

5.5 Accounts

Except as permitted by this Agreement, no Obligor shall open and/or maintain any bank, brokerage or other account other than the Depositary Accounts and Local Accounts.

5.6 Replacement Major Project Contracts

The Obligors shall not enter into any Replacement Major Project Contract if entering into such contract or agreement would reasonably be expected to (a) result in a Material Adverse Effect or iii) result in the breach of, or conflict with the terms of, any Major Project Contract, which breach or conflict would reasonably be expected to have a Material Adverse Effect.

5.7 Transactions with Affiliates

(a) No Obligor shall, directly or indirectly, enter into any transaction or series of transactions relating to the Projects with or for the benefit of any Affiliate of the Borrower other than any Obligor ("**Affiliate Transactions**") other than:

(i) any Affiliate Transaction that (A) contains terms no less favorable to such Obligor than would be included in an arm's-length transaction entered into by a prudent Person with a non-Affiliated third party, or (B) if no comparable arm's-length transaction with a Person that is not an Affiliate is available, then on terms reasonably believed by the Borrower to be fair and reasonable (in the case of this clause (B), as set forth in an officer's certificate of the Borrower delivered to the First Lien Collateral Agent within fifteen Business Days after the entry into such transaction, together with copies of documents evidencing such transaction) (it being understood that an exchange or borrowing of spare parts with an Affiliate based on net book value or Fair Market Value will be deemed to be an arm's-length transaction);

(ii) any contracts, agreements or understandings with Affiliates existing on the Closing Date (and any transactions or arrangements entered into thereunder from time to time, and any amendments to or replacements of such contracts, agreements or understandings so long as any such amendment or replacement (A) does not contain terms less favorable in any material respect to such Obligor than would be included in an arm's-length transaction entered into by a prudent Person with a non-affiliated third party, or (B) if no comparable arm's-length transaction with a Person that is not an Affiliate is available, then on terms reasonably believed by the Borrower to be fair and reasonable (in the case of this clause (B), as set forth in an officer's certificate of the Borrower delivered to the First Lien Collateral Agent within fifteen Business Days after the entry into such transaction, together with copies of documents evidencing such transaction));

(iii) any employment agreement, employee benefit plan, officer or director indemnification agreement, non-competition, confidentiality agreement or any similar arrangement entered into by such Obligor in the ordinary course of business and payments pursuant thereto;

(iv) transactions with an Affiliate of an Obligor solely on account of such Obligor's ownership, directly or indirectly, of Equity Interest in, or controls, such Affiliate;

(v) payment of directors' fees to Persons who are not otherwise Affiliates of the Borrower;

(vi) any issuance of Equity Interests (other than Disqualified Capital Stock) of an Obligor to Affiliates of such Obligor;

(vii) **(A) any** Permitted Investments~~;~~ **and (B) any transfer of any assets or contracts relating to an energy storage Project or carbon capture Project that was contributed to one or more Obligors on or after the Omnibus Amendment Date (other than (i) to the extent the Obligors have spent cash or cash equivalents relating to such assets or contracts, in which case, such transferee reimburses the Obligors for such expenses or (ii) any other asset or contract without which the condition specified in clause (a) of the definition of Additional Ratio Indebtedness would not have been satisfied);**

(viii) Restricted Payments that do not violate Section 5.1;

(ix) loans or advances to employees in the ordinary course of business not to exceed $3,000,000 in the aggregate at any one time outstanding; and

(x) as otherwise expressly permitted (or, if not addressed therein, not prohibited) by the First Lien Documents.

5.8 Liens

No Obligor shall, directly or indirectly, create, incur, assume or suffer to exist any Lien securing Indebtedness on any asset now owned or hereafter acquired, except Permitted Liens.

5.9 Limitation on Asset Dispositions

The Obligors shall not, directly or indirectly, consummate an Asset Disposition, except Permitted Asset Dispositions.

5.10 Fundamental Changes

(a) The Borrower shall not, directly or indirectly: (x) consolidate with or merge into another Person (whether or not the Borrower is the surviving corporation) or (y) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Obligors, taken as a whole, in one or more related transactions, to another Person, unless:

(i) either:

(A) the Borrower is the surviving entity; or

(B) the Person formed by or surviving any such consolidation or merger (if other than the Borrower) or to which such sale, assignment, transfer, conveyance, allocation of assets, division or other disposition has been made is a corporation, partnership or limited liability company organized or existing under the laws of the United States, any state thereof or the District of Columbia;

(ii) the Person formed by or surviving any such consolidation or merger (if other than the Borrower) or the Person to which such sale, assignment, transfer, conveyance, allocation of assets, division or other disposition has been made assumes all the obligations of the Borrower under the First Lien Secured Debt Documents and the First Lien Collateral Documents; and

(iii) immediately after such transaction, no CTA Event of Default shall exist;

(b) The Borrower shall not, directly or indirectly, lease all or substantially all of the properties and assets of the Obligors, taken as a whole, in one or more related transactions, to any other Person;

(c) Notwithstanding anything herein to the contrary, Section 5.10(a) and Section 5.10(b) shall not apply to, and the Obligors shall be permitted to, take any of the following actions:

(i) Any merger of the Borrower with an Affiliate solely for the purpose of reincorporating the Borrower in another jurisdiction or forming a direct holding company of the Borrower;

(ii) Any consolidation or merger of any Obligor into another Obligor; and

(iii) Any sale, assignment, transfer, conveyance, lease, allocation of assets, divisions or other disposition of assets by any Obligor to another Obligor.

5.11 Limitation on Hedging

The Obligors shall not, directly or indirectly, enter into any hedge agreement, except Permitted Commodity Hedge Agreements and Permitted Interest Rate Agreements; provided, that, to the extent such Permitted Commodity Hedge Agreement or Permitted Interest Rate Agreement is secured by the Collateral, the counterparty party thereto shall have become party to the Intercreditor Agreement.

5.12 Limitation on Sale and Leaseback Transactions

No Obligor shall enter into any sale and leaseback transaction; provided, that the Obligors may enter into a sale and leaseback transaction if (a) such Obligor could have incurred a Lien (other than a Lien created under the First Lien Collateral Documents) to secure Indebtedness pursuant to Section 5.8, and (b) the gross cash proceeds of such sale and leaseback transaction are at least equal to the Fair Market Value, as determined in good faith by the Board of Directors of the Borrower and set forth in an officer's certificate delivered to the First Lien Collateral Agent, of the property that is the subject of that sale and leaseback transaction.

5.13 Nature of Business

No Obligor shall engage in any business or activities other than the Permitted Businesses, except to such extent as would not be material to the Obligors, taken as a whole.

5.14 Tax Status

Each of the Obligors is classified, as of the Closing Date, as a partnership or an entity disregarded from its owner for U.S. federal, state and local income tax purposes. None of the Obligors will make or permit to be made any election to be treated as, or take any actions that could cause it to be treated as, an association taxable as a corporation for U.S. federal, state or local income tax purposes.

6. EVENTS OF DEFAULT

6.1 Events of Default

The occurrence of any of the following events shall constitute an event of default (each, a "**CTA Event of Default**") in respect of all First Lien Secured Debt Obligations:

(a) Principal Payment Default. The Borrower shall fail to pay when due any principal on the First Lien Obligations (other than any First Lien Secured Hedge) in excess $50,000,000 and such default continues unremedied for a period of five days;

(b) Interest Payment Default. The Borrower shall fail to pay when due any interest in respect of First Lien Obligations (other than any First Lien Secured Hedge) or any commitment or similar fee payable by it under any First Lien Secured Debt Document and such failure continues unremedied for a period of thirty days;

(c) Breach of Terms of Agreement.

(i) Defaults without Cure Periods. Any Obligor shall fail to perform or observe any of the covenants set forth in Sections 4.1 or Article 5 (other than Section 5.4).

(ii) Defaults with Cure Periods. Any Obligor shall fail to perform or observe any of the covenants set forth in Section 5.4, and such failure shall continue unremedied for a period of five Business Days.

(iii) Other Defaults. Any Obligor shall fail to perform or observe any of its covenants set forth hereunder or any other First Lien Collateral Document not otherwise specifically provided for in Section 6.1(c)(i), Section 6.1(c)(ii) or elsewhere in this Article 6, and such failure shall continue unremedied for a period of thirty days after such Obligor receives written notice thereof from the TLA Administrative Agent; provided, that if (A) such failure cannot be cured within such thirty-day period, (B) such failure is susceptible of cure within ninety days, (C) such Obligor is proceeding with diligence and in good faith to cure such failure, (D) the existence of such failure has not had and could not, after considering the nature of the cure, be reasonably expected to have a Material Adverse Effect, and (E) the TLA Administrative Agent shall have received an officer's certificate signed by a Responsible Officer to the effect of clauses (A), (B), (C), and (D) above and stating what action such Obligor is taking to cure such failure, then such thirty-day cure period shall be extended to such date, not to exceed a total of ninety days, as shall be necessary for such Obligor diligently to cure such failure.

(d) Security. Any First Lien Collateral Document ceases, for any reason, to be in full force and effect (other than in accordance with its terms) with respect to a material portion of the Collateral, or any Obligor so asserts, or any Lien created by any First Lien Collateral Document ceases to be enforceable and of the same effect and priority purported to be created thereby with respect to a material portion of the Collateral (other than, in each case, pursuant to a failure of any First Lien Secured Debt Representative, any other agent appointed by a First Lien Secured Debt Representative or the holders of any First Lien Secured Debt Holders to take any action within the sole control of such Person); provided, that the Borrower will have ten Business Days after the discovery thereof by the Borrower to cure any such cessation and restore such priority or to furnish to the First Lien Collateral Agent all documents or instruments reasonably required to cure any such cessation and restore such priority; provided, further, that the release of Collateral from the First Lien Collateral Documents or the discharge of a Guarantor therefrom shall not be construed (i) as any First Lien Collateral Document ceasing to be in full force and effect or (ii) as any Lien created thereunder ceasing to be enforceable or of the same priority and effect purported to be created thereby;

(e) Guarantees. Except as permitted by the First Lien Documents or the First Lien Security Agreement, any Guarantee ceases, for any reason, to be in full force and effect (other than in accordance with its terms), or a Guarantor denies or disaffirms in writing its obligations under its Guarantee;

(f) Judgements. A final judgment or judgments for the payment of money exceeding $50,000,000 in the aggregate shall be rendered against any Obligor by one or more courts, administrative tribunals or other bodies having jurisdiction over such Obligor and the same shall not have been paid or discharged, or for which no bond is posted, for a period of sixty consecutive days after its entry, which judgment(s) are neither (i) covered by available insurance as acknowledged in writing by the provider of such insurance or as certified to the First Lien Collateral Agent and the TLA Administrative Agent by an insurance consultant and the same is not nor (ii) effectively stayed within ninety days after such judgment(s) entry;

(g) Abandonment. (i) Any Obligor shall make a formal, public announcement of its decision to abandon the Projects or (ii) the Obligors shall have ceased all activities relating to the Projects for a period of more than thirty consecutive days for any reason other than force majeure, a Casualty Event or a Legal Requirement; provided, that in each case, none of (A) scheduled maintenance of the Projects, (a) repairs to the Projects, whether or not scheduled, (b) a forced outage or scheduled outage of the Projects, or (c) the abandonment of any single Project, shall constitute abandonment or suspension of the Projects so long as the Borrower is diligently attempting to end such cessation; provided, further, that any period of cessation shall be deemed to end on the date that operations of a substantial nature are resumed and thereafter diligently pursued;

(h) Unenforceability. At any time after the execution and delivery hereof, this Agreement or the Intercreditor Agreement shall cease to be in full force and effect (other than by reason of the satisfaction in full or release of an Obligor's First Lien Obligations hereunder or thereunder or any other termination of a Financing Document in accordance with the terms hereof or thereof) or this Agreement or the Intercreditor Agreement shall be declared null and void by a Governmental Authority of competent jurisdiction.

(i) Bankruptcy. Any Obligor shall be subject to a Bankruptcy Event.

7. MISCELLANEOUS

7.1 Effectiveness; Continuing Nature of this Agreement; Severability

(a) This Agreement shall become effective when executed and delivered by each of the parties hereto.

(b) Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. All references to any Obligor shall include such Obligor as debtor and debtor-in-possession and any receiver or trustee for such Obligor (as the case may be) in any Insolvency or Liquidation Proceeding.

(c) This Agreement shall terminate and be of no further force and effect with respect to the First Lien Collateral Agent, the First Lien Secured Parties and the First Lien Obligations, upon the Discharge of First Lien Obligations.

7.2 Amendments; Waivers

(a) No amendment, modification or waiver of any of the provisions of this Agreement by the parties hereto shall be deemed to be made unless the same shall be in writing signed by the authorized agents of or on behalf of the Obligors, First Lien Collateral Agent and First Lien Secured Debt Representatives constituting the Required First Lien Secured Debt Parties and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the parties making such waiver or the obligations of the other parties to such party in any other respect or at any other time.

(b) 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.

7.3 Consent to Jurisdiction and Service of Process; Waiver of Jury Trial

(a) EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT SITTING IN NEW YORK COUNTY, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO 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 FULLEST EXTENT PERMITTED BY LEGAL REQUIREMENT, 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. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS AGREEMENT OR IN ANY OTHER FINANCING DOCUMENT SHALL AFFECT ANY RIGHT THAT THE FIRST LIEN COLLATERAL AGENT OR ANY FIRST LIEN SECURED DEBT REPRESENTATIVE MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER FIRST LIEN DOCUMENT AGAINST THE OBLIGORS OR THEIR RESPECTIVE PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(b) EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LEGAL REQUIREMENT, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER FIRST LIEN DOCUMENT IN ANY COURT REFERRED TO IN SECTION 7.3(a). EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LEGAL REQUIREMENT, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(c) Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 7.4. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by Legal Requirement.

(d) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY 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 OR ANY OTHER FINANCING DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE FINANCING DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

7.4 Notices

Unless otherwise specifically provided herein, any notice hereunder shall be in writing and may be personally served, telexed or sent by facsimile, electronic mail or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of facsimile or telex, or three Business Days after depositing it in the United States mail with postage prepaid and properly addressed. For the purposes hereof, the addresses of the parties hereto shall be as set forth on Annex I to the Intercreditor Agreement, or, as to each party, at such other address as may be designated by such party on its signature page hereto or in a written notice to all of the other parties.

7.5 Further Assurances

The First Lien Collateral Agent, on behalf of itself and the First Lien Secured Parties, each First Lien Secured Debt Representative, on behalf of itself and the First Lien Secured Parties represented by it, and each Obligor agree that each of them shall take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as the Obligors or the First Lien Collateral Agent may reasonably request to effectuate the terms of this Agreement.

7.6 Applicable Law

THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

7.7 Binding on Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the Obligors, First Lien Collateral Agent and the First Lien Secured Parties, and their respective successors and assigns. If the First Lien Collateral Agent resigns or is replaced pursuant to this Agreement, its successor shall be deemed to be a party to this Agreement and shall have all the rights of, and be subject to all the obligations of, this Agreement.

7.8 Headings

Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

7.9 Counterparts; Integration; Effectiveness

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Financing Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall become effective when it shall have been executed by the First Lien Collateral Agent and when the First Lien Collateral Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith by telecopy or by email with a portable document format (.pdf) attached or by similar electronic means shall be effective as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable.

7.10 Authorization

By its signature, each Person executing this Agreement on behalf of a party hereto represents and warrants to the other parties hereto that it is duly authorized to execute this Agreement.

7.11 Third Party Beneficiaries

This Agreement and the rights and benefits hereof shall inure to the benefit of each of the parties hereto and their respective successors and assigns and shall inure to the benefit of each of the Secured Parties.

7.12 Electronic Execution

The words “execution,” “execute”, “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation amendments, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Directing Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

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EXHIBIT A
to First Lien Common Terms Agreement

DEFINITIONS

"**2014 SCE PPA**" means that certain Renewable Power Purchase and Sale Agreement, dated July 29, 2014, between Southern California Edison Company and the Borrower.

"**2015 SCE PPA**" means that certain Renewable Power Purchase and Sale Agreement, dated July 28, 2015, between Southern California Edison Company and the Borrower.

"**A.L.T.A.**" means American Land Title Association.

"**Additional Major Project Contract**" means each contract, agreement, letter agreement or other instrument to which any Obligor becomes a party after the Closing Date that:

(a) is a Replacement Major Project Contract;

(b) is a power purchase agreement (including any Permitted Commodity Hedge Agreement) that contains obligations and liabilities or payments to the such Obligor (i) that as of the date of determination, are in excess of $225,000,000 over its remaining term (including after taking into account all amendments, amendments and restatements, supplements, or waivers to any such contract, agreement, letter agreement or other instrument as of such date), or (ii) without which the condition specified in clause (a) of the definition of Additional Ratio Indebtedness would not have been satisfied; or

(c) is any contract or other arrangement to which any Obligor is a party (other than the Financing Documents) for which a breach, non-performance, cancellation or failure to renew would reasonably be expected to have a Material Adverse Effect.

"**Additional Ratio Indebtedness**" means additional Indebtedness subject to satisfaction of the following conditions as of the date such Indebtedness is incurred: (a)**(i) either (x) the Debt Service Coverage Ratio for the Calculation Period of each Quarterly Date through the Term Maturity Date (with respect to future Calculation Periods, as reasonably projected by the Borrower for such future Calculation Period) is either at least 2.00:1.00 or (y)** the Debt Service Coverage Ratio for the Calculation Period of each Quarterly Date through the Term Maturity Date (with respect to future Calculation Periods, as reasonably projected by the Borrower for such future Calculation Period) is at least ~~2.00~~**1.50:**1.00 ~~**for each period (**~~**and the average Debt Service Coverage Ratio for all Calculation Periods of all Quarterly Dates through the Term Maturity Date (with respect to future Calculation Periods, as reasonably projected by the Borrower for such future Calculation Period) is at least 1.75:1.00; provided, that, the aggregate amount of Additional Ratio Indebtedness at any time outstanding pursuant to this clause (y) shall not exceed $100,000,000; provided, further, that the Debt Service Coverage Ratio for purposes of this definition shall be** calculated (~~**i**~~**A**) taking into account such incurrence and the amortization profile relating to such Additional Ratio Indebtedness and (~~**ii**~~**B**) using contracted cash flows under power purchase or other offtake agreements with utilities or community choice aggregators or under other Permitted Commodity Hedge Agreements, which agreements shall, in each case, (~~**A**~~**1**) provide for the sale of capacity, energy, green attributes or other products or services by the Obligors, (~~**B**~~**2**) specify an agreed price or a pricing formula or pricing procedures or mechanics for the sale of such products or services, (~~**C**~~**3**) have a term of no less than six months, and (~~**D**~~**4**) have pricing assumptions referenced in clause (~~**B**~~**2**) above that are based on market pricing consistent with a report of a nationally or regionally recognized market consultant for the applicable periods (it being acknowledged that PA Consulting Group, Inc. or its successor shall be deemed to be a nationally or regionally recognized market consultant for purposes hereof); provided, **further,** that (~~**i**~~**A**) the proportion of the contracted cash flows under such agreements with any Affiliates of the Obligors, including the Third Amended and Restated Power Purchase and Sale Agreement, as a percentage of all such contracted cash flows of the Obligors included in any such Debt Service Coverage Ratio calculation, shall not exceed 20% and (~~**ii**~~**B**) any merchant revenues and revenues indexed to daily market prices shall not be included in any such Debt Service Coverage Ratio calculation; (b) the final maturity date of any such additional Indebtedness shall occur after the Term Maturity Date; (c) in the case of additional term loan facilities, establishment of an additional debt service reserve account that reserves an amount at least equal to the amount of interest, commitment fees and principal in respect of such term loan facilities reasonably anticipated to be payable over the succeeding six-month period; (d) in the case of any such additional Indebtedness issued in the capital markets, the Borrower obtaining an Investment Grade rating for such additional indebtedness; (e) **the Borrower shall have obtained a ratings reaffirmation confirming no downgrade of the ratings issued by Kroll on or prior to the Omnibus Amendment Date; (f)** satisfaction of any conditions to the incurrence of such Indebtedness as required by the First Lien Secured Debt Documents under which any other First Lien Obligations are then-outstanding; (~~**f**~~**g**) no Event of Default (as defined in the TLA Credit Agreement) or CTA Event of Default shall have occurred and be continuing or would result therefrom; (~~**g**~~**h**) no TLA Lender will be required to participate in any such Additional Ratio Indebtedness (and the Borrower shall not have any obligation to approach any existing TLA Lender to provide such Additional Ratio Indebtedness); and (~~**h**~~**i**) the Borrower shall have certified the satisfaction of the foregoing conditions to the TLA Administrative Agent, the First Lien Secured Debt Representative and the First Lien Collateral Agent.

"**Administrative Services Agreement**" means the administrative services agreement among the Borrower, Geysers Company, Wild Horse, Calistoga, and Calpine Administrative Services Company, Inc., to be entered into on or about the Closing Date (as amended, amended and restated, supplemented or otherwise modified from time to time).

"**Affiliate**" has the meaning given in the Intercreditor Agreement.

"**Affiliate Transactions**" has the meaning given in Section 5.7(a).

"**After-Acquired Real Property**" has the meaning given in Section 4.12(c).

"**Agreement**" has the meaning given in the Recitals.

"**Applicable Permits**" means, at any time, any Permit, including any zoning or land use Permit, any Permit required under any Environmental Law to conduct the business and operations as currently conducted, or any FERC, state fire marshal, import, export, safety, siting or building Permit that is: necessary under applicable Legal Requirements or any of the Major Project Contracts to be obtained by or on behalf of any Obligor at such time in light of the stage of development, construction or operation of the Projects to construct, test, operate, maintain, repair, lease, own or use the Projects as contemplated by the Major Project Contracts, to sell electricity from the Projects or deliver steam or fuel to any Project, or for any Obligor to enter into any Major Project Contract or to consummate any transaction contemplated thereby, in each case in accordance with all applicable Legal Requirements; or necessary so that none of the Obligors, any First Lien Secured Debt Representative under any First Lien Secured Debt Document, or the First Lien Collateral Agent or the First Lien Secured Debt Holder nor any Affiliate of any of them may be deemed by any Governmental Authority to be subject to, or not exempt from, regulation under the FPA or the federal access to books and records requirements of PUHCA or treated as a public utility under the Constitution and the laws of the State of California as presently constituted and as construed by the courts of California with respect to the regulation of the rates of, or the financial or organizational regulation of, electric utilities solely as a result of the development and construction or operation of the Projects or the sale of electricity therefrom, except that:

(a) the Borrower and certain of the Guarantors are subject to the compliance requirements under PUHCA applicable to Exempt Wholesale Generators and/or owners of Qualifying Facilities that are directly or indirectly owned by entities that are "holding companies" under PUHCA solely with respect to Exempt Wholesale Generators, Qualifying Facilities under PURPA or "foreign utility companies" under PUHCA; and

(b) the Borrower is a "public utility" under the FPA with authority to sell wholesale electric power, capacity and certain ancillary services at market-based rates and with all waivers of regulations and blanket authorizations as are customarily granted by FERC to a "public utility" that sells wholesale electric power, capacity and certain ancillary services at market-based rates.

"**Asset Disposition**" has the meaning given in the Intercreditor Agreement.

"**Asset Disposition Proceeds**" has the meaning given in the Depositary Agreement.

"**Bankruptcy Event**" means shall be deemed to occur, with respect to any Person if (a) such Person shall institute a voluntary case seeking liquidation or reorganization under the Bankruptcy Law, or shall consent to the institution of an involuntary case thereunder against it; or (b) such Person shall file a similar petition or shall otherwise institute any similar proceeding under any other applicable Federal or state law, or shall consent thereto; or (c) such Person shall apply for the appointment, or by consent or acquiescence there shall be an appointment, of a receiver, liquidator, sequestrator, trustee or other officer or custodian with similar powers for itself or any substantial part of its property or assets; or (d) such Person shall make an assignment for the benefit of its creditors; or (e) such Person shall become insolvent, or admit in writing its inability to pay its debts generally as they become due; or (f) an involuntary case shall be commenced seeking liquidation or reorganization of such Person under the Bankruptcy Law or any similar proceedings shall be commenced against such Person under any other applicable Federal or state law and (i) the petition commencing the involuntary case is not timely controverted, (ii) the petition commencing the involuntary case is not dismissed within sixty days of its filing, (iii) an interim trustee is appointed to take possession of all or a portion of the property, and/or to operate all or any material part of the business, of such Person and such appointment is not vacated within sixty days, or (iv) an order for relief shall have been issued or entered therein; (g) a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee or other officer having similar powers of such Person or all or a material part of its property shall have been entered; or (h) any other similar relief shall be granted against such Person under any applicable Bankruptcy Law.

"**Bankruptcy Law**" has the meaning given in the Intercreditor Agreement.

"**Board of Directors**" means:

(a) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board;

(b) with respect to a partnership, the board of directors of the general partner of the partnership;

(c) with respect to a limited liability company, the managing member or members or any controlling committee of managing members thereof; and

(d) with respect to any other Person, the board or committee of such Person serving a similar function.

"**Borrower**" has the meaning given in the Recitals.

"**Business Day**" has the meaning given in the Intercreditor Agreement.

"**CAISO**" has the meaning given in the Intercreditor Agreement.

"**Calculation Period**" means, as to a particular date, the four consecutive fiscal quarters most recently ended immediately preceding such date.

"**Calistoga**" has the meaning given in the Recitals.

"**Calistoga Geothermal Steam Sales Agreement**" means the steam sales agreement between Calistoga and Borrower, to be dated on or about the Closing Date (as amended, amended and restated, supplemented or otherwise modified from time to time).

"**Calpine**" has the meaning given in the Intercreditor Agreement.

"**Capital Expenditures**" means expenditures made by any Obligor to acquire, construct, repair, improve, replace, expand, install and/or similar actions with respect to fixed assets, plant and equipment which, in accordance with GAAP, are or should be included in "purchase of property and equipment" or similar items reflected in the consolidated statement of cash flows of the Borrower (including renewals, improvements and replacements thereto, but, notwithstanding the foregoing, excluding any such expenditures that are paid out of Loss Proceeds, Asset Disposition Proceeds or the proceeds of any Permitted Asset Disposition).

"**Capital Stock**" has the meaning given in the Intercreditor Agreement.

"**Cash**" has the meaning given in the Intercreditor Agreement.

"**Casualty Event**" means a casualty event that causes all or a portion of the Projects to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever, other than (a) ordinary use and wear and tear, (b) any Event of Eminent Domain or (c) any casualty event in respect of which (x) any Obligor reasonably expects to receive Insurance Proceeds of less than $10,000,000 or (y) in the case of an uninsured event, any Obligor reasonably expects to incur repair, restoration, replacement and/or demolition costs of less than $10,000,000.

"**CIA Accession Agreement**" means the "Accession Agreement" as defined in the Intercreditor Agreement.

"**Closing Date**" means the date hereof.

"**CoBank Service Share**" means a single, fully paid and non-assessable share of common stock in CoBank, ACB with a par value of $100.

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

"**Collateral**" has the meaning given in the Intercreditor Agreement.

"**Collection Expenses**" means all reasonable and documented out-of- pocket costs and expenses (if any) and, if applicable, reasonable transaction costs (including reasonable legal and accounting fees and expenses, taxes paid or payable as a result thereof and amounts payable to holders of senior Liens on such asset (to the extent such Liens are Permitted Liens)), incurred or reasonably anticipated to be incurred by any Obligor in connection with the collection, enforcement, negotiation, consummation, settlement, proceedings, administration or other activity related to the receipt or collection of Asset Disposition Proceeds, Loss Proceeds or Project Payments, as applicable.

"**Commodity Hedge Agreement**" has the meaning given in the Intercreditor Agreement.

"CPA PPA" means that certain Renewable Power Purchase Agreement, dated as of June 4, 2021, between the Borrower and Clean Power Alliance of Southern California.

"**CTA Default**" means any event that is, or with the passage of time or the giving of notice or both, would be, a CTA Event of Default.

"**CTA Event of Default**" has the meaning given in Section 6.1.

"**Debt Service**" means, for any period, the sum of (a) all scheduled interest and scheduled principal payable during such period in respect of First Lien Secured Debt Obligations (other than the final principal payment of any Indebtedness on the final maturity date thereof), b) any letter of credit fees relating thereto, and c) (for purposes of calculating the Debt Service Coverage Ratio) any payments paid by the Borrower during such period pursuant to Interest Rate Agreements *less* (for purposes of calculating the Debt Service Coverage Ratio) any payments received or to be received by the Borrower during such period pursuant to Interest Rate Agreements; provided, that such Debt Service shall not include mandatory prepayments pursuant to, any First Lien Secured Debt Document.

"**Debt Service Coverage Ratio**" means, for any period, the ratio of (a) Operating Cash Available for Debt Service for such period to d) Debt Service for such period; provided, that for purposes of calculating the Debt Service Coverage Ratio, (i) Debt Service, for the Calculation Period ending on September 30, 2020 shall be deemed to be the product of four times Debt Service for the fiscal quarter ending on such date, (ii) Debt Service, for the Calculation Period ending on December 31, 2020 shall be deemed to be the product of two times the Debt Service for the two fiscal quarters ending on such date, and (iii) Debt Service, for the Calculation Period ending on March 31, 2021 shall be deemed to be the product of four thirds Debt Service for the three fiscal quarters ending on such date.

"**Debt Service Reserve Account**" has the meaning given in the Depositary Agreement.

"**Depositary Accounts**" has the meaning given in the Depositary Agreement.

"**Depositary Agent**" has the meaning given in the Intercreditor Agreement.

"**Depositary Agreement**" has the meaning given in the Intercreditor Agreement.

"**Directing Agent**" means (a) the TLA Administrative Agent, (b) if the TLA Credit Agreement is no longer in effect, the First Lien Secured Debt Representative(s) collectively representing any other outstanding commercial bank debt, including any letter of credit facility, and (c) if there is no commercial bank debt referred to in clause (b) outstanding, the First Lien Secured Debt Representative representing the then-largest amount of Additional Ratio Indebtedness.

"**Discharge of First Lien Obligations**" has the meaning given in the Intercreditor Agreement.

"**Disqualified Capital Stock**" means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder of the Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the date that is 91 days after the latest maturity date of the promissory notes issued by the Borrower evidencing the borrowing of a loan, issuance of or drawing upon a letter of credit, or the issuance of debt securities pursuant to any First Lien Secured Debt Document (other than pursuant to a change of control or asset sale prepayment offer provision).

"**Distribution Suspense Account**" has the meaning given in the Depositary Agreement.

"**Division**" means the division of a limited liability company into two or more limited liability companies pursuant to a "plan of division" or similar method within the meaning of the Delaware Limited Liability Company Act.

"**Emergency Operating Costs**" means those amounts required to be expended, in the good faith judgment of Borrower (as confirmed by the Independent Engineer) as a result of the occurrence of an unanticipated event in order to prevent or mitigate an emergency situation involving endangerment of life, human health, safety or the environment or damage to property.

"**Environmental Law**" has the meaning given in the Intercreditor Agreement.

"**Equity Interests**" has the meaning given in the Intercreditor Agreement.

"**Event of Eminent Domain**" has the meaning given in the Depositary Agreement.

"**Excluded Asset**" has the meaning given in the Intercreditor Agreement.

"**Excluded Subsidiary**" means (a) any non-wholly owned Subsidiary formed or acquired by any Obligor after the Closing Date, e) any Subsidiary that is not a Material Subsidiary, and f) any Non-Recourse Subsidiary.

"**Exempt Wholesale Generator**" means an "exempt wholesale generator" within the meaning of PUHCA and FERC's regulations thereunder.

"**Fair Market Value**" means the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party, determined in good faith by the chief financial officer of the Borrower (unless otherwise provided under this Agreement).

"**FERC**" has the meaning given in the Intercreditor Agreement.

"**Finance Lease Obligation**" has the meaning given in the Intercreditor Agreement.

"**Financing Documents**" has the meaning given in the Intercreditor Agreement.

"**First Lien Collateral Agent**" has the meaning given in the Recitals.

"**First Lien Collateral Documents**" has the meaning given in the Intercreditor Agreement.

"**First Lien Common Terms Accession Agreement**" means an accession agreement to this Agreement entered into (or to be entered into) by any acceding First Lien Secured Debt Representative, substantially in the form set forth on Exhibit B.

"**First Lien Documents**" has the meaning given in the Intercreditor Agreement.

"**First Lien Obligations**" has the meaning given in the Intercreditor Agreement.

"**First Lien Secured Debt Documents**" has the meaning given in the Intercreditor Agreement.

"**First Lien Secured Debt Holder**" has the meaning given in the Intercreditor Agreement.

"**First Lien Secured Debt Obligations**" has the meaning given in the Intercreditor Agreement.

"**First Lien Secured Debt Representative**" has the meaning given in the Intercreditor Agreement.

"**First Lien Secured Hedge**" has the meaning given in the Intercreditor Agreement.

"**First Lien Secured Parties**" has the meaning given in the Intercreditor Agreement.

"**Fitch**" means Fitch Ratings, Ltd., or any successor thereto.

"**Flood Laws**" means, collectively, (a) the National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973), (b) the Flood Insurance Reform Act of 2004 and (c) the Biggert-Waters Flood Insurance Reform Act of 2012 and any and all official rulings and interpretation thereunder or thereof.

"**Flood Zone**" means areas having special flood hazards as determined by the Federal Emergency Management Agency or any successor Governmental Authority performing a similar function.

"**FPA**" means the Federal Power Act, as amended, and FERC's implementing regulations thereunder.

"**Fronted Equity Contributions**" means contributions of cash equity made to any Obligor if and to the extent that such contributions are used to fund actual or reasonably anticipated Loss Proceeds, O&M Costs, Capital Expenditures or any other cost, expense or liability of any Obligor (in each case, without netting Collection Expenses) as certified to the First Lien Collateral Agent and the TLA Administrative Agent by a Responsible Officer, which contributions shall not be required to be deposited into the Depositary Accounts under the Depositary Agreement.

"**GAAP**" has the meaning given in the Intercreditor Agreement.

"**Geysers Company**" has the meaning given in the Recitals.

"**Governing Documents**" means, with respect to any Person, the certificate or articles of incorporation, bylaws, operating agreement or other organizational or governing documents of such Person.

"**Governmental Authority**" has the meaning given in the Intercreditor Agreement.

"**Governmental Rule**" has the meaning given in the Intercreditor Agreement.

"**Guarantee**" has the meaning given in the Intercreditor Agreement.

"**Guarantors**" has the meaning given in the Recitals.

"**Holdings**" has the meaning given in the Recitals.

"**Indebtedness**" has the meaning given in the Intercreditor Agreement.

"**Independent Engineer**" means Leidos Engineering, LLC, its successors, and any replacement thereof appointed by the Borrower with the consent of the First Lien Collateral Agent (acting at the direction of the Directing Agent, acting reasonably).

"**Insurance Proceeds**" has the meaning given in the Depositary Agreement.

"**Intercreditor Agreement**" means the Collateral Agency and Intercreditor Agreement, dated as of the Closing Date (as amended, amended and restated, supplemented or otherwise modified from time to time), among the Obligors, the First Lien Collateral Agent, the Second Lien Collateral Agent, each First Lien Secured Debt Representatives, each First Lien Commodity Hedge Counterparty and each Second Lien Commodity Hedge Counterparty party thereto from time to time.

"**Interest Rate Agreement**" has the meaning given in the Intercreditor Agreement.

"**Investment**" by any Person means any direct or indirect loan, advance or other extension of credit or capital contribution to (by means of transfers of cash or other property to others or payments for property or services for the account or use of others, or otherwise), or purchase or acquisition of Capital Stock, bonds, notes, debentures or other securities or evidence of Indebtedness issued by any other Person and any Capital Expenditures.

"**Investment Grade**" means with respect to any Person, that such Person's unsecured senior debt obligations are rated by at least one rating agency and are no less than BBB- by S&P, BBB- by Fitch, Baa3 by Moody's (or any corresponding future ratings levels by such ratings agencies), or an equivalent rating by any other rating agency (it being acknowledged that if more than one rating agency rates the unsecured senior obligations of such Person, only one such rating shall be required to be "Investment Grade" in order for such Person to be considered "Investment Grade" under this Agreement).

"Kroll" means Kroll Bond Rating Agency, Inc., or any successor thereto.

"**Legal Requirements**" has the meaning given in the Intercreditor Agreement.

"**Lien**" has the meaning given in the Intercreditor Agreement.

"**Local Account**" has the meaning given in the Depositary Agreement.

"**Loss Proceeds**" has the meaning given in the Depositary Agreement.

"**Major Maintenance Reserve Account**" has the meaning given in the Depositary Agreement.

"**Major Project Contracts**" means:

(a) each of the following agreements**, in each case, during the stated term of such agreement**: (i) the Material Electrical Interconnection Agreements, i) the Material Water Supply Agreements, ii) the O&M Agreement, iii) the Administrative Services Agreement, iv) the Third Amended and Restated Power Purchase and Sale Agreement, v) the 2014 SCE PPA, vi) the 2015 SCE PPA, ~~and~~ vii) the PG&E PPA**, (viii) the Peninsula PPA and (ix) the CPA PPA**;

(b) each Additional Major Project Contract; and

(c) each Replacement Major Project Contract.

"**Material Adverse Effect**" means a material adverse effect on (a) the business, operations, properties, assets or financial condition of the Obligors, taken as a whole, (b) the ability of the Obligors, as a whole, to perform their obligations in accordance with the terms of First Lien Documents, or (c) the material rights, remedies or benefits available to, or conferred upon, any First Lien Secured Party under the First Lien Documents; provided, that (i) the bankruptcy of Pacific Gas & Electric Company or any effects thereof or relating thereto shall not constitute a Material Adverse Effect and (ii) other than in respect of representations and warranties made on the Closing Date and the conditions precedent set forth in Section 3.1 (*Conditions Precedent to the Closing Date*) of the TLA Credit Agreement, a "Material Adverse Effect" shall exclude any adverse effect on the business, operations, properties, assets or financial condition of the Obligors, taken as a whole, as a result of direct or reasonably foreseeable and expected consequences of the COVID-19 pandemic or the related restrictions imposed by applicable Governmental Authorities.

"**Material Electrical Interconnection Agreements**" means (a) the generator interconnection agreement, dated as of September 26, 2003, between the Borrower and Pacific Gas & Electric Company, which interconnects each of the Projects as of the Closing Date other than the Aidlin project and the Calistoga project, g) the large generator interconnection agreement, dated as of November 14, 2008, among the Borrower, Pacific Gas & Electric Company and the CAISO, which interconnects the Aidlin project, and h) the large generator interconnection agreement, dated as of November 14, 2008, among the Borrower, Pacific Gas & Electric Company and the CAISO, which interconnects the Calistoga project, in each case as amended, amended and restated, supplemented or otherwise modified from time to time.

"**Material Subsidiary**" means: (a) any Subsidiary which directly or indirectly owns all or a part of any of the Projects in existence as of the Closing Date; i) any Subsidiary acquired or formed after the Closing Date without which the condition specified in clause (a) of the definition of Additional Ratio Indebtedness would not have been satisfied; and j) any Subsidiary of the Borrower (other than a Non-Recourse Subsidiary) i) whose total assets exceed 7.5% of the total assets (after intercompany eliminations) (or 15% of the total assets taken as a whole with all other Subsidiaries under this clause (c)) or ii) that accounted for more than 7.5% of the revenues (or 15% of the revenues taken as a whole with all other Subsidiaries under this clause (c), in each case of the Borrower and its Subsidiaries (other than Non-Recourse Subsidiaries) as determined on a consolidated basis in all material respects in accordance with GAAP and as reflected in the Borrower's most recently available monthly internal financial statements (including, if applicable, reasonable pro forma adjustments as determined in good faith by the Borrower, which determination shall be conclusive)).

"**Material Water Supply Agreements**" means (a) the construction and operating agreement, dated April 14, 1998, between the Borrower and the City of Santa Rosa, k) the joint operating agreement, dated July 25, 1995, among the Lake County Sanitation District, the Northern California Power Agency and the Sponsor (as assigned to the Borrower), and l) the Second Amendment and Restatement of the Steam Suppliers Joint Operating Agreement Southeast Geysers Effluent Pipeline Project, dated as of September 18, 2003, among the Northern California Power Agency and the Sponsor (as assigned to the Borrower), in each case as amended, amended and restated, supplemented or otherwise modified from time to time.

"**Moody's**" has the meaning given in the Intercreditor Agreement.

"**Mortgages**" means such first priority deeds of trust by the Borrower in favor of the First Lien Collateral Agent, in proper form for recording in all applicable jurisdictions, in form reasonably satisfactory to the First Lien Collateral Agent (acting at the reasonable direction of the TLA Administrative Agent), as each may be amended, restated, supplemented or otherwise modified from time to time.

"**Net Proceeds**" means:

(a) with respect to any disposition of assets, the excess, if any, of (i) the amounts received by the Obligors in connection with such disposition (including business interruption insurance proceeds, or payments in lieu thereof, any amounts received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) *over* (ii) the sum of (A) the reasonable out of pocket costs, fees, commissions, premiums and expenses (including legal fees and expenses) incurred by the Obligors in connection with such disposition to the extent such amounts were not deducted in determining the amount referred to in clause (i), (B) federal, state, provincial, foreign and local taxes reasonably estimated (on a consolidated basis) to be actually payable by the Obligors within the current or the immediately succeeding tax year as a result of any gain recognized in connection therewith to the extent such amounts were not deducted in determining the amount referred to in clause (i), and (C) a reasonable reserve determined by a Responsible Officer in its reasonable business judgment and to the extent required under GAAP for any purchase price adjustments (including working capital adjustments or adjustments attributable to seller's indemnities and representations and warranties to purchaser in respect of such disposition) expressly contemplated by the purchase agreement relating to such disposition;

(b) with respect to any receipt of contract termination payments, the excess if any, of (i) all termination payments or cancellation payments to the Obligors under any Major Project Contract *over* (ii) the reasonable out of pocket costs, fees, commissions, premiums and expenses (including legal fees and expenses) incurred by the Obligors in connection with the receipt of such payments; and

(c) with respect to any proceeds of or under any casualty or property insurance, indemnity, condemnation awards, warranty or guaranty (other than business interruption insurance proceeds) received by the Obligors in connection with the occurrence of any Casualty Event or Event of Eminent Domain, the excess, if any, of (i) the amounts received by the Obligors in connection with such Casualty Event or Event of Eminent Domain *over* (ii) the sum of (A) the reasonable out of pocket costs and expenses (including legal fees and expenses) incurred by the Obligors in connection with the collection, enforcement, negotiation, consummation, settlement, proceedings, administration or other activity related to the receipt or collection of the relevant proceeds to the extent such amounts were not deducted in determining the amount referred to in clause (i) and (B) federal, state, provincial, foreign and local taxes reasonably estimated (on a consolidated basis) to be actually payable by the Obligors within the current or the immediately succeeding tax year as a result of any gain recognized in connection therewith (taking into account any tax benefit resulting from the event giving rise to the payment of such proceeds) to the extent such amounts were not deducted in determining the amount referred to in clause (i).

"**Non-Recourse Debt**" means Indebtedness:

(a) as to which no Obligor (i) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness), (ii) is directly or indirectly liable as a guarantor or otherwise, or (iii) constitutes the lender;

(b) no default with respect to which (including any rights that the holders of such Indebtedness may have to take enforcement action against a Non- Recourse Subsidiary) would permit upon notice, lapse of time or both, any holder of any other Indebtedness of any Obligor to declare a default on such other Indebtedness or cause the payment of such other Indebtedness to be accelerated or payable prior to its stated maturity; and

(c) as to which the lenders have been notified in writing that they will not have any recourse to the stock or assets of any Obligor.

"**Non-Recourse Subsidiary**" means any direct or indirect Subsidiary formed or acquired by any Obligor or any Non-Recourse Subsidiary after the Closing Date so long as the following conditions are satisfied:

(a) such Subsidiary is funded solely by (i) equity contributions from a Person other than any Obligor (except as permitted by clause (b) hereof), (ii) amounts permitted to be distributed in accordance with Section 5.1 or (iii) Non-Recourse Debt, or any combination of clauses (i) through (ii) above;

(b) to the extent such Subsidiary enters into a management services agreement, shared facilities agreement or other agreement or arrangement relating to shared facilities between a Non-Recourse Subsidiary, on one hand, and any Obligor, on the other hand, (i) such agreement or arrangement would not reasonably be expected to materially and adversely affect the business of the Obligors (taken as a whole) and (ii) a copy of any such agreement or arrangement has been provided to the TLA Administrative Agent on or prior to the entry into any such agreement or arrangement; and

(c) such Non-Recourse Subsidiary does not own any of the Projects described in clauses (a) through (m) of the definition of Projects.

"**Non-Recourse Subsidiary Account**" means any account held by any Non-Recourse Subsidiary.

"**O&M Agreement**" means the Third Amended and Restated Operation and Maintenance Agreement, dated as of the Closing Date (as amended, amended and restated, supplemented or otherwise modified from time to time), among the Borrower, the Obligors party thereto and Calpine Operating Services Company, Inc.

"**O&M Costs**" means, without duplication, for any period, cash amounts incurred and paid by the Borrower or any of its Subsidiaries (other than Excluded Subsidiaries) for the operation and maintenance of such entities, the Projects or any portion thereof (other than as funded from the Major Maintenance Reserve Account) and for the purchase of goods and services in connection therewith, in each case including: (a) premiums for insurance policies; (b) fuel supply and fuel transportation costs, costs of additives or chemicals and transportation costs related thereto and the cost of other consumables; (c) costs of obtaining any other materials, supplies, spare parts, utilities or services for the Projects; (d) costs of obtaining, transferring, maintaining, renewing and amending Permits; (e) franchise, licensing, property, real estate, sales and excise taxes (including, and without duplication, any such taxes the Borrower pays pursuant to any tax sharing agreement); (f) general and administrative expenses; (g) employee salaries, wages and other employment-related costs; (h) business management and administrative service fees; (i) costs and fees required to be paid by any Project under any Project Contract (including, for the avoidance of doubt, the O&M Agreement, the Administrative Services Agreement, the Wild Horse Geothermal Steam Sales Agreement, the Calistoga Geothermal Steam Sales Agreement, and any guaranty reimbursement agreement entered into in accordance with this Agreement) or Financing Document (other than scheduled Debt Service or payments on any other Indebtedness specified in Sections 5.3(a)(ii), (v), (vii), and (xvi)) or to satisfy any Legal Requirement or obtain or maintain any Permit; (j) legal, accounting and consulting fees and other transaction costs and all other fees payable to the Secured Parties allocable to the Borrower (other than amounts constituting scheduled Debt Service or payments on any other Indebtedness specified in Sections 5.3(a)(ii), (v), (vii), and (xvi)); (k) all other fees and expenses necessary for the continued operation and maintenance of the Projects and the conduct of the business of the Projects; (l) Emergency Operating Costs (except for Emergency Operating Costs in connection with the repair or restoration of any casualty suffered by the Projects to the extent funded with insurance or similar proceeds applied pursuant to the Depositary Agreement or infusions of equity pursuant to the Financing Documents); (m) reasonable expenses to keep the Collateral free and clear of all Liens; (n) costs of purchasing any necessary emissions credits, allowances or rights in respect of the Projects (and any carbon, emissions or similar taxes in respect of Borrower's interest in the Projects); (o) net payments made under any Commodity Hedge Agreements; (p) any income taxes payable by the Borrower as a result of a change in the applicable federal, state or local income tax law after the Closing Date, which change requires the Borrower or Holdings to be treated as other than an entity disregarded from its owner or a partnership (including, and without duplication, any such taxes the Borrower pays under any tax sharing agreement); provided, that such taxes shall be limited to those taxes properly allocable to the net income of the Obligors for the applicable federal, state or local income tax purposes; provided, further, that for avoidance of doubt, such taxes shall not include any income taxes arising due to the treatment of the Borrower as a partnership or an entity disregarded from its owner for federal, state or local income tax purposes; and (q) costs, fees and other liabilities required to be paid by Borrower under any Financing Document (other than scheduled Debt Service, mandatory prepayments pursuant to any First Lien Secured Debt Document from cash sweeps, ordinary course settlements under Permitted Commodity Hedge Agreements and Permitted Interest Rate Agreements or payments on any other Indebtedness specified in Sections 5.3(a)(ii), (v), (vii), and (xvi)), exclusive in all cases of non-cash charges, including depreciation or obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature, and also exclusive of all interest charges and charges for the payment or amortization of principal of Indebtedness of Borrower (other than such payments with respect to Indebtedness of the type referred to in Sections 5.3(a)(ii), (v), (vii), and (xvi)); provided, that to the extent any of the foregoing O&M Costs are paid by a Person other than any Obligor, the reimbursement by any Obligor of the same shall constitute "O&M Costs." O&M Costs shall not include (i) costs of Major Maintenance (as defined in the Depositary Agreement) to the extent paid with funds on deposit in a Major Maintenance Reserve Account, (ii) non-cash charges, including depreciation and amortization; (iii) payments for restoration or repair of the Projects from the Loss Proceeds Account (as defined in the Depositary Agreement) in accordance with the terms of the Depositary Agreement; (iv) Restricted Payments to any Affiliate of the Borrower (other than payments to Affiliates of the Borrower otherwise permitted pursuant to the Financing Documents); (v) any termination or liquidation payments under any Permitted Commodity Hedge Agreements and Permitted Interest Rate Agreements; or (vi) Capital Expenditures other than Emergency Operating Costs to the extent such are Capital Expenditures.

"**Obligors**" has the meaning given in the Intercreditor Agreement.

"Omnibus Amendment"means the Omnibus Amendment, dated as of November 9, 2021, by and among the Borrower, the lenders party thereto, the guarantors party thereto, the Administrtive Agent, the First Lien Collateral Agent and the Depositary Agent.

"Omnibus Amendment Date" has the meaning given in the Omnibus Amendment.

"**Operating Cash Available for Debt Service**" means, for any period, (a) Project Revenues during such period (including, for the avoidance of doubt, all net payments paid to any Obligor under any Commodity Hedge Agreements during such period) *minus* m) O&M Costs paid or to be paid during such period; provided, that O&M Costs relating to real property taxes and insurance premiums shall, for purposes of this definition, be accounted for by ratably allocating such amounts over the period to which they apply rather than accounting for them solely during the period in which they were paid; provided, further, that O&M Costs shall, for purposes of this definition, exclude **(x)** all fees and expenses payable in connection with entering into this Agreement or any other Financing Document **and (y) Excluded O&M Costs (as defined in the Depositary Agreement)**; provided, further, that (a) Operating Cash Available for Debt Service, for the Calculation Period ending on September 30, 2020 shall be deemed to be the product of four times Operating Cash Available for Debt Service for the fiscal quarter ending on such date, (b) Operating Cash Available for Debt Service, for the Calculation Period ending on December 31, 2020 shall be deemed to be the product of two times the Operating Cash Available for Debt Service for the two fiscal quarters ending on such date, and (c) Operating Cash Available for Debt Service, for the Calculation Period ending on March 31, 2021 shall be deemed to be the product of four thirds Operating Cash Available for Debt Service for the three fiscal quarters ending on such date.

"Peninsula PPA" means, collectively, (a) the Master Power Purchase and Sale Agreement, by and between Geysers Power Company, LLC, a Delaware limited liability company, and Peninsula Clean Energy Authority, a California joint powers authority, dated as of August 26, 2021, (b) the Confirmation Letter (Energy), dated as of August 26, 2021 and (c) the Confirmation Letter, dated as of August 26, 2021.

"**Permit**" has the meaning given in the Intercreditor Agreement.

"**Permitted Asset Disposition**" means any of the following Asset Dispositions:

(a) any single transaction or series of transactions that involves the receipt of Net Proceeds of less than $250,000,000 in the aggregate prior to the Discharge of First Lien Obligations (so long as any such transaction or series of transactions was for Fair Market Value);

(b) a transfer of assets between or among the Obligors;

(c) the sale or lease of products or services in the ordinary course of business (including sales in the "spot" market or merchant sales of the electricity and related products);

(d) the sale or other disposition of any damaged, worn-out or obsolete assets (other than assets consisting of all or substantially all of a Project in existence on the Closing Date, which shall be permitted to the extent provided in clause (a) of this definition) in the ordinary course of business;

(e) the sale, transfer or release, with or without consideration, of assets, real property or interests in real property related to the Projects (other than real property consisting of all or substantially all of the real property relating to a Project in existence on the Closing Date, which shall be permitted to the extent provided in clause (a) of this definition) to the extent that such assets, real property or interests in real property is only incidental to, or no longer useful in connection with, the leasing, ownership or operation of the Projects;

(f) the granting of easements or other interests in real property related to the Projects to other Persons;

(g) in the case of any spare or surplus part, (i) such spare or surplus part is sold or transferred at Fair Market Value or net book value, i) such sold or transferred spare part (but not surplus part) is replaced by any Obligor on or before the date when such spare part is needed by any Obligor, ii) such sale or transfer is consistent in all material respects with Prudent Industry Practices, and iii) any Obligor can reasonably be expected to obtain any necessary replacement parts for such spare part (but not surplus part) on commercially reasonable terms, and any such replacement part received by such Obligor is free and clear of all Liens (other than Permitted Liens);

(h) the sale or other disposition of Cash or cash equivalents;

(i) **(A)** any transfer of any assets of an energy storage Project **or carbon capture Project** (other than (i) the Projects described in clauses (a) through (m) of the definition thereof or iv) any other Project without which the condition specified in clause (a) of the definition of Additional Ratio Indebtedness would not have been satisfied) to a Non-Recourse Subsidiary **and (B) any transfer of assets contemplated by Section 5.7(a)(vii)(B)**;

(j) the disposition of the CoBank Service Share; or

(k) any Restricted Payment made in accordance with Section 5.1, Permitted Investment or Permitted Lien.

"**Permitted Businesses**" means (a) the operation, maintenance, expansion, development, construction, reconstruction, improvement and/or ownership of the Projects and/or any other geothermal power generation assets **(including, for the avoidance of doubt, any research and development relating to such assets, such as closed loop heat exchange technology)** and/or any ancillary services or assets, including energy storage and carbon sequestration located in or adjacent to the Geysers area of Northern California (Sonoma and Lake Counties) and/or similar, related, incidental, ancillary or complimentary businesses and/or such other lines of business as may be consented to by the Required First Lien Secured Debt Parties, and all activity reasonably necessary or undertaken in connection with the foregoing and any activities incidental or related to any of the foregoing and (b) the purchase of the CoBank Service Share.

"**Permitted Commodity Hedge Agreement**" has the meaning given in the Intercreditor Agreement.

"**Permitted Debt**" has the meaning given in Section 5.3.

"**Permitted Interest Rate Agreement**" means any Interest Rate Agreement entered into by any Obligor not for speculative purposes.

"**Permitted Investments**" means:

(a) (i) all Capital Expenditures reasonably necessary to permit the Borrower and its Subsidiaries to comply with applicable law (including any Environmental Laws), Project Contracts, or to operate the Projects in accordance with Prudent Industry Practice, v) Emergency Operating Costs to the extent such costs are Capital Expenditures, vi) Capital Expenditures financed with proceeds of (1) voluntary equity contributions made to the Borrower or a Subsidiary of the Borrower or (2) Indebtedness incurred in compliance with Section 5.3, vii) Capital Expenditures made using funds permitted to be distributed pursuant to Section 5.3 but are retained by the Borrower for the purposes of making Capital Expenditures, viii) Capital Expenditures in respect of the Projects made with funds in the Distribution Suspense Account, and ix) any budgeted maintenance expense;

(b) Investments consisting of extensions of credit in the nature of deposits, prepayments, accounts receivable, notes receivable or other similar accounts arising from the grant of trade credit in the ordinary course of business;

(c) Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and other credits to suppliers in the ordinary course of business;

(d) Investments in the ordinary course of business consisting of UCC Article 3 endorsements for collection or deposit and UCC Article 4 customary trade arrangements with customers consistent with past practices;

(e) Investments in any Obligor;

(f) Permitted Interest Rate Agreements and Permitted Commodity Hedge Agreements;

(g) Investments in Permitted Businesses;

(h) direct obligations of the United States of America or any agency thereof or obligations guaranteed by the United States of America or any agency thereof, in each case with maturities not exceeding two years, including money market funds for which the Depositary Agent or its Affiliates provide investment advice or other management services, but excluding any fund with a floating net asset value;

(i) time deposit accounts, certificates of deposit and money market deposits maturing within ninety days of the date of acquisition thereof issued by a bank or trust company that is organized or existing under the laws of the United States of America or any state thereof having capital, surplus and undivided profits in excess of $1,000,000,000 and whose long-term debt, or whose parent holding company's long-term debt, is rated A (or such similar equivalent rating or higher) by at least one of Moody's, S&P and Fitch;

(j) repurchase obligations with a term of not more than ninety days for underlying securities of the types described in clause (g) above entered into with a bank meeting the qualifications described in clause (i) above;

(k) commercial paper, maturing not more than one year after the date of acquisition, issued by a corporation (other than an Affiliate of any Obligor) organized or existing under the laws of the United States of America or any foreign country recognized by the United States of America with a rating at the time as of which any investment therein is made of P-1 (or higher) according to Moody's or A-1 (or higher) according to S&P;

(l) money market funds that (i) comply with the criteria set forth in Rule 2a-7 under the Investment Company Act of 1940, x) if rated, are rated AA by S&P or Aa2 by Moody's, and xi) have portfolio assets of at least $500,000,000, including money market funds for which the Depositary Agent or its Affiliates provide investment advice or other management services, but excluding any fund with a floating net asset value;

(m) time deposit accounts, certificates of deposit and money market deposits in an aggregate face amount not to exceed 0.50% of the total assets of the Borrower and its consolidated Subsidiaries (other than any Non-Recourse Subsidiary) as of the end of the Borrower's most recently completed fiscal year;

(n) time deposit accounts, certificates of deposit and money market deposits held with the Depositary Agent;

(o) shares of mutual funds whose investment guidelines restrict 95% of such funds' investments to those satisfying the provisions of clauses (g) through (n) above;

(p) other Investments that at the time acquired by any Obligor were formerly of the type described in clauses (g) through (o) above; provided, that such other Investment will cease to be a Permitted Investment at such time as the applicable Obligor has held such Investment for a period in excess of sixty days from which such Investment was no longer an Investment of the type described in clauses (g) through (o) above;

(q) with respect to any disposition, Casualty Event, or Event of Eminent Domain, the application of any related Net Proceeds to purchase any property useful in the business of any Obligor (or, in the case of a Casualty Event, used to replace damaged or destroyed assets, or to improve or expand the Projects) in accordance with the terms of this Agreement and the Depositary Agreement;

(r) the CoBank Service Share;

(s) Cash; and

(t) any other Investments so long as each of the Restricted Payments Conditions shall have been satisfied as of the Quarterly Date immediately preceding the date of such Investment and after giving pro forma effect to such Investment.

In the event that an Investment meets the criteria of more than one of the categories of Permitted Investments described in clauses (a) through (r) above, the Borrower will be permitted to classify such Investment on the date of making such Investment in any manner that complies with this definition.

"**Permitted Liens**" means:

(a) Liens in favor of the First Lien Collateral Agent for the benefit of First Lien Secured Parties granted pursuant to any First Lien Collateral Documents or, to the extent contemplated by this Agreement, for the benefit of First Lien Secured Parties granted pursuant to any other First Lien Collateral Documents, including, without limitation, Indebtedness incurred in compliance with Sections 5.3(a)(i), (iii), (v), and (vi); provided, that the representative of the holders of such Refinancing Indebtedness shall have acceded to this Agreement; provided, further that Liens granted in favor of one or more Permitted Commodity Hedge Counterparties pursuant to this clause (a) shall (i) be entered into by any Obligor with a Permitted Commodity Hedge Counterparty and (ii) be subject to the Cap Amount (with any remaining exposure to be granted a second lien on the Collateral); provided, however, that no Liens in favor of a Sponsor Counterparty with respect to a Permitted Commodity Hedge Agreement may be granted pursuant to this clause (a);

(b) Liens securing Second Lien Obligations (including, without limitation, Liens in favor of a Sponsor Counterparty with respect to a Permitted Commodity Hedge Agreement), so long as such Liens are junior to the First Lien Obligations pursuant to this Agreement;

(c) Liens on the property or assets of any Obligor in favor of any other Obligor;

(d) Liens on property (including Capital Stock) existing at the time of acquisition of the property (including Capital Stock) by any Obligor; provided, that such Liens were in existence prior to such acquisition and not incurred in contemplation of, such acquisition;

(e) Liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, government contracts, performance and return-of-money bonds and other similar obligations incurred in the ordinary course of business (exclusive of obligations in respect of the payment for borrowed money);

(f) Liens to secure the performance of bids, trading contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds, and other obligations of a like nature incurred in the ordinary course of business; provided, that, for the avoidance of doubt, Liens (including without limitation rights of set-off) on (i) deposits and (ii) revenues under trading contracts, in each case in favor of counterparties under such trading contracts and other obligations incurred in the ordinary course of business (including trading counterparties, brokerages, clearing houses, utilities, systems operators and similar entities) shall be permitted and shall be permitted to be first-priority Liens on such collateral;

(g) Liens for taxes, assessments or charges not yet due or delinquent or that are being contested in good faith and by appropriate proceedings if adequate reserves with respect thereto are maintained on the books of the Borrower or the affected Guarantor, as the case may be, in accordance with GAAP as in effect from time to time;

(h) Liens imposed by law, such as carriers', warehousemen's, mechanics', materialmen's, repairmen's, landlords' or other similar Liens arising in the ordinary course of business (i) for amounts not overdue for a period of more than thirty days or (ii) for amounts that are overdue and that are being diligently contested in good faith by appropriate proceedings, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts;

(i) survey exceptions, easements or reservations of, or rights of others for, license, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions, encroachments, mineral interests and leases, minor title defects and other similar encumbrances that were not incurred in connection with Indebtedness and that do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(j) any interest or title of a licensor, lessor, sublessor, sublicensor or grantor of an easement under any lease, sublease, license, sublicense or easement and to which any Obligor is a party (including any Liens on the interest of such licensor, lessor, sublessor, sublicensor or grantor);

(k) Liens arising in the ordinary course of business to secure liability (in an amount not in excess of the premium for such insurance) for premiums to insurance carriers;

(l) filing of UCC financing statements as a precautionary measure in connection with operating leases or finance leases;

(m) bankers' Liens and similar Liens (including rights of set-off) in respect of bank deposits;

(n) Liens on cash, Permitted Investments or other property arising in connection with the defeasance, discharge or redemption of Indebtedness;

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

(p) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into in the ordinary course of business;

(q) good faith deposits made in connection with (i) any acquisition (whether pursuant to an acquisition of Capital Stock, assets or otherwise) by any Obligor from any Person of all or substantially all of the assets of a Person or a line of business of a Person or (ii) any advance, loan, extension of credit (by way of guarantee or otherwise) or capital contribution, or purchase of any stock, bonds, notes, debentures or other securities of or any assets constituting a business unit of, or any other investment;

(r) Liens existing on any property or asset prior to the acquisition thereof (or the acquisition of, or merger or consolidation with, the Person owning such property or asset) by any Obligor, and any Lien securing obligations incurred to refinance, replace, refund, renew or extend the obligations secured by such Liens; provided, that in each case, (i) such Lien is not created in contemplation or in connection with such acquisition, (ii) such Lien does not apply to any other property or assets of the Borrower or any of the Guarantees (other than fixtures and improvements on any such real property), and (iii) the principal amount of any Indebtedness secured by such Liens shall not be increased (except by the amount of premiums, penalties, accrued and unpaid interest, fees and expenses associated with such refinancing, replacement, refunding, renewal or extension of such Indebtedness);

(s) utility and similar deposits made by any Obligor in the ordinary course of business;

(t) Liens securing (i) Finance Lease Obligations and (ii) other Indebtedness of any Obligor incurred to finance all or any part of the acquisition, lease, construction, installation or improvement of any assets, and any refinancing, replacement, refunding, renewal or extension of any such Indebtedness without any increase thereof, in an aggregate amount, together with all other Finance Lease Obligations and Indebtedness secured by Liens pursuant to this clause (t) not to exceed $10,000,000 at any one time outstanding, so long as (A) such Liens are initially created or arise prior to or within the ninety days after the completion of such acquisition, lease, construction, installation or improvement and (B) such Liens do not attach to assets of the Borrower or any Subsidiary (other than an Excluded Subsidiary) other than the relevant assets acquired, leased, constructed, installed or improved;

(u) Liens of sellers of goods, gas or oil to any Obligor arising under Article 2 of the UCC or under other state statutes in the ordinary course of business, covering only the goods, gas or oil sold and covering only the unpaid purchase price for such goods, gas or oil and related expenses;

(v) Liens encumbering (i) accounts receivable of any Obligor (and accounts into which the proceeds of such accounts receivable are deposited) in favor of a counterparty to any PPA or similar agreement in accordance with the terms of such agreement (but excluding any such accounts receivable, accounts or proceeds held by or pledged to such counterparty in excess of ninety days; provided, that such ninety-day period shall be extended for such longer period during which such accounts receivable, accounts or proceeds may be subject to any dispute), or (ii) margin, clearing or similar accounts with or on behalf of brokers, credit clearing organizations, the CAISO, independent system operators, regional transmission organizations or balancing authorities, pipelines, state agencies, federal agencies, futures contract brokers, exchanges related to the trading of energy (including the Intercontinental Exchange), customers, trading counterparties, or any other parties or issuers of surety bonds and any proceeds thereof, in the ordinary course of business, in an aggregate amount not to exceed the sum of (A) $30,000,000 (or such higher amount as is necessary or advisable in the ordinary course of business, as reasonably determined by a Responsible Officer of the Borrower which determination shall be conclusive), plus (B) voluntary equity contributions made to any Obligor for such purpose plus (C) funds in the Distribution Suspense Account that are used for such purpose in lieu of making Restricted Payments at any time under this clause (ii); provided, however, that the foregoing limitation in this clause (ii) on such aggregate amount shall not apply to (x) letters of credit provided for the benefit of such accounts in compliance with the other terms and conditions hereof or (y) any such arrangements with or on behalf of the CAISO, any other independent system operators, regional transmission organizations or balancing authorities;

(w) Title Exceptions;

(x) statutory Liens related to the CoBank Service Share; and

(y) Liens securing Indebtedness or other First Lien Obligations or Second Lien Obligations, as applicable, in an aggregate amount, together with all other Indebtedness and other First Lien Obligations or Second Lien Obligations, as applicable, secured by Liens pursuant to this clause (x), not to exceed $100,000,000 at any one time outstanding.

"**Permitted Tax Distributions**" means, without duplication with O&M Costs, with respect to each taxable year (or a portion thereof) ending after the Closing Date for which each of the Borrower and Holdings is treated as a partnership or disregarded entity for U.S. federal income tax purposes, the payment of distributions to the direct or indirect equity owners of Holdings to pay the U.S. federal, state and local income tax liabilities for such taxable period attributable to their ownership of Holdings during such taxable year (or a portion thereof) in an aggregate amount not to exceed the product of (a) the amount of net U.S. federal taxable income of Holdings and its Subsidiaries (in the case of a disregarded entity, computed as if such entity were a partnership) allocated to the direct or indirect equity owners of Holdings for such taxable year (or, in the case of a taxable year beginning on or before the Closing Date, the portion thereof beginning after the Closing Date), reduced by any taxable losses, deductions, credits and other attributes and any carryovers thereof allocated to such equity owners for any prior taxable year ending after the Closing Date to the extent such cumulative taxable loss is reasonably expected to be deductible by such equity owners against such taxable income (assuming that such equity owners have no items of income, gain, loss, deduction or credit other than through Holdings and its Subsidiaries) and has not previously been taken into account in determining Permitted Tax Distributions and n) the highest maximum combined marginal U.S. federal, state and local income tax rate applicable to an individual or corporation (whichever is higher, unless the equity of Holdings is owned entirely by a corporation or corporations, in which case, the highest combined U.S. federal, state or local tax rate applicable to any of such corporations) for such taxable year (taking into account the character of the taxable income in question (long-term capital gain, qualified dividend income, etc.), the deductibility of state and local income taxes for U.S. federal income tax purposes (and any applicable limitation thereon), it being understood that, under law in effect on the Closing Date, an individual taxpayer subject to tax at the maximum marginal federal income tax rate would not be able to deduct state and local taxes from the income such taxpayer receives directly or indirectly from Holdings and its Subsidiaries), but, in each case, without regard to the possible applicability of any deduction permitted under Section 199A of the Code if a rate applicable to an individual is used (assuming the income and deductions attributed from the Borrower were allocated to a single unmarried individual) and any foreign tax credits; provided, that Permitted Tax Distributions shall include with respect to any such taxable year an amount necessary to allow such equity owners to pay estimated taxes during the course of the taxable year using reasonable estimates of the anticipated aggregate amount of distributions for such taxable year, with any excess of aggregate installments distributed with respect to any such taxable year over the actual amount of distributions permitted for such taxable year reducing the amount of Permitted Tax Distributions with respect to the immediately subsequent taxable year (and, to the extent such excess is not fully absorbed in the immediately subsequent taxable year, the following year(s)); provided, further, that in the event Holdings is required under applicable law to withhold or directly pay any U.S. federal, state or local income taxes applicable to any direct or indirect equity owner that is treated as a non-U.S. Person for U.S. federal income tax purposes for the purposes of such withholding or payment, Holdings may discharge such obligation as if the amount so required to be withheld is a Permitted Tax Distribution, and the amount of any Permitted Tax Distribution for such period will be reduced by any U.S. federal, state and local taxes paid directly or withheld by Holdings.

"**Person**" has the meaning given in the Intercreditor Agreement.

"**PG&E PPA**" means the Power Purchase and Sale Agreement, dated as of September 30, 2009, between the Borrower and Pacific Gas & Electric Company.

"**PPA**" means an agreement (including a tolling agreement, fuel conversion services agreement or other similar agreement) entered into by the Borrower or a Subsidiary of the Borrower for the sale of capacity, energy or green attributes (and services ancillary or related thereto) from one or more of the Projects.

"**Project Contracts**" means, without duplication, the Major Project Contracts and any other agreement relating to the development, construction, operation, maintenance or use of any Project to which any Obligor is a party.

"**Project Payments**" means the proceeds of any payment (or series of related payments) in connection with any liquidated damages (other than delay liquidated damages), buy-out payments, termination payments and other similar damages or payments received by any Obligor pursuant to, or in connection with, any Project Contract, net of applicable Collection Expenses.

"**Project Revenues**" has the meaning given in the Depositary Agreement.

"**Project Site**" means the land upon which each power plant, energy storage facility and/or carbon sequestration facility listed in the definition of "Projects" is located.

"**Projects**" has the meaning given in the Intercreditor Agreement.

"**Prudent Industry Practices**" means those practices, methods, equipment, specifications and standards of safety and performance, as the same may change from time to time, (a) as are commonly used by independent power producers in the United States as prudent engineering practices in connection with the design, construction, operation, maintenance, repair and use of electrical and other equipment, facilities and improvements of such generation stations, with commensurate standards of safety, performance, dependability, efficiency and economy or o) which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Industry Practices does not necessarily mean one particular or the optimum practice, method, equipment specification or standard in all cases, but is instead intended to encompass a broad range of acceptable practices, methods, equipment specifications and standards.

"**PUHCA**" means the Public Utility Holding Company Act of 2005, and FERC's implementing regulations thereunder at 18 C.F.R. Part 366.

"**PURPA**" means the Public Utility Regulatory Policies Act of 1978, and FERC's implementing regulations thereunder at 18 C.F.R. Part 292.

"**Qualifying Facilities**" means cogeneration facilities or small power production facilities that meet the criteria for a "qualifying facility" under FERC's regulations implementing PURPA.

"**Quarterly Date**" means the last Business Day of each December, March, June, and September.

"**Refinancing Indebtedness**" means any Indebtedness incurred to refinance existing First Lien Secured Debt Obligations or any Indebtedness incurred for Required Modifications, whether or not constituting First Lien Secured Debt Obligations.

"**Replacement Major Project Contract**" means one or more contracts or agreements which:

(a) is entered into by any Obligor in substitution for any Major Project Contract that has been terminated in accordance with its terms or otherwise or replaced following an event of default thereunder;

(b) has economic and other terms which, taken as a whole, are not materially less favorable to such Obligor as the Major Project Contract being replaced; and

(c) only with respect to PPAs, is with one or more counterparties (or guarantors of such counterparties' obligations) having substantially similar or better creditworthiness (or is otherwise credit supported so that the credit risk of such counterparty is not materially less favorable to such Obligor, as applicable, than the existing counterparty) and substantially similar or better experience in the industry, in each case, as the counterparty to the Major Project Contract being replaced.

"**Required First Lien Secured Debt Parties**" means, as of any date, the holders of more than 50% of the sum of (without duplication):

(a) subject to any restrictions set forth in the TLA Credit Agreement with respect to the voting or approval rights of the Borrower, its Affiliates and defaulting lenders, the Outstanding Amounts under the TLA Credit Agreement on such date; and

(b) subject to any restrictions set forth in any First Lien Secured Other Permitted Debt Documents with respect to the voting or approval rights of the Borrower, its Affiliates and defaulting lenders, the aggregate Outstanding Amounts under any applicable First Lien Secured Other Permitted Debt Documents on such date; provided that First Lien Secured Bond Debt shall be excluded from this clause (b) if the Outstanding Amount under (i) the TLA Credit Agreement and (i) any other First Lien Secured Other Permitted Debt Documents constituting commercial bank or term loan A facilities is collectively equal to or greater than $300,000,000.

"**Required Modifications**" means modifications, additions, and improvements to the Projects that are, in each case, necessary to remain in compliance with Legal Requirements, as certified as such by the Borrower to the First Lien Collateral Agent and the TLA Administrative Agent.

"**Responsible Officer**" means the chief executive officer, president, any vice president or financial officer of the Borrower, but in any event, with respect to financial matters, a financial officer of the Borrower.

"**Restricted Payment**" means any (a) dividend or other distribution on account of any Equity Interests of any Obligor or any Excluded Subsidiary (including, without limitation, any payment in connection with any merger or consolidation involving any Obligor or any such Excluded Subsidiary) or to the direct or indirect holders of the Equity Interests of any Obligor or any such Excluded Subsidiary in their capacity as such (other than dividends or distributions payable in Equity Interests (other than Disqualified Capital Stock) of any Obligor or any Excluded Subsidiary and other than dividends or distributions payable to any Obligor or an Excluded Subsidiary); p) any purchase, redemption or other acquisition or retirement for value (including, without limitation, in connection with any merger or consolidation involving any Obligor or any such Excluded Subsidiary) of any Equity Interests of the Borrower, any direct or indirect parent of any Obligor or any Excluded Subsidiary (other than purchases, redemptions or other acquisitions or retirements for value by i) the Borrower, ii) a Subsidiary of any Obligor or iii) Holdings to the extent such Equity Interests are of its Subsidiaries); or q) payment on or with respect to, or purchase, redemption, defeasance or other acquisition or retirement for value of any Indebtedness of any Obligor or any Excluded Subsidiary that is by its terms contractually subordinated to the First Lien Obligations or any Guarantee (excluding i) intercompany Indebtedness between or among the Obligors and ii) payment on or with respect to Permitted Debt in accordance with the Depositary Agreement); provided, that "Restricted Payment" shall not include any payment or distribution to or for the account of a direct or indirect holder, that is not an Affiliate of the Sponsor, of any Indebtedness or Equity Interests in an Excluded Subsidiary of the type described in clause (a) of the definition thereof.

"**Restricted Payment Conditions**" has the meaning given in Section 5.1(a)(vii).

"**Revolving Issuing Banks**" has the meaning given in the TLA Credit Agreement.

"**Second Lien Collateral Agent**" has the meaning given in the Intercreditor Agreement.

"**Second Lien Obligations**" has the meaning given in the Intercreditor Agreement.

"**Sponsor**" has the meaning given in the Intercreditor Agreement.

"**Sponsor Counterparty**" means the Sponsor or one of its Affiliates.

"**Subsidiary**" has the meaning given in the Intercreditor Agreement.

"**Term Maturity Date**" has the meaning given in the TLA Credit Agreement.

"**Third Amended and Restated Power Purchase and Sale Agreement**" means the Third Amended and Restated Power Purchase and Sale Agreement, dated as of the Closing Date, between Calpine Energy Services, L.P. and the Borrower.

"**Title Exceptions**" means those exceptions to coverage listed on a schedule of the Title Policy, other than the standard printed exceptions contained therein.

"**Title Insurer**" means Fidelity National Title Insurance Company.

"**Title Policy**" has the meaning given in Section 4.13(a)(ii).

"**TLA Administrative Agent**" has the meaning given in the Intercreditor Agreement.

"**TLA Credit Agreement**" means the Credit Agreement, to be dated the Closing Date (as amended, amended and restated, supplemented or otherwise modified from time to time), among the Obligors, the TLA Lenders, Revolving Issuing Banks, TLA Administrative Agent, First Lien Collateral Agent, and the others party thereto from time to time.

"**TLA Lender**" or "**TLA Lenders**" means the financial institutions party to the TLA Credit Agreement.

"**U.S. Dollars**" and "**$**" means United States dollars or such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts in the United States of America.

"**U.S. Person**" means any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

"**UCC**" has the meaning given in the Intercreditor Agreement.

"**Wild Horse**" has the meaning given in the Recitals.

"**Wild Horse Geothermal Steam Sales Agreement**" means the amended and restated steam sales agreement between Wild Horse and Borrower, to be dated on or about the Closing Date (as amended, amended and restated, supplemented or otherwise modified from time to time).

RULES OF INTERPRETATION

1. The singular includes the plural and the plural includes the singular.

2. "or" is not exclusive.

3. A reference to a Governmental Rule includes any amendment or modification to such Governmental Rule, and all regulations, rulings and other Governmental Rules promulgated under such Governmental Rule.

4. A reference to a Person includes its permitted successors, permitted replacements and permitted assigns.

5. Accounting terms have the meanings assigned to them by GAAP, as applied by the accounting entity to which they refer.

6. The words "include", "includes", and "including" are not limiting.

7. A reference in a document to an Article, Section, Exhibit, Schedule, Annex or Appendix is to the Article, Section, Exhibit, Schedule, Annex or Appendix of such document unless otherwise indicated. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed incorporated by reference in such document. In the event of any conflict between the provisions of this Agreement (exclusive of the Exhibits, Schedules, Annexes and Appendices thereto) and any Exhibit, Schedule, Annex or Appendix thereto, the provisions this Agreement shall control.

8. Unless otherwise expressly provided, references to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) means such document, instrument or agreement, or replacement or predecessor thereto, as amended, amended and restated, modified and supplemented from time to time and in effect at any given time.

9. The words "hereof", "herein", and "hereunder" and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.

10. References to "days" means calendar days, unless the term "Business Days" shall be used. References to a time of day means such time in New York, New York, unless otherwise specified.

11. The time periods specified in each of Sections 4.10, 4.12, and 4.13 shall be extended (a) automatically to account for any period during which any applicable Obligor is unable, after exercising commercially reasonable efforts, to perform its obligations under such Section due to any circumstances existing in connection with the COVID-19 pandemic, or (b) as may otherwise be agreed by the First Lien Collateral Agent (acting at the direction of the Directing Agent, acting reasonably).

12. If, at any time after the Closing Date, Moody's or S&P shall change its respective system of classifications, then any Moody's or S&P "rating" referred to herein shall be considered to be at or above a specified level if it is at or above the new rating which most closely corresponds to the specified level under the old rating system.

13. The First Lien Documents are the result of negotiations between, and have been reviewed by the Obligors, each Affiliate of each Obligor, TLA Administrative Agent, each First Lien Secured Party and their respective counsel. Accordingly, the First Lien Documents shall be deemed to be the product of all parties thereto, and no ambiguity shall be construed in favor of or against the Obligors, any Affiliate of the Obligors, TLA Administrative Agent or any First Lien Secured Party solely as a result of any such party having drafted or proposed the ambiguous provision.

14. For all purposes under this Agreement, in connection with any Division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

Exhibit 10.9

Execution Version

SECOND OMNIBUS AMENDMENT AGREEMENT

This SECOND OMNIBUS AMENDMENT AGREEMENT, dated as of May 31, 2022 (this "**Second Omnibus Amendment Agreement**"), is by and among GEYSERS POWER COMPANY, LLC (the "**Borrower**"), THE LENDERS SIGNATORY HERETO, THE GUARANTORS SIGNATORY HERETO, MUFG BANK, LTD., as Administrative Agent (together with its permitted successors and assigns in such capacity, "**Administrative Agent**"), MUFG UNION BANK, N.A., as First Lien Collateral Agent (together with its permitted successors and assigns in such capacity appointed, "**First Lien Collateral Agent**") and MUFG UNION BANK, N.A., as Depositary Agent (together with its permitted successors and assigns in such capacity appointed, "**Depositary Bank**"), and is made with reference to (a) that certain Credit Agreement, dated as of June 9, 2020, among the Borrower, the several banks and other financial institutions and entities from time to time party thereto as lenders and issuing banks (collectively, the "**Lenders**"), the Administrative Agent, the First Lien Collateral Agent, GEYSERS INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, as Holdings ("**Holdings**"), GEYSERS COMPANY, LLC, a Delaware limited liability company ("**Geysers Company**"), WILD HORSE GEOTHERMAL, LLC, a Delaware limited liability company ("**Wild Horse**") and CALISTOGA HOLDINGS, LLC, a Delaware limited liability company ("**Calistoga**", and, together with Holdings, Geysers Company, Wild Horse, and each subsidiary of an Obligor (as defined in the Credit Agreement) that becomes a "Guarantor" from time to time in accordance with the terms hereof, each a "**Guarantor**" and together, the "**Guarantors**") and other financial institutions and entities from time to time party thereto (as amended by that certain Omnibus Amendment Agreement, dated as of November 9, 2021 and, as may be further amended, supplemented, amended and restated or otherwise modified from time to time prior to the date hereof, the "**Credit Agreement**"), (b) that certain First Lien Common Terms Agreement, dated as of June 9, 2020, by and among the Borrower, the Guarantors, each First Lien Secured Debt Representative party thereto from time to time (the "**First Lien Secured Debt Representative**") and the First Lien Collateral Agent (as amended by that certain Omnibus Amendment Agreement, dated as of November 9, 2021 and, as may be further amended, supplemented, amended and restated or otherwise modified from time to time prior to the date hereof, the "**Common Terms Agreement**"), (c) that certain Depositary Agreement, dated as of June 9, 2020, among the Borrower, the Guarantors, the First Lien Collateral Agent and the Depositary Bank and MUFG UNION BANK, N.A., as Second Lien Collateral Agent (in such capacity, together with its successors and permitted assigns, the "**Second Lien Collateral Agent**") for the Second Lien Secured Parties (as amended by that certain Omnibus Amendment Agreement, dated as of November 9, 2021 and, as may be further amended, supplemented, amended and restated or otherwise modified from time to time prior to the date hereof, the "**Depositary Agreement**") and (d) that certain Collateral Agency and Intercreditor Agreement, dated as of June 9, 2020, by and among the Borrower, Holdings, the Guarantors, MUFG BANK, LTD., as TLA Administrative Agent for the TLA Lender Parties (in such capacity, together with its successors and permitted assigns in such capacity, the "**TLA Administrative Agent**"), MUFG UNION BANK, N.A., as collateral agent for the First Lien Secured Parties (in such capacity, together with its successors and permitted assigns in such capacity, the "**First Lien Collateral Agent**"), MUFG UNION BANK, N.A., as collateral agent for the Second Lien Secured Parties (in such capacity, together with its successors and permitted assigns in such capacity, the "**Second Lien Collateral Agent**"), and each of the other Persons party thereto from time to time in accordance with the terms thereof (as may be further amended, supplemented, amended and restated or otherwise modified from time to time prior to the date hereof, the "**Intercreditor Agreement**"). Capitalized terms used herein without definition shall have the meaning assigned to such terms in Section 1.1 of the Credit Agreement and the interpretive provisions set forth in Section 1.2 of the Credit Agreement.

RECITALS:

WHEREAS, pursuant to the Credit Agreement, the Lenders and the other parties thereto have agreed to provide to the Borrower certain credit facilities, consisting of (i) a term loan facility of the Borrower in an aggregate principal amount of up to $1,500,000,000 (the "**Term Loan Commitments**") and (ii) a senior secured revolving letter of credit facility of the Borrower (the "**Multi-Draw Facility**") in an aggregate principal amount up to $250,000,000 (the commitments under Multi-Draw Facility, the "**Multi-Draw Commitments**"; and the Multi-Draw Commitments and the Term Loan Commitments, the
"**Existing Commitments**" and, the loans thereunder, the "**Existing Loans**");

WHEREAS, in connection with repricing, extension and upsize of the Existing Loans, the Borrower hereby requests the amendments of the Credit Agreement, the Common Terms Agreement, the Depositary Agreement and the Intercreditor Agreement;

WHEREAS, pursuant to Section 9.9 of the Credit Agreement, amendments to the Credit Agreement are required to be in writing signed by the Borrower, the Guarantors, the Lenders, the Administrative Agent and the First Lien Collateral Agent, and each of Borrower, the Guarantors, the Lenders, the Administrative Agent and the First Lien Collateral Agent are willing to agree to the amendments to the Credit Agreement requested by the Borrower subject to and in accordance with the terms and conditions hereinafter set forth;

WHEREAS, pursuant to Section 7.2 of the Common Terms Agreement, amendments to the Common Terms Agreement are required to be in writing signed by each of the Borrower, the Guarantors, the First Lien Collateral Agent and the First Lien Secured Debt Representatives constituting the Required First Lien Secured Debt Parties (as defined in the Common Terms Agreement) (the "**Required First Lien Secured Debt Parties**") and each of the Borrower, the Guarantors, the First Lien Collateral Agent and the Required First Lien Secured Debt Parties are willing to agree to the amendments to the Common Terms Agreement requested by the Borrower subject to and in accordance with the terms and conditions hereinafter set forth;

WHEREAS, pursuant to Section 6.1 of the Depositary Agreement, amendments to the Depositary Agreement are required to be in writing signed by each of the Borrower, the Guarantors, the Depositary Bank and the First Lien Collateral Agent and each of the Borrower, the Guarantors, the Depositary Bank and the First Lien Collateral Agent are willing to agree to the amendments to the Depositary Agreement requested by the Borrower subject to and in accordance with the terms and conditions hereinafter set forth;

WHEREAS, pursuant to Section 9.3 of the Intercreditor Agreement, amendments to the Intercreditor Agreement are required to be in writing signed by each of the Borrower, the Guarantors, the TLA Administrative Agent, the First Lien Collateral Agent, the Second Lien Collateral Agent, and each of the other Persons from time to time party thereto and each of the Borrower, the Guarantors, the TLA Administrative Agent, the First Lien Collateral Agent, the Second Lien Collateral Agent, and each of the other Persons from time to time party thereto are willing to agree to the amendments to the Intercreditor Agreement requested by the Borrower subject to and in accordance with the terms and conditions hereinafter set forth;

WHEREAS, the parties hereto wish to enter into this Second Omnibus Amendment Agreement pursuant to Section 9.9 of the Credit Agreement, Section 7.2 of the Common Terms Agreement, Section 6.1 of the Depositary Agreement and Section 9.3 of the Intercreditor Agreement, respectively, and it is the intent of the parties hereto that this Second Omnibus Amendment Agreement not constitute a novation of the obligations and liabilities of the parties under the Credit Agreement and rather that this Second Omnibus Amendment Agreement amend the Credit Agreement;

WHEREAS, the Borrower has requested an increase of the Total Term Loan Commitment in an aggregate principal amount of $310,000,000 (together with the Term Loan Commitment, the "**2022 Term Loan Commitment**", and any loans made thereunder, the "**2022 Term Loans**") which shall be provided by the 2022 Term Lenders (as defined below) party hereto and effective on the Second Omnibus Amendment Date (as defined below) pursuant to the terms and subject to the conditions set forth herein and in the Credit Agreement, which the Borrower intends to treat as fungible with the Term Loans made on the Second Omnibus Amendment Date to the fullest extent permitted by applicable law;

WHEREAS, the Borrower has requested that $50,000,000 of the Multi-Draw Facility (such amount, as shall be permanently reduced dollar for dollar with the principal amount of any Sub-facility Term Loans repaid hereunder, the "**Sub-facility Commitment**") be available for providing one or more (w) term loans (the "**Sub-facility Term Loans**"); (x) revolving loans (the "**Sub-facility Revolving Loans**"); (y) Sub-facility Letters of Credit; or (z) LC Loans resulting from the drawing on Sub-facility Letters of Credit (the "**Sub-facility LC Loans**", together with Sub-facility Term Loans and Sub-facility Revolving Loans, the "**Sub-facility Loans**"), which shall be provided by the 2022 Sub-facility Lenders (as defined below) party hereto and effective on the Second Omnibus Amendment Date (as defined below) pursuant to the terms and subject to the conditions set forth herein and in the Credit Agreement;

WHEREAS, each of the institutions listed on Schedule I hereto as a 2022 Term Lender (the "**2022 Term Lenders**") is willing to provide their respective 2022 Term Loan Commitments as set forth on Schedule I to the Borrower on the Second Omnibus Amendment Date subject to the conditions set forth herein and in the Credit Agreement;

WHEREAS, each of the institutions listed on Schedule I hereto as a 2022 Sub-facility Lender (the "**2022 Sub-facility Lenders**") is willing to provide their respective Sub-facility Commitment as set forth on Schedule I to the Borrower subject to the conditions set forth herein and in the Credit Agreement; and

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

AGREEMENT:

SECTION 1. 2022 TERM LOAN COMMITMENTS.

(a) On, from and after the Second Omnibus Amendment Date:

(i) each 2022 Term Lender shall hold 2022 Term Loan Commitments as set forth on Schedule I hereto, on the terms and subject to the conditions set forth below and in the Credit Agreement, as amended by this Second Omnibus Amendment Agreement (the "**Amended Credit Agreement**");

(ii) each 2022 Term Lender that holds Existing Loans hereby further agrees that the 2022 Term Loan Commitments as set forth on Schedule I hereto supersede, in their entirety, all Term Loan Commitments of such 2022 Term Lender under the Credit Agreement;

(iii) upon the incurrence of 2022 Term Loans pursuant to this Second Omnibus Amendment Agreement, such 2022 Term Loans shall, except as otherwise expressly set forth in the Amended Credit Agreement, be subject to the same terms and conditions (including repayment terms, voluntary prepayment terms, mandatory prepayment terms, and Applicable Margins) applicable to Term Loans as set forth in the Amended Credit Agreement; and

(iv) on (and subject to the occurrence of) the Second Omnibus Amendment Date, each 2022 Term Lender party hereto (A) acknowledges and agrees to make the 2022 Term Loans as provided in the Second Omnibus Amendment Agreement on the terms, and subject to the 3 conditions, set forth in the Second Omnibus Amendment Agreement and (B) to the extent provided in the Second Omnibus Amendment Agreement and the Amended Credit Agreement, shall have the rights and obligations of a Lender thereunder and under the other applicable Credit Documents.

SECTION 2. 2022 SUB-FACILITY COMMITMENTS. On, from and after the Second Omnibus Amendment Date, each 2022 Sub-facility Lender shall provide their respective Sub-facility Commitments and Sub-facility Loans, on the terms and subject to the conditions set forth below and in the Amended Credit Agreement.

SECTION 3. AMENDMENTS TO CREDIT AGREEMENT. Pursuant to Section 9.9 of the Credit Agreement, each of the Borrower, the Guarantors, the Lenders, the Administrative Agent, and the First Lien Collateral Agent consents to the amendment of the Credit Agreement made as of the date hereof to:

(a) delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in Exhibit A-1 hereto;

(b) replace the Exhibits to the Credit Agreement in their entirety with the Exhibits in the form set forth in Exhibit A-2 hereto; and

(c) replace Schedule 2.2(a) and Schedule 2.1(b)(ii)(C) to the Credit Agreement in their entirety with Schedule 2.2(a) and Schedule 2.1(b)(ii)(C), respectively, in the forms set forth in Exhibit A-3 hereto. Each Lender that holds Existing Loans and Existing Commitments hereby further agrees that the Commitments set forth in Schedule 2.2(a) to the Credit Agreement as amended by this Second Omnibus Amendment Agreement supersede, in their entirety, all Commitments of such Lenders under the Credit Agreement.

SECTION 4. AMENDMENTS TO COMMON TERMS AGREEMENT. Pursuant to Section 7.2 of the Common Terms Agreement, each of the Borrower, the Guarantors, the First Lien Collateral Agent and the Required First Lien Secured Debt Parties consents to the amendment of the Common Terms Agreement made as of the date hereof to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in Exhibit B hereto.

SECTION 5. AMENDMENTS TO DEPOSITARY AGREEMENT. Pursuant to Section 6.1 of the Depositary Agreement, each of the Borrower, the Guarantors, the Depositary Bank and the First Lien Collateral Agent consents to the amendment of the Depositary Agreement made as of the date hereof to:

(a) delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in Exhibit C-1 hereto; and

(b) replace Exhibit E to the Depositary Agreement in its entirety with Exhibit E in the form set forth in Exhibit C-2 hereto.

SECTION 6. AMENDMENTS TO INTERCREDITOR AGREEMENT. Pursuant to Section 9.3 of the Intercreditor Agreement, each of the Borrower, the Guarantors, the TLA Administrative Agent, the First Lien Collateral Agent, the Second Lien Collateral Agent, and each of the other Persons from time to time party thereto consents to the amendment of the Intercreditor Agreement made as of the date hereof to:

(a) delete the definition of "Projects" in Section 1.1 of the Intercreditor Agreement in its entirety and replace it with the following:

""**Projects**" means, collectively, (a) an approximately 18 MW geothermal facility located in Sonoma County, California, referred to as the Aidlin project, (b) an approximately 61 MW geothermal facility located in Lake County, California, referred to as the Big Geysers project, (c) an approximately 69 MW geothermal facility located in Lake County, California, referred to as the Calistoga project, (d) an approximately 51 MW geothermal facility located in Sonoma County, California, referred to as the Cobb Creek project, (e) an approximately 68 MW geothermal facility located in Sonoma County, California, referred to as the Eagle Rock project, (f) an approximately 41 MW geothermal facility located in Sonoma County, California, referred to as the Grant project, (g) an approximately 54 MW geothermal facility located in Sonoma County, California, referred to as the Lake View project, (h) an approximately 84 MW geothermal facility located in Sonoma County, California, referred to as the McCabe project, (i) an approximately 53 MW geothermal facility located in Lake County, California, referred to as the Quicksilver project, (j) an approximately 76 MW geothermal facility located in Sonoma County, California, referred to as the Ridge Line project, (k) an approximately 50 MW geothermal facility located in Sonoma County, California, referred to as the Socrates project, (l) an approximately 53 MW geothermal facility located in Sonoma County, California, referred to as the Sonoma project, (m) an approximately 47 MW geothermal facility located in Sonoma County, California, referred to as the Sulphur Springs project and (n) Battery Projects, provided that a Battery Project in this paragraph (n) shall constitute a "Project" only from and after the date on which the Borrower has received the proceeds of a Sub-facility Loan or a Sub-facility Letter of Credit, in each case in respect of such Battery Project."; and

(b) add the following defined term to Section 1.1 of the Intercreditor Agreement in the proper alphabetical order:

""**Battery Projects**" means any energy storage project that is developed, constructed, owned, operated and maintained by any Obligor."

SECTION 7. REPRESENTATIONS AND WARRANTIES. In order to induce the Lenders party hereto to enter into this Second Omnibus Amendment Agreement and to amend the Credit Agreement, the Common Terms Agreement, the Depositary Agreement and the Intercreditor Agreement in the manner provided herein, each Obligor hereby represents and warrants that:

(a) the representations and warranties set forth in Article 4 of the Credit Agreement and in each other Credit Document, shall be true and correct in all material respects on and as of the Second Omnibus Amendment Date, and the representations and warranties which are contained in any other document furnished at any time under or in connection herewith or therewith were true and correct in all material respects when made, except, in each case, to the extent that such representations and warranties specifically refer to an earlier or specified date, in which case they shall be true and correct in all material respects as of such earlier or specified date (provided, that, in each case, to the extent any such representations are qualified by materiality, such representations shall be true and correct in all respects as of such earlier or specified date);

(b) both before and after giving effect to this Second Omnibus Amendment Agreement, no Default or Event of Default shall have occurred and be continuing; and

(c) this Second Omnibus Amendment Agreement has been duly authorized, executed and delivered by such Obligor and each of this Second Omnibus Amendment Agreement, the Credit Agreement, the Common Terms Agreement, the Depositary Agreement and the Intercreditor Agreement, as amended hereby, constitutes a legal, valid and binding obligation of such Obligor, enforceable against such Obligor in accordance with its terms, except to the extent that enforceability may be limited by (i) applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights, (ii) the effect of general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law), or (iii) implied covenants of good faith and fair dealing.

SECTION 8. EFFECTIVENESS. This Second Omnibus Amendment Agreement (including the amendments contained in Sections 1, 2, 3, 4, 5 and 6 hereof) shall become effective on the date (the "**Second Omnibus Amendment Date**") on which the following conditions shall have been satisfied:

(a) Resolutions. Delivery to the Administrative Agent of a copy of one or more resolutions or other authorizations, in form and substance reasonably satisfactory to the Administrative Agent, of the Obligors certified by a Responsible Officer of Holdings or Borrower, as applicable, as being in full force and effect on the Second Omnibus Amendment Date, authorizing, as applicable and among other things, the delivery and performance of this Second Omnibus Amendment Agreement and any other Credit Document to be entered into on the Second Omnibus Amendment Date and any instruments or agreements required hereunder or thereunder to which any of the Obligors is a party.

(b) Incumbency. Delivery to the Administrative Agent and the Depositary Agent of a certificate, in form and substance reasonably satisfactory to the Administrative Agent, from the Obligors, signed by the appropriate authorized officer or manager of the Obligors and dated as of the Second Omnibus Amendment Date, as to the incumbency of the natural Persons authorized to execute and deliver this Second Omnibus Amendment Agreement and any instruments or agreements required hereunder or thereunder to which an Obligor is a party.

(c) Formation Documents. Delivery to the Administrative Agent of (i) copies of the articles of incorporation, certificate of incorporation, charter or other state certified constituent documents of each Obligor, certified by the secretary of state of such Obligor's state of formation, and (ii) copies of the limited liability company operating agreement or other comparable constituent documents, if applicable, of each Obligor, certified by an authorized officer of such Obligor, as applicable, as being true, correct and complete on the Second Omnibus Amendment Date.

(d) Good Standing Certificates. Delivery to the Administrative Agent of good standing certificates in a form customarily issued by (i) the secretary of state of the state in which the Obligors are formed or incorporated, as applicable, and (ii) in the case of Borrower, the Secretary of State of the State of California.

(e) Second Omnibus Amendment Certificate. Delivery to the Administrative Agent of a certificate, dated as of the Second Omnibus Amendment Date, duly executed by a Responsible Officer of Borrower, in substantially the form of the Closing Certificate provided on the Closing Date.

(f) Legal Opinions. Delivery to the Administrative Agent of legal opinions of counsel to the Obligors, in each case in form and substance reasonably satisfactory to the Administrative Agent.

(g) Second Omnibus Amendment Agreement and Major Project Contracts. Delivery to the Administrative Agent of (i) executed copies of this Second Omnibus Amendment Agreement, (ii) an executed copy of a Master Assignment and Assumption Agreement substantially in the form of Exhibit D and (iii) a certified list of, and true, correct and complete copies of, each Major Project Contract executed after November 9, 2021 and on or prior to the Second Omnibus Amendment Date (together with any supplements or amendments thereto), in the case of each of clauses (i) through (iii), all of which shall have been duly authorized, executed and delivered by the parties thereto.

(h) Representations and Warranties. (i) all representations and warranties set forth in Section 7 of this Second Omnibus Amendment Agreement shall be true and correct in all material respects (or true and correct in all respects in the case of representations and warranties qualified by materiality or Material Adverse Effect) on and as of the Second Omnibus Amendment Date with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects (or true and correct in all respects in the case of representations and warranties qualified by materiality or Material Adverse Effect) on and as of such earlier date), (ii) no Event of Default shall have occurred and be continuing or would occur at the time of and immediately after giving effect to the transactions contemplated hereunder, and (iii) the Administrative Agent shall have received an officer's certificate of the Borrower, dated the Second Omnibus Amendment Date, certifying compliance with the preceding clauses (i) and (ii).

(i) Consultant Reports. Delivery to the Administrative Agent of the Independent Engineer, Insurance Consultant and Environmental Consultant, together with a reliance letter from each such Person in form and substance reasonably satisfactory to the Administrative Agent.

(j) Depositary Accounts. The Debt Service Reserve Account shall have been funded in an amount equal to the Debt Service Reserve Requirement, with cash or one or more letters of credit.

(k) UCC Reports. Delivery to the Administrative Agent of a bring-down UCC report of a date no less recent than ten days before the Second Omnibus Amendment Date for each of the jurisdictions in which the UCC-1 financing statements and the fixture filings were filed in respect of the Collateral on the Closing Date, showing that the security interests created under the First Lien Collateral Documents, with respect to such Collateral, are prior to all other financing statements, future filings or other security documents wherein the security interest is perfected by filing or recording in respect of the Collateral.

(l) Payment of Taxes, Interest and Fees. All taxes, fees and other costs payable in connection with the execution, delivery, recordation and filing of the documents and instruments referred to in this Section 7 and due on the Second Omnibus Amendment Date shall have been paid in full or, as approved by the Lenders, provided for. Borrower shall have paid (or caused to be paid) all outstanding amounts due, as of the Second Omnibus Amendment Date, and owing to (i) the Lenders, Administrative Agent, First Lien Collateral Agent, the Issuing Banks, Coordinating Lead Arrangers or the Joint Lead Arrangers under any fee or other letter, including without limitation, pursuant to Section 2.3(a) of the Credit Agreement, (ii) the Lenders' attorneys and consultants (including the Independent Consultants) for all services rendered and billed at least one Banking Day prior to the Second Omnibus Amendment Date, (iii) the Depositary Agent under the Depositary Agreement and the Depositary and Collateral Agency Fee Letter and (iv) Administrative Agent for any other amounts required to be paid or deposited by Borrower on the Second Omnibus Amendment Date. In addition, Borrower shall have provided, to any Lender that has so requested in writing at least one Banking Day prior to the Second Omnibus Amendment Date, documentation reasonably satisfactory to Borrower and such Lender regarding the description or designation of any fees payable to such Lender pursuant to the foregoing clause (i); provided, that Borrower shall not be responsible for making any determination or verification with respect to the description or designation of fees requested by any such Lender, and shall not have any liability to any such Lender as a result of the delivery of such documentation.

(m) Notice of Borrowing. Borrower shall have delivered a Notice of Borrowing to Administrative Agent in accordance with the procedure specified in Section 2.1(a)(ii) of the Credit Agreement.

(n) Annual Operating Budget. The Lenders shall have received a copy of the Annual Operating Budget for calendar year 2022.

(o) Base Case Projections. Delivery to the Administrative Agent of the Base Case Projections of operating expenses and cash flow for the Projects in the form of Exhibit D hereto, which Base Case Projections shall be in form and substance satisfactory to the Administrative Agent.

(p) Amendment Fee. The Borrower shall have paid an amendment fee paid to the Administrative Agent for the account of each Lender party hereto, who was a Lender under the Credit Agreement immediately prior to the occurrence of the Second Omnibus Amendment Date, equal to 12.5 basis points (0.125%) of the sum of the stated principal amount of such Lender's Loans and Commitments (without duplication) outstanding immediately prior to the Second Omnibus Amendment Date.

(q) Know-your-Customer. At least three Banking Days prior to the Second Omnibus Amendment Date, the Agents and the Lenders shall have received all documentation and other information required by bank regulatory authorities or reasonably requested by any Agent or any Lender, at least seven Banking Days prior to the Second Omnibus Amendment Date, under or in respect of applicable "know-your-customer" and anti-money laundering rules and regulations, including the PATRIOT Act.

(r) Letter of Direction. Delivery to the Administrative Agent and the Depositary Agent of the Second Omnibus Amendment Date Funds Flow Memorandum (as defined in the Amended Credit Agreement).

(s) Notes. Delivery to the Administrative Agent, for the account of each Lender that has requested a Note prior to the Second Omnibus Amendment Date, such Lender's Notes duly executed and delivered by a Responsible Officer of the Borrower.

SECTION 9. EFFECT ON CREDIT DOCUMENTS.

(a) Reference to Credit Agreement. On and after the effectiveness of this Second Omnibus Amendment Agreement, each reference in the Credit Agreement to "this Agreement", "hereunder", "hereof", "herein" or words of like import referring to the Credit Agreement, and each reference in the other Credit Documents to the "Credit Agreement", "thereunder", "thereof" or words of like import referring to the Credit Agreement shall mean and be a reference to the Credit Agreement, as amended and supplemented by this Second Omnibus Amendment Agreement. The Borrower acknowledges and agrees that this Second Omnibus Amendment Agreement shall constitute a Credit Document for all purposes of the Credit Agreement.

(b) Reference to Common Terms Agreement. On and after the effectiveness of this Second Omnibus Amendment Agreement, each reference in the Common Terms Agreement to "this Agreement", "hereunder", "hereof", "herein" or words of like import referring to the Common Terms Agreement, and each reference in the other Credit Documents to the "First Lien Common Terms Agreement", "thereunder", "thereof" or words of like import referring to the Common Terms Agreement shall mean and be a reference to the Common Terms Agreement, as amended and supplemented by this Second Omnibus Amendment Agreement.

(c) Reference to Depositary Agreement. On and after the effectiveness of this Second Omnibus Amendment Agreement, each reference in the Depositary Agreement to "this Agreement", "hereunder", "hereof", "herein" or words of like import referring to the Depositary Agreement, and each reference in the other Credit Documents to the "Depositary Agreement", "thereunder", "thereof" or words of like import referring to the Depositary Agreement shall mean and be a reference to the Depositary Agreement, as amended and supplemented by this Second Omnibus Amendment Agreement.

(d) Reference to Intercreditor Agreement. On and after the effectiveness of this Second Omnibus Amendment Agreement, each reference in the Intercreditor Agreement to "this Agreement", "hereunder", "hereof", "herein" or words of like import referring to the Intercreditor Agreement, and each reference in the other Credit Documents to the "Intercreditor Agreement", "thereunder", "thereof" or words of like import referring to the Intercreditor Agreement shall mean and be a reference to the Intercreditor Agreement, as amended and supplemented by this Second Omnibus Amendment Agreement.

(e) Effect on Credit Documents. Except as specifically amended by this Second Omnibus Amendment Agreement, the Credit Agreement, the Common Terms Agreement, the Depositary Agreement, the Intercreditor Agreement and the other Credit Documents shall remain in full force and effect.

(f) Credit Document. This Second Omnibus Amendment Agreement shall constitute a Credit Document under the terms of the Credit Agreement.

(g) Collateral and Guaranty Matters.

(i) Each of the Obligors party to the Security Agreement, the Depositary Agreement, the other First Lien Collateral Documents and the other Credit Documents, in each case as amended, supplemented or otherwise modified from time to time prior to the date hereof (x) acknowledges and agrees that all of its guaranties, pledges, grants of security interests and Liens and other obligations under the Credit Agreement, Security Agreement, the Depositary Agreement, the other First Lien Collateral Documents and the other Credit Documents to which it is a party are reaffirmed and remain in full force and effect on a continuous basis, (y) reaffirms each Lien granted by it to the Administrative Agent and/or First Lien Collateral Agent for the benefit of the First Lien Secured Parties and (z) acknowledges and agrees that the guaranties, pledges, grants of security interests and Liens contained in the Credit Agreement, Security Agreement, the Depositary Agreement, the other First Lien Collateral Documents and any other Credit Documents are, and shall remain, in full force and effect on and after the Second Omnibus Amendment Date.

(ii) The applicable Obligor will deliver such other documents, certificates and agreements and take all such further actions, in each case, that may be required under any applicable law or which the Administrative Agent and/or First Lien Collateral Agent may reasonably request to ensure the creation, validity, perfection and priority of the Liens on the Collateral created, or purported to be created, under the First Lien Collateral Documents.

(h) No Other Amendment or Waiver. The execution, delivery and performance of this Second Omnibus Amendment Agreement shall not constitute a waiver of any other provision of, or operate as a waiver of any other right, power or remedy of the Administrative Agent, the First Lien Collateral Agent or any Lender Party under, the Credit Agreement or any of the other Credit Documents. The amendment contained herein is limited to the specific provisions described and shall not be deemed to prejudice any rights not specifically addressed herein which the Administrative Agent, the Collateral Agent or any Lender Party may now have or may have in the future under the Credit Agreement or any other Credit Document.

SECTION 10. GOVERNING LAW. This Second Omnibus Amendment Agreement and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Second Omnibus Amendment Agreement and the transactions contemplated hereby or thereby, including the validity, interpretation, construction, breach, enforcement or termination hereof and thereof, shall be governed by, and construed in accordance with, the law of the State of New York without regard to the conflict of law rules thereof (other than Sections 5-1401 and 5-1402 of The New York General Obligations Law).

SECTION 11. WAIVER OF JURY TRIAL; CONSENT TO JURISDICTION. The "*Waiver of Jury Trial*" provisions set forth in Section 11.14 of the Credit Agreement and the "*Consent to Jurisdiction*" provisions set forth in Section 11.15 of the Credit Agreement, shall apply to this Second Omnibus Amendment Agreement, *mutatis mutandis*, as if fully set forth herein.

SECTION 12. DIRECTION. By its signature below, (a) each of the undersigned Lenders hereby instructs the Administrative Agent to (i) sign this Amendment, (ii) direct the Depositary Agent and Collateral Agent to sign this Amendment and (b) the Administrative Agent hereby instructs the Depositary Agent and Collateral Agent to sign this Amendment.

SECTION 13. COUNTERPARTS. This Second Omnibus Amendment Agreement may be executed by one or more of the parties to this Second Omnibus Amendment Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. A set of the copies of this Second Omnibus Amendment Agreement signed by all the parties shall be maintained by the Borrower and the Administrative Agent. This Second Omnibus Amendment Agreement may be executed and delivered by electronic transmission with the same force and effect as if the same was a fully executed and delivered original manual counterpart. The words "execution", "execute", "signed", "signature", and words of like import in or related to any document signed or to be signed in connection with this Second Omnibus Amendment Agreement and the transactions contemplated hereby shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the parties hereto, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Omnibus Amendment Agreement as of the date first above written.

GEYSERS POWER COMPANY, LLC,
a Delaware limited liability company, as Borrower

By: /s/ Zamir Rauf
Name: Zamir Rauf
Title: Chief Financial Officer

GEYSERS INTERMEDIATE HOLDINGS LLC,
a Delaware limited liability company, as a Guarantor

By: /s/ Zamir Rauf
Name: Zamir Rauf
Title: Chief Financial Officer

GEYSERS COMPANY, LLC,
a Delaware limited liability company, as a Guarantor

By: /s/ Zamir Rauf
Name: Zamir Rauf
Title: Chief Financial Officer

WILD HORSE GEOTHERMAL, LLC,
a Delaware limited liability company, as a Guarantor

By: /s/ Zamir Rauf
Name: Zamir Rauf
Title: Chief Financial Officer

CALISTOGA HOLDINGS, LLC,
a Delaware limited liability company, as a Guarantor

By: /s/ Zamir Rauf
Name: Zamir Rauf
Title: Chief Financial Officer

[Signature Page to the Second Omnibus Amendment Agreement]

MUFG BANK, LTD.,
as Administrative Agent

By: /s/ Lawrence Blat
Name: Lawrence Blat
Title: Authorized Signatory

[Signature Page to Second Omnibus Amendment Agreement]

MUFG UNION BANK, N.A.,
as First Lien Collateral Agent

By: /s/ Thaddeus Smith
Name: Thaddeus Smith
Title: Vice President

[Signature Page to Second Omnibus Amendment Agreement]

MUFG UNION BANK, N.A.,
as Depositary Bank

By: /s/ Thaddeus Smith
Name: Thaddeus Smith
Title: Vice President

[Signature Page to Second Omnibus Amendment Agreement]

COÖPERATIEVE RABOBANK U.A., NEW YORK BRANCH,
as a Lender

By: /s/ Claus Hertel
Name: Claus Hertel
Title: MD - Project Finance Officer

By: /s/ Wayne Hu
Name: Wayne Hu
Title: Executive Director

[Signature Page to Second Omnibus Amendment Agreement]

AMALGAMATED BANK,
as a Lender

By: /s/ Shu Chen
Name: Shu Chen
Title: FVP

[Signature Page to Second Omnibus Amendment Agreement]

TRUIST BANK,
as a Lender

By: /s/ Justin Lien
Name: Justin Lien
Title: Director

[Signature Page to Second Omnibus Amendment Agreement]

BANK OF AMERICA, N.A.,
as a Lender

By: /s/ Claudia Correa Welch
Name: Claudia Correa Welch
Title: Managing Director

[Signature Page to Second Omnibus Amendment Agreement]

SIEMENS FINANCIAL SERVICES, INC.,
as a Lender

By: /s/ Russell Nussbaum
Name: Russell Nussbaum
Title: Vice President

By: /s/ Melissa J. Brown
Name: Melissa J. Brown
Title: Sr. Transaction Coordinator

[Signature Page to Second Omnibus Amendment Agreement]

SUMITOMO MITSUI BANKING CORPORATION,
as a Lender

By: /s/ Carl Morales
Name: Carl Morales
Title: Managing Director

[Signature Page to Second Omnibus Amendment Agreement]

CADENCE BANK,
as a Lender

By: /s/ David Anderson
Name: David Anderson
Title: Senior Vice President

[Signature Page to Second Omnibus Amendment Agreement]

CRÉDIT AGRICOLE CORPORATE & INVESTMENT BANK,
as a Lender

By: /s/ Evan Levy
Name: Evan Levy
Title: Managing Director

By: /s/ Ken Ricciardi
Name: Ken Ricciardi
Title: Director

[Signature Page to Second Omnibus Amendment Agreement]

DZ BANK AG DEUTSCHE ZENTRAL- GENOSSENSCHAFTSBANK, NEW YORK BRANCH,
as a Lender

By: /s/ William A. Kersten
Name: William A. Kersten
Title: Director

By: /s/ John Hammarskjold
Name: John Hammarskjold
Title: Senior Vice President

[Signature Page to Second Omnibus Amendment Agreement]

BANK OF MONTREAL, CHICAGO BRANCH,
as a Lender

By: /s/ Nada Elreedy
Name: Nada Elreedy
Title: Director

[Signature Page to Second Omnibus Amendment Agreement]

ASSOCIATED BANK, N.A.,
as a Lender

By: /s/ Justin Nam
Name: Justin Nam
Title: Senior Vice President

[Signature Page to Second Omnibus Amendment Agreement]

NATIONAL BANK OF CANADA,
as a Lender

By: /s/ John Hunt
Name: John Hunt
Title: Authorized Signatory

By: /s/ Mark Williamson
Name: Mark Williamson
Title: Authorized Signatory

[Signature Page to Second Omnibus Amendment Agreement]

HSBC BANK USA, N.A.,
as a Lender

By: /s/ Jay Fort
Name: Jay Fort
Title: Senior Vice President

[Signature Page to Second Omnibus Amendment Agreement]

THE HUNTINGTON NATIONAL BANK,
as a Lender

By: /s/ Joseph Reines
Name: Joseph Reines
Title: Vice President

[Signature Page to Second Omnibus Amendment Agreement]

ING CAPITAL LLC,
as a Lender

By: /s/ Scott Hancock
Name: Scott Hancock
Title: Managing Director

By: /s/ Stefano Palombo
Name: Stefano Palombo
Title: Director

[Signature Page to Second Omnibus Amendment Agreement]

NATIXIS, NEW YORK BRANCH,
as a Lender

By: /s/ Nasir KHAN
Name: Nasir KHAN
Title: Managing Director

By: /s/ Damien AUGUSTE
Name: Damien AUGUSTE
Title: Director

[Signature Page to Second Omnibus Amendment Agreement]

BANK OF CHINA, NEW YORK BRANCH,
as a Lender

By: /s/ Min Zhu
Name: Min Zhu
Title: Executive Vice President

[Signature Page to Second Omnibus Amendment Agreement]

COBANK, ACB,
as a Lender

By: /s/ Justin Merkowitz
Name: Justin Merkowitz
Title: Vice President

[Signature Page to Second Omnibus Amendment Agreement]

APPLE BANK FOR SAVINGS,
as a Lender

By: /s/ Dana R. MacKinnon
Name: Dana R. MacKinnon
Title: Senior Vice President

[Signature Page to Second Omnibus Amendment Agreement]

Signed by **ALLIED IRISH BANKS, P.L.C**)
acting by its duly authorised signatories)
)
)

/s/ Authorised signatory
(Authorised signatory)

/s/ Authorised signatory
(Authorised signatory)

[Signature Page to Second Omnibus Amendment Agreement]

PENSIONSKASSE DES BUNDES PUBLICA,
as a Lender

By: MetLife Investment Management Limited, as Investment Manager

By: /s/ Annette Bannister
Name: Annette Bannister
Title: Authorised Signatory

[Signature Page to Second Omnibus Amendment Agreement]

METROPOLITAN LIFE INSURANCE COMPANY,
as a Lender

By: MetLife Investment Management, LLC, Its Investment Manager

By: /s/ Filipe Cunha
Name: Filipe Cunha
Title: Authorized Signatory

[Signature Page to Second Omnibus Amendment Agreement]

BRIGHTHOUSE LIFE INSURANCE COMPANY,
as a Lender

By: MetLife Investment Management, LLC, Its Investment Manager

By: /s/ Filipe Cunha
Name: Filipe Cunha
Title: Authorized Signatory

[Signature Page to Second Omnibus Amendment Agreement]

METROPOLITAN TOWER LIFE INSURANCE COMPANY,
as a Lender

By: MetLife Investment Management, LLC, Its Investment Manager

By: /s/ Filipe Cunha
Name: Filipe Cunha
Title: Authorized Signatory

[Signature Page to Second Omnibus Amendment Agreement]

SOCIÉTÉ GÉNÉRALE,
as a Lender

By: /s/ Eric Kim
Name: Eric Kim
Title: Director

[Signature Page to Second Omnibus Amendment Agreement]

E. SUN COMMERCIAL BANK, LTD., LOS ANGELES BRANCH,
as a Lender

By: /s/ Mandy Yeh
Name: Mandy Yeh
Title: VP & General Manager

[Signature Page to Second Omnibus Amendment Agreement]

BRIGHTHOUSE LIFE INSURANCE COMPANY,
as a Lender

By: Brighthouse Services, LLC, as adviser
By: Barings LLC, as Investment Adviser

By: /s/ Orhan Sarayli
Name: Orhan Sarayli
Title: Managing Director

[Signature Page to Second Omnibus Amendment Agreement]

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY,
as a Lender

By: Barings LLC, as Investment Adviser

By: /s/ Orhan Sarayli
Name: Orhan Sarayli
Title: Managing Director

[Signature Page to Second Omnibus Amendment Agreement]

BANKUNITED, N.A.,
as a Lender

By: /s/ Michael van Teeffelen
Name: Michael van Teeffelen
Title: SVP

[Signature Page to Second Omnibus Amendment Agreement]

MUFG UNION BANK, N.A.,
as a Lender

By: /s/ Carmelo Restifo
Name: Carmelo Restifo
Title: Managing Director

[Signature Page to Second Omnibus Amendment Agreement]

NATIONAL AUSTRALIA BANK LIMITED,
as a Lender

By: /s/ Henry Miller
Name: Henry Miller
Title: Director

[Signature Page to Second Omnibus Amendment Agreement]

MIZUHO BANK, LTD.,
as a Lender

By: /s/ Raymond Ventura
Name: Raymond Ventura
Title: Managing Director

[Signature Page to Second Omnibus Amendment Agreement]

BNP PARIBAS,
as a Lender

By: /s/ Aashish Mohan
Name: Aashish Mohan
Title: Managing Director

By: /s/ Francis Delaney
Name: Francis Delaney
Title: Managing Director

[Signature Page to Second Omnibus Amendment Agreement]

CAIXABANK, S.A.,
as a Lender

By: /s/ Maria Luisa Cobos Barrio
Name: Maria Luisa Cobos Barrio
Title: Director

By: /s/ Jesús Ansede Ferreiro
Name: Jesús Ansede Ferreiro
Title: Director

[Signature Page to Second Omnibus Amendment Agreement]

Exhibit A-1
Credit Agreement

[*Attached*]

Final Form
Conformed to Omnibus Amendment dated as of November 9, 2021
Conformed to Second Omnibus Amendment dated as of May 31, 2022

CREDIT AGREEMENT

Dated as of June 9, 2020

(as amended by the Omnibus Amendment, dated as of November 9, 2021 and the Second Omnibus Amendment, dated as of May 31, 2022)
among

GEYSERS POWER COMPANY, LLC,
as Borrower,

THE GUARANTORS PARTY HERETO,
as Guarantors,

MUFG BANK, LTD.
as Administrative Agent,

MUFG UNION BANK, N.A.
as First Lien Collateral Agent,

and

THE LENDERS AND ISSUING BANKS PARTIES HERETO

With

BANK OF CHINA, NEW YORK BRANCH, BANK OF AMERICA, N.A., BNP PARIBAS, COBANK, ACB, COÖPERATIEVE RABOBANK, U.A., NEW YORK BRANCH, ING CAPITAL LLC, MIZUHO BANK, LTD., ~~MUFG UNION BANK, N.A.,~~ NATIONAL BANK OF CANADA, SUMITOMO MITSUI BANKING CORPORATION, and **TRUIST SECURITIES, INC.,**
as Coordinating Lead Arrangers and Bookrunners,

CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK and
NATIXIS, NEW YORK BRANCH,
as Coordinating Lead Arrangers, Bookrunners, and Green Loan Coordinators,

~~**BNP PARIBAS,**~~
MUFG UNION BANK, N.A.,
as Coordinating Lead Arranger, Bookrunner, and Syndication Agent,

~~**BANK OF CHINA, NEW YORK BRANCH, BANK OF MONTREAL, BARINGS, LLC, HSBC BANK USA, N.A., and KOOKMIN BANK, NEW YORK BRANCH,**~~
THE HUNTINGTON NATIONAL BANK, ASSOCIATED BANK, N.A., BARINGS LLC, and SOCIÉTÉ GÉNÉRALE,
as Joint Lead Arrangers,

CAIXABANK, S.A., DZ BANK AG DEUTSCHE ZENTRAL-GENOSSENSCHAFTSBANK, NEW YORK BRANCH, ALLIED IRISH BANKS, P.L.C., APPLE BANK FOR SAVINGS, SIEMENS FINANCIAL SERVICES, INC. and HSBC BANK USA, N.A., as Senior Managing Agents

CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK,
as Sole Swap Coordinator

~~**THE HUNTINGTON NATIONAL BANK and NATIONAL AUSTRALIA BANK LIMITED, as Senior Managing Agents**~~

Climate Bond Certified

Geysers Geothermal Projects

$~~1,750,000,000~~2,020,850,000 Senior Secured Credit Facilities

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This CREDIT AGREEMENT, dated as of June 9, 2020 (this "**Agreement**"), is entered into among GEYSERS POWER COMPANY, LLC, a Delaware limited liability company, as borrower ("**Borrower**"), GEYSERS INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, as Holdings ("**Holdings**"), GEYSERS COMPANY, LLC, a Delaware limited liability company ("**Geysers Company**"), WILD HORSE GEOTHERMAL, LLC, a Delaware limited liability company ("**Wild Horse**") and CALISTOGA HOLDINGS, LLC, a Delaware limited liability company ("**Calistoga**", and, together with Holdings, Geysers Company, Wild Horse, and each subsidiary of an Obligor that becomes a "Guarantor" from time to time in accordance with the terms hereof, each a "**Guarantor**" and together, the "**Guarantors**"), THE FINANCIAL INSTITUTIONS LISTED ON SCHEDULE 2.2(a) OR WHO LATER BECOME A PARTY HERETO, as Lenders and Issuing Banks (the financial institutions party to this Agreement being collectively referred to as the "**Lenders**"), MUFG BANK, LTD., as administrative agent for the Lenders (together with its permitted successors and assigns in such capacity, "**Administrative Agent**") and MUFG UNION BANK, N.A. as First Lien Collateral Agent for the First Lien Secured Parties (together with its permitted successors and assigns in such capacity appointed pursuant to the Intercreditor Agreement, "**First Lien Collateral Agent**") with COBANK, ACB, COÖPERATIEVE RABOBANK, U.A., NEW YORK BRANCH, ING CAPITAL LLC, MIZUHO BANK, LTD., MUFG UNION BANK, N.A., NATIONAL BANK OF CANADA, SUMITOMO MITSUI BANKING CORPORATION, and TRUIST SECURITIES, INC., as Coordinating Lead Arrangers and Bookrunners, CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK and NATIXIS, NEW YORK BRANCH, as Coordinating Lead Arrangers, Bookrunners, and Green Loan Coordinators, BNP PARIBAS, as Coordinating Lead Arranger, Bookrunner, and Syndication Agent, BANK OF CHINA, NEW YORK BRANCH, BANK OF MONTREAL, BARINGS, LLC, HSBC BANK USA, N.A., and KOOKMIN BANK, NEW YORK BRANCH, as Joint Lead Arrangers and THE HUNTINGTON NATIONAL BANK and NATIONAL AUSTRALIA BANK LIMITED, as Senior Managing Agents.

WHEREAS:

(A) Borrower is the owner of thirteen geothermal electric generating facilities located in the Geysers area of Northern California (Sonoma and Lake Counties);

(B) Borrower desires that the Lenders, Issuing Banks and the other parties hereto agree to provide, upon the terms and subject to the conditions set forth herein and in the other Credit Documents, certain credit facilities, consisting of (i) a term loan facility of the Borrower in an aggregate principal amount of up to $~~1,500,000,000~~1,770,850.000 (the loans thereunder, including the 2021 Term Loans (as defined herein) **and the 2022 Term Loans (as defined herein)**, the "**Term Loans**"), and (ii) a senior secured ~~**revolving letter of credit**~~**multi-draw** facility of the Borrower (the "~~**LC**~~**Multi-Draw Facility**") in an aggregate principal amount up to $250,000,000 (the commitments under ~~**LC**~~**Multi-Draw** Facility, including the 2021 LC Commitments (as defined herein), the "~~**LC**~~**Multi-Draw Facility Commitments**"~~,~~, the loans thereunder **other than Sub-facility Term Loans or Sub-facility Revolving Loans**, the "**LC Loans**"~~),~~, **together with Sub-facility Term Loans and Sub-facility Revolving Loans (in each case, as defined below), the "Multi-Draw Facility Loans"), the full amount thereof shall be available for the issuance of Revolving Letters of Credit and/or DSR Letters of Credit~~,~~ and $50,000,000 of such Multi-Draw Facility (such amount, as shall be permanently reduced dollar for dollar with the principal amount of any Sub-facility Term Loans repaid hereunder, the "Sub-facility Cap") shall be available for providing one or more (w) term loans (the "Sub-facility Term Loans"); (x) revolving loans (the "Sub-facility Revolving Loans"); (y) Sub-facility Letters of Credit or (z) LC Loans resulting from the drawing on Sub-facility Letters of Credit (the "Sub-facility LC Loans", together with Sub-facility Term Loans and Sub-facility Revolving Loans, the "Sub-facility Loans");**

(C) The credit facilities provided hereunder will be secured by, among other things, the grant to First Lien Collateral Agent, for the benefit of the First Lien Secured Parties, of a first priority Lien on the Collateral (subject to Permitted Liens); and

(D) The Lenders are willing to provide the credit facilities described herein upon the terms and subject to the conditions set forth herein and in the other Credit Documents, and the Lenders have, on or prior to the **Initial** Closing Date, unanimously approved the execution of this Agreement.

NOW, **THEREFORE**, in consideration of the agreements herein and in the other Credit Documents and in reliance upon the representations and warranties set forth herein and therein, the parties hereto agree as follows:

1. DEFINITIONS

1.1 Definitions

Unless otherwise defined in Exhibit A or otherwise expressly provided in this Agreement, capitalized terms used herein shall have the meanings provided in the First Lien Common Terms Agreement or, if not in the First Lien Common Terms Agreement, in the Intercreditor Agreement.

1.2 Rules of Interpretation

Except as otherwise expressly provided, the rules of interpretation set forth in Exhibit A shall apply to this Agreement and the other Credit Documents.

1.3 Rates

The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Base Rate, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Base Rate, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR or any other Benchmark, in each case in accordance with the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

2. THE CREDIT FACILITIES

2.1 Term Loan Facility

(a) Term Loans; Term Loan Commitments.

(i) The aggregate amount of the Term Loan Commitments on the **Initial** Closing Date was $900,000,000 which amount increased as of the Omnibus Amendment Date to an amount equal to $1,500,000,000 **and further increased as of the Second Omnibus Amendment Date to an amount equal to $1,770,850,000** (the "**Total Term Loan Commitment**"). On the **Initial** Closing Date, each Lender holding a Term Loan Commitment (a "**Term Lender**") made a Loan to the Borrower in the amount of its respective Term Loan Commitment as of such date. ~~Each~~**On the Omnibus Amendment Date, each** Lender holding a 2021 **Term Loan Commitment, made a Loan to the Borrower in an amount of its respective Term Loan Commitment at such time. To the extent not previously funded on the Initial closing Date or Omnibus Amendment Date, each Lender holding a 2022** Term Loan Commitment severally agrees, on the terms and conditions hereinafter set forth, to make a Loan to the Borrower on the **Second** Omnibus Amendment Date in an amount not to exceed such Lender's ~~2021~~**2022** Term Loan Commitment at such time. Amounts borrowed under this Section 2.1(a), when repaid or prepaid, may not be reborrowed.

(ii) Notice of Borrowing. Borrower shall request any **Term** Loans to be funded on the ~~Closing~~**Second Omnibus Amendment** Date ~~**or Borrowing Date, as applicable,**~~ by delivering to Administrative Agent a written notice in the form of Exhibit C-1, appropriately completed (a "**Term Loan Notice of Borrowing**"), at or before 1:00 p.m. (New York City time) at least one Banking Day prior to the ~~**Closing Date or Borrowing Date, as applicable**~~**Second Omnibus Amendment Date in the case of Base Rate Loans and at least two U.S. Government Securities Business Days in the case of SOFR Loans**.

(A) Each Lender shall, before 12:00 noon (New York City time) on the date of such Borrowing, make available by wire transfer for the account of its Lending Office to the account of the Administrative Agent, in same day funds, such Lender's ratable portion of such Borrowing, in accordance with the respective Commitments of such Lender. After the Administrative Agent's receipt of such funds and upon fulfillment or waiver of the applicable conditions set forth in Section 3.2, the Administrative Agent shall make such funds available to the Borrower (1) in the case of a Borrowing of Term Loans to be made on the **Initial** Closing Date, as directed by the Borrower pursuant to the terms of, and in accordance with, the Funds Flow Memorandum **and,** (2) in the case of a Borrowing of the 2021 Term Loans to be made on the Omnibus Amendment Date, as directed by the Borrower pursuant to the terms and in accordance with, directed by the Borrower pursuant to the terms of, and in accordance with, the Omnibus Amendment Date Funds Flow Memorandum **and (3) in the case of a Borrowing of the 2022 Term Loans to be made on the Second Omnibus Amendment Date, as directed by the Borrower pursuant to the terms and in accordance with, the Second Omnibus Amendment Date Funds Flow Memorandum**.

(B) Each Notice of Borrowing shall be irrevocable and binding on the Borrower from and after the Banking Day prior to the Borrowing. In the case of any Borrowing that the related Notice of Borrowing specifies is to be comprised of ~~LIBOR~~**SOFR** Loans, the Borrower shall indemnify each applicable Lender against any actual and documented out-of-pocket loss, cost or expense (excluding loss of anticipated profits and indirect losses) incurred by such Lender as a result of any failure to fulfill on or before the date specified in such Notice of Borrowing for such Borrowing the applicable conditions set forth in Section 3.2, including any loss (excluding loss of anticipated profits and indirect losses), cost or expense incurred by reason of the liquidation or redeployment of deposits or other funds acquired by such Lender to fund the **Term** Loans to be made by such Lender as part of such Borrowing when such **Term** Loan, as a result of such failure, is not made on such date.

(C) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's ratable portion of such Borrowing, the Administrative Agent may assume that such Lender has made such portion available to the Administrative Agent on the date of such Borrowing in accordance with clause (A) of this Section 2.1(a)(ii) and the Administrative Agent may, in its sole discretion and in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If and to the extent that such Lender shall not have so made such ratable portion available to the Administrative Agent, the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each day from such date of Borrowing until the date such amount is paid to the Administrative Agent, at the Base Rate. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent shall promptly notify the Borrower and the Borrower shall immediately pay such corresponding amount to the Administrative Agent together with interest thereon, for each day from the date of such Borrowing until the date such amount is paid to the Administrative Agent, at the rate payable hereunder for Base Rate Loans.

(D) The failure of any Lender to make the **Term** Loans to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its **Term** Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the **Term** Loan to be made by such other Lender on the date of any Borrowing. Nothing in this Section 2.1(a)(ii) shall prejudice any rights that the Borrower may have against a Defaulting Lender.

(b) [Reserved].

(c) Provisions Relating to all Credit Facilities.

(i) Loan Interest. Subject to Section 2.4(c), Borrower shall pay interest on the unpaid principal amount of each Loan from the **Initial** Closing Date until the repayment or prepayment thereof at one of the following rates per annum:

(A) With respect to the principal portion of a Term Loan which is, and during such periods as such Term Loan is, a Base Rate Term Loan, at a rate per annum equal to the Base Rate (such rate to change from time to time as the Base Rate shall change) *plus* the Applicable Margin.

(B) With respect to the principal portion of an ~~LC~~**Multi-Draw Facility** Loan which is, and during such periods as such ~~LC~~**Multi-Draw Facility** Loan is, a Base Rate ~~LC~~**Multi-Draw Facility** Loan, at a rate per annum equal to the Base Rate (such rate to change from time to time as the Base Rate shall change) *plus* the Applicable Margin.

(C) With respect to the principal portion of such Term Loan which is, and during such periods as such Term Loan is, a ~~LIBOR~~**SOFR** Term Loan, at a rate per annum during each Interest Period for such ~~LIBOR~~**SOFR** Term Loan equal to the ~~LIBO Rate~~**Adjusted Term SOFR** *plus* the Applicable Margin.

(D) With respect to the principal portion of such ~~LC~~**Multi-Draw Facility** Loan which is, and during such periods as such ~~LC~~**Multi-Draw Facility** Loan is, a ~~LIBOR LC~~**SOFR Multi-Draw Facility** Loan, at a rate per annum during each Interest Period for such ~~LIBOR LC~~**SOFR Multi-Draw Facility** Loan equal to the ~~LIBO Rate~~**Adjusted Term SOFR** *plus* the Applicable Margin.

(d) Loan Principal Payment.

(i) On each Principal Repayment Date commencing on the Principal Repayment Date occurring on ~~December 31~~**June 30**, ~~2021~~**2022**, Borrower shall repay to Administrative Agent, for the account of each Term Lender, the aggregate unpaid principal amount of the Term Loan made by such Term Lender in installments in accordance with the amortization schedule set forth on Schedule 2.1(b)(ii)(C) ~~(as updated from time to time in accordance with Section 2.1(b)(ii)(C))~~, with any remaining unpaid principal, interest, fees and costs due and payable on the Maturity Date.

(ii) **On each Principal Repayment Date following the date on which a Sub-facility Term Loan is made, Borrower shall repay to Administrative Agent, for the account of each Multi-Draw Facility Lender, the aggregate unpaid principal amount of the Sub-facility Term Loan made by such Multi-Draw Facility Lender in installments in accordance with the amortization schedule set forth on Schedule 2.1(b)(ii)(C), with any remaining unpaid principal, interest, fees and costs due and payable on the Maturity Date.**

(iii) ~~(ii)~~ The Borrower shall repay to the Administrative Agent for the ratable account of each of the ~~LC~~**Multi-Draw Facility** Lenders on the ~~LC~~**Multi-Draw Facility** Maturity Date**,** the aggregate principal amount of the ~~LC Loans~~**Multi-Draw Facility Loans (other than Sub-facility Term Loans, repayment of which is made in accordance with Section 2.1(d)(ii))** then outstanding owing to such ~~LC~~**Multi-Draw Facility** Lender, together with accrued and unpaid interest to the date of such repayment on the aggregate principal amount repaid.

(e) Interest Provisions Relating to All Loans.

(i) Applicable Interest Rate. The basis for determining the interest rate with respect to any Loan may be changed from time to time as specified in a Notice of Conversion of Loan Type delivered pursuant to Section 2.1(g). If on any day a Loan is outstanding with respect to which notice has not been delivered to Administrative Agent in accordance with the terms of this Agreement specifying the applicable basis for determining the rate of interest, then for that day such Loan shall bear interest determined by reference to the Base Rate. Borrower shall not request, and the Lenders shall not be obligated to make, ~~LIBOR~~**SOFR** Loans at any time an Event of Default exists. Administrative Agent shall promptly notify each Lender of the contents of each Notice of Conversion of Loan Type.

(ii) Interest Payment Dates. Borrower shall pay accrued interest on the unpaid principal amount of each Loan (A) in the case of each Base Rate Loan, on each Quarterly Date, (B) in the case of each ~~LIBOR~~**SOFR** Loan, on the last day of each Interest Period related to such ~~LIBOR~~**SOFR** Loan and, with respect to Interest Periods longer than three months, the last Banking Day of each third month in which such ~~LIBOR~~**SOFR** Loan is outstanding, and (C) in all cases, upon repayment or prepayment (to the extent thereof and including any Optional Prepayments or Mandatory Prepayments), upon conversion from one Type of Loan to another Type of Loan and at maturity (whether by acceleration or otherwise).

(iii) ~~LIBOR~~**SOFR** Loan Interest Periods.

(A) Each Interest Period selected by Borrower for all ~~LIBOR~~**SOFR** Loans shall be one, three or six months. Notwithstanding anything to the contrary in the preceding sentence, (1) any Interest Period which would otherwise end on a day which is not a Banking Day shall be extended to the next succeeding Banking Day unless such next Banking Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Banking Day, (2) any Interest Period which begins on the last Banking Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Banking Day of a calendar month, (3) Borrower may not select Interest Periods which would leave a greater principal amount of Loans subject to Interest Periods ending after a date upon which Loans are or may be required to be repaid (including the Maturity Date and each Principal Repayment Date) than the principal amount of Loans scheduled to be outstanding after such date, (4) any Interest Period for a Term Loan which would otherwise end after the Maturity Date shall end on the Maturity Date, (5) ~~LIBOR~~**SOFR** Loans for each Interest Period shall be in the minimum amount of $500,000 or an integral multiple of $100,000 in excess thereof, (6) Borrower may not at any time have outstanding more than six different Interest Periods relating to ~~LIBOR~~**SOFR** Loans, (7) the Borrower may select an initial Interest Period after the Omnibus Amendment Date applicable to the Term Loans borrowed on the Omnibus Amendment Date that ends on November 30, 2021, ~~and~~ (8**) the Borrower may select an initial Interest Period after the Second Omnibus Amendment Date applicable to the Term Loans borrowed on the Second Omnibus Amendment Date that ends on June 30, 2022 and (9**) the Interest Period applicable to the Loans borrowed on the **Initial** Closing Date may have an initial non-standard Interest Period ending on June 30, 2020.

(B) Borrower may contact Administrative Agent at any time prior to the end of an Interest Period for a quotation of Interest Rates in effect at such time for given Interest Periods, and Administrative Agent shall promptly provide such quotation. Subject to Section 2.1(e)(iii)(A), Borrower may select an Interest Period telephonically within the time periods specified in Section 2.1(g), which selection shall be irrevocable on and after commencement of the applicable Minimum Notice Period. Borrower shall confirm such telephonic notice to Administrative Agent by hand delivery or facsimile or other electronic transmission on the day such notice is given by delivery to Administrative Agent of a notice in substantially the form of Exhibit C-2, appropriately completed (a "**Confirmation of Interest Period Selection**"). If Borrower fails to notify Administrative Agent of the next Interest Period for any ~~LIBOR~~**SOFR** Loans in accordance with this Section 2.1(e)(iii)(B), such Loans shall automatically convert to Base Rate Loans on the last day of the current Interest Period therefor. Administrative Agent shall as soon as practicable (and, in any case, within two Banking Days after delivery of a Confirmation of Interest Period Selection) notify Borrower of each determination of the Interest Rate applicable to each Loan.

(iv) Interest Computations. All computations of interest on Base Rate Loans shall be based upon a year of 365 days or, in the case of a leap year, 366 days, shall be payable for the actual days elapsed (including the first day but excluding the last day), and shall be adjusted in accordance with any changes in the Base Rate to take effect on the beginning of the day of such change in the Base Rate. All computations of interest on ~~LIBOR~~SOFR Loans shall be based upon a year of 360 days and shall be payable for the actual days elapsed (including the first day but excluding the last day). Borrower agrees that all computations by Administrative Agent of interest shall be conclusive and binding in the absence of manifest error. **(v) Term SOFR Conforming Changes. In connection with the use or administration of Term SOFR, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Credit Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Credit Document. The Administrative Agent will promptly notify the Borrower and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of Term SOFR.**

(f) Promissory Notes. The obligation of Borrower to repay the Loans made by a Lender and to pay interest thereon at the rates provided herein shall, upon the written request of such Lender, be evidenced by promissory notes in the form of Exhibit B-1 (individually, a "**Term Note**" and, collectively, the "**Term Notes**") and Exhibit B-2 (individually, an "~~LC~~**Multi-Draw Note**" and, collectively, the "~~LC~~**Multi-Draw Notes**") each payable to such requesting Lender (or its registered assigns) and in the principal amount of such Lender's Term Loan Commitment or ~~LC~~**Multi-Draw Facility** Commitment, respectively. Borrower authorizes each such requesting Lender to record on the schedule annexed to such Lender's Note or Notes, the date and amount of each Loan made by such requesting Lender, and each payment or prepayment of principal thereunder and agrees that all such notations shall constitute prima facie evidence of the matters noted; provided, that in the event of any inconsistency between the records or books of Administrative Agent and any Lender's records or Notes, the records of Administrative Agent shall be conclusive and binding in the absence of manifest error. Borrower further authorizes each such requesting Lender to attach to and make a part of such requesting Lender's Note or Notes continuations of the schedule attached thereto as necessary. No failure to make any such notations, nor any errors in making any such notations, shall affect the validity of Borrower's obligations to repay the full unpaid principal amount of the Loans or the duties of Borrower hereunder or thereunder. Upon the payment in full in cash of the aggregate principal amount of, and all accrued and unpaid interest on, the applicable Loans or upon exchange of any Notes, the Lenders holding such Notes shall promptly mark the applicable Notes cancelled and return such cancelled Notes to Borrower.

(g) Conversion of Loans. Subject to Section 2.1(e)(i), Borrower may convert Loans from one Type of Loan to another Type of Loan; provided, that (x) any conversion of ~~LIBOR~~SOFR Loans into Base Rate Loans shall be effective on, and only on, the first day after expiration of an Interest Period for such ~~LIBOR~~SOFR Loans, and (y) Loans shall be converted only in amounts of $500,000 and increments of $100,000 in excess thereof. Borrower shall request such a conversion by delivering to Administrative Agent a written notice in the form of Exhibit C-3, appropriately completed (a "**Notice of Conversion of Loan Type**"), which contains or specifies, among other things:

(i) the Loans, or portion thereof, which are to be converted;

(ii) the Type of Loans into which such Loans, or portion thereof, are to be converted;

(iii) if such Loans are to be converted into ~~LIBOR~~SOFR Loans, the initial Interest Period selected by Borrower for such Loans (which Interest Period shall be selected in accordance with Section 2.1(e)(iii));

(iv) the proposed date of the requested conversion (which shall be a Banking Day **in the case of a conversion into Base Rate Loans and U.S. Government Securities Business Day in the case of a conversion into SOFR Loans** and otherwise in accordance with this Section 2.1(g)); and

(v) if Base Rate Loans are to be converted to ~~LIBOR~~SOFR Loans, a certification by Borrower that no Event of Default has occurred and is continuing.

Borrower shall so deliver each Notice of Conversion of Loan Type so as to provide at least the applicable Minimum Notice Period. Any Notice of Conversion of Loan Type may be modified or revoked by Borrower through the Banking Day prior to the Minimum Notice Period, and shall thereafter be irrevocable. Each Notice of Conversion of Loan Type shall be delivered in the manner provided in Section 11.1. Administrative Agent shall promptly notify each Lender of the contents of each Notice of Conversion of Loan Type.

(h) Prepayments.

(i) Terms of All Prepayments.

(A) Upon the prepayment of any Loan (whether such prepayment is an Optional Prepayment or a Mandatory Prepayment), Borrower shall pay to Administrative Agent for the account of the Lender which made such Loan or Hedge Bank, as applicable, (1) all accrued interest to the date of such prepayment on the amount of such Loan prepaid, (2) all accrued fees to the date of such prepayment relating to the amount of such Loan being prepaid, (3) to the extent required by the terms of the applicable Interest Rate Agreement, all Hedge Breaking Fees owed by Borrower to such Hedge Bank as a result of such prepayment, and (4) if such prepayment is the prepayment of a ~~LIBOR~~SOFR Loan on a day other than the last day of an Interest Period for such ~~LIBOR~~SOFR Loan, all Liquidation Costs incurred by such Lender as a result of such prepayment (pursuant to the terms of Section 2.7).

(B) Notwithstanding the foregoing, but only in respect of any Mandatory Prepayment, Borrower shall have the right, by giving five Banking Days' notice to Administrative Agent, in lieu of prepaying a ~~LIBOR~~SOFR Loan on a day other than the last day of an Interest Period for such ~~LIBOR~~SOFR Loan, to deposit or cause Administrative Agent to deposit into an account to be held by Depositary Agent (which account shall be subjected to the Lien of the First Lien Collateral Documents) an amount equal to the ~~LIBOR~~SOFR Loans to be prepaid. Such funds shall be held in such account until the expiration of the Interest Period applicable to the ~~LIBOR~~SOFR Loan to be prepaid at which time the amount deposited in such account shall be used to prepay such ~~LIBOR~~SOFR Loan and any interest accrued on such amount shall be deposited into the Revenue Account. The deposit of amounts into such account shall not constitute a prepayment of Loans and all Loans to be prepaid using the proceeds from such account shall continue to accrue interest at the then applicable interest rate for such Loans until actually prepaid. All amounts in such account shall only be invested in Permitted Investments as directed by and at the expense and risk of Borrower.

(C) Except as otherwise specifically set forth herein (including Section 2.5(a)), (1) all prepayments of Term Loans shall be applied to reduce the remaining payments required under Section 2.1(d)(i) (I) with respect to Mandatory Prepayments, on a pro rata basis to remaining amortization payments and the payments at the final maturity thereof and (II) with respect to Optional Prepayments, as directed by the Borrower, (2) any prepayment of Term Loans or ~~LC~~**Multi-Draw Facility** Loans of any class or tranche, respectively, shall be applied first to any Term Loans or ~~LC~~**Multi-Draw Facility** Loans of any class or tranche, as applicable, that are Base Rate Loans and then to any Term Loans or ~~LC~~**Multi-Draw Facility** Loans of any class or tranche, as applicable, that are ~~LIBOR~~**SOFR** Loans.

(ii) Optional Prepayments.

(A) Borrower may, at its option and without premium or penalty, upon three Banking Days' notice to Administrative Agent ~~(~~**in the case of Base Rate Loans, or three (3) U.S. Government Securities Business Days prior notice to Administrative Agent, in the case of SOFR Loans (in each case,** which notice may state that it is conditioned upon the effectiveness of another credit facility or facilities or other agreement(s) providing the source of funds for such Optional Prepayment, in which case such notice may be revoked by Borrower by providing written notice to Administrative Agent at least one Banking Day prior to the proposed date of the Optional Prepayment if one or more of such conditions is not satisfied), prepay (1) any Term Loans in whole or from time to time in part in minimum amounts of $1,000,000 or an incremental multiple of $1,000,000 in excess thereof (provided, that such minimum amounts shall not apply to a prepayment of all outstanding Term Loans) or (2) any ~~LC~~**Multi-Draw Facility** Loans of any class or tranche in whole or from time to time in part in minimum amounts of $500,000 or an incremental multiple of $100,000 in excess thereof (provided, that such minimum amounts shall not apply to a prepayment of all ~~LC~~**Multi-Draw Facility** Loans of any class or tranche **or except to the extent ~~that such LC Loan of any class or tranche is being repaid pursuant to clause Thirteenth of Section 3.1(b) (*Revenue Account Waterfall*) of the Depositary Agreement~~**) (each, an "**Optional Prepayment**").

(B) Any Optional Prepayments shall be applied (1) *first*, ratably to any outstanding LC Loans, if any, until all LC Loans have been repaid in full; and (2) *second*, subject to Section 2.1(h)(i) and Section 2.1(h)(ii)(A), as Borrower may elect in its sole discretion.

(iii) Mandatory Prepayments. Borrower shall make the following mandatory prepayments (each, a "**Mandatory Prepayment**"):

(A) as and when contemplated by (1) Section 3.4(d) of the Depositary Agreement, within thirty days after the date on which the balance on deposit in the Excess LP Prepayment Sub-Account (as defined in the Depositary Agreement) equals or exceeds $10,000,000, (2) Section 3.5(d) of the Depositary Agreement, within thirty days after the date on which the balance on deposit in the Excess ADP Prepayment Sub-Account (as defined in the Depositary Agreement) equals or exceeds $10,000,000, and (3) Section 3.6(b) of the Depositary Agreement, within thirty days after receipt of Excess Contract Termination Proceeds (as defined in the Depositary Agreement); and

(B) in the event of any termination of all the ~~LC~~**Multi-Draw Facility** Commitments in accordance with this Agreement, Borrower shall, on the date of such termination, terminate any outstanding Revolving Letter of Credit or DSR Letter of Credit, as applicable, and/or cash collateralize any outstanding Revolving Letter of Credit or DSR Letter of Credit, as applicable, in the amount of the applicable LC Exposure. If, as a result of any partial reduction of the ~~LC~~**Multi-Draw Facility** Commitments, the aggregate LC Exposure would exceed the aggregate ~~LC~~**Multi-Draw Facility** Commitments after giving effect thereto, then Borrower shall, on the date of such reduction, cash collateralize the applicable Letters of Credit in an amount equal to the amount of such excess.

Any Mandatory Prepayments shall be applied (x) *first*, to outstanding Term Loans and outstanding ~~LC~~**Multi-Draw Facility** Loans and outstanding Drawing Payments, pro rata, until all Term Loans, ~~LC~~**Multi-Draw Facility** Loans and Drawing Payments have been repaid in full **(for the avoidance of doubt, all First Lien Obligations which are term loans, revolving loans, letter of credit loans or drawing payments similar to those specified above, such loans and payments shall be included in this clause (x) on a pro rata basis)**, (y) *second,* to the Cash Collateralization of any outstanding Letters of Credit and (z) *third*, to all other First Lien Obligations due and payable under the Credit Documents.

(iv) Reduction of Commitments.

(A) Borrower may at any time permanently terminate, or from time to time permanently reduce, the ~~LC~~**Multi-Draw Facility** Commitments; provided, that (1) each reduction of the ~~LC~~**Multi-Draw Facility** Commitments shall be in an amount that is an integral multiple of $100,000 and not less than $1,000,000 (or, if less, the remaining amount of the ~~LC~~**Multi-Draw Facility** Commitments)**;** and (2) Borrower shall not voluntarily terminate or reduce the ~~LC~~**Multi-Draw Facility** Commitments, if, after giving effect to any concurrent prepayment of ~~LC~~**Multi-Draw Facility** Loans in accordance with this Section 2.1(h), the LC Exposure would exceed the Total ~~LC~~**Multi-Draw Facility** Commitments **minus the aggregate principal amount of Sub-facility Revolving Loans and Sub-facility Term Loans outstanding at such time**.

(B) Borrower shall notify Administrative Agent in writing of any election to terminate or reduce Commitments under the foregoing clauses (A) at least three Banking Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any such notice, Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by Borrower pursuant to this clause (B) shall be irrevocable. Any termination or reduction of Commitments shall be permanent; provided, that a notice of termination of Commitments delivered by Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by Borrower (by notice to Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Each reduction of Commitments shall be made ratably among the Lenders participating in the applicable Loan facility in accordance with their respective Proportionate Shares.

(i) Register. Administrative Agent on behalf of Borrower shall maintain, at its address referred to in Section 11.1, a register for the recordation of the names and addresses of the Lenders, the Commitments and Loans of each Lender from time to time and the name of each Lender which holds a Note (the "**Register**"). The Register shall be available for inspection by Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice. Administrative Agent shall record in the Register (i) the Commitments and the Loans from time to time of each Lender, (ii) the interest rates applicable to all Loans and the effective dates of all changes thereto, (iii) the Interest Period for each ~~LIBOR~~SOFR Loan, (iv) the date and amount of any principal or interest due and payable or to become due and payable from Borrower to each Lender hereunder, (v) each repayment or prepayment in respect of the principal amount of the Loans of each Lender, (vi) the amount of any sum received by Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof, and (vii) such other information as Administrative Agent may determine is necessary for the administering of the Loans and this Agreement. Any such recording shall be conclusive and binding in the absence of manifest error; provided, that neither the failure to make any such recordation, nor any error in such recordation, shall affect Borrower's First Lien Obligations in respect of any applicable Loans or otherwise; and provided, further, that in the event of any inconsistency between the Register and any Lender's records, the Register shall govern absent manifest error.

(j) Re-Borrowing. Borrower may not re-borrow the principal amount of any Term Loan **or any Sub-facility Term Loan** repaid or prepaid pursuant to this Agreement. Any prepaid ~~LC~~**Multi-Draw Facility** Loans **(other than Sub-facility Term Loans)** may be re-borrowed. The ~~LC~~**Multi-Draw Facility** Commitments shall not be reduced as a result of any prepayment **of any Multi-Draw Facility Loans**. To the extent that any ~~LC~~**Multi-Draw Facility** Commitment was reduced as a result of any issuance of ~~LC~~**Multi-Draw Facility** Loans, and so long as the Borrower shall have satisfied the requirements ~~of~~ for ~~LC~~**Multi-Draw Facility** Loans **(other than Sub-facility Term Loans)** may be re-borrowed. The ~~LC~~**Multi-Draw Facility** Commitments shall not be reduced as a result of any prepayment **of any Multi-Draw Facility Loans**. To the extent that any ~~LC~~**Multi-Draw Facility** Commitment was reduced as a result of any issuance of ~~LC~~**Multi-Draw Facility** Loans, and so long as the Borrower shall have satisfied the requirements ~~of~~ for ~~LC~~**Multi-Draw Facility** Loans, Section 3.2 and Section 2.2(a)(ii) **(in the case of LC Loans)**, such ~~LC~~**Multi-Draw Facility** Commitment shall be reinstated as a result of any prepayment of such ~~LC Loans~~**Multi-Draw Facility Loans (other than Sub-facility Term Loans)** made in accordance with Section 2.1(h)(ii). **The Sub-facility Cap shall be permanently and irrevocably reduced dollar for dollar with the principal amount of any Sub-facility Term Loans repaid hereunder (including as a result of any optional prepayment, mandatory prepayment or scheduled amortization).**

2.2 ~~Letter of Credit~~Multi-Draw Facility

(a) ~~LC~~**Multi-Draw Facility** Commitments; Issuance of Letters of Credit. The initial Dollar amount of the aggregate LC Commitments **(as defined in the Omnibus Amendment)** on the **Initial** Closing Date was $200,000,000~~. The~~**, which amount increased as of the Omnibus Amendment Date to an amount equal to $250,000,000. The parties agreed to designate such LC Commitment as "Multi-Draw Facility Commitments" as of the Second Omnibus Amendment Date and** aggregate amount of the ~~LC~~**Multi-Draw Facility** Commitments on the **Second** Omnibus Amendment Date is $250,000,000 (the "**Total ~~LC~~Multi-Draw Facility Commitment**", and each Lender holding such ~~LC~~**Multi-Draw Facility** Commitments, a "~~**LC Lender"). All of the LC Commitments shall be available for the issuance of standby letters of credit, provided that the LC Exposure of any Issuing Bank shall not exceed its Issuing Bank Limit**~~**Multi-Draw Facility Lender"). Multi-Draw Facility Lenders hereby agree to provide, as part of Multi-Draw Facility Commitment, Sub-facility Loans, as requested by the Borrower from time to time, in a maximum aggregate principal amount equal to the Sub-facility Cap. For the avoidance of doubt, Multi-Draw Facility Loans shall include the Sub-facility Loans and in no event shall the aggregate amount of LC Exposure and outstanding aggregate principal amount of Sub-facility Revolving Loans and Sub-facility Term Loans exceed $250,000,000**. Subject to the terms and conditions set forth in this Agreement, Borrower may request ~~the issuance of~~ (x) ~~an~~**the issuance of one or more** irrevocable standby ~~letter~~**letters** of credit substantially in the forms set forth in Exhibit B-3 or otherwise reasonably satisfactory to such Issuing Bank issuing such Letter of Credit (a "**Revolving Letter of Credit**") or (y) ~~an~~**the issuance of one or more** irrevocable standby ~~letter~~**letters** of credit substantially in the forms set forth in Exhibit B-4 or otherwise reasonably satisfactory to the applicable Issuing Bank issuing such Letter of Credit (a "**DSR Letter of Credit**"), **or (z) funding of one or more Sub-facility Loans (as a Sub-facility Term Loan, a Sub-facility Revolving Loan or a Sub-facility LC Loan),** in any case, for its own account, at any time and from time to time prior to the applicable Maturity Date~~.~~**; provided, that (A) the LC Exposure of any Issuing Bank shall not exceed its Issuing Bank Limit and (B) the aggregate principal amount of Sub-facility Loans, the aggregate available amount under any Sub-facility Letters of Credit and aggregate outstanding Revolving LC Reimbursement Obligations in respect of Sub-facility Letters of Credit outstanding at any time, shall not at any time exceed the Sub-facility Cap.**

(i) Notice of Issuance of Letter of Credit, Amendment, Renewal, Extension; Certain Conditions.

(A) To request the issuance of a Letter of Credit (or the amendment, renewal (other than an automatic renewal in accordance with clause (B) below) or extension of an outstanding Letter of Credit), Borrower shall hand deliver or transmit by telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the applicable Issuing Bank) to the Administrative Agent and (1) the Revolving Issuing Bank with respect to any such Revolving Letter of Credit or, as applicable, (2) each DSR Issuing Bank with respect to DSR Letters of Credit (three Banking Days in advance of the requested date of issuance, amendment, renewal or extension or, with respect to any issuance to take place on the **Second** Omnibus Amendment Date, one Banking Day in advance of the **Second** Omnibus Amendment Date) a Notice of LC Activity requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying whether such Letter of Credit is a Revolving Letter of Credit or DSR Letter of Credit, **and to the extent applicable, whether such requested Letter of Credit is to be considered a Sub-facility Letter of Credit under the Credit Documents,** the date of issuance, amendment, renewal or extension (which shall be a Banking Day at least three Banking Days after the form of such Letter of Credit or amendment, renewal or extension has been agreed by Borrower, the applicable Issuing Bank and Administrative Agent or, with respect to any issuance, amendment, renewal or extension to take place on the ~~Closing~~**Second Omnibus Amendment** Date, one Banking Day in advance of the ~~Closing~~**Second Omnibus Amendment** Date), the date on which such Letter of Credit is to expire and such other information as shall be necessary to issue, amend, renew or extend such Letter of Credit. If requested by a Issuing Bank, Borrower also shall submit a letter of credit application on such Issuing Bank's standard form in connection with any request for a Letter of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by Borrower to, or entered into by Borrower with, the applicable Issuing Bank relating to a Letter of Credit, the terms and conditions of this Agreement shall control. Notwithstanding anything to contrary, the Borrower shall make any request for issuance, amendment, renewal or extension for any DSR Letter of Credit simultaneously to all the DSR Issuing Banks under this Agreement such that the stated amount of the DSR Letter of Credit of each individual DSR Issuing Bank is equal to its Proportionate Share of the Stated Amount of all DSR Letters of Credit.

(B) Each Letter of Credit shall expire at or prior to the close of business on the earlier of (1) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) or such other date as applicable Issuing Bank may agree, and (2) five Banking Days prior to the ~~LC~~**Multi-Draw Facility** Maturity Date; provided, that any Letter of Credit with a one-year tenor shall provide for the automatic renewal thereof for additional one-year periods (which, in no event, shall extend beyond the date referred to in clause (2) of this clause (B)), and provided, further, that a Revolving Letter of Credit may expire after the ~~LC~~**Multi-Draw Facility** Maturity Date to the extent that such 19 Revolving Letter of Credit is Cash Collateralized to a mutually agreed level as between the Borrower and such Revolving Issuing Bank or back-stopped pursuant to arrangements acceptable to the relevant Revolving Issuing Bank during the period commencing on such ~~LC~~**Multi-Draw Facility** Maturity Date until such later stated expiry date occurring after such ~~LC~~**Multi-Draw Facility** Maturity Date. For the avoidance of doubt, the obligation of the ~~LC~~**Multi-Draw Facility** Lenders to make ~~LC~~**Multi-Draw Facility** Loans shall terminate on the ~~LC~~**Multi-Draw Facility** Maturity Date.

(ii) LC Loans.

(A) If a Revolving Issuing Bank makes any Drawing Payment, Borrower shall reimburse such Drawing Payment by paying to Administrative Agent an amount equal to such Drawing Payment in Dollars, not later than 12:00 p.m., New York City time, on the date that is the second Banking Day following the date Borrower receives notice of such Drawing Payment; provided, that, to the extent Borrower does not so reimburse the Drawing Payment by such date, the ~~LC~~**Multi-Draw Facility** Lenders shall be irrevocably and unconditionally obligated to fund participations in the Revolving LC Reimbursement Obligations on a pro rata basis based on their Proportionate Share of the ~~LC~~**Multi-Draw Facility** Commitments. Such amount shall be reduced, if necessary, such that the aggregate amount of applicable LC Exposure does not exceed the aggregate applicable Total ~~LC~~**Multi-Draw Facility** Commitments **of such LC Lender**, with the amount of such Drawing Payment that is not covered by LC Loans becoming due and payable on demand. With respect to any Revolving LC Reimbursement Obligation that is not financed with a LC Loan because it was not reimbursed in accordance with this clause (A), such Revolving LC Reimbursement Obligation shall be due and payable on demand (together with interest) and shall bear interest as provided in Section 2.4(c). The LC Loans made pursuant to this Section 2.2(a)(ii)(A) shall initially be Base Rate Loans.

(B) If a DSR Issuing Bank makes any Drawing Payment, Borrower shall reimburse such Drawing Payment by paying to Administrative Agent an amount equal to such Drawing Payment in Dollars, not later than 12:00 p.m., New York City time, on the date that is the second Banking Day immediately following the date Borrower receives notice of such Drawing Payment; provided, that any Drawing Payment shall be deemed to be a request by Borrower for a Borrowing in an aggregate amount equal to the amount of DSR LC Reimbursement Obligations with respect to the DSR Letters of Credit and such DSR LC Reimbursement Obligations shall be discharged and replaced by the resulting LC Loan owing to the ~~LC~~**Multi-Draw Facility** Lender which issued the Letter of Credit giving rise to such DSR LC Reimbursement Obligation in its capacity as the DSR Issuing Bank. Such requested amount shall be reduced, if necessary, such that the aggregate amount of applicable LC Exposure does not exceed the aggregate applicable Total ~~LC~~**Multi-Draw Facility** Commitments or Issuing Bank Limit of such DSR Issuing Bank, with the amount of such Drawing Payment that is not covered by LC Loans becoming due and payable on demand. Notwithstanding anything to the contrary, Borrower may not elect to reimburse a Drawing Payment for some but not all the DSR Issuing Banks. The LC Loans made pursuant to this Section 2.2(a)(ii)(B) shall initially be Base Rate Loans.

(C) If Borrower fails to reimburse any Drawing Payment not covered or financed by LC Loans as contemplated by clause (A) or (B) then Administrative Agent shall promptly notify the applicable Issuing Bank(s) of the applicable Drawing Payment and the payment then due from Borrower. Promptly following receipt by Administrative Agent of any payment from Borrower pursuant to this paragraph, Administrative Agent shall distribute such payment to the applicable Issuing Bank(s).

(D) On the Revolving Maturity Date, the Borrower shall repay to Administrative Agent, for the account of each applicable ~~LC~~**Multi-Draw Facility** Lender, the aggregate unpaid principal amount of the LC Loans (including all fees, interest and other amounts accrued in connection therewith).

(b) Existing Letters of Credit. Each party hereto hereby acknowledges and agrees that certain letters of credit have been issued under the Credit Agreement prior to the **Second** Omnibus Amendment Date and remain outstanding hereunder as of the **Second** Omnibus Amendment Date, which letters of credit are set forth on Schedule 2.2(b) (as may be updated from time to time with the consent of the applicable Issuing Bank, the Administrative Agent and the Borrower, and each letter of credit set forth therein, an "**Existing Letter of Credit**"). The Borrower hereby instructs the Administrative Agent to reflect the transfer of each such Existing Letter of Credit to the facility contemplated by this Agreement. Each Existing Letter of Credit shall constitute a Letter of Credit for all purposes of this Agreement and the other Credit Documents; provided, that, with respect to an Existing Letter of Credit, the Borrower shall not have to comply with the requirements of Section 2.2(a)(i)(A) and Section 3.2 with respect to the initial issuance of a Letter of Credit. Subject to the occurrence of the **Second** Omnibus Amendment Date, the applicable Issuing Banks shall maintain each Existing Letter of Credit in accordance with its terms until the expiration date applicable to such Existing Letter of Credit.

(c) ~~[Reserved]~~**Sub-facility Loans**.

(i) From time to time, on any Banking Day occurring on or after the Second Omnibus Amendment Date but prior to the Multi-Draw Facility Maturity Date:

(A) each Multi-Draw Facility Lender, agrees that it will make one or more Sub-facility Loans to the Borrower, equal to such Multi-Draw Facility Lender's ratable portion of each Sub-facility Loan requested by Borrower, provided that no Multi-Draw Facility Lender's obligation to make such Sub-facility Loans shall exceed such Multi-Draw Facility Lender's Sub-facility Commitment;

(B) on the terms and subject to the conditions hereof, the Borrower may, from time to time, request such Sub-facility Loan as one or more Sub-facility Term Loans or as one or more Sub-facility Revolving Loans as designated by the Borrower in the respective Sub-facility Loan Notice of Borrowing delivered in accordance with Section 2.2(c)(ii);

(C) on the terms and subject to the conditions hereof, the Borrower may at any time designate a Sub-facility Revolving Loan or a Sub-facility LC Loan as a Sub-facility Term Loan, by providing a written notice to the Administrative Agent in the form of Exhibit C-6, appropriately completed (a "Notice of Sub-facility Loan Designation") at least two Banking Days prior to the effective date of such designation. For the avoidance of doubt, any LC Loan designated as a Sub-facility Term Loan in accordance with this Section 2.2(c)(i) shall cease to be an LC Loan upon such designation and shall thereafter be treated as Sub-facility Term Loans for all purposes of this Agreement;

(ii) On the terms and subject to the conditions hereof, the Borrower may from time to time borrow, repay, and reborrow Sub-facility Revolving Loans.

(iii) Amounts borrowed under Sub-facility Term Loans, when repaid or prepaid, may not be reborrowed.

(iv) The aggregate principal amount of Sub-facility Loans, the aggregate available amount under any Sub-facility Letters of Credit and aggregate outstanding Revolving LC Reimbursement Obligations in respect of Sub-facility Letters of Credit outstanding at any time, shall not exceed the Sub-facility Cap.

(v) Each Sub-facility Revolving Loan shall automatically convert to a Sub-facility Term Loan on the earliest to occur of (x) the twenty-four (24) month anniversary of the Borrowing Date of such Sub-facility Revolving Loan, (y) the date of the achievement of commercial operation of the applicable Battery Project as evidenced by a notice provided to the Administrative Agent by the Borrower in respect of which such Sub-facility Revolving Loan was Borrowed and (z) the date of Abandonment of the applicable Battery Project in respect of which the such Sub-facility Revolving Loan was Borrowed.

(vi) Notice of Borrowing. Borrower shall request any Sub-facility Loans to be funded on any Borrowing Date, by delivering to Administrative Agent a written notice in the form of Exhibit C-5, appropriately completed (a "Sub-facility Loan Notice of Borrowing"), at or before 1:00 p.m. (New York City time) at least one Banking Day prior to such Borrowing Date in the case of Base Rate Loans and at least three U.S. Government Securities Business Days in the case of SOFR Loans. The Borrower shall, designate the requested Sub-facility Loan, in such Sub-facility Loan Notice of Borrowing, as either a Sub-facility Term Loan or a Sub-facility Revolving Loan.

(A) **Each Lender shall, before 12:00 noon (New York City time) on the date of such Borrowing, make available by wire transfer for the account of its Lending Office to the account of the Administrative Agent, in same day funds, such Lender's ratable portion of such Borrowing, in accordance with the respective Commitments of such Lender. After the Administrative Agent's receipt of such funds and upon fulfillment or waiver of the applicable conditions set forth in Section 3.2, the Administrative Agent shall make such funds available to the Borrower.**

(B) **Each Sub-facility Notice of Borrowing shall be irrevocable and binding on the Borrower from and after the Banking Day prior to the Borrowing. In the case of any Borrowing that the related Sub-facility Loan Notice of Borrowing specifies is to be comprised of SOFR Loans, the Borrower shall indemnify each applicable Lender against any actual and documented out-of-pocket loss, cost or expense (excluding loss of anticipated profits and indirect losses) incurred by such Lender as a result of any failure to fulfill on or before the date specified in such Sub-facility Loan Notice of Borrowing for such Borrowing the applicable conditions set forth in Section 3.2, including any loss (excluding loss of anticipated profits and indirect losses), cost or expense incurred by reason of the liquidation or redeployment of deposits or other funds acquired by such Lender to fund the Sub-facility Loans to be made by such Lender as part of such Borrowing when such Sub-facility Loan, as a result of such failure, is not made on such date.**

(C) **Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's ratable portion of such Borrowing, the Administrative Agent may assume that such Lender has made such portion available to the Administrative Agent on the date of such Borrowing in accordance with clause (A) of this Section 2.2(c)(ii) and the Administrative Agent may, in its sole discretion and in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If and to the extent that such Lender shall not have so made such ratable portion available to the Administrative Agent, the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each day from such date of Borrowing until the date such amount is paid to the Administrative Agent, at the Base Rate. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent shall promptly notify the Borrower and the Borrower shall immediately pay such corresponding amount to the Administrative Agent together with interest thereon, for each day from the date of such Borrowing until the date such amount is paid to the Administrative Agent, at the rate payable hereunder for Base Rate Loans.**

(D) **The failure of any Lender to make the Loans to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing. Nothing in this Section 2.2(c)(ii) shall prejudice any rights that the Borrower may have against a Defaulting Lender.**

(d) Reimbursement Obligations Absolute. The obligation of Borrower to reimburse any Drawing Payment as provided in Section 2.2 shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by an Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, (iv) any amendment or waiver of or any consent to departure from all or any terms of any of the Credit Documents, (v) the existence of any claim, setoff, defense or other right which Borrower may have at any time against the beneficiary of such Letter of Credit (or any Persons for whom such beneficiary may be acting), the applicable Issuing Bank, Administrative Agent, any Lender or any other Person, whether in connection with this Agreement, the transactions contemplated hereby, by any other Credit Document or by any unrelated transaction, (vi) any breach of contract or dispute among or between Borrower, an Issuing Bank, Administrative Agent, any Lender or any other Person, (vii) any non-application or misapplication by the beneficiary of a Letter of Credit of the proceeds of any Drawing Payment or any other act or omission of such beneficiary in connection with such Letter of Credit, (viii) any failure to preserve or protect any Collateral, any failure to perfect or preserve the perfection of any Lien thereon, or the release of any of the Collateral securing the performance or observance of the terms of this Agreement or any of the other Credit Documents, or (ix) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.2(d), constitute a legal or equitable discharge of, or provide a right of setoff against, Borrower's obligations hereunder; provided, that in each case, payment by an Issuing Bank shall not have constituted gross negligence or willful misconduct. Neither Administrative Agent, the Lenders nor the applicable Issuing Bank, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of an Issuing Bank; provided, that nothing contained herein shall be construed to excuse an Issuing Bank from liability to Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by Borrower to the extent permitted by applicable law) suffered by Borrower that are determined by a court having jurisdiction to have been caused by (x) such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof, or (y) such Issuing Bank's refusal to issue a Letter of Credit in accordance with the terms of this Agreement. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of an Issuing Bank, such Issuing Bank shall be deemed to have exercised care in each such determination and each refusal to issue a Letter of Credit. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, an Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(e) Disbursement Procedures. An Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. Each Issuing Bank shall promptly notify Administrative Agent and Borrower by telephone (confirmed by telecopy or other electronic transmission) of such demand for payment and whether such Issuing Bank has made or shall make a Drawing Payment thereunder; provided, that any failure to give or delay in giving such notice shall not relieve Borrower of its obligation to reimburse the applicable Issuing Bank with respect to any such Drawing Payment.

(f) Interim Interest. If an Issuing Bank shall make any Drawing Payment, then, unless Borrower shall reimburse such Drawing Payment in full by 4:00 p.m. (New York time) on the second Banking Day after the date such Drawing Payment is made, the unpaid amount thereof shall bear interest, for each day from and including the date such Drawing Payment is made to but excluding the date that Borrower reimburses such Drawing Payment (including by the making of a Borrowing), at the rate per annum then applicable to Base Rate ~~LC~~Multi-Draw Facility Loans or ~~LIBOR LC~~SOFR Multi-Draw Facility Loans, at the election of Borrower, for Drawing Payments under a Letter of Credit; provided, that if such Drawing Payment is not reimbursed by Borrower when due or otherwise discharged pursuant to Section 2.2~~2.2(c)~~(a)(ii), ~~(b)(ii) or (c)(ii),~~ then Section 2.4(c) shall apply. Interest accrued pursuant to this Section 2.2(f) shall be for the account of the applicable Issuing Bank.

(g) Additional Issuing Banks. From time to time, Borrower may by notice to Administrative Agent designate one or more other Lenders or other financial institutions (in addition to the Issuing Banks and their respective Affiliates) that agree (in their sole discretion) to act in such capacity and is reasonably satisfactory to Administrative Agent as a Revolving Issuing Bank or DSR Issuing Bank, as applicable. Each such additional Issuing Bank shall execute a counterpart of this Agreement in such capacity upon the approval of Administrative Agent (which approval shall not be unreasonably withheld or delayed) and shall thereafter be a Revolving Issuing Bank or DSR Issuing Bank, as applicable, hereunder for all purposes. The Register shall be updated following such execution.

(h) Reporting. Unless otherwise requested by Administrative Agent, each Issuing Bank shall (i) provide to Administrative Agent copies of any notice received from Borrower pursuant to Section 2.2 no later than the next Banking Day after receipt thereof, and (ii) report in writing to Administrative Agent (A) on or prior to each Banking Day on which such Issuing Bank expects to issue, amend, renew or extend any Letter of Credit, the date of such issuance, amendment, renewal or extension, and the aggregate face amount of the Letters of Credit to be issued, amended, renewed or extended by it and outstanding after giving effect to such issuance, amendment, renewal or extension occurred (and whether the amount thereof changed), and such Issuing Bank shall be permitted to issue, amend, renew or extend such Letter of Credit if Administrative Agent shall not have advised such Issuing Bank that such issuance, amendment renewal or extension would not be in conformity with the requirements of this Agreement, (B) on each Banking Day on which such Issuing Bank makes any Drawing Payment, the date of such Drawing Payment and the amount of such Drawing Payment, and (C) on any other Banking Day, such other information as Administrative Agent shall reasonably request, including but not limited to prompt verification of such information as may be requested by Administrative Agent.

(i) Replacement of an Issuing Bank. An Issuing Bank may be replaced at any time by written agreement among Borrower, Administrative Agent and the successor Issuing Bank. Administrative Agent shall notify the Lenders of any such replacement of an Issuing Bank. At the time any such replacement shall become effective, Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.3(c), (f) or (h), as applicable, and any unreimbursed obligations and other First Lien Obligations owed to such Issuing Bank in its capacity as such. From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the replaced Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter by such successor Issuing Bank, and (ii) references herein to the term "Issuing Bank", and as applicable, "Revolving Issuing Bank" or "DSR Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. Upon the replacement of an Issuing Bank hereunder, (x) all outstanding Letters of Credit issued by the replaced Issuing Bank shall be cancelled and returned to the replaced Issuing Bank and (y) any Cash Collateral pledged to the First Lien Collateral Agent for the account of any such Issuing Bank shall be released by the First Lien Collateral Agent upon written confirmation from the Issuing Bank of the Issuing Bank's receipt of originals of all Letters of Credit and any and all amendments thereto issued by such Issuing Bank and payment by the Borrower of all First Lien Obligations owing to such Issuing Bank as contemplated by this Section 2.2(i).

(j) Non-Fronted Obligations. For certainty, the DSR Letters of Credit are intended to be non-fronted letters of credit, such that the ~~LC~~**Multi-Draw Facility** Lender with respect to any DSR Letter of Credit is the same entity as, or an Affiliate of Issuing Bank that has issued such DSR Letter of Credit. Each of the Administrative Agent and Borrower agree that in the event that Borrower has provided any DSR Letters of Credit to support the Debt Service Reserve Requirement, it shall instruct the First Lien Collateral Agent to draw on such DSR Letters of Credit *pro rata* among all DSR Letters of Credit. To the extent that any DSR Letter of Credit is drawn on a non-pro rata basis, each other DSR Issuing Bank shall be irrevocably and unconditionally obligated to fund participations in the overdrawn DSR LC Reimbursement Obligations on a pro rata basis based on their Proportionate Share of the ~~LC~~**Multi-Draw Facility** Commitments. The First Lien Collateral Agent hereby agrees to draw on such DSR Letter of Credit only on a pro rata basis as notified by the Administrative Agent or the Borrower to the First Lien Collateral Agent.

2.3 Fees

(a) Agents' and Arranger's Fees. Borrower shall pay to Administrative Agent, First Lien Collateral Agent, and Depositary Agent, as applicable, solely for (i) Administrative Agent's account the fees and other amounts described in the Agency Fee Letter, and (ii) Depositary Agent's and First Lien Collateral Agent's account the fees and other amounts described in the schedule of fees agreed among Borrower, First Lien Collateral Agent and Depositary Agent (the "**Depositary and Collateral Agency Fee Letter**").

(b) ~~LC~~Multi-Draw Facility Commitment Fees. On each Quarterly Date, Borrower shall pay to Administrative Agent the following commitment fees, in each case, payable quarterly in arrears, and for the benefit of the ~~LC~~Multi-Draw Facility Lenders, accruing from the Initial Closing Date or the first day of the Payment Period, as the case may be, a commitment fee for such quarter (or portion thereof) then ending equal to 0.50% per annum on the average daily balance of the aggregate undrawn ~~LC~~Multi-Draw Facility Commitments (calculated on an actual/360-day basis).

(c) Revolving LC Fees. On each Quarterly Date, Borrower shall pay to Administrative Agent:

(i) for the benefit of the ~~LC~~Multi-Draw Facility Lenders, accruing from the Initial Closing Date or the first day of the Payment Period, as the case may be, a letter of credit participation fee on all outstanding Revolving Letters of Credit (the "**Revolving LC Fee**") for such quarter (or portion thereof) then ending at a per annum rate equal to the Applicable Margin then in effect with respect to ~~LIBOR~~SOFR Loans under the ~~LC~~Multi-Draw Facility Commitments, on the face amount of each such Revolving Letter of Credit. Such fee shall be shared ratably among the ~~LC~~Multi-Draw Facility Lenders based on such Revolving Lender's Proportionate Share of the Stated Amounts of all Revolving Letters of Credit (other than Defaulting Lenders) and calculated on an actual/360-day basis, payable quarterly in arrears; and

(ii) for the benefit of the ~~LC~~Multi-Draw Facility Lenders who has issued, either directly or through an Affiliate, a DSR Letter of Credit, accruing from the Initial Closing Date or the first day of the Payment Period, as the case may be, a letter of credit participation fee on all outstanding DSR Letters of Credit issued by such ~~LC~~Multi-Draw Facility Lender (or its Affiliate) (the "**DSR LC Fee**") for such quarter (or portion thereof) then ending at a per annum rate equal to the Applicable Margin then in effect with respect to ~~LIBOR~~SOFR Loans under the ~~LC~~Multi-Draw Facility Commitments, on the face amount of each such DSR Letter of Credit. Such fee shall be shared ratably among the ~~LC~~Multi-Draw Facility Lenders who have issued, or who have Affiliates who have issued, DSR Letters of Credit (other than Defaulting Lenders) and calculated on an actual/360-day basis, payable quarterly in arrears.

(d) Revolving Letter of Credit Fronting Fee. The Borrower shall pay to the Administrative Agent for the account of each Issuing Bank a fronting fee (the "**Revolving Letter of Credit Fronting Fee**") until the ~~LC~~Multi-Draw Facility Maturity Date, payable quarterly in arrears on each Quarterly Date occurring after the Initial Closing Date, and on the Revolving Maturity Date at the rate per annum on the difference between the average daily Stated Amount of all undrawn Revolving Letters of Credit issued by such Issuing Bank for such quarter (or portion thereof), minus such Issuing Bank's Proportionate Share of such Stated Amount, as agreed to between the Borrower and such Issuing Bank.

2.4 Other Payment Terms

(a) Place and Manner. Except as otherwise provided in the Agency Fee Letter, Depositary and Collateral Agency Fee Letter or any other provision contained in any of the Credit Documents, Borrower shall make all payments due to any Lender, any Issuing Bank, First Lien Collateral Agent, Depositary Agent or Administrative Agent hereunder to Administrative Agent, for the account of such Lender, such Issuing Bank, First Lien Collateral Agent, Depositary Agent or Administrative Agent (as the case may be), to the account in the name of MUFG Bank, Ltd., Bank Name: MUFG Bank, Ltd., ABA No. 026-009-632, Account No: 9777-0191, Account Name: Loan Operations Department, Attention: Agency Desk, Reference: Geysers or such other account as Administrative Agent shall notify Borrower from time to time, in Dollars and in immediately available funds not later than 12:00 p.m., New York City time, on the date on which such payment is due. Any payment made after such time on any day shall be deemed received on the Banking Day after such payment is received. Administrative Agent shall disburse to each Lender, each Issuing Bank, First Lien Collateral Agent or Depositary Agent (as the case may be) each such payment received by Administrative Agent for such Lender, such Issuing Bank or First Lien Collateral Agent (as the case may be), such disbursement to occur on the day such payment is received if received by 12:00 p.m., New York City time, or if otherwise reasonably possible, or otherwise on the next Banking Day.

(b) Date. Whenever any payment due hereunder shall fall due on a day other than a Banking Day, such payment shall be made on the next succeeding Banking Day, and such extension of time shall be included in the computation of interest or fees, as the case may be, without duplication of any interest or fees so paid in the next subsequent calculation of interest or fees payable.

(c) Default Interest. Notwithstanding anything to the contrary herein, upon the occurrence and during the continuation of any Event of Default, the outstanding principal amount of overdue Loans and amounts due under outstanding Letters of Credit (without duplication) and, to the extent permitted by applicable Legal Requirements, any accrued and overdue but unpaid interest payments thereon and any accrued and overdue but unpaid fees, and other overdue amounts hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under applicable Bankruptcy Laws) payable upon demand, and the LC Fees shall be increased, at a rate that is (i) 2% per annum in excess of the interest rate or LC Fee, as applicable, then otherwise payable under this Agreement with respect to the LC Loans, or (ii) in the case of any such fees and other amounts, at a rate that is 2% per annum in excess of the interest rate then otherwise payable under this Agreement for Base Rate Loans (the "**Default Rate**"); provided, that in the case of ~~LIBOR~~SOFR Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective, such ~~LIBOR~~SOFR Loans shall thereupon become Base Rate Loans and shall thereafter bear interest payable upon demand at a rate that is 2% per annum in excess of the interest rate then otherwise payable under this Agreement for Base Rate Loans, (it being understood that from and after the date on which all continuing Events of Default have been waived by the Lenders pursuant to Section 9.9, the Default Rate shall no longer apply).

(d) Net of Taxes, Etc.

(i) Taxes. Any and all payments to or for the benefit of any Lender Party by or on behalf of any Obligor hereunder or under any other Credit Document shall be made free and clear of and without deduction or withholding, setoff or counterclaim of any kind whatsoever, except as required by applicable law. If any Taxes are required to be deducted or withheld from or in respect of any sum payable by or on behalf of any Obligor hereunder or under any other Credit Document to any Lender Party, (A) if such Tax is an Indemnified Tax, the sum payable shall be increased as may be necessary so that after all required deductions or withholdings (including deductions or withholdings applicable to additional sums payable under this Section 2.4(d)), such Lender Party receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (B) the relevant Obligor shall make (or cause to be made) such deductions or withholdings, and (C) the relevant Obligor shall pay (or cause to be paid) the full amount deducted or withheld to the relevant taxation authority or other authority in accordance with applicable Legal Requirements. In addition, Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(ii) Tax Indemnity. Borrower shall indemnify each Lender Party for and hold it harmless against the full amount of Indemnified Taxes and Other Taxes (including any Indemnified Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 2.4(d)) paid by any Lender Party or its Affiliates, or any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally asserted. Payments by Borrower pursuant to this indemnification shall be made within thirty days from the date such Lender Party makes written demand therefor (submitted through Administrative Agent), which demand shall be accompanied by a certificate describing in reasonable detail the basis thereof.

(iii) Notice. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by or on behalf of Borrower pursuant to this Section 2.4(d), Borrower shall furnish to Administrative Agent, at its address referred to in Section 11.1, the original or a certified copy of a receipt evidencing payment thereof or, if such receipt is not obtainable, other evidence of such payment reasonably satisfactory to Administrative Agent.

(iv) Conduit Financing. Notwithstanding anything to the contrary contained in this Section 2.4(d), if a Lender Party is a conduit entity participating in a conduit financing arrangement (as defined in Section 7701(l) of the Code and the Treasury Regulations issued thereunder) with respect to any payments made by Borrower under this Agreement and under any Note, Borrower shall not be obligated to pay additional amounts to such Lender Party pursuant to this Section 2.4(d) to the extent that the amount of Indemnified Taxes exceeds the amount that would have otherwise been payable were such Lender Party not a conduit entity participating in a conduit financing arrangement.

(v) Reimbursement by Lender Parties. If any Lender Party receives an indemnification payment pursuant to Section 2.4(d)(ii) and if such Lender Party is able, in its sole discretion exercised in good faith, to apply or otherwise take advantage of any refund or tax credit arising out of or in conjunction with any Indemnified Taxes or Other Taxes which give rise to such indemnification, such Lender Party shall, to the extent that in its sole discretion exercised in good faith, it can do so without prejudice to the retention of the amount of such refund or credit and without any other adverse tax consequences for such Lender Party, reimburse to Borrower at such time as such tax refund or credit shall have actually been received by such Lender Party such amount as the Lender Party shall, in its sole discretion exercised in good faith, have determined to be attributable to the relevant Taxes or Other Taxes and as will leave such Lender Party in no better or worse position than it would have been in if the payment of such Taxes or Other Taxes had not been required; provided, that if the Lender Party is required to repay all or any portion of any refund or any interest thereon to such Governmental Authority or to forfeit all or any portion of such credit, then, upon the request of such Lender Party, Borrower agrees to repay such Lender Party, as soon as reasonably practicable, the amount of the refund required to be paid to such Governmental Authority by such Lender Party or the amount of such credit that is required to be forfeited, in each case *plus* any penalties, interest or other charges imposed by such Governmental Authority with respect to such refund or credit, as the case may be. Nothing in this Section 2.4(d)(v) shall oblige any Lender Party to disclose to Borrower or any other Person any information regarding its tax affairs or tax computations, or shall interfere with Lender Party's absolute discretion to arrange its tax affairs in whatever manner it thinks fit. In particular, no Lender Party shall be under any obligation to claim relief from its corporate profits or similar tax liability in credits or deductions available to it and, if it does claim, the extent, order and manner in which it does so shall be at its absolute discretion.

(vi) Survival of Obligations. The obligations of Obligors under this Section 2.4(d) shall survive the termination of this Agreement and the repayment of Borrower's First Lien Obligations hereunder.

(e) Application of Payments. Except as otherwise expressly provided herein or in the other Credit Documents, payments made under this Agreement or the other Credit Documents and other amounts received by Administrative Agent, First Lien Collateral Agent, Depositary Agent, the Issuing Banks or the Lenders under this Agreement or the other Credit Documents shall first be applied to any fees, costs, charges or expenses payable to Administrative Agent, First Lien Collateral Agent, Depositary Agent, the Issuing Banks or the Lenders hereunder or under the other Credit Documents, next to any accrued but unpaid interest then due and owing, then to outstanding principal then due and owing or otherwise to be prepaid, and to all ordinary course settlement payments and termination payments then due and payable under any Interest Rate Agreement and Cash Collateralize outstanding LC Exposure (in each case, such application to be made on a pro rata basis among such applicable Persons), and any surplus then remaining shall be paid to Borrower or its successors or assigns or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

(f) Withholding Exemption Certificates.

(i) Any Lender Party that is entitled to an exemption from or reduction of withholding tax with respect to payments made under any Credit Document shall deliver to Borrower and the Administrative Agent, at the time or times reasonably requested by Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender Party, if reasonably requested by Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Legal Requirements or reasonably requested by Borrower or the Administrative Agent as will enable Borrower or the Administrative Agent to determine whether or not such Lender Party is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.4(f)(ii)(A), 2.4(f)(ii)(B), and 2.4(f)(ii)(D) below) shall not be required if in the Lender Party's reasonable judgment such completion, execution or submission would subject such Lender Party to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender Party that is a U.S. Person shall deliver to Borrower and the Administrative Agent on or prior to the date on which such Lender Party becomes a Lender Party under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender Party is exempt from U.S. federal backup withholding tax;

(B) any Non-U.S. Lender Party shall, to the extent it is legally entitled to do so, deliver to Borrower and the Administrative Agent (in such number of copies as shall be requested by the Recipient) on or prior to the date on which such Non-U.S. Lender Party becomes a Lender Party under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Non-U.S. Lender Party claiming the benefits of an income tax treaty to which the United States is a party (I) with respect to payments of interest under any Credit Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "interest" article of such tax treaty, and (II) with respect to any other applicable payments under any Credit Document, IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Non-U.S. Lender Party claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (I) a certificate substantially in the form of Exhibit H-1 to the effect that such Non-U.S. Lender Party is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of Borrower (or if the Borrower is an entity that is disregarded as separate from its regarded owner for U.S. federal income tax purposes, such regarded owner) within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "**U.S. Tax Compliance Certificate**"), and (II) executed copies of IRS Form W-8BEN or W-8BEN-E; or

(4) to the extent a Non-U.S. Lender Party is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit H-2 or Exhibit H-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided, that if the Non-U.S. Lender Party is a partnership and one or more direct or indirect partners of such Non-U.S. Lender Party are claiming the portfolio interest exemption, such Non-U.S. Lender Party may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit H-4 on behalf of each such direct and indirect partner;

(C) any Lender Party shall, to the extent it is legally entitled to do so, deliver to Borrower and the Administrative Agent (in such number of copies as shall be requested by the Recipient) on or prior to the date on which such Lender Party becomes a Lender Party under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender Party under any Credit Document would be subject to U.S. federal withholding tax imposed by FATCA if such Lender Party were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender Party shall deliver to Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower or the Administrative Agent as may be necessary for Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender Party has complied with such Lender Party's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender Party agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) Defaulting Lender. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article 7 or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.2 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to Cash Collateralize each Issuing Bank's LC Exposure (if any) with respect to such Defaulting Lender in accordance with Section 2.4(g)(iii); *third*, as Borrower may request (so long as no Default or Event of Default exists), to the funding of any Term Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fourth*, if so determined by the Administrative Agent and Borrower, to be held in a deposit account and released pro rata in order to (A) satisfy such Defaulting Lender's potential future funding obligations with respect to Term Loans under this Agreement and (B) Cash Collateralize any Issuing Bank's future LC Exposure (if any) with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement; *fifth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *sixth*, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *seventh*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided, that if such payment is a payment of the principal amount of any Term Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, such payment shall be applied solely to pay the Term Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Term Loans are held by the Lenders pro rata in accordance with the Term Loan Commitments. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Cash Collateral. At any time that there shall exist a Defaulting Lender, within one Banking Day following the written request of the Administrative Agent or a Issuing Bank (with a copy to the Administrative Agent) the Borrower shall Cash Collateralize each Issuing Bank's LC Exposure (other than the LC Exposure of any Issuing Bank that is the Defaulting Lender or its Affiliate) with respect to such Defaulting Lender (determined after giving effect to Section 2.4(g)(iii)(B) and any Cash Collateral provided by such Defaulting Lender).

(A) Grant of Security Interest. The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the First Lien Collateral Agent, for the benefit of the applicable Issuing Bank, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lenders' obligation to fund participations in respect of Letters of Credit, to be applied pursuant to clause (B) below. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the First Lien Collateral Agent and an Issuing Bank as herein provided, or that the total amount of such Cash Collateral is less than 102.5% of the Stated Amount of such Letters of Credit, the Borrower shall, promptly upon demand by the Administrative Agent, pay or provide to the First Lien Collateral Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(B) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 2.4(g) in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of Letters of Credit (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(C) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce the applicable Issuing Bank's LC Exposure shall not be held as Cash Collateral pursuant to this Section 2.4(g) following (1) the elimination of the LC Exposure (including by the termination of Defaulting Lender status of the applicable Lender) or (2) the determination by the Administrative Agent and the applicable Issuing Bank that there exists excess Cash Collateral; provided, that, subject to the other provisions of this Section 2.4(g), the Person providing Cash Collateral and the applicable Issuing Bank may agree that Cash Collateral shall be held to support future anticipated LC Exposure or other obligations; provided, further, that to the extent that such Cash Collateral was provided by the Borrower, such Cash Collateral shall remain subject to the security interest granted pursuant to the Credit Documents.

(iv) Certain Fees. Notwithstanding anything herein to the contrary, no Defaulting Lender shall be entitled to receive any commitment fee for any period during which that Lender is a Defaulting Lender (and Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(v) Termination or Transfer of Interest Rate Agreements. During the period that any Lender is a Defaulting Lender, such Lender (or any of its Affiliates) shall, at Borrower's option, not be permitted to be a Hedge Bank with respect to any Permitted Interest Rate Agreement, and to the extent such Lender (or its Affiliate) is a Hedge Bank, Borrower may, at its sole option, require such Hedge Bank to terminate or transfer its Permitted Interest Rate Agreements to an existing Lender (or its Affiliate). Any transfer of a Permitted Interest Rate Agreement, if required by the Borrower, shall be subject to the following conditions: (A) the Lender (or its Affiliate) as Hedge Bank and as transferor (the "**Transferor Hedge Provider**") and the transferee (the "**Transferee Hedge Provider**") shall enter into a novation agreement (based on the ISDA standard form novation agreement); (B) the calculation of the pricing of such novation (including any payment to be made between the Transferor Hedge Provider and the Transferee Hedge Provider) shall be acceptable to the Transferor Hedge Provider (unless it, or its Affiliates is a Defaulting Lender) and Transferee Hedge Provider in their reasonable discretion; and (C) the Transferor Hedge Provider shall bear all costs and expenses (including legal costs and expenses) in relation to any such transfer.

(vi) Defaulting Lender Cure. If Borrower, the Administrative Agent and each Issuing Bank agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Term Loans to be held pro rata by the Lenders in accordance with the Term Loan Commitments, whereupon such Lender will cease to be a Defaulting Lender; provided, that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

2.5 Pro Rata Treatment

(a) Borrowings, Commitment Reductions, Etc. Except as otherwise provided herein, (i) each Borrowing consisting of Loans or each Drawing Payment under any Letters of Credit or each reduction of Commitments shall be made or allocated among the Lenders pro rata according to their respective Proportionate Shares of such Loans or Commitments, as the case may be, (ii) each payment of principal of and interest on Term Loans and ~~LC~~**Multi-Draw Facility** Loans shall be made or shared among the Lenders holding such Loans pro rata according to their respective unpaid principal amounts of such Loans held by such Lenders, (iii) each payment of commitment fees shall be shared among the Lenders pro rata according to (A) their respective Proportionate Shares of the Commitments held by such Lenders to which such fees apply, and (B) in respect of each Lender which becomes a party to this Agreement hereunder after the **Initial** Closing Date, the date upon which such Lender so became a party hereunder, and (iv) each payment of Revolving LC Fees shall be made or shared among the Lenders holding such Loans pro rata according to their respective Proportionate Shares of Stated Amounts of all Revolving Letters of Credit.

(b) Sharing of Payments, Etc. If any Lender or Issuing Bank shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) on account of its Loans or participations in Drawing Payments of Revolving Letters of Credit resulting in such Lender or Issuing Bank receiving payment of a greater proportion of the aggregate amount of its Loans or participations in Drawing Payments of Revolving Letters of Credit and accrued interest thereon under the applicable facility than the proportion received by any other Lender or Issuing Bank with respect to such facility (other than the application of funds arising from the existence of a Defaulting Lender), then the Lender or Issuing Bank receiving such greater proportion shall forthwith purchase from the other Lenders or Issuing Bank such participations in the Loans or Drawing Payments, as the case may be, as shall be necessary to cause such purchasing Lender or Issuing Bank to share the excess payment ratably with each of them; provided, that (i) the foregoing shall not apply to any assignments by a Lender or Issuing Bank in accordance with Section 9.14, (ii) the foregoing shall not apply to any upfront fees, arranging fees or agency fees and (iii) if all or any portion of such excess payment is thereafter recovered from such purchasing Lender or Issuing Bank, such purchase from such Lender or Issuing Bank shall be rescinded and each other Lender or Issuing Bank shall repay to the purchasing Lender of Issuing Bank the purchase price to the extent of such recovery together with an amount equal to such other Lender's or Issuing Bank's proportionate share of the applicable facility (according to the proportion of (A) the amount of such other Lender's or Issuing Bank's required repayment to (B) the total amount so recovered from the purchasing Lender or Issuing Bank) of any interest or other amount paid or payable by the purchasing Lender or Issuing Bank in respect of the total amount so recovered. Borrower agrees that any Lender or Issuing Bank so purchasing a participation from another Lender or Issuing Bank pursuant to this Section 2.5(b) may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of setoff) with respect to such participation as fully as if such Lender or Issuing Bank was the direct creditor of Borrower in the amount of such participation.

2.6 Change of Circumstances

(a) Inability to Determine Rates; Benchmark Replacement Setting.

(i) Benchmark Replacement.

(A) ~~**(a) Inability to Determine Rates; Effect of Benchmark Transition Event.**~~ Notwithstanding anything to the contrary herein or in any other Credit Document~~:~~

~~**(i)**~~ **, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to any setting of the then-current Benchmark, then a** ~~**Replacing LIBOR. On March 5, 2021 the Financial Conduct Authority ("FCA"), the regulatory supervisor of LIBOR's administrator ("IBA"), announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1-month, 3-month, 6-month and 12-month LIBOR tenor settings. On the earlier of (A) the date that all Available Tenors of LIBOR have either permanently or indefinitely ceased to be provided by IBA or have been announced by the FCA pursuant to public statement or publication of information to be no longer representative and (B) the Early Opt-in Effective Date, if the then-current Benchmark is LIBOR, the Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Credit Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Credit Document. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a quarterly basis.**~~

~~(ii)~~ ~~Replacing Future Benchmarks. Upon the occurrence of a Benchmark Transition Event, the~~ Benchmark Replacement will replace ~~the then-current~~such Benchmark for all purposes hereunder and under any Credit Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Credit Document ~~(other than any Benchmark Replacement Conforming Changes made pursuant to Section 2.6(a)(iii) below)~~ so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. At any time that the administrator of the then-current Benchmark has permanently or indefinitely ceased to provide such Benchmark or such Benchmark has been announced by the regulatory supervisor for the administrator of such Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored, the Borrower may revoke any request for a borrowing of, conversion to or continuation of Loans to be made, converted or continued that would bear interest by reference to such Benchmark until the Borrower's receipt of notice from the Administrative Agent that a Benchmark Replacement has replaced such Benchmark, and, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans. During the period referenced in the foregoing sentence, the component of the Base Rate based upon the Benchmark will not be used in any determination of the Base Rate.

(B) **No swap agreement shall be deemed to be a "Credit Document" for purposes of this Section 2.6(a).**

(ii) **(iii)** Benchmark Replacement Conforming Changes. In connection with the ~~implementation and~~use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make **Benchmark Replacement** Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Credit Document, any amendments implementing such **Benchmark Replacement** Conforming Changes will become effective without any further action or consent of any other party to this Agreement **or any other Credit Document**.

(iii) ~~(iv)~~ Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any ~~Benchmark Replacement~~ Conforming Changes **in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will promptly notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.6(a)(iv) and (y) the commencement or conclusion of any Benchmark Unavailability Period**. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section **2.6(a)**, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action **or any selection**, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party ~~hereto~~**to this Agreement or any other Credit Document**, except, in each case, as expressly required pursuant to this Section **2.6(a)**.

(iv) ~~(v)~~ Unavailability of Tenor of Benchmark. ~~At~~**Notwithstanding anything to the contrary herein or in any other Credit Document, at** any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate (including **the** Term SOFR ~~or LIBOR)~~**Reference Rate) and either (x) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (y) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative**, then the Administrative Agent may ~~remove any tenor of such Benchmark that is unavailable or non-representative for Benchmark (including Benchmark Replacement) settings and (B)~~**modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable, non-representative, non-compliant or non-aligned tenor and (B) if a tenor that was removed pursuant to clause (A) above either (x) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (y) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to** reinstate ~~any~~ such previously removed tenor ~~for Benchmark (including Benchmark Replacement) settings~~.

(v) **Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any pending request for a SOFR Borrowing of, conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Base Rate.**

(b) Illegality. If any Lender reasonably determines that, after the **Initial** Closing Date, the adoption of any Governmental Rule, any change in any Governmental Rule or the application or requirements thereof (whether such change occurs in accordance with the terms of such Governmental Rule as enacted, as a result of amendment, or otherwise), any change in the interpretation or administration of any Governmental Rule by any Governmental Authority, or compliance by any Lender or Borrower with any request or directive (whether or not having the force of law, but if not having the force of law, being of a type with which a Lender customarily complies) of any Governmental Authority; provided, that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith, and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", (regardless of the date enacted, adopted or issued, a "**Change in Law**") shall make it unlawful or impossible for any Lender to make or maintain any ~~LIBOR~~**SOFR** Loan, or results in a Governmental Authority imposing material restrictions on the authority of the Lenders to purchase, sell or take deposits of Dollars in the pursuant to the preceding sentence prior to the notice thereof by such Lender to Borrower through Administrative Agent, (1) Borrower's right to request the making of or conversion to, and the Lender's obligations to make or convert to, ~~LIBOR~~**SOFR** Loans shall be suspended until such Lender notifies Borrower and Administrative Agent that the circumstances giving rise to such determination no longer exist, and (2) Borrower shall, upon demand from such Lender (with a copy to Administrative Agent), either (I) pursuant to Section 2.1(g) convert any then outstanding ~~LIBOR~~**SOFR** Loans into Base Rate Loans at the end of the current Interest Periods for such Loans, or (II) immediately repay ~~LIBOR~~**SOFR** Loans pursuant to Section 2.1(h) or convert ~~LIBOR~~**SOFR** Loans into Base Rate Loans if such Lender shall notify Borrower that such Lender may not lawfully continue to fund and maintain such Loans. Upon any such conversion, Borrower shall also pay accrued interest on the amount so converted. Any conversion or prepayment of ~~LIBOR~~**SOFR** Loans made pursuant to the preceding sentence prior to the last day of an Interest Period for such Loans shall be deemed a prepayment thereof for purposes of Section 2.7.

(c) Increased Costs. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement) or any Issuing Bank; or

(ii) impose on any Lender or any Issuing Bank ~~or the London interbank market~~ any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letters of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost (other than any cost relating to any Taxes) to such Lender or such other Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender, such Issuing Bank or such other Recipient of participating in, issuing or maintaining any Letters of Credit (or of maintaining its obligation to participate in or to issue any Letters of Credit), or to reduce the amount of any sum received or receivable by such Lender, Issuing Bank or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, Issuing Bank or other Recipient, Borrower shall pay to such Lender, Issuing Bank or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, Issuing Bank or other Recipient, as the case may be, for such additional costs incurred or reduction suffered (without duplication and after netting out the effect of any benefits resulting therefrom).

(d) Capital Requirements.

(i) If any Lender or Issuing Bank reasonably determines that any Change in Law affecting such Lender or Issuing Bank or any Lending Office of such Lender or such Lender's or Issuing Bank's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's or Issuing Bank's capital or on the capital of such Lender's or Issuing Bank's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by any Issuing Bank, to a level below that which such Lender or Issuing Bank or such Lender's or Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or Issuing Bank's policies and the policies of such Lender's or Issuing Bank's holding company with respect to capital adequacy), then from time to time Borrower shall pay to such Lender or Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or Issuing Bank or such Lender's or Issuing Bank's holding company for any such reduction suffered (without duplication and after netting out the effect of any benefits resulting therefrom).

(ii) Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including eurocurrency funds or deposits (currently known as "Eurocurrency Liabilities" in Regulation D), additional interest on the unpaid principal amount of each ~~LIBOR~~SOFR Loan equal to the actual costs of such reserves allocated to such Loan by such Lender; provided, that such costs shall be applied consistently across all other similar loans of such Lender, as determined by such Lender in good faith, which determination shall be conclusive absent manifest error. Such additional interest shall be due upon the occurrence of event giving rise to, or the imposition of, as applicable, the reserve requirement, and payable on each date on which interest is payable on such Loan; provided, that such Lender shall provide Borrower at least ten days' prior notice (with a copy to the Administrative Agent) of such additional interest. If a Lender fails to give notice ten days prior to the relevant interest payment date, such failure shall not excuse Borrower's obligation to pay such additional interest, however, such additional interest shall be only payable ten days from receipt of such notice.

(e) Notice; Participating Lenders' Rights. Each Lender shall notify Borrower of any event occurring after the date of this Agreement that will entitle such Lender to compensation pursuant to this Section 2.6(e), promptly, and in no event later than 180 days after the principal officer of such Lender responsible for administering this Agreement obtains knowledge thereof; provided, that any Lender's failure to notify Borrower within such 180 day period shall not relieve Borrower of its obligation under this Section 2.6(e) with respect to claims arising prior to the end of such period, but shall relieve Borrower of its obligations under this Section 2.6(e) with respect to the time between the end of such period and such time as Borrower receives notice from the applicable Lender as provided herein; and provided, further, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180 day period referred to above shall be extended to include the period of retroactive effect thereof. No Person purchasing from a Lender a participation in any Commitment (as opposed to an assignment) shall be entitled to any payment from or on behalf of Borrower pursuant to Section 2.6(c) or Section 2.6(d) which would be in excess of the applicable proportionate amount (based on the portion of the Commitment in which such Person is participating) which would then be payable to such Lender if such Lender had not sold a participation in that portion of the Commitment.

2.7 Funding Losses

If Borrower shall (a) repay or prepay any ~~LIBOR~~SOFR Loans on any day other than the last day of an Interest Period for such Loans (whether an Optional Prepayment or a Mandatory Prepayment), (b) fail to convert any Loans into ~~LIBOR~~SOFR Loans in accordance with a Notice of Conversion of Loan Type delivered to Administrative Agent (whether as a result of the failure to satisfy any applicable conditions or otherwise) after such Notice of Conversion of Loan Type has become irrevocable, (c) fail to continue a ~~LIBOR~~SOFR Loan in accordance with a Confirmation of Interest Period Selection delivered to Administrative Agent, or (d) fail to make any prepayment in accordance with any notice of prepayment delivered to Administrative Agent, then Borrower shall, within ten days after demand by any Lender, reimburse such Lender for all reasonable costs and losses incurred by such Lender as a result of such repayment, prepayment or failure ("**Liquidation Costs**"). Borrower understands that such costs and losses may include losses incurred by a Lender as a result of funding and other contracts entered into by such Lender to fund ~~LIBOR~~SOFR Loans (other than non-receipt of the margin applicable to such ~~LIBOR~~SOFR Loans). Each Lender demanding payment under this Section 2.7 shall deliver to Borrower a certificate setting forth in reasonable detail the basis for and the amount of costs and losses for which demand is made. Such a certificate so delivered to Borrower shall, in the absence of manifest error, be conclusive and binding as to the amount of such loss for purposes of this Agreement.

2.8 Alternate Office; Minimization of Costs; Replacement of Lenders

(a) To the extent reasonably possible, each Lender shall designate an alternative Lending Office with respect to its ~~LIBOR~~SOFR Loans and otherwise take any reasonable actions to reduce any liability of Borrower to any Lender under Sections 2.4(d), 2.6(c), 2.6(d) or Section 2.7, or to avoid the unavailability of any Type of Loans under Section 2.6(b) so long as (in the case of the designation of an alternative Lending Office) such Lender, in the reasonable judgment of such Lender, determines that (i) such designation would not subject the Lender to any unreimbursed cost or otherwise be disadvantageous to such Lender in any material respect, and (ii) such actions would eliminate or reduce liability to such Lender; provided, that no Lender shall be required to designate an alternative Lending Office if such designation requires internal credit approval until such time as such Lender receives such internal credit approval. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or actions within ten Banking Days of demand thereof to Borrower.

(b) If and with respect to each occasion that any Lender has failed to consent to a proposed amendment, waiver, discharge or termination which pursuant to the terms of Section 9.9 requires the consent of all of the Lenders affected and with respect to which the Required Lenders shall have granted their consent, a Lender either makes a demand for 42 compensation pursuant to Sections 2.4(d), 2.6(c) or 2.6(d) or is unable to fund ~~LIBOR~~SOFR Loans pursuant to Section 2.6(b) or is a Defaulting Lender, then Borrower may, upon at least five Banking Days' prior irrevocable written notice to each of such Lender and Administrative Agent, in whole permanently replace the Loans and Commitments of such Lender. Such replacement Lender shall upon the effective date of replacement purchase Borrower's First Lien Obligations hereunder owed to such replaced Lender for the aggregate amount thereof and shall thereupon for all purposes become a "Lender" hereunder. Such notice from Borrower shall specify an effective date for the replacement of such Lender's Loans and Commitments, which date shall not be later than the fourteenth day after the day such notice is given. On the effective date of any replacement of such Lender's Loans and Commitments pursuant to this Section 2.8(b), Borrower shall pay to Administrative Agent for the account of such Lender (i) any fees due to such Lender to the date of such replacement, (ii) the principal of and accrued interest on the principal amount of outstanding Loans held by such Lender to the date of such replacement (such amount to be represented by the purchase of Borrower's First Lien Obligations hereunder of such replaced Lender by the replacing Lender and not as a prepayment of such Loans), and (iii) the amount or amounts due to such Lender pursuant to each of Sections 2.4(c), 2.6(c) or 2.6(d), as applicable, and any other amount then payable hereunder to such Lender. Borrower shall remain liable to such replaced Lender for any Liquidation Costs that such Lender sustains or incurs as a consequence of the purchase of such Lender's Loans (unless such Lender has defaulted on its obligation to fund a Loan hereunder). Upon the effective date of the purchase of any Lender's Loans owed to such Lender and termination of such Lender's Commitments pursuant to this Section 2.8(b), such Lender shall cease to be a Lender hereunder. No such termination of any such Lender's Commitments and the purchase of such Lender's Loans pursuant to this Section 2.8(b) shall affect (x) any liability or obligation of Borrower or any other Lender to such terminated Lender, or any liability or obligation of such terminated Lender to Borrower or any other Lender, which accrued on or prior to the date of such termination, or (y) such terminated Lender's rights hereunder in respect of any such liability or obligation. Nothing in this Section 2.8(b) shall be deemed to prejudice any rights that Borrower may have against any Lender that is a Defaulting Lender.

(c) Upon written notice to Administrative Agent, any Lender may designate a Lending Office other than the Lending Office most recently designated to Administrative Agent and may assign all of its interests under the Credit Documents and its Notes (if any) to such Lending Office; provided, that, such designation and assignment do not at the time of such designation and assignment increase the reasonably foreseeable liability of Borrower under Sections 2.4(d), 2.6(c) or 2.6(d) or make an Interest Rate option unavailable pursuant to Section 2.6(b).

3. CONDITIONS PRECEDENT

3.1 Conditions Precedent to the Initial Closing Date

The obligation of the Lenders to make the Term Loans or ~~LC~~Multi-Draw Facility Loans on the Initial Closing Date, as applicable, under this Agreement, and the obligation of any Issuing Bank to issue any Letter of Credit hereunder on the Initial Closing Date ~~is~~was subject to the prior satisfaction of each of the following conditions (unless waived in writing by Administrative Agent with the consent of the Lenders) (the date such conditions precedent ~~are~~were so satisfied or waived being referred to as the "**Initial Closing Date**"):

(a) Resolutions. Delivery to the Administrative Agent of a copy of one or more resolutions or other authorizations, in form and substance reasonably satisfactory to the Administrative Agent, of the Obligors certified by a Responsible Officer of Holdings or Borrower, as applicable, as being in full force and effect on the **Initial** Closing Date, authorizing, as applicable and among other things, the Borrowings herein provided for, the granting or continuation of the Liens under the First Lien Collateral Documents, delivery and performance of this Agreement and the other **Initial** Closing Date Credit Documents and any instruments or agreements required hereunder or thereunder to which any of the Obligors is a party.

(b) Incumbency. Delivery to the Administrative Agent and the Depositary Agent of a certificate, in form and substance reasonably satisfactory to the Administrative Agent, from the Obligors, signed by the appropriate authorized officer or manager of the Obligors and dated as of the **Initial** Closing Date, as to the incumbency of the natural Persons authorized to execute and deliver this Agreement and the other **Initial** Closing Date Credit Documents and any instruments or agreements required hereunder or thereunder to which an Obligor is a party.

(c) Formation Documents. Delivery to the Administrative Agent of (i) copies of the articles of incorporation, certificate of incorporation, charter or other state certified constituent documents of each Obligor, certified by the secretary of state of such Obligor's state of formation, and (ii) copies of the limited liability company operating agreement or other comparable constituent documents, if applicable, of each Obligor, certified by an authorized officer of such Obligor, as applicable, as being true, correct and complete on the **Initial** Closing Date.

(d) Good Standing Certificates. Delivery to the Administrative Agent of good standing certificates in a form customarily issued by (i) the secretary of state of the state in which the Obligors are formed or incorporated, as applicable, and (ii) in the case of Borrower, the Secretary of State of the State of California.

(e) Third Party Approvals. Delivery to the Administrative Agent of copies of any approval by any Governmental Authority reasonably required in connection with any transaction herein contemplated or contemplated in any other Credit Document, which the Administrative Agent may reasonably have requested in connection herewith.

(f) Credit Documents and Major Project Contracts. Delivery to the Administrative Agent of (i) executed copies of this Agreement, the First Lien Common Terms Agreement, and each other Credit Document (other than the Interest Rate Agreements) to be executed on the **Initial** Closing Date and any supplements or amendments thereto and (ii) a certified list of, and true, correct and complete copies of, each Major Project Contract executed on or prior to the **Initial** Closing Date (together with any supplements or amendments thereto), in the case of each of clauses (i) and (ii), all of which shall have been duly authorized, executed and delivered by the parties thereto, and all of which shall be certified by a Responsible Officer of Borrower as being true, complete and correct and in full force and effect (to the extent provided therein) on the **Initial** Closing Date pursuant to the certificate delivered pursuant to Section 3.1(g).

(g) Closing Certificate. Delivery to the Administrative Agent of a certificate, dated as of the **Initial** Closing Date, duly executed by a Responsible Officer of Borrower, in substantially the form of Exhibit F-1.

(h) Legal Opinions. Delivery to the Administrative Agent of legal opinions of counsel to the Obligors entering into Financing Documents entered into as of the **Initial** Closing Date, in each case in form and substance reasonably satisfactory to the Administrative Agent.

(i) Insurance. Insurance complying with terms and conditions set forth in Exhibit K shall be in full force and effect and the Administrative Agent and the Insurance Consultant shall have received (i) a certificate from Borrower's insurance broker(s), dated as of the **Initial** Closing Date, in form and substance reasonably satisfactory to the Administrative Agent, (A) identifying underwriters, type of insurance, insurance limits and policy terms, (B) listing the special provisions required as set forth in Exhibit K, (C) describing the insurance obtained, and (D) stating that such insurance is in full force and effect and that all premiums then due thereon have been paid and that, in the opinion of such broker(s), such insurance complies with the terms and conditions set forth in Exhibit K, and (ii) certified copies of all policies evidencing such insurance (or a binder, commitment or certificates signed by the insurer or a broker authorized to bind the insurer).

(j) Consultant Reports. Delivery to the Administrative Agent of the Independent Engineer, Insurance Consultant, Reserve Consultant, Environmental Consultant and Market Consultant's reports, together with a reliance letter from each such Person in form and substance reasonably satisfactory to the Administrative Agent.

(k) Depositary Accounts. The Depositary Accounts shall have been established and the Debt Service Reserve Account and shall have been funded in an amount equal to the Debt Service Reserve Requirement, with cash or a letter of credit.

(l) Payment of Taxes, Interest and Fees. All taxes, fees and other costs payable in connection with the execution, delivery, recordation and filing of the documents and instruments referred to in this Section 3.1 and due on the **Initial** Closing Date shall have been paid in full or, as approved by the Lenders, provided for. Borrower shall have paid (or caused to be paid) all outstanding amounts due, as of the **Initial** Closing Date, and owing to (i) the Lenders, Administrative Agent, First Lien Collateral Agent, the Issuing Banks, Coordinating Lead Arrangers or the Joint Lead Arrangers under any fee or other letter, including without limitation the Agency Fee Letter, the Depositary and Collateral Agency Fee Letter or pursuant to Section 2.3(a), (ii) the Lenders' attorneys and consultants (including the Independent Consultants) for all services rendered and billed at least one Banking Day prior to the **Initial** Closing Date, (iii) the Depositary Agent under the Depositary Agreement and the Depositary and Collateral Agency Fee Letter and (iv) Administrative Agent for any other amounts required to be paid or deposited by Borrower on the **Initial** Closing Date. In addition, Borrower shall have provided, to any Lender that has so requested in writing at least one Banking Day prior to the **Initial** Closing Date, documentation reasonably satisfactory to Borrower and such Lender regarding the description or designation of any fees payable to such Lender pursuant to the foregoing clause (i); provided, that Borrower shall not be responsible for making any determination or verification with respect to the description or designation of fees requested by any such Lender, and shall not have any liability to any such Lender as a result of the delivery of such documentation.

(m) Financial Statements. Delivery to the Administrative Agent of (i) accurate and complete copies of (A) the audited balance sheets of the Borrower for the years ended December 31, 2017, December 31, 2018 and December 31, 2019, and (B) audited statements of cash flows of the Borrower for the years ended December 31, 2016, December 31, 2017, December 31, 2018 and December 31, 2019, and (ii) together with a certificate from the appropriate Responsible Officer of Borrower, dated as of the **Initial** Closing Date, stating that, since December 31, 2019, there has occurred no event or circumstance which could reasonably be expected to have a Material Adverse Effect.

(n) UCC Reports. Delivery to the Administrative Agent of a UCC report of a date no less recent than ten days before the **Initial** Closing Date for each of the jurisdictions in which the UCC-1 financing statements and the fixture filings are intended to be filed in respect of the Collateral, showing that upon due filing or recordation (assuming such filing or recordation occurred on the date of such respective reports), as the case may be, the security interests created under the First Lien Collateral Documents, with respect to such Collateral, will be prior to all other financing statements, future filings or other security documents wherein the security interest is perfected by filing or recording in respect of the Collateral, together with evidence of release of the Projects from all liens other than Permitted Liens and payoff of any debt for borrowed money of the Obligors.

(o) Base Case Projections. Delivery to the Administrative Agent of the Base Case Projections of operating expenses and cash flow for the Projects in the form of Schedule 3.1(o), which Base Case Projections shall be in form and substance satisfactory to the Administrative Agent.

(p) Reorganization. Delivery to the Administrative Agent of a certificate by the Borrower certifying that the structure set forth in Schedule 3.1(p) is the Obligor's corporate structure as of the **Initial** Closing Date, together with documents evidencing that such corporate structure has been effectuated.

(q) Flood Determination. Delivery to the Administrative Agent of a completed "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination for the real property relating to each of the Projects.

(r) Representations and Warranties. Each representation and warranty of Borrower and each other Obligor under the Credit Documents shall be true and correct as of the **Initial** Closing Date, except to the extent that such representations and warranties are stated to be made as of a specific date, in which case they shall be true and correct as of such date.

(s) Absence of Litigation. The absence of any action, suit, investigation or proceeding pending or, to the knowledge of the Borrower, threatened in any court or before any arbitrator or Governmental Authority that could reasonably be expected to have a Material Adverse Effect.

(t) No Default. No Default or Event of Default shall have occurred and be continuing as of the **Initial** Closing Date.

(u) Annual Operating Budget. The Lenders shall have received a copy of the Annual Operating Budget for calendar year 2020.

(v) Notice of Borrowing. Borrower shall have delivered the Notice of Borrowing to Administrative Agent in accordance with the procedure specified in Section 2.1(a)(ii).

(w) Know-your-Customer. At least three Banking Days prior to the **Initial** Closing Date, the Agents and the Lenders shall have received (i) all documentation and other information required by bank regulatory authorities or reasonably requested by any Agent or any Lender, at least seven Banking Days prior to the **Initial** Closing Date, under or in respect of applicable "know-your-customer" and anti-money laundering rules and regulations, including the PATRIOT Act and (ii) to the extent that Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, Borrower shall deliver a Beneficial Ownership Certification.

(x) Release Letter. Substantially concurrently with the transactions contemplated hereby, all Indebtedness of the Obligors (other than Permitted Debt), together with all accrued and unpaid interest thereon and all applicable make-whole or other premiums payable in connection therewith, concurrently with the consummation of the transactions contemplated hereby, has been prepaid, redeemed or defeased in full or otherwise satisfied and extinguished, in each case, on terms reasonably satisfactory to the Administrative Agent, and all commitments relating thereto terminated and all Liens on security interests related thereto shall have been terminated or released, in each case, on terms reasonably satisfactory to the Administrative Agent.

(y) Consents. Delivery to the Administrative Agent of executed copies of the Consent for the (i) Administrative Services Agreement, dated as of the date hereof, between Calpine Administrative Services Company, Inc. and the Borrower, Geysers Company, Wild Horse and Calistoga, (ii) the O&M Agreement, and (iii) the Third Amended and Restated Power Purchase and Sale Agreement.

3.2 Conditions Precedent to Credit Events

The obligation of any Lenders to make the ~~LC~~**Multi-Draw Facility** Loans after the **Initial** Closing Date or to issue, amend or renew Letters of Credit after the **Initial** Closing Date is subject to the prior satisfaction of each of the following conditions (unless waived in writing by Administrative Agent with the consent of the Lenders) (any date such conditions precedent are so satisfied or waived being referred to as a "**Borrowing Date**"):

(a) Representations and Warranties. Each representation and warranty made by or on behalf of Borrower or any Obligor in any of the Credit Documents shall be true and correct in all material respects (or, in the case of any such representations and warranties qualified as to materiality, in all respects) as if made on the date of such Credit Event, unless such representation or warranty expressly relates solely to an earlier date; provided, that this Section 3.2(a) shall not be a condition to reinstating the Stated Amount of any Letter of Credit upon ~~reimbursement~~**reimbursement** thereof.

(b) No Default. No Event of Default shall have occurred and be continuing or shall result from such Credit Event.

(c) Borrowing Notice; Notice of LC Activity. In respect of any Borrowing of Term Loans **or Sub-facility Loans**, Borrower shall have delivered a Notice of Borrowing to Administrative Agent in accordance with the procedures specified in Section 2.1(a)(ii) **or 2.2(c)(ii), as applicable**. In respect of any Letter of Credit issuance, amendment or renewal, Borrower shall have delivered a Notice of LC Activity to Administrative Agent in accordance with the procedures specified in Section 2.2.

4. REPRESENTATIONS AND WARRANTIES

Each Obligor makes each representation and warranty set forth in Article 3 (*Representations and Warranties*) of the First Lien Common Terms Agreement and each of the following supplemental representations and warranties set forth in this Article 4, on the **Initial** Closing Date and as of the date of each Credit Event (unless such representation and warranty is stated to be made as of a specific date), in favor of, the First Lien Collateral Agent, each of the Lender Parties and each other party hereto:

4.1 Organization

(a) Each Obligor is (i) a limited liability company duly formed, validly existing and in good standing under the laws of the state of its formation, and (ii) is duly qualified as a foreign limited liability company, in each other jurisdiction in which such qualification is required by law in light of the business it conducts and the property it owns or leases and in light of the transactions contemplated by this Agreement, except where the failure to be so qualified or be in good standing could not reasonably be expected to have a Material Adverse Effect.

(b) Borrower and each Obligor has all requisite limited liability company power and authority to (i) own or hold under lease and operate the property it purports to own or hold under lease, (ii) carry on its business as now being conducted and as now proposed to be conducted in respect of the Projects, and (iii) execute, deliver and perform each Credit Document to which it is a party and perform its obligations thereunder.

4.2 Authorization; No Conflict

Each Obligor has duly authorized, executed and delivered each Credit Document to which such Obligor is a party (or such Credit Documents have been duly and validly assigned to such Obligor and such Obligor has authorized the assumption thereof, and has assumed the obligations of the assignor thereunder) and neither any Obligor's execution and delivery thereof nor its consummation of the transactions contemplated thereby nor its compliance with the terms thereof

(a) violate in any material respect any of its Governing Documents,

(b) violate any Legal Requirement applicable to or binding on such Obligor or any of such Obligor's properties in a manner which could reasonably be expected to result in a Material Adverse Effect,

(c) violate in any respect or result in any breach of or constitute any default under, or result in or require the creation of any Lien (other than Permitted Liens) upon any of its property under, any agreement or instrument to which it is a party or by which it or any of its properties may be bound or affected which, in each case, could reasonably be expected to result in a Material Adverse Effect, or

(d) require any consent or approval of any Person, and with respect to any Governmental Authority, does or will require any registration with, or notice to, or any other action of, with or by any applicable Governmental Authority, in each case which has not already been obtained and disclosed in writing to Administrative Agent (except (i) any Permits that are not yet Applicable Permits, (ii) for those that are required by securities, regulatory or applicable law in connection with an exercise of remedies, (iii) as set forth on Schedule 3.2(d) of the First Lien Common Terms Agreement and the filing of any required continuation statements, (iv) for those that, by the terms of the First Lien Collateral Documents, are not required to be obtained or completed or are required to be obtained or completed only after the **Initial** Closing Date, or (v) for those the absence of which could not reasonably be expected to have a Material Adverse Effect).

4.3 Enforceability

Each of the Credit Documents and, except as ~~otherwsic~~**otherwise** permitted by Section 6.2, the Major Project Contracts to which each Obligor is a party is a legal, valid and binding obligation of such Obligor, enforceable against such Obligor in accordance with its terms, except to the extent that enforceability may be limited by (a) applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights, (b) the effect of general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law), or (c) implied covenants of good faith and fair dealing.

4.4 Energy Regulatory

(a) Each of the Obligors is in compliance with the FPA and PUHCA, except to the extent such Obligor is not subject to, or is exempt from, the FPA or PUHCA or where failure to be in such compliance could not reasonably be expected to have a Material Adverse Effect. Borrower is a "public utility" within the meaning of the FPA, and has authorization from FERC under Section 205 of the FPA to engage in wholesale sales of electric energy, capacity, and certain ancillary services at market-based rates and has received such waivers and authorizations as are customarily granted to market-based rate sellers by FERC, including blanket authorization to issue securities and assume liabilities pursuant to Section 204 of the FPA. No Obligor is, nor solely as a result of the execution, delivery and performance of, and the consummation of the transactions contemplated by the Credit Documents shall be or become, a "public utility," a "transmitting utility," or an "electric utility" within the meaning of the FPA. No Obligor is, nor solely as a result of the execution, delivery and performance of, and the consummation of the transactions contemplated by the Credit Documents shall be or become, subject to state regulation of rates or to state financial or organizational requirements for utilities.

(b) Borrower is an Exempt Wholesale Generator with respect to its ownership and operation of all of the Projects and such status remains in effect. Each of the Obligors is not a "holding company" under PUHCA or is a "holding company" under PUHCA solely with respect to one or more Exempt Wholesale Generators, "qualifying facilities" (as defined in 18 C.F.R § 292.101(b)(1)) or "foreign utility companies" (as defined under PUHCA), and each of the Obligors is not subject to, or is exempt from, regulation under the federal access to books and records, accounting and recordkeeping and reporting requirements under PUHCA.

(c) None of the Lender Parties or any of their respective "affiliates" (as defined in PUHCA and applicable FERC regulations), solely by virtue of the Obligors' or any of their respective Subsidiaries' ownership or operation of the Projects, the sale or transmission of electricity therefrom or the execution, delivery and performance of or the consummation of the transactions contemplated by any Credit Document or Major Project Contracts, shall be or become subject to, or not exempt from, regulation under PUHCA, the FPA or any state law or regulation respecting the rates of electric utilities or the financial and organizational regulation of electric utilities; provided, that any exercise of remedies under the First Lien Collateral Documents that results in the direct or indirect ownership or control of the Projects or of a Project by any Lender Party or any of its "affiliates" (as defined in PUHCA and applicable FERC regulations) may subject such Lender Party and its "affiliates" (as defined in PUHCA and applicable FERC regulations) to regulation under PUHCA, the FPA or any state law or regulation respecting the rates of electric utilities or the financial and organizational regulation of electric utilities.

4.5 Adverse Change

As of the **Initial** Closing Date, since December 31, 2019 there has occurred no event or circumstance which could reasonably be expected to have a Material Adverse Effect.

4.6 Investment Company Act

Borrower is not an investment company or a company controlled by an investment company, within the meaning of the Investment Company Act of 1940, as amended. Borrower is not a "covered fund" under Section 13 of the Bank Holding Company Act of 1956, as amended, as such term is defined in the final regulations issued on December 10, 2013 implementing Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (commonly known as the "Volcker Rule").

4.7 ERISA

As of the **Initial** Closing Date, except as would not (individually or in the aggregate) reasonably be expected to have a Material Adverse Effect, no ERISA Event has occurred or is reasonably expected to occur. Except as would not (individually or in the aggregate) reasonably be expected to have a Material Adverse Effect, (a) neither Holdings or its Subsidiaries has incurred or reasonably expect to incur liability under Title IV of ERISA with respect to the termination of or withdrawal from any ERISA Plan or Multiemployer Plan and (b) each ERISA Plan that is intended to be qualified under Section 401 of the Code is so qualified and nothing has occurred, whether by action or failure to act, which would reasonably be expected to result in the loss of such qualification.

4.8 Permits

(a) As of the **Initial** Closing Date, other than the Permits required under Section 3.2(d) of the First Lien Common Terms Agreement, the Obligors currently have all material Permits under existing Legal Requirements.

(b) Each Obligor is in compliance with all of its Applicable Permits except to the extent such noncompliance could not reasonably be expected to have a Material Adverse Effect.

4.9 Environmental Matters

Except as set forth in Schedule 4.9 and as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, Holdings, and each of its Subsidiaries are in compliance with all applicable Environmental Laws and Applicable Permits required under Environmental Laws to conduct their businesses and operations as currently conducted.

4.10 Litigation

(a) Except as set forth on Schedule 4.10(a), as of the **Initial** Closing Date, no action, suit, proceeding or investigation has been instituted or, to Borrower or any Obligor's knowledge, threatened in writing against Borrower or any Obligor that could reasonably be expected to have a Material Adverse Effect.

(b) Except as set forth on Schedule 4.10(b), Borrower has no knowledge of any order, judgment or decree that has been issued or proposed to be issued by any Governmental Authority that, as a result of the leasing, ownership, operation or maintenance of the Projects by any Obligor, the sale of electricity or steam therefrom by any Obligor or the entering into of any Credit Document or any transaction contemplated hereby or thereby, could reasonably be expected to cause or deem the Lenders, Administrative Agent, First Lien Collateral Agent, the Issuing Banks, Coordinating Lead Arrangers, Joint Lead Arrangers or any Affiliate of any of them to be subject to, or not exempted from, regulation under PUHCA, the FPA or treated as a public utility under the laws of the State of California as presently constituted and as construed by the courts of California respecting the rates or the financial or organizational regulation of electric utilities.

(c) As of the date of each Credit Event occurring after the **Initial** Closing Date, no action, suit, proceeding or investigation has been instituted or, to Borrower's knowledge, threatened in writing against any Obligor, which could reasonably be expected to have a Material Adverse Effect and which have not been disclosed by Borrower to Administrative Agent.

4.11 Labor Disputes.

No labor dispute with the employees of the Borrower or any Subsidiary exists or, to the knowledge of the Borrower, is imminent that would reasonably be expected to have a Material Adverse Effect.

4.12 Major Project Contracts

As of the **Initial** Closing Date, copies of all of the Major Project Contracts executed on or prior to such date have been delivered to Administrative Agent. As of the **Initial** Closing Date, there are no services or materials required for development, construction, operation and maintenance of the Projects in accordance with the Specified Major Project Contracts, other than those (a) to be provided under the Project Contracts, (b) that are not material to the development, construction, operation and maintenance of the Projects or (c) that can reasonably be expected to be commercially available at or for delivery to the Projects on commercially reasonable terms. As of the **Initial** Closing Date, there is no default or event of default under the Material Project Contracts (other than any such default or event of default arising from or relating to the bankruptcy filing by Pacific Gas & Electric Company in the Northern District of California under Chapter 11 of the Bankruptcy Law), which could reasonably be expected to have a Material Adverse Effect.

4.13 Disclosures

(a) ~~None~~**As of the Second Omnibus Amendment Date, none** of this Agreement, the other Credit Documents, any certificate or other information or documentation (other than the Annual Operating Budget or the Base Case Projections and other forward-looking statements, the Market Consultant's report, the conclusions drawn by the Independent Engineer in its report, the conclusions drawn by the Insurance Consultant in its report and the information contained in any other reports provided by the Coordinating Lead Arrangers' consultants (it being understood and agreed that Borrower will be solely responsible for the contents of any information, documentation or other materials delivered by it or on its behalf to the preparers of such study and/or reports) and any other forward-looking statements) furnished or verified by Borrower to the Coordinating Lead Arrangers, Joint Lead Arrangers, Administrative Agent, First Lien Collateral Agent, or the Lenders, or to any consultant submitting a report to Administrative Agent, Coordinating Lead Arrangers, Joint Lead Arrangers or the Lenders, by or, to Borrower's knowledge, on behalf of Borrower with respect to the Projects, in connection with the transactions contemplated by this Agreement or the other Credit Documents, contained (when taken as a whole and at the time of delivery or verification thereof) any untrue statement of a material fact or omitted (when taken as a whole and at the time of delivery or verification thereof) to state a material fact necessary in order to make the statements contained herein or therein not misleading under the circumstances in which they were made at the time such statements were made (other than any information that was corrected or updated in writing to the Coordinating Lead Arrangers, or Joint Lead Arrangers prior to the **Initial** Closing Date).

(b) The Annual Operating Budget or the Base Case Projections and the other forward-looking statements and *pro forma* financial information contained in the materials provided by the Borrower and referenced in paragraph (a) above (other than, in each case, any assumptions or projections therein provided by any third-party consultant) (i) are based upon good faith estimates and assumptions believed by management of the Borrower to be reasonable in light of the conditions existing at the time they were ~~made~~**delivered** and (ii) as of the date delivered, updated or supplemented are consistent in all material respects with the provisions of the Project Contracts executed on or prior to such date, it being recognized by the Coordinating Lead Arrangers, Joint Lead Arrangers, Administrative Agent, First Lien Collateral Agent, and the Lenders, that (x) such information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount and (y) such Annual Operating Budget and the Base Case Projections are subject to significant uncertainties and contingencies, many of which are beyond the control of Borrower, and Borrower makes no representation or warranty as to (1) the attainability of such Annual Operating Budget and the Base Case Projections or as to whether such Annual Operating Budget and the Base Case Projections shall be achieved and (2) any assumptions or projections therein provided by any third-party consultant.

4.14 Taxes

Holdings and its Subsidiaries have accurately prepared and timely filed all federal, state and other tax returns that are required to be filed by them and have paid or made provision for the payment of all taxes, assessments, governmental or other similar charges, including without limitation, all sales and use taxes and all taxes which they are obligated to withhold from amounts owing to their respective employees, creditors and third parties, with respect to the periods covered by such tax returns (whether or not such amounts are shown as due on any tax return), except any amounts that an Obligor is contesting in good faith for which appropriate reserves have been provided in accordance with GAAP or where the failure to so accurately prepare, file or pay would not reasonably be expected to have a Material Adverse Effect. No deficiency assessment with respect to a proposed adjustment of the Borrower's or any of the Subsidiaries' federal, state, or other taxes is pending or, to the Borrower's knowledge, threatened, which would reasonably be expected to have a Material Adverse Effect. There is no material tax Lien, whether imposed by any federal, state, or other taxing authority, outstanding against the assets, properties or business of the Borrower or any of its Subsidiaries, which would reasonably be expected to have a Material Adverse Effect.

As of the date hereof, Borrower is an entity that is disregarded as separate from its regarded owner for U.S. federal income tax purposes.

4.15 Governmental Regulation

No consent, approval, authorization or order of, or registration, qualification or filing with any court or regulatory authority or other governmental agency or instrumentality (including but not limited to, prior authorization from FERC under Sections 203 or 204 of the FPA) is required in connection with the consummation by the Borrower and the other Obligors of the transactions contemplated by the Credit Documents, except such consents, approvals, authorizations, registrations or qualifications (a) as have been obtained or made, (b) as may be required under state securities or "blue sky" laws in connection with the transactions contemplated by the Credit Documents, (c) as may be required in connection with an exercise of remedies under the First Lien Collateral Documents, or (d) the failure of which to obtain or make would not reasonably be expected to have a Material Adverse Effect.

4.16 Regulation U, Etc.

No Obligor is engaged principally, or as one of its principal activities, in the business of extending credit for the purpose of "buying", "carrying" or "purchasing" margin stock (each as defined in Regulations T, U or X of the Federal Reserve Board), and no part of the proceeds of the Loans shall be used by any Obligor for the purpose of "buying", "carrying" or "purchasing" any such margin stock or for any other purpose which violates the provisions of the regulations of the Federal Reserve Board.

4.17 [Reserved]

4.18 Financial Statements

In the case of each financial statement of Holdings and its Subsidiaries and accompanying information delivered by Borrower under (a) Section 3.1(m), each such financial statement and information has been prepared in conformity with GAAP and fairly presents, in all material respects, the financial position of Holdings and its Subsidiaries described therein for each of the periods then ended, subject, if applicable, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments, the absence of footnote disclosure and the exclusion of income tax impacts, and (b) Section 5.3, each such financial statement and information has been prepared in conformity with GAAP and fairly presents, in all material respects, the financial position of Holdings and its Subsidiaries described therein for each of the periods then ended, subject, if applicable, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments, the absence of footnote disclosure and the exclusion of income tax impacts.

4.19 No Default

No Default or Event of Default which has not been disclosed to Administrative Agent in writing has occurred and is continuing.

4.20 Title and Liens

The Obligors have good title in fee simple to all real property owned by them and good title to all personal property owned by them, in each case free and clear of all liens, encumbrances and defects (other than Permitted Liens), except where the failure to possess such title would not reasonably be expected to have a Material Adverse Effect. The Obligors have a good leasehold interest in any real property held under lease by the Obligors, in each case free and clear of all liens, encumbrances and defects (other than Permitted Liens), except where the failure to possess such interests would not reasonably be expected to have a Material Adverse Effect. The Borrower and the Guarantors have a good and valid interest in any real property held by the Borrower and the Guarantors under easements, rights-of-way, permits or licenses, in each case free and clear of all liens, encumbrances and defects (other than Permitted Liens), except where the failure to possess such interests would not reasonably be expected to have a Material Adverse Effect. The Borrower and the Guarantors possess all real property rights and interests necessary to operate and maintain all of the electrical generation facilities of the Borrower and the Guarantors as currently operated and maintained, except where the failure to possess such rights and interests would not reasonably be expected to have a Material Adverse Effect.

4.21 Intellectual Property

Except as disclosed in Schedule 4.21, Holdings and its Subsidiaries own or possess sufficient trademarks, trade names, patent rights, copyrights, licenses, approvals, trade secrets and other similar rights (collectively, "**Intellectual Property Rights**") reasonably necessary to conduct their businesses as now conducted, in each case, except where the failure to own or possess such Intellectual Property Rights would not reasonably be expected to have a Material Adverse Effect, and the expected expiration of any of such Intellectual Property Rights would not reasonably be expected to have a Material Adverse Effect. Neither Holdings nor any of its Subsidiaries has received any notice of infringement or conflict with asserted Intellectual Property Rights of others, which could reasonably be expected to have a Material Adverse Effect.

4.22 Collateral

The respective liens and security interests granted to First Lien Collateral Agent (for the benefit of the First Lien Secured Parties) pursuant to the First Lien Collateral Documents (a) constitute as to personal property included in the Collateral a valid security interest, and (b) constitute as to real property included in the Collateral, upon the execution of the Mortgages in accordance with Section 4.13 (*Post-Closing Covenant*) of the First Lien Common Terms Agreement and the recording of the Mortgages in the appropriate filing office, a valid lien of record and security interest in such Collateral. The security interest granted to First Lien Collateral Agent (for the benefit of the First Lien Secured Parties) pursuant to the First Lien Collateral Documents in the Collateral consisting of personal property shall be perfected (x) with respect to any property that can be perfected by filing, upon the filing of financing statements in the filing offices identified in Schedule 4.22, (y) with respect to any property that can be perfected by control, upon execution of the Control Agreements (as defined in the Depositary Agreement) or the Depositary Agreement, as applicable, and (z) with respect to any property (if any) that can be perfected by possession, upon First Lien Collateral Agent receiving possession thereof, and in each case such security interest shall be, as to Collateral perfected under the UCC or otherwise as aforesaid and to the extent provided therein, superior and prior to the rights of all third Persons now existing or hereafter arising whether by way of mortgage, lien, security interests, encumbrance, assignment or otherwise, except for Permitted Liens. Except to the extent possession of portions of the Collateral is required for perfection and except for the Collateral covered by the Mortgages, all such action as is necessary has been taken to establish and perfect First Lien Collateral Agent's rights in and to the Collateral in existence on such date to the extent First Lien Collateral Agent's security interest can be perfected by filing, including any recording, filing, registration, giving of notice or other similar action. As of the **Initial** Closing Date, no filing, recordation, re-filing or re-recording other than those listed on Schedule 4.22 hereto is necessary to perfect and maintain the perfection of the interest, title or Liens of the First Lien Collateral Documents, and as soon as reasonably practicable after the **Initial** Closing Date all such filings or recordings shall have been made to the extent First Lien Collateral Agent's security interest can be perfected by filing except for the Collateral secured by the Mortgages, which filings in respect of the Mortgages shall be made in accordance with Section 4.13 (*Post-Closing Covenant*) of the First Lien Common Terms Agreement. Borrower has properly delivered or caused to be delivered, or provided control (to the extent providing control is possible using commercially reasonable efforts), to First Lien Collateral Agent with respect to all Collateral that permits perfection of the Lien and security interest described above by possession or control.

4.23 Sanctions and Anti-Corruption Laws

(a) Neither Holdings nor any of its Subsidiaries, nor any director, officer, employee or, to the knowledge of the Borrower or any of its Subsidiaries, an Affiliate of the same is an individual or entity (i) located, organized or resident in a country or territory that is the subject of Sanctions (including, currently, **the** Crimea**, Donetsk and Luhansk regions of Ukraine**, Cuba, Iran, North Korea and Syria (each a "**Sanctioned Country**")); (ii) on any applicable U.S. sanctions list administered or enforced by the Office of Foreign Assets Control of the U.S. Department of Treasury; (iii) currently listed by the European Union sanctions laws and regulations as they appear in the following link (as the same may be updated from time to time upon ten days' notice from the Administrative Agent to Borrower if such link no longer displays such then-current European Union sanctions laws and regulations): https://eeas.europa.eu/topics/common-foreign-security-policy-cfsp/8442/consolidated-list-of-sanctions_en; (iv) currently listed by United Nations sanctions laws and regulations as they appear in the following link (as the same may be updated from time to time upon ten days' notice from the Administrative Agent to Borrower if such link no longer displays such then-current United Nations sanctions laws and regulations): https://www.un.org/securitycouncil/content/un-sc-consolidated-list, or on any applicable U.S. sanctions list administered or enforced by the Office of Foreign Assets Control of the U.S. Department of Treasury (any such trade embargoes, financial or economic sanctions, collectively, "**Sanctions**"); or (v) individually or in the aggregate owned 50% or greater by or, as relevant under applicable Sanctions, controlled by the foregoing ((i) through (v) collectively, "**Sanctioned Persons**").

(b) (i) None of Holdings nor its Subsidiaries or Affiliates, nor any of their respective officers, directors or employees, in their capacities as such, or any representative or agent thereof, have violated, and the Borrower's and Guarantors' participation in the transactions contemplated by the Credit Documents shall not violate, the Foreign Corrupt Practices Act of 1977 (the "FCPA") as amended, the Bribery Act 2010 of the United Kingdom, any law, rule, or regulation promulgated to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed on December 17, 1997, or any other applicable anti-bribery or anti-corruption law (collectively, the "**Anti-Corruption Laws**"); (ii) Holdings and its Subsidiaries have instituted, maintain and enforce, and shall continue to maintain and enforce, policies and procedures designed to promote and ensure compliance with Anti-Corruption Laws; and (iii) neither Holdings nor its Subsidiaries shall use, directly or indirectly the proceeds of the offering in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value to any person in violation of any applicable Anti-Corruption Laws. The operations of Holdings and its Subsidiaries are and have been conducted at all times in material compliance with all applicable anti-money laundering laws, including applicable federal, state, international, foreign or other laws or regulations regarding anti-money laundering, including Title 18 U.S. Code Sections 1956 and 1957, the Patriot Act and the Bank Secrecy Act, as amended by Title III of the Patriot Act (collectively, the "**Anti-Money Laundering Laws**"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving Holdings or any of its Subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to Holdings or any of its Subsidiaries' knowledge, threatened.

4.24 Solvency

Immediately after giving effect to the transactions to occur on the **Initial** Closing Date and immediately following the occurrence of each other Credit Event, (a) the fair value of the assets of the Obligors, on a consolidated basis, shall exceed the debts and liabilities, direct, subordinated, contingent or otherwise, of the Obligors, (b) the present fair saleable value of the property of the Obligors shall be greater than the amount that will be required to pay the probable liability, on a consolidated basis, of the Obligors on their debts and other liabilities, direct, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured, (c) the Obligors shall, on a consolidated basis, be able to pay their debts and liabilities, direct, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured (after giving effect to any guarantees and credit support), and (d) the Obligors shall, on a consolidated basis, not have unreasonably small capital with which to conduct the business in which they are engaged as such business is now conducted and is proposed to be conducted following the **Initial** Closing Date. For purposes of this Section 4.24 (x) "able to pay their debts and liabilities, direct, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured (after giving effect to any guarantees and credit support)" means that such Person shall be able to generate enough cash from operations, asset dispositions or ~~refinancings~~**re-financings**, or a combination thereof, to meet its obligations as they become due, and (y) the amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

4.25 Insurance

Holdings has caused its Subsidiaries to have insurance coverage in at least the amounts and against such risks as required by Section 4.11 (*Maintenance of Insurance*) of the First Lien Common Terms Agreement.

4.26 Beneficial Ownership Regulation

To the extent that Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, the information included in the Beneficial Ownership Certification is true and correct.

5. AFFIRMATIVE COVENANTS

Each Obligor covenants and agrees that until the Discharge of First Lien Obligations under this Agreement and the other Credit Documents (other than those contingent First Lien Obligations that are intended to survive the termination of this Agreement and the other applicable Credit Documents), it shall perform or observe or cause to be performed or observed (as applicable) each of the obligations set forth in Article 4 (*Affirmative Covenants*) of the First Lien Common Terms Agreement and each of the following supplemental obligations set forth in this Article 5:

5.1 Use of Proceeds and Letters of Credit

(a) Borrower shall not request any Credit Event, and Borrower shall not use, and shall take reasonable steps to ensure that its directors, officers, and employees shall not use, the proceeds of any Credit Event, directly or indirectly (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in material violation of any Anti-Corruption Laws and Anti-Money Laundering Laws or (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person or in any Sanctioned Country in violation of any applicable Sanctions.

(b) The Obligors will use the net proceeds from the Term Loans (including the 2021 Term Loans) to (i) make a distribution to the Sponsor, ~~**including to repay existing Indebtedness of the Sponsor in order to cause the release of Liens on Holdings, Borrower, the Project Companies (other than Permitted Liens),**~~ (ii) pay costs and expenses incurred in connection with the Loan Transactions, (iii) working capital and general corporate purposes of the Obligors (including to purchase the CoBank Service Share) and (iv) fund the Debt Service Reserve Account and the Major Maintenance Reserve Account.

(c) Revolving Letters of Credit shall be available to provide credit support in respect of the working capital needs of any Obligors and the other obligations of the Obligors associated with the Projects (including credit support obligations of the Obligors under the PPAs~~)~~ **and credit support obligations in connection with the development, construction, financing, ownership, operation and maintenance of Battery Projects (subject to the Sub-facility Cap)),** and fund the Debt Service Reserve Account and the Major Maintenance Reserve Account.

(d) DSR Letters of Credit shall be available to fund the Debt Service Reserve Account.

(e) The Obligors will use the net proceeds from the Sub-facility Loans to finance the development, construction, ownership, operation and maintenance of Battery Projects and to purchase any interest in any parcel of the Project Site and/or any other real property that is currently used by the Projects.

5.2 Special Purpose Entity

(a) Each Obligor shall conduct in all material respects its business solely in its own name (or the name of another Obligor) through its duly authorized directors, officers or agents so as not to mislead others as to the identity of such Obligor with which those other entities (other than any Obligor) are concerned, and particularly shall avoid the appearance of conducting business on behalf of any other entity (other than any other Obligor) or that such Obligor's assets are available to pay the creditors of such other entity (other than any other Obligor) or the assets of any other entity (other than any other Obligor) are available to pay the creditors of such Obligor. Without limiting the generality of the foregoing, all material written communications of each Obligor shall be made solely in the name of such Obligor (or another Obligor).

(b) Each Obligor shall comply in all material respects with all organizational formalities to maintain its existence separate from that of the Sponsor, each Affiliate of the Sponsor and any unaffiliated entity.

(c) Except to the extent provided in the Depositary Agreement, each Obligor shall keep its assets and its liabilities wholly separate from those of all other entities (other than any other Obligor).

5.3 Operating Plan and Reports

(a) On ~~**the Closing Date (as delivered pursuant to Section 3.1(u) (in the case of the calendar year 2020), and on**~~ or before sixty days prior to the beginning of each calendar year commencing on calendar year ~~**2021)**~~**2022**, Borrower shall submit a budget to the Administrative Agent, detailed by month, of anticipated revenues and anticipated expenditures under all applicable waterfall levels set forth in clauses First through Fourth of Section 3.1(b) (*Revenue Account Waterfall*) of the Depositary Agreement, each such budget to include Debt Service, proposed dividend distributions, Major Maintenance, Capital Expenditures, reserves and all anticipated O&M Costs (including reasonable allowance for contingencies) for the ensuing calendar year (or, in the case of the initial Annual Operating Budget, partial calendar year) (each such annual operating plan and budget, including the initial Annual Operating Budget, an "**Annual Operating Budget**"). Notwithstanding the foregoing, this Agreement shall not restrict any deviation by the Obligors from the Annual Operating Budget.

(b) Borrower shall deliver to Administrative Agent within ~~sixty~~ninety days of the end of each fiscal quarter, a summary operating report with respect to the Projects, which shall include, with respect to the period most recently ended, the information set forth on the Template Operating Report, which information shall include a level of detail on a month-by-month basis and consolidated revenue generated**, and an update on the construction status of any Battery Projects, including projected date of substantial completion and an up-to-date budget for any such Battery Project**.

5.4 Financial Reports

(a) The Borrower shall deliver to the Administrative Agent:

(i) within 120 days after the end of each fiscal year (commencing with fiscal year ending on December 31, ~~2020~~2022), audited annual financial statements of Borrower and its consolidated Subsidiaries prepared in accordance with GAAP as in effect from time to time;

(ii) within ninety days after the end of each of the first three fiscal quarters of each fiscal year (commencing on the fiscal quarter ending June 30, ~~2020)~~2022, unaudited quarterly financial statements (comprised of a balance sheet, income statement, and cash flow statement) of the Borrower and its consolidated Subsidiaries (but, with respect to the fiscal quarter ending June 30, ~~2020~~2022, such financial statements may exclude the results of operations of, or the assets held by, Geysers Company, Wild Horse and Calistoga, which will become direct wholly owned Subsidiaries of the Borrower on the **Initial** Closing Date) prepared in accordance with GAAP as in effect from time to time (subject to changes resulting from audit and normal year-end adjustments and the absence of footnote disclosure);

(iii) at the time of providing the information required by Section 5.4(a)(i), a certificate signed by a Responsible Officer of the Borrower certifying that to such Responsible Officer's knowledge, no Default, Event of Default, CTA Default or CTA Event of Default has occurred and is continuing or, if any Default, Event of Default, CTA Default or CTA Event of Default has occurred and is continuing, a brief description of the nature thereof and the corrective actions that the Borrower or Guarantor, as applicable, has taken or proposes to take with respect thereto (other than litigation strategy).

(b) Notwithstanding the foregoing, the financial information and other documents referred to in the preceding paragraph may be those of any direct or indirect parent of the Borrower; provided, that if there are material differences (as determined in good faith by the Borrower) between the consolidated results of operations and financial condition of such parent and its consolidated Subsidiaries, on the one hand, and of the Borrower and its consolidated Subsidiaries, on the other hand, the quarterly and annual information required by the preceding paragraph will include a discussion of such material differences in reasonable detail as determined in good faith by the Borrower.

(c) The Borrower shall be deemed to have satisfied its obligation to deliver information referred to in this Section 5.4 by (i) filing or furnishing such information with the SEC for public availability or (ii) posting such information on a website (which may be nonpublic and may be password-protected) hosted by the Borrower or by a third party, in each case within the applicable time periods specified herein.

(d) To the extent that any information required by this Section 5.4 is not delivered to the Administrative Agent within the applicable time periods specified herein and such information is subsequently delivered, the Borrower will be deemed to have satisfied its obligations under this Section 5.4 with respect to such information and any CTA Default or CTA Event of Default with respect thereto shall be deemed to have been cured and any acceleration of any First Lien Obligations resulting therefrom shall be deemed to have been rescinded so long as such rescission would not conflict with any applicable judgment or decree.

5.5 Debt Service Coverage Ratio

No later than 45 days after each Principal Repayment Date, Borrower shall calculate and deliver to Administrative Agent the Debt Service Coverage Ratio for the Calculation Period of such Principal Repayment Date.

5.6 Additional Consents

The Borrower and the Guarantors shall use commercially reasonably efforts to obtain from each counterparty to each Major Project Contract that is in effect as of the **Initial** Closing Date a Consent within ninety days following the **Initial** Closing Date. Concurrently with or promptly after entering into any Replacement Major Project Contract that is also a Major Project Contract after the **Initial** Closing Date, the Borrower or the Guarantor, as applicable, shall use commercially reasonable efforts to obtain from the counterparty under such Replacement Major Project Contract that is also a Major Project Contract, and deliver or cause to be delivered to the First Lien Collateral Agent, a Consent.

5.7 Lender Meetings

Borrower shall, upon the request of Administrative Agent or Required Lenders, participate in a meeting of Administrative Agent and Lenders (which, unless an Event of Default has occurred and is continuing, shall be limited to no more than once during each fiscal year) to be held telephonically at such time as may be agreed to by Borrower and Administrative Agent.

5.8 Interest Rate Hedging

From and after the date that is twenty Banking Days following the **Second** Omnibus Amendment Date, the Borrower shall, on each Principal Repayment Date until the Maturity Date, have in effect one or more Interest Rate Agreements with respect to an effective notional amount equal to at least 75% of the Projected Notional Principal Amount of the sum of Term Loans and Additional Ratio Indebtedness (excluding any Additional Ratio Indebtedness that bears interest at a fixed rate); provided, that if, at any time, Borrower incurs any Additional Ratio Indebtedness and, as a result of such incurrence, Borrower would not be in compliance with the terms of this Section 5.8, then Borrower shall be deemed not to be in default of this Section 5.8 so long as Borrower is in compliance with the terms of this Section 5.8 within twenty Banking Days of the incurrence of such Additional Ratio Indebtedness. Interest Rate Agreements with respect to Term Loans shall be entered into with Hedge Banks pursuant to clause (a) of the definition thereof and Interest Rate Agreements with respect to Additional Ratio Indebtedness shall be entered into with Hedge Banks.

5.9 Insurance

Borrower shall maintain or cause to be maintained in all material respects on its behalf in effect at all times the types of insurance required pursuant to Exhibit K, in the amounts and on the terms and conditions specified therein, from the quality of insurers specified in such Exhibit or other insurance companies of recognized responsibility reasonably satisfactory to the Administrative Agent.

5.10 Notices

Borrower shall promptly, upon acquiring notice or giving notice (except as otherwise specified below), as the case may be, or obtaining knowledge thereof (except as otherwise specified below), give written notice (with copies of any underlying notices, papers, files or related documentation except as otherwise specified below) to Administrative Agent of:

(a) any litigation pending or, to any Obligor's knowledge, threatened in writing against any Obligor as to which an adverse determination is reasonably probable and which involves material claims against any Obligor or the Projects in excess of $10,000,000 individually or $50,000,000 in the aggregate per calendar year or which could reasonably be expected to have a Material Adverse Effect, such notice to include reasonable details about such litigation other than litigation strategy and related documentation subject to attorney-client-privilege;

(b) any dispute or disputes for which written notice has been received by any Obligor which may exist between any Obligor and any Governmental Authority and which involve (a) claims which could reasonably be expected to have a Material Adverse Effect, or (b) revocation, modification, failure to renew or the like of any Applicable Permit which could reasonably be expected to have a Material Adverse Effect;

(c) any Default, Event of Default, CTA Default or CTA Event of Default (together with a statement of a Responsible Officer of Borrower setting forth the details of such Default, Event of Default, CTA Default or CTA Event of Default and the action which the applicable Obligor has taken and proposes to take with respect thereto);

(d) any casualty, damage or loss to the Projects, whether or not insured, through fire, theft, other hazard or casualty, or any act or omission of (a) any Obligor, its employees, agents, contractors, consultants or representatives for which a mandatory prepayment is required in respect of the First Lien Obligations or (b) to any Obligor's knowledge, any other Person if such casualty, damage or loss could reasonably be expected to have a Material Adverse Effect;

(e) any (i) early termination (other than expiration in accordance with its terms and any applicable Consent) or default of which any Obligor has knowledge or written notice thereof under any Major Project Contract which could reasonably be expected to have a Material Adverse Effect and (ii) material Project Contract Modification (with copies of all such Project Contract Modifications whether or not requiring approval of Administrative Agent or the Required Lenders pursuant to Section 6.2);

(f) any written claim of events of force majeure under any Major Project Contract which could reasonably be expected to have a Material Adverse Effect together with reasonable details with respect to such claim;

(g) initiation of any condemnation proceedings involving a portion of (i) the Projects or (ii) the Project Sites, in each case, which could reasonably be expected to have a Material Adverse Effect;

(h) promptly, but in no event later than fifteen Banking Days after any Obligor has knowledge of the execution and delivery thereof, a copy of each Additional Major Project Contracts;

(i) promptly, but in no event later than thirty days after the receipt thereof by any Obligor, copies of (i) any material amendment, supplement or other material modification to any material Applicable Permit **(other than any Applicable Permits relating to construction activities)** received by any Obligor, and (ii) all notices relating to the Projects received by any Obligor from, or delivered by any Obligor to, any Governmental Authority (other than routine correspondence given or received in the ordinary course of business relating to routine aspects of **constructing,** owning, financing, operating, maintaining or using the Projects) which could reasonably be expected to have a Material Adverse Effect;

(j) any unscheduled or forced outage of the Projects (taken as a whole) causing a reduction of at least 50 MW of capacity, **without taking into account any outage of the Battery Projects,** which continues for more than twenty consecutive days;

(k) the occurrence of any ERISA Event that, individually or together with all other ERISA Events that have occurred, would reasonably be expected to result in a Material Adverse Effect; and

(l) the occurrence of any event or circumstance specific to any Obligor or the Projects that is not a matter of general public knowledge and that could reasonably be expected to have a Material Adverse Effect; provided, that, solely for purposes of this Section 5.10(l), clause (ii) of the proviso in the definition of Material Adverse Effect shall be disregarded.

In addition, Borrower shall provide, with reasonable promptness, to Administrative Agent any other material information (other than litigation strategy and related documentation subject to attorney-client-privilege) with respect to any Obligor or the Projects as is reasonably requested by Administrative Agent or any Lender (which request shall be made through Administrative Agent).

6. NEGATIVE COVENANTS

Each Obligor covenants and agrees that until the Discharge of First Lien Obligations under this Agreement and the other Credit Documents (other than those contingent First Lien Obligations that are intended to survive the termination of this Agreement and the other applicable Credit Documents), it shall perform or observe or cause to be performed or observed (as applicable) each of the obligations set forth in Article 5 (*Negative Covenants*) of the First Lien Common Terms Agreement and each of the following supplemental obligations set forth in this Article 6:

6.1 Regulations

Borrower shall not directly or indirectly apply any part of the proceeds of any Loan, any cash equity contributions received by Borrower or other funds or revenues to the "buying", "carrying" or "purchasing" of any margin stock within the meaning of Regulations T, U or X of the Federal Reserve Board, or any regulations, interpretations or rulings thereunder.

6.2 Amendments to Major Project Contracts

(a) No Obligor shall, without the prior written consent of the Required Lenders, (such consent not to be unreasonably withheld, conditioned or delayed), amend or otherwise modify any Major Project Contract or give any consent, waiver or approval (other than consents, waivers or approvals in the ordinary course of business consistent with past practices, where applicable) (each such amendment or modification being referred to herein as a "**Project Contract Modification**") thereunder (including any waiver of any default under or breach of any Major Project Contract), or agree in any manner to any other amendment, modification or change of any term or condition of any Major Project Contract; provided, that the foregoing shall not restrict any of the following: (i) the extension of the term of a Major Project Contract on substantially the same terms and conditions then in effect (or on more favorable terms and conditions to such Obligor), (ii) ministerial or administrative amendments, modifications, waivers, consents and approvals, (iii) replacement of any Major Project Contract as permitted by Section 6.2(d) or (iv) any Project Contract Modification that could not reasonably be expected to have a Material Adverse Effect (as certified by the Borrower in an officer's certificate of a Responsible Officer).

(b) No Obligor shall, without the prior written consent of Administrative Agent, such consent not to be unreasonably withheld, amend, supplement, waive or otherwise modify the organizational documents of such Obligor, if the result could reasonably be expected to have a Material Adverse Effect on the Lenders or their rights or remedies under the Credit Documents in any material respect.

(c) If applicable, the Required Lenders and Administrative Agent shall use good faith efforts to respond to each request pursuant to this Section 6.2 as soon as possible and in all events within thirty days of its receipt of written notification thereof.

(d) No Obligor shall without the prior written consent of the Required Lenders (acting in consultation with the Independent Engineer), such consent not to be unreasonably withheld, conditioned or delayed, enter into any Additional Major Project Contract; provided, that the foregoing shall not restrict the entry by an Obligor into an Additional Major Project Contract so long as the entry by the applicable Obligor into such Additional Major Project Contract could not reasonably be expected to have a Material Adverse Effect (as certified by the Borrower in an officer's certificate signed by a Responsible Officer). In connection with the entry by a Obligor into any Additional Major Project Contract, the Obligor shall: (A) deliver copies of all such Additional Major Project Contracts to the Administrative Agent prior to entering into such Additional Major Project Contract and (B) (1) use commercially reasonable efforts to enter into a Consent as specified in Section 5.6 and (2) deliver copies of any such Consent to Administrative Agent and First Lien Collateral Agent following the execution thereof.

7. EVENTS OF DEFAULT; REMEDIES

7.1 Events of Default

The CTA Events of Default set forth in Article 6 (*Events of Default*) of the First Lien Common Terms Agreement shall constitute Events of Default under this Agreement, subject to all of the provisions of such Article 6 (*Events of Default*) in the First Lien Common Terms Agreement, and each of the following events or occurrences set forth in this Article 7 shall be a supplemental Event of Default (each, an "**Event of Default**") hereunder:

(a) Failure to Make Payments. Borrower shall fail to pay, in accordance with the terms of this Agreement (a) any principal on any Loan on the date that such sum is due, (b) any interest on any Loan within five Banking Days after the date such sum is due, (c) any scheduled fee, cost, charge or sum due hereunder within five Banking Days of the date that such sum is due, or (d) any other fee, cost, charge or other sum due under this Agreement within thirty days after written notice to Borrower that such sum is due.

(b) Cross-Payment Default. An event of default (howsoever defined) shall occur with respect to an Obligor which is caused by a failure to pay principal or interest beyond the applicable grace period in respect of (i) any Indebtedness for borrowed money of such Obligor, which would entitle the lender(s) under such Indebtedness to cause the principal amounts in excess of $50,000,000 in the aggregate to become immediately due or (ii) any Permitted Commodity Hedge Agreement or Permitted Interest Rate Agreement of such Obligor and, in the case of this clause (ii), which would entitle the counterparty under such agreement to demand an early termination amount (howsoever defined in such Commodity Hedge Agreement or Interest Rate Agreement) and such early termination amount that would result from a liquidation, acceleration or early termination of such Permitted Commodity Hedge Agreement or Permitted Interest Rate Agreement is in excess of $50,000,000.

(c) Cross-Acceleration.

(i) An event of default (howsoever defined) shall occur with respect to any Obligor under any Indebtedness for borrowed money of such Obligor, having drawn principal amounts in excess of $50,000,000 in the aggregate and shall have continued beyond the applicable grace period, the effect of which has been to cause the entire amount of such Indebtedness to become due and such Indebtedness remains unpaid or the acceleration of its stated maturity unrescinded.

(ii) An event of default (howsoever defined) shall occur with respect to Any Permitted Commodity Hedge Agreement or Permitted Interest Rate Agreement and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, such Permitted Commodity Hedge Agreement or Permitted Interest Rate Agreement, and, in addition, the early termination amount (howsoever defined in such Permitted Commodity Hedge Agreement or Permitted Interest Rate Agreement) resulting from the occurrence of such liquidation, acceleration or early termination that is due and payable by Obligor (if any) is in excess of $50,000,000.

(d) ERISA Event. One or more ERISA Events shall have occurred that, when taken together with any other ERISA Events that have occurred, would reasonably be expected to have a Material Adverse Effect;

(e) Breach of Terms of Agreement.

(i) Defaults without Cure Periods. Any Obligor shall fail to perform or observe any of the covenants set forth in Sections 5.1, 5.10(c) (but excluding any obligation thereunder in respect of any Default or CTA Default) or Article 6.

(ii) Defaults with Cure Periods. Any Obligor shall fail to perform or observe any of the covenants set forth in (A) Section 5.9 and such failure shall continue unremedied for a period of fifteen Banking Days after Borrower receives written notice thereof from Administrative Agent or (B) Section 5.2 and such failure shall continue unremedied for a period of thirty days after Borrower receives written notice thereof from Administrative Agent.

(iii) Other Defaults. Any Obligor shall fail to perform or observe any of its covenants set forth hereunder not otherwise specifically provided for in Section 7.1(e)(i), Section 7.1(e)(ii) or elsewhere in this Article 7, and such failure shall continue unremedied for a period of thirty days after such Obligor receives written notice thereof from Administrative Agent; provided, that if (A) such failure cannot be cured within such thirty-day period, (B) such failure is susceptible of cure within ninety days, (C) such Obligor is proceeding with diligence and in good faith to cure such failure, (D) the existence of such failure has not had and could not, after considering the nature of the cure, be reasonably expected to have a Material Adverse Effect, and (E) Administrative Agent shall have received an officer's certificate signed by a Responsible Officer to the effect of clauses (i), (ii), (iii), and (F) above and stating what action such Obligor is taking to cure such failure, then such thirty-day cure period shall be extended to such date, not to exceed a total of ninety days, as shall be necessary for such Obligor diligently to cure such failure.

(f) Regulatory Status.

(i) Any Obligor shall become a public utility under the laws of the State of California as presently constituted and as construed by the courts of California, and in each case, such event could reasonably be expected to have a Material Adverse Effect.

(ii) FERC has issued an order determining that any Obligor that is a "public utility" under the FPA is no longer entitled to make sales at wholesale of electric energy, capacity and certain ancillary services at market-based rates and/or is no longer entitled to associated waivers and blanket authorizations under FERC regulations, including blanket authorization to issue securities and assume liabilities pursuant to Section 204 of the FPA, if loss of such Obligor's authorization from FERC under the FPA to make sales at wholesale of electric energy, capacity and certain ancillary services at market-based rates and/or associated waivers and blanket authorizations under FERC regulations, including blanket authorization to issue securities and assume liabilities pursuant to Section 204 of the FPA, could reasonably be expected to have a Material Adverse Effect.

(g) Change of Control. A Change of Control shall have occurred.

(h) Unenforceability. At any time after the execution and delivery thereof, any material provision of this Agreement shall cease to be in full force and effect (other than by reason of the satisfaction in full or release of Borrower's First Lien Obligations hereunder or any other termination of this Agreement in accordance with the terms hereof) or this Agreement shall be declared null and void by a Governmental Authority of competent jurisdiction.

(i) Misstatements; Omissions. Any representation or warranty made or deemed made by any Obligor in any Credit Document to which it is a party or in any separate written statement or certificate required to be delivered to Administrative Agent, Depositary Agent, First Lien Collateral Agent, or any Lender hereunder or under any other Credit Document to which it is a party, shall be untrue in any material respect as of the time made; provided, that misrepresentations which are capable of being remedied, are made or deemed made after the **Initial** Closing Date, the untruth of which could not reasonably be expected to have a Material Adverse Effect, shall not be deemed to be an Event of Default if such misrepresentation is cured, corrected or otherwise remedied within thirty days (or if such incorrect representation, warranty, written statement or certificate is not susceptible to cure within thirty days, and such Obligor is proceeding with diligence and in good faith to cure such default and such default is susceptible to cure, such thirty day cure period shall be extended as may be necessary to cure such incorrect representation, warranty, written statement or certificate, such extended period not to exceed ninety days in the aggregate (inclusive of the original thirty-day period)) from the date a Responsible Officer of Borrower acquires knowledge thereof such that such representation or warranty (as cured, corrected or remedied) has not resulted in a Material Adverse Effect, then such false or incorrect representation, warranty, written statement or certification shall not constitute a Default or an Event of Default for purposes of the Credit Documents.

(j) Specified Major Project Contract Defaults. (i) Any Specified Major Project Contract shall terminate or shall be declared null and void (except (a) upon fulfillment of the parties' obligations thereunder or (b) upon the scheduled expiration of the term of such Specified Major Project Contract) and such termination is reasonably expected to have a Material Adverse Effect, (ii) any provision in any Specified Major Project Contract shall for any reason cease to be valid and binding on any party thereto (other than Borrower), other than any such failure to be valid and binding which could not reasonably be expected to have a Material Adverse Effect or (iii) performance shall be breached under any Specified Major Project Contract and such breach is reasonably expected to have a Material Adverse Effect except, in the case of the foregoing clauses (i), (ii), or (iii) to the extent that (x) such provision is restored or replaced by a replacement provision in form and substance reasonably acceptable to Administrative Agent within a 120-day period thereafter, or (y) Borrower enters into a Replacement Major Project Contract within 120 days thereafter.

7.2 Remedies

Subject to the terms and conditions of the Intercreditor Agreement, upon the occurrence and during the continuation of an Event of Default, Administrative Agent shall, upon the direction of the Required Lenders, without further notice of default, presentment or demand for payment, protest or notice of non-payment or dishonor, or other notices or demands of any kind, all such notices and demands (other than notices expressly required by the Credit Documents) being waived, exercise any or all of the following rights and remedies, in any combination or order that the Required Lenders may elect, in addition to such other rights or remedies as the First Lien Secured Parties may have hereunder, under the First Lien Collateral Documents or at law or in equity:

(a) No Further Loans or Letters of Credit. Cancel all Commitments, refuse, and Administrative Agent, the Issuing Banks and the Lenders shall not be obligated, to continue any Loans, make any additional Loans, or make any payments, or permit the making of payments, from any Depositary Account or any Loan proceeds or other funds held by Administrative Agent or First Lien Collateral Agent under the Credit Documents or on behalf of Borrower; provided, that in the case of an Event of Default occurring under Section 6.1(i) (*Bankruptcy*) of the First Lien Common Terms Agreement, all such Commitments shall be cancelled and terminated without further act of Administrative Agent, First Lien Collateral Agent, or any First Lien Secured Party.

(b) Cure by Agents. Without any obligation to do so, make disbursements or Loans to or on behalf of Borrower or disburse amounts from any Depositary Account to cure (i) any Default or Event of Default hereunder, and (ii) any default and render any performance under any Major Project Contract as the Required Lenders in their sole discretion may consider necessary or appropriate, whether to preserve and protect the Collateral or the First Lien Secured Parties' interests therein or for any other reason. All sums so expended, together with interest on such total amount at the Default Rate (but in no event shall the rate exceed the maximum lawful rate), shall be repaid by Borrower to Administrative Agent or First Lien Collateral Agent, as the case may be, on demand and shall be secured by the Credit Documents, notwithstanding that such expenditures may, together with amounts advanced under this Agreement, exceed the aggregate amount of the Total Term Loan Commitment.

(c) Acceleration. Declare and make all or a portion of the sums of accrued and outstanding principal and accrued but unpaid interest remaining under this Agreement, together with all unpaid fees, costs (including Liquidation Costs and Hedge Breaking Fees) and charges due hereunder or under any other Credit Document, immediately due and payable and require Borrower immediately, without presentment, demand, protest or other notice of any kind, all of which Borrower hereby expressly waives, to pay Administrative Agent or the First Lien Secured Parties an amount in immediately available funds equal to the aggregate amount of any outstanding First Lien Obligations of Borrower under this Agreement and the other Credit Documents; provided, that in the event of an Event of Default occurring under Section 6.1(i) (*Bankruptcy*) of the First Lien Common Terms Agreement, all such amounts shall become immediately due and payable without further act of Administrative Agent, the Issuing Banks, First Lien Collateral Agent, or the First Lien Secured Parties.

(d) Cash Collateral; Letters of Credit.

(i) Pursuant to the terms of the First Lien Common Terms Agreement and the Collateral and Intercreditor Agreement, vote in favor of the First Lien Collateral Agent taking action to declare, apply or execute upon any amounts on deposit in any Depositary Account, or any proceeds or any other moneys of Borrower on deposit with Administrative Agent, First Lien Collateral Agent, Depositary Agent or any First Lien Secured Party in the manner provided in the UCC and other relevant statutes and decisions and interpretations thereunder with respect to Cash Collateral; or draw upon any letter of credit held by First Lien Collateral Agent as security. Without limiting the foregoing, each of Administrative Agent, First Lien Collateral Agent and Depositary Agent shall have all rights and powers with respect to the Loan proceeds, draws upon any Letter of Credit, the Depositary Accounts and the contents of the Depositary Accounts as it has with respect to any other Collateral and may apply, or cause the application of, such amounts to the payment of interest, principal, fees, costs, charges or other amounts due or payable to Administrative Agent, First Lien Collateral Agent, Depositary Agent or the First Lien Secured Parties with respect to the Loans in such order as the Required Lenders may elect in their sole discretion. Borrower shall not have any rights or powers with respect to such amounts.

(ii) Make demand upon the Borrower to, and forthwith upon such demand the Borrower shall, pay to the Administrative Agent on behalf of the Lenders in same day funds at the Administrative Agent's account, to the extent not already funded, an amount equal to 102.5% of the aggregate LC Exposure; provided, that upon the occurrence of any Default or Event of Default under Section 6.1(i) (*Bankruptcy*) of the First Lien Common Terms Agreement, the Borrower shall be obligated to pay to the Administrative Agent on behalf of the Lenders in same day funds at the Administrative Agent's account, to the extent not already funded, an amount equal to 102.5% of the aggregate LC Exposure, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by the Borrower.

(e) Possession of Projects. Pursuant to the terms of the First Lien Common Terms Agreement and the Collateral and Intercreditor Agreement, vote in favor of the First Lien Collateral Agent taking action to enter into possession of the Projects or operate and maintain the Projects, and all sums expended by Administrative Agent, First Lien Collateral Agent or Depositary Agent in so doing, together with interest on such total amount at the Default Rate, shall be repaid by Borrower to Administrative Agent, First Lien Collateral Agent or Depositary Agent, as the case may be, upon demand and shall be secured by the Credit Documents, notwithstanding that such expenditures may, together with amounts advanced under this Agreement, exceed the aggregate amount of the Total Term Loan Commitment.

(f) Remedies under Credit Documents. Take (or vote in favor of the taking) other action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement and the other Credit Documents.

8. SCOPE OF LIABILITY

Except as set forth in this Article 8, notwithstanding anything in this Agreement or the other Credit Documents to the contrary, none of the Lender Parties shall have any claims with respect to the transactions contemplated by the Credit Documents against Sponsor or any of its Affiliates (other than Borrower or any other Obligor), shareholders, officers, directors or employees (collectively, the "**Non-Recourse Persons**") and the Lender Parties' recourse against Borrower and the Non-Recourse Persons shall be limited to the Obligors, the Collateral, the Projects, all Project Revenues, all Loan proceeds, Insurance Proceeds, Eminent Domain Proceeds, and all income or revenues of the foregoing as and to the extent provided herein and in the First Lien Collateral Documents; provided, that the foregoing provision of this Article 8 shall not (a) constitute a waiver, release or discharge of any of the Indebtedness, or of any of the terms, covenants, conditions, or provisions of this Agreement or any other Credit Document and the same shall continue (but without personal liability to the Non-Recourse Persons) until fully paid, discharged, observed, or performed, (b) limit or restrict the right of Administrative Agent, First Lien Collateral Agent or any other Lender Party (or any assignee, beneficiary or successor to any of them) to name the Obligors or any other Person as a defendant in any action or suit for a judicial foreclosure or for the exercise of any other remedy under or with respect to this Agreement or any other Collateral Document or Credit Document, or for injunction or specific performance, so long as no judgment in the nature of a deficiency judgment shall be enforced against any Non-Recourse Person, except as set forth in this Article 8, (c) in any way limit or restrict any right or remedy of Administrative Agent, First Lien Collateral Agent or any other Lender Party (or any assignee or beneficiary thereof or successor thereto) with respect to, and each of the Non-Recourse Persons shall remain fully liable to the extent that it would otherwise be liable for its own actions with respect to, any fraud, willful misrepresentation (which shall not include innocent or negligent misrepresentation), or misappropriation of Project Revenues, Loan proceeds, Insurance Proceeds, Eminent Domain Proceeds or any other earnings, revenues, rents, issues, profits or proceeds from or of the Collateral, that should or would have been paid as provided herein or paid or delivered to Administrative Agent, First Lien Collateral Agent or any other Lender Party (or any assignee or beneficiary thereof or successor thereto) towards any payment required under this Agreement or any other Credit Document, (d) affect or diminish or constitute a waiver, release or discharge of any specific written obligation, covenant, or agreement in respect of the transactions contemplated by the Credit Documents made by any of the Non-Recourse Persons or any security granted by the Non-Recourse Persons in support of the obligations of such Persons under any First Lien Collateral Document or Project Contract (or as security for the obligations of any Obligor), or (e) limit the liability of (i) any Person who is a party to any Project Contract or has issued any certificate or other statement in connection therewith with respect to such liability as may arise by reason of the terms and conditions of such Project Contract (but subject to any limitation of liability in such Project Contract), certificate or statement or (ii) any Person rendering a legal opinion pursuant to this Agreement (including Section 3.1(h)), in each case under this clause (e) relating solely to such liability of such Person as may arise under such referenced agreement, instrument or opinion. The limitations on recourse set forth in this Article 8 shall survive the termination of this Agreement, the termination of all Commitments and the Interest Rate Agreements to which any Lender Party is a party and the indefeasible payment in full in cash and performance in full of Borrower's First Lien Obligations hereunder and under the other Credit Documents.

9. AGENTS; SUBSTITUTION

9.1 Appointment, Powers and Immunities

(a) In order to expedite the transactions contemplated by this Agreement, (i) Bank of China, New York Branch, Bank of Montreal, Barings, LLC, HSBC Bank USA, N.A., and Kookmin Bank, New York Branch, are hereby appointed to act as the Joint Lead Arrangers, (ii) CoBank, ACB, Coöperatieve Rabobank, U.A., New York Branch, ING Capital LLC, Mizuho Bank, Ltd., MUFG Union Bank, N.A., National Bank of Canada, Sumitomo Mitsui Banking Corporation and Truist Securities, Inc. are hereby appointed to act as the Coordinating Lead Arrangers and Bookrunners, (iii) Crédit Agricole Corporate and Investment Bank and Natixis, New York Branch are hereby appointed to act as the Coordinating Lead Arrangers, Bookrunners and Green Loan Coordinators, (iv) BNP Paribas is hereby appointed to act as the Syndication Agent, Coordinating Lead Arranger, and Bookrunner, (v) The Huntington National Bank and National Australia Bank Limited are hereby appointed to act as Senior Managing Agents, (vi) MUFG Bank, Ltd. is hereby appointed to act as the Administrative Agent and (vii) MUFG Union Bank, N.A. is hereby appointed to act as the Coordinating Lead Arranger, Bookrunner and First Lien Collateral Agent. None of Administrative Agent, First Lien Collateral Agent, Coordinating Lead Arrangers, Joint Lead Arrangers nor any of their respective Related Parties shall have any duties or responsibilities except those expressly set forth in this Agreement or in any other Credit Document, or be a trustee or a fiduciary for any Lender Party, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into the Credit Documents or otherwise exist against any Agent, Coordinating Lead Arranger, or Joint Lead Arranger (other than those implied as a matter of applicable law that are not capable of being waived). Notwithstanding anything to the contrary contained herein, none of Administrative Agent, First Lien Collateral Agent, Coordinating Lead Arrangers, Joint Lead Arrangers or any of their respective Related Parties shall be liable as such for any action taken or omitted by any of them except for its or their own gross negligence or willful misconduct, or required to take any action which is contrary to this Agreement or any other Credit Documents or any Legal Requirement or exposes Administrative Agent, First Lien Collateral Agent, Coordinating Lead Arrangers, Joint Lead Arrangers or any of their respective Related Parties (as the case may be) to any liability. None of the Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent, Administrative Agent, the Lenders nor any of their respective Related Parties shall be required to ascertain or to make any inquiry concerning the performance or observance by the Obligors of any of the terms, conditions, covenants or agreements contained in any Credit Document, or be responsible for (x) any recitals, statements, representations or warranties made by any other Person contained in this Agreement or the contents of any document delivered in connection herewith, the other Credit Documents or in any certificate or other document referred to or provided for in, or received by the Coordinating Lead Arrangers, Joint Lead Arrangers, Administrative Agent, First Lien Collateral Agent or any other Lender Party under this Agreement or any other Credit Document, (y) any failure by any Obligor or its Affiliates to perform their respective obligations hereunder or thereunder, or (z) the failure, delay in performance or breach by any Lender or Issuing Bank of any of its obligations hereunder or as a result of any information provided by any Lender or Issuing Bank, or to any Lender or Issuing Bank on account of the failure of or delay in performance or breach by any other Lender or Issuing Bank or any Obligor of any of its obligations hereunder or in connection herewith. Each of Administrative Agent, First Lien Collateral Agent, Coordinating Lead Arranger, and Joint Lead Arranger may execute any and all duties hereunder by or through agents, employees or any sub-agent appointed by it, and neither shall be responsible for the negligence or misconduct of any such agents or attorneys-in-fact selected by it with reasonable care.

(b) Without limiting the generality of the foregoing, (i) Administrative Agent may treat the payee of any Note as the holder thereof until Administrative Agent receives written notice of the assignment or transfer thereof signed by such payee and in form satisfactory to Administrative Agent, (ii) each of Administrative Agent and First Lien Collateral Agent may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by them in accordance with the advice of such counsel, accountants or experts, (iii) none of First Lien Collateral Agent, Administrative Agent, Syndication Agent, Bookrunners, Green Loan Coordinators, Coordinating Lead Arrangers, Senior Managing Agents and Joint Lead Arrangers makes any warranty or representation to any other Lender Party for any statements, warranties or representations made in or in connection with any Credit Document, (iv) none of First Lien Collateral Agent, Administrative Agent, Syndication Agent, Bookrunners, Green Loan Coordinators, Coordinating Lead Arrangers, Senior Managing Agents and Joint Lead Arrangers shall have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of any Credit Document on the part of any party thereto, to inspect the property (including the books and records) of the Obligors or any other Person or to ascertain or determine whether a Material Adverse Effect exists or is continuing, and (v) none of First Lien Collateral Agent, Administrative Agent, the Syndication Agent, Bookrunners, Green Loan Coordinators, Coordinating Lead Arrangers, Senior Managing Agents or Joint Lead Arrangers shall be responsible to any other Lender Party for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of any Credit Document or any other instrument or document furnished pursuant hereto. Except as otherwise provided under this Agreement and the other Credit Documents, each of Administrative Agent and First Lien Collateral Agent shall take such action with respect to the Credit Documents as shall be directed by the Required Lenders or, if expressly so provided, all Lenders, and shall exercise such powers, rights and remedies hereunder and under the other Credit Documents as are specifically delegated or granted to such Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. The Lenders hereby acknowledge that no Agent shall be under any duty to take any discretionary action permitted to be taken by it pursuant to the provisions of this Agreement unless it shall be requested in writing to do so by the Required Lenders. The Lenders further acknowledge and agree that so long as an Agent shall make any determination to be made by it hereunder or under any other Credit Document in good faith, such Agent shall have no liability in respect of such determination to any Person.

(c) No Agent shall have, by reason hereof or of any of the other Credit Documents, a fiduciary relationship in respect of any Lender; and nothing herein or in any of the other Credit Documents, expressed or implied, is intended to or shall be so construed as to impose upon any Agent any obligations in respect hereof or of any of the other Credit Documents except as expressly set forth herein or therein. Each Lender agrees to be bound by the terms and limitations of (i) any "use of work products" or similar agreement entered into by the Administrative Agent in connection with the Independent Consultant reports and reliance letters delivered in connection therewith or (ii) any reliance letter required to be countersigned by the Administrative Agent on behalf of the Lenders. In connection with any direction by the Lenders of the First Lien Collateral Agent under the Credit Documents, including but not limited to the Intercreditor Agreement, the First Lien Collateral Agent may request the Administrative Agent determine whether the Required Lenders (or other applicable requisite percentage of First Lien Secured Parties under the Intercreditor Agreement) have consented to any such direction or action of the First Lien Collateral Agent.

(d) Each Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees, and may consult with the applicable Independent Consultants in the exercise of such powers, rights and remedies and the performance of such duties. To the extent of any conflict or inconsistencies between the functions, responsibilities, duties, obligations or liabilities of the Depositary Agent set forth in this Article 9 and those set forth in the Depositary Agreement, the terms of the Depositary Agreement shall govern.

(e) Any Agent may perform any and all of its duties and exercise its rights and powers under this Agreement or under any other Credit Document by or through any one or more sub-agents appointed by such Agent. Any such Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. The exculpatory, indemnification and other provisions of this Section 9.1(e) and of Section 9.5 shall apply to any of the Affiliates of each Agent and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as an Agent. All of the rights, benefits, and privileges (including the exculpatory and indemnification provisions) of this Section 9.1(e) and of Section 9.5 shall apply to any such sub-agent and to the Affiliates of any such sub-agent and shall apply to their respective activities as sub-agent as if such sub-agent and Affiliates were named herein. Notwithstanding anything herein to the contrary, with respect to each sub-agent appointed by an Agent, (i) such sub-agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory rights and rights to indemnification) and shall have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of the Obligors and the Lenders, (ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub-agent, (iii) such sub-agent shall only have obligations to the applicable Agent and not to any Obligor, Lender or any other Person, and no Obligor, Lender or any other Person shall have any rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub-agent, and (iv) the applicable Agent shall not be responsible for the negligence or misconduct of any of its sub-agents except to the extent that a court of competent jurisdiction determines in a final, non-appealable judgment that such selecting Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

9.2 Reliance

Each of Administrative Agent, First Lien Collateral Agent, Coordinating Lead Arranger, and Joint Lead Arranger, shall be entitled to rely upon any certificate, notice or other document (including any cable, telegram, facsimile, electronic mail or telex) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by it. First Lien Collateral Agent, Administrative Agent, Coordinating Lead Arrangers, and Joint Lead Arrangers shall in all cases be fully protected in acting, or refraining from acting, in accordance with written instructions signed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided herein or under the other Credit Documents) or otherwise, and, except as otherwise specifically provided herein, such instructions and any action or inaction pursuant thereto shall be binding on all the Lenders. As to any other matters not expressly provided for by this Agreement, neither First Lien Collateral Agent nor Administrative Agent shall be required to take any action or exercise any discretion, but shall be required to act or to refrain from acting upon instructions of the Required Lenders or, where expressly provided, all Lenders (except that neither First Lien Collateral Agent nor Administrative Agent shall be required to take any action which exposes First Lien Collateral Agent or Administrative Agent (as the case may be) to personal liability or which is contrary to this Agreement, any other Credit Document or any Legal Requirement). Each of First Lien Collateral Agent and Administrative Agent shall in all cases (including when any action by First Lien Collateral Agent or Administrative Agent (as the case may be) alone is authorized hereunder, if First Lien Collateral Agent or Administrative Agent (as the case may be) elects in its sole discretion to obtain instructions from the Required Lenders) be fully protected in acting, or in refraining from acting, hereunder or under any other Credit Document in accordance with the instructions of the Required Lenders (or, where so expressly stated, all Lenders), and such instructions of the Required Lenders (or all Lenders, where applicable) and any action taken or failure to act pursuant thereto shall be binding on all of the Lender Parties.

9.3 Non-Reliance

Each Lender represents that it has, independently and without reliance on the Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent, Administrative Agent, or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of the financial condition and affairs of the Obligors and its own decision to enter into this Agreement and agrees that it shall, independently and without reliance upon the Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent, Administrative Agent, or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own appraisals and decisions in taking or not taking action under this Agreement. Each of Administrative Agent, Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent and any Lender shall not be required to keep informed as to the performance or observance by any Obligor or its Affiliates under this Agreement or any other document referred to or provided for herein or to make inquiry of, or to inspect the properties or books of any Obligor or its Affiliates.

9.4 Defaults; Material Adverse Effect

None of the Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent and Administrative Agent shall be deemed to have knowledge or notice of the occurrence of any Default, Event of Default or Material Adverse Effect, unless such Person has received a notice from a Lender or Borrower, referring to this Agreement, describing such Default, Event of Default or Material Adverse Effect and indicating that such notice is a notice of the occurrence of such Default, Event of Default or Material Adverse Effect (as the case may be). If Administrative Agent receives such a notice of the occurrence of a Default, Event of Default or Material Adverse Effect, Administrative Agent shall give notice thereof to the Lenders. Each of First Lien Collateral Agent and Administrative Agent shall take such action with respect to such Default, Event of Default or Material Adverse Effect as is provided in Article 3, Article 7 or the terms of the Credit Documents, including but not limited to the Intercreditor Agreement, or if not provided for in Article 3, Article 7 or such Credit Documents, as the Administrative Agent or First Lien Collateral Agent shall be reasonably directed by the Required First Lien Secured Parties; provided, that unless and until Administrative Agent or First Lien Collateral Agent shall have received such directions, each of Administrative Agent and First Lien Collateral Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default, Event of Default or Material Adverse Effect as it shall deem advisable in the best interest of the First Lien Secured Parties.

9.5 Indemnification

Without limiting the First Lien Obligations of Borrower hereunder, each Lender severally agrees to indemnify the Coordinating Lead Arrangers, Joint Lead Arrangers, each Agent and their respective officers, directors, shareholders, controlling Persons, employees, agents and servants, ratably in accordance with their Proportionate Shares for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against such Agent, the Coordinating Lead Arrangers, Joint Lead Arrangers, or such Person in any way relating to or arising out of this Agreement or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or the enforcement of any of the terms hereof or thereof or of any such other documents, or any action taken or omitted by it or any of them under this Agreement or any other Credit Document, to the extent the same shall not have been reimbursed by Borrower; provided, that no Lender shall be liable to an Agent the Syndication Agent, Bookrunners, Coordinating Lead Arrangers, or Joint Lead Arrangers for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements found in a final non-appealable judgment by a court of competent jurisdiction to have resulted primarily from the gross negligence or willful misconduct of such Agent, such Coordinating Lead Arrangers, Joint Lead Arrangers or any of their Related Parties. The obligations of the Lenders under this Section 9.5 shall survive payment of all First Lien Obligations and the resignation or replacement of any Agent. An Agent or any such Person shall be fully justified in refusing to take or to continue to take any action hereunder or under any other Credit Document unless it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Without limitation of the foregoing, each Lender agrees to reimburse each Agent, the Coordinating Lead Arrangers, Joint Lead Arrangers, or any such Person promptly upon demand for its Proportionate Share of any out-of-pocket expenses (including reasonable counsel fees and compensation of agents and employees paid for services rendered on behalf of the Lenders, but limited in the case of legal expenses, to the actual and reasonable and documented expenses of one counsel for the Agents, and, if necessary, one firm of local counsel in each appropriate jurisdiction where any action to realize upon any part of the Collateral is necessary, in each case for the Agents (and, in the case of an actual or perceived conflict of interest where the Agents affected by such conflict informs the Borrower of such conflict, of another firm of counsel for such affected Agent) incurred by such Agent, Coordinating Lead Arrangers, Joint Lead Arrangers, or any such Person in connection with the preparation, execution, administration or enforcement of, or legal advice in respect of rights or responsibilities under, the Credit Documents, to the extent that such Agent, Coordinating Lead Arrangers, Joint Lead Arrangers, or any such Person is not reimbursed for such expenses by Borrower).

9.6 Successor Agent

Any Agent may resign at any time by notifying the Lenders and Borrower, in accordance with this Section 9.6 or the provisions of the Intercreditor Agreement, as applicable. Upon any such resignation of either Administrative Agent or First Lien Collateral Agent, the Required Lenders shall have the right, with the consent of Borrower (such consent not to be unreasonably withheld or delayed) to appoint a successor Administrative Agent or First Lien Collateral Agent (as the case may be). Subject to the provisions of the Intercreditor Agreement, if no successor Administrative Agent or First Lien Collateral Agent (as the case may be) shall have been so appointed by the Required Lenders and shall have accepted such appointment, within fifteen days after the retiring Administrative Agent's or First Lien Collateral Agent's (as the case may be) giving of notice of resignation or the Lenders' removal of the retiring Administrative Agent or First Lien Collateral Agent (as the case may be), the retiring Administrative Agent and First Lien Collateral Agent (as the case may be) may, on behalf of the Lender Parties, with the consent of Borrower (such consent not to be unreasonably withheld or delayed), appoint a successor Administrative Agent or First Lien Collateral Agent (as the case may be) hereunder, which shall be a Lender, if any Lender shall be willing to serve, and otherwise shall be a commercial bank having a combined capital and surplus of at least $500,000,000 or an Affiliate of any such bank. Upon the acceptance of any appointment as Administrative Agent or First Lien Collateral Agent (as the case may be) under the Credit Documents by a successor Administrative Agent or First Lien Collateral Agent (as the case may be), such successor Administrative Agent or First Lien Collateral Agent (as the case may be) shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent or First Lien Collateral Agent (as the case may be), and the retiring Administrative Agent or First Lien Collateral Agent (as the case may be) shall be discharged from its duties and obligations as Administrative Agent or First Lien Collateral Agent (as the case may be) only under the Credit Documents. After any retiring Administrative Agent's or First Lien Collateral Agent's resignation hereunder as Administrative Agent or First Lien Collateral Agent (as the case may be), the provisions of this Article 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent or First Lien Collateral Agent (as the case may be) under the Credit Documents. In addition to the foregoing, if a Lender becomes, and during the period it remains, a Defaulting Lender, an Issuing Bank may, upon prior written notice to Borrower and Administrative Agent, resign as an Issuing Bank effective at the close of business New York time on a date specified in such notice (which date may not be less than twenty Banking Days after the date of such notice); provided, that such resignation by the applicable Issuing Bank shall have no effect on the validity or enforceability of any Letter of Credit then outstanding or on the obligations of Borrower or any Lender under this Agreement with respect to any such outstanding Letter of Credit or otherwise to such Issuing Bank. Anything herein to the contrary notwithstanding, if at any time the Required Lenders determine that the Person serving as Administrative Agent is a Defaulting Lender, the Required Lenders (determined after giving effect to Section 9.9) may by notice to Borrower and such Person remove such Person as Administrative Agent and appoint a replacement Administrative Agent hereunder. Such removal shall, to the fullest extent permitted by applicable law, be effective on the earlier of (a) the date a replacement Administrative Agent is appointed, and (b) the date which is five Banking Days after the giving of such notice by the Required Lenders (regardless of whether a replacement Administrative Agent has been appointed).

9.7 Authorization

Each of the Lenders and each assignee of any such Lender hereby irrevocably authorizes each of Administrative Agent, First Lien Collateral Agent, the Coordinating Lead Arrangers, Joint Lead Arrangers, and Issuing Banks to take such actions on behalf of such Lender or assignee and to exercise such powers as are specifically delegated to such Person in such capacity by the terms and provisions hereof and of the other Credit Documents, together with such actions and powers as are reasonably incidental thereto, and each Lender and each assignee or any such Lender hereby agrees to be bound by any such actions. Without limiting the generality of the foregoing, Administrative Agent is hereby expressly authorized by the Lenders and Issuing Banks, without hereby limiting any implied authority, (a) to receive on behalf of the Lenders and the Issuing Banks all payments of principal of and interest on the Loans, all payments in respect of Drawing Payments and all other amounts due to the Lenders and the Issuing Banks hereunder, and promptly to distribute to each Lender or Issuing Bank its proper share of each payment so received (and any such payments not so distributed by Administrative Agent within one Banking Day of receipt thereof shall bear interest (at Administrative Agent's expense) at a rate equal to the greater of (i) the Federal Funds Rate, and (ii) a rate reasonably determined by Administrative Agent in accordance with banking industry rules on interbank compensation); (b) to give notice on behalf of each of the Lenders of any Event of Default specified in this Agreement of which Administrative Agent has actual knowledge acquired in connection with the performance of its duties as Administrative Agent hereunder; (c) to distribute to each Lender copies of all notices, financial statements and other materials delivered by Borrower pursuant to this Agreement as received by Administrative Agent; and (d) to enter into (and each of the Lenders, Issuing Banks, Coordinating Lead Arrangers, and Joint Lead Arrangers hereby agree to be bound by the terms of and direct the Administrative Agent to enter into) a use of work product agreement in the form of Exhibit J on behalf of each Lender, Issuing Banks, Coordinating Lead Arrangers, and Joint Lead Arrangers. Each of Administrative Agent and First Lien Collateral Agent is further authorized by the Lender Parties to release Liens on property that the Obligors are permitted to sell or transfer pursuant to the terms of this Agreement or the other Credit Documents and to enter into agreements supplemental hereto for the purpose of curing any formal defect, inconsistency, omission or ambiguity in this Agreement or any Credit Document to which it is a party.

9.8 Other Roles

With respect to its Commitment, the Loans made by it and any Note issued to it, each of the Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent, Administrative Agent and Issuing Banks in its individual capacity shall have the same rights and powers under the Credit Documents as any other Lender and may exercise the same as though it were not a Coordinating Lead Arranger, Joint Lead Arranger, First Lien Collateral Agent, Administrative Agent or Issuing Bank. The term "Lender" or "Lenders" shall, unless otherwise expressly indicated, include each of the Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent, Administrative Agent and Issuing Banks in its individual capacity. Each of the Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent, Administrative Agent, Issuing Banks and their respective Affiliates may accept deposits from, lend money to, and generally engage in any kind of business with Borrower or any other Person, without any duty to account therefor to the Lenders. For the avoidance of doubt, MUFG Union Bank, N.A. may act as both First Lien Collateral Agent and as Depositary Agent, notwithstanding any potential or actual conflict of interest presented by the foregoing. Each of the Lenders hereby waives any claim against each of the Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent, Administrative Agent, Issuing Banks, Borrower and any of their respective Affiliates based upon any conflict of interest that such Coordinating Lead Arrangers, Joint Lead Arrangers, First Lien Collateral Agent, Administrative Agent, Issuing Bank or any of their respective Affiliates may have with regard to acting as an agent, arranger or Issuing Bank hereunder and acting in such other roles.

9.9 Amendments; Waivers

(a) Unanimous Consent. Subject to the provisions of this Section 9.9, unless otherwise specified in this Agreement or another Credit Document, the Required Lenders (or Administrative Agent or First Lien Collateral Agent upon written direction or consent of the Required Lenders) and the Obligors may enter into agreements, waivers or supplements hereto for the purpose of adding, modifying or waiving any provisions to the Credit Documents or changing in any manner the rights of the Lenders or the Obligors hereunder or thereunder or waiving any Default or Event of Default; provided, that notwithstanding anything to the contrary set forth herein, any amendment modification, termination or consent to, of or under any First Lien Collateral Document permitted pursuant to this Section 9.9 shall be subject to the applicable terms of the Intercreditor Agreement and no such supplemental agreement shall, without the consent of all of the Lenders affected thereby or, with respect to clauses (ii) and (iii), all of the Lenders affected thereby and all of the Hedge Banks affected thereby:

(i) increase the amount of the Commitment of any Lender hereunder;

(ii) amend any provision of this Section 9.9;

(iii) release (A) all or substantially all of the Collateral (other than (1) pursuant to Section 5.9 (*Limitation on Asset Dispositions*) of the First Lien Common Terms Agreement, (2) in respect of any Casualty Event or Event of Eminent Domain, or (3) as otherwise expressly permitted hereby or under any other Credit Document) from the Lien of any of the First Lien Collateral Documents or (B) release all or substantially all of the guaranties of the Guarantors pursuant to the Credit Documents (except as expressly permitted hereby or under any other Credit Document);

(iv) extend the Maturity Dates or reduce the principal amount of any outstanding Loans or Notes or reduce the rate or change the time of payment of interest due on any Loan; provided, that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" contained in Section 2.4(c) or to waive any obligation of Borrower to pay interest at the Default Rate;

(v) reduce the amount or extend the payment date for any amount due, whether principal or interest (but not prepayment);

(vi) add, modify or waive any provisions to the Credit Documents so as to subordinate the Loans to any other Indebtedness;

(vii) amend or modify the definition of "Required First Lien Secured Parties" (as defined in the Intercreditor Agreement); provided, that, additional extensions of credit pursuant hereto shall be included in the definition of "Required First Lien Secured Parties" on substantially the same basis as the Loans and Commitments included on the **Initial** Closing Date; or

(viii) modify the order of application of any prepayment of Term Loans or ~~LC~~**Multi-Draw Facility** Loans from the application thereof set forth in the applicable provisions of Section 2.1(h) of this Agreement or Section 4.1 (*Applications of Proceeds*) of the Intercreditor Agreement; provided, that the Required Lenders may waive, in whole or in part, any prepayment so long as the application as between Loans, of any portion of such prepayment which is still required to be made is not altered.

(b) Affected Party Consent. Notwithstanding anything to the contrary herein, no agreement, waiver or supplement hereto shall add, modify or waive any provisions to the Credit Documents, or change in any manner the rights of the Lenders, Hedge Banks or the Obligors hereunder or thereunder, so as to:

(i) amend or modify any provision set forth in Sections 2.1(h)(i), 2.1(h)(ii), 2.1(h)(iii), 2.4(d)(i), 2.4(e), 2.5(a) or 2.5(b) in a manner that would alter the pro rata sharing of payments with respect to the applicable Loan facility without the prior written consent of each Lender adversely affected thereby;

(ii) change the order of priority of payments set forth in Section 4.1 (*Applications of Proceeds*) of the Intercreditor Agreement or Section 3.1(b) (*Revenue Account Waterfall*) of the Depositary Agreement, without the prior written consent of each Lender adversely affected thereby;

(iii) amend, modify or otherwise affect the rights or duties of Administrative Agent, First Lien Collateral Agent, Depositary Agent or an Issuing Bank without the prior written consent of Administrative Agent, Depositary Agent, First Lien Collateral Agent or such Issuing Bank, as applicable, acting as such at the effective date of such agreement;

(iv) amend the definition of "Lenders" or reduce the percentage specified in the definition "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the prior written consent of each Lender adversely affected thereby;

(v) change the relative priority or the extent of the security interest granted in favor of any Lender or Hedge Bank as compared to the priority or the extent of the security interest granted in favor of any other Lender or Hedge Bank, without the prior written consent of each Lender or Hedge Bank adversely affected thereby; or

(vi) otherwise subordinate the First Lien Obligations of Borrower in respect of the Interest Rate Agreements to any other First Lien Obligations of Borrower hereunder, without the prior written consent of each Hedge Bank adversely affected thereby.

(c) Defaulting Lenders. Anything herein to the contrary notwithstanding, during such period as a Lender is a Defaulting Lender, to the fullest extent permitted by applicable law, such Lender shall not be entitled to vote in respect of amendments and waivers hereunder and the Commitment and the outstanding Loans or other extensions of credit of such Lender hereunder shall not be taken into account in determining whether the Required Lenders or all of the Lenders, as required, have approved any such amendment or waiver (and the definition of "Required Lenders" shall automatically be deemed modified accordingly for the duration of such period), except that (i) without the consent of such Defaulting Lender (A) the Commitment of any Defaulting Lender may not be increased or extended, (B) any amount due to any Defaulting Lender, whether principal or interest, may not be reduced, and (C) the payment date for any amount due to such Defaulting Lender, whether principal or interest, may not be extended, and (ii) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

(d) Minor Defects. Notwithstanding the other provisions of this Section 9.9, Borrower, Administrative Agent and First Lien Collateral Agent may (but shall have no obligation to) amend or supplement the Credit Documents without the consent of any other Lender Party for the purpose of (i) curing any ambiguity, defect or inconsistency, (ii) making any change that would provide any additional rights or benefits to the Lender Parties or that does not adversely affect the legal rights hereunder of any Lender Party, and (iii) making, completing or confirming any grant of Collateral permitted or required by this Agreement, any of the Credit Documents or the Intercreditor Agreement or any release of any Collateral that is otherwise permitted under the terms of this Agreement and the Credit Documents.

9.10 Withholding Tax

Each Lender Party shall severally indemnify the Administrative Agent, within ten days after demand therefor, for (a) any taxes (including any interest, additions to tax or penalties applicable thereto) attributable to such Lender Party for whatever reason (but, if such taxes are Indemnified Taxes and Other Taxes, only to the extent that Borrower has not already indemnified the Administrative Agent for such taxes and without limiting the obligation of Borrower to do so), and (b) any taxes (including any interest, additions to tax or penalties applicable thereto) attributable to such Lender Party's failure to comply with the provisions of Section 9.13 relating to the maintenance of a Participant Register (as defined in Section 9.13 below), in each case, that are payable or paid by the Administrative Agent in connection with any Credit Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender Party by the Administrative Agent shall be conclusive absent manifest error. Each Lender Party hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender Party under any Credit Document or otherwise payable by the Administrative Agent to the Lender Party from any other source against any amount due to the Administrative Agent under this Section 9.10. The obligations of the Lender Parties under this Section 9.10 shall survive the payment of all First Lien Obligations and the resignation or replacement of Administrative Agent.

If any Lender or Issuing Bank sells, assigns, grants participation in, or otherwise transfers its rights under this Agreement, the purchaser, assignee, Participant or transferee, as applicable, shall comply and be bound by the terms of Section 2.4(f) and this Section 9.10 as though it were such Lender or Issuing Bank.

9.11 General Provisions as to Payments

Administrative Agent shall promptly distribute to each Lender, subject to the terms of any separate agreement between Administrative Agent and such Lender, its pro rata share of each payment of principal and interest payable to the Lenders on the Loans and of fees hereunder received by Administrative Agent for the account of the Lenders and of any other amounts owing under the Loans. The payments made for the account of each Lender shall be made, and distributed to it, for the account of (a) its domestic Lending Office in the case of payments of principal of, and interest on, its Base Rate Loans, (b) its domestic or foreign Lending Office, as each Lender may designate in writing to Administrative Agent, in the case of ~~LIBOR~~SOFR Loans, and (c) its domestic Lending Office, or such other Lending Office as it may designate for the purpose from time to time, in the case of payments of fees and other amounts payable hereunder.

9.12 Substitution of Lender

Should any Lender fail to make a Loan in violation of its obligations under this Agreement (a "**Non-Advancing Bank**"), Administrative Agent shall (a) in its sole discretion fund the Loan on behalf of the Non-Advancing Bank, or (b) cooperate and consult with Borrower or any other Lender to find another Person that shall be acceptable to Administrative Agent and that shall be willing to assume the Non-Advancing Bank's obligations under this Agreement (including the obligation to make the Loan which the Non-Advancing Bank failed to make but without assuming any liability for damages for failing to have made such Loan or any previously required Loan). Subject to the provisions of the next following sentence, such Person shall be substituted for the Non-Advancing Bank hereunder upon execution and delivery to Administrative Agent of an agreement acceptable to Administrative Agent by such Person assuming the Non-Advancing Bank's obligations (including its Commitments) under this Agreement, and all interest and fees which would otherwise have been payable to the Non-Advancing Bank shall thereafter be payable to such Person. Nothing in (and no action taken pursuant to) this Section 9.12 shall relieve the Non-Advancing Bank from any liability it might have to Borrower or to the other Lenders as a result of its failure to make any Loan.

9.13 Participation.

Any Lender may, without the consent of Borrower, Administrative Agent or any Issuing Bank, sell participations to one or more banks or other entities (a "**Participant**") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans and Drawing Payments owing to it); provided, that (a) no such sale of a participation shall alter such Lender's or Borrower's obligations hereunder, (b) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (c) Borrower and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement, and (d) any agreement or instrument (oral or written) pursuant to which any Lender may grant a participation in its rights with respect to its Commitment (or Loans made hereunder) shall provide that, with respect to such Commitment (or Loans made hereunder), subject to the following proviso, such Lender shall retain the sole right and responsibility to exercise the rights of such Lender, and enforce the obligations of Borrower relating to such Commitment (or Loans made hereunder), including the right to approve any amendment, modification or waiver of any provision of this Agreement or any other Credit Document and the right to take action to have the First Lien Obligations hereunder (or any portion thereof) declared due and payable pursuant to Article 7; provided, that (e) such agreement may provide that the participant may have rights to approve or disapprove decreases in Loans, interest rates or fees, lengthening of maturity of any Loans, extending the payment date for any amount due under Article 2 or releasing all or a material portion of the Collateral (other than (i) pursuant to Section 5.9 (*Limitation on Asset Dispositions*) of the First Lien Common Terms Agreement, (ii) in respect of any Casualty Event or Event of Eminent Domain, or (iii) as otherwise expressly permitted hereby or under any other Credit Document), and (w) no other agreement (oral or written) with respect to such Participant may exist between such Lender and such Participant. Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.6, 2.7, and 2.4(d) (subject to the requirements and limitations therein, including the requirements under Section 2.4(f) (it being understood that the documentation required under Section 2.4(f) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 9.14; provided, that such Participant (x) agrees to be subject to the provisions of Section 2.8 as if it were an assignee under this Section 9.13; and (y) shall not be entitled to receive any greater payment under Sections 2.6, 2.7 and 2.4(d), with respect to any participation, than its participating Lender would have been entitled to receive. No recipient of a participation in any Commitment or Loans of any Lender shall have any rights under this Agreement or shall be entitled to any reimbursement for Indemnified Taxes, Other Taxes, increased costs or reserve requirements under Sections 2.6 or 2.7 or any other indemnity or payment rights against Borrower (but shall be permitted to receive from the Lender granting such participation a proportionate amount which would have been payable to the Lender from whom such Person acquired its participation as provided in this Section 9.13). Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Credit Documents (the "**Participant Register**"); provided, that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Credit Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations and Section 1.163-5(b) of the United States Proposed Treasury Regulations (or any amended or successor version). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

9.14 Transfer of Commitment

(a) Notwithstanding anything else herein to the contrary, any Lender, after receiving Administrative Agent's prior written consent (such consent not to be unreasonably withheld) and (so long as no Event of Default has occurred and is continuing) after receiving Borrower's prior written consent (such consent not to be unreasonably withheld solely with respect to a sale, assignment, transfer, negotiation or disposal to a commercial bank, financial institution or an insurance company but such consent may be withheld in Borrower's sole discretion with respect to a sale, assignment, transfer, negotiation or disposal to any other Eligible Assignee), may from time to time, at its option, sell, assign, transfer, negotiate or otherwise dispose of a portion of one or more of its Commitments (including, for purposes of this Section 9.14, Loans made hereunder) (including the Lender's interest in this Agreement and the other Credit Documents) to one or more banks, financial institutions, or Eligible Assignees; provided, that (i) no Lender (including any assignee of any Lender) may assign any portion of its Commitment (including Loans) (A) in an amount less than $5,000,000 (unless to another Lender), or (B) in an amount which leaves the assigning Lender with a Commitment (including Loans) of less than $5,000,000 (in each case based on the original principal amount of the Commitment assigned) after giving effect to such assignment and all previous assignments (except that a Lender may be left with no Commitment or Loans if it assigns its entire Commitment); (ii) without the consent of the Borrower or any other Party, any Lender may assign all or any portion of its Commitments to another Lender, an Affiliate of a Lender; (iii) no consent of the Borrower shall be required in the case of primary syndication of the Loans and Commitments within sixty days after the **Initial** Closing Date, to institutions that have been identified by the Syndication Agent and accepted by the Borrower (in its reasonable discretion) prior to the **Initial** Closing Date and (iv) Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten Banking Days after having received notice thereof. An assignee shall not be entitled to receive any greater payment under any of Sections 2.4(d), 2.6 and 2.7.

(b) No such assignment shall be made to (i) Borrower or any of Borrower's Affiliates or Subsidiaries, or (ii) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute a Defaulting Lender or a Subsidiary thereof. In the event of any such assignment, (A) the assigning Lender's Proportionate Share shall be reduced and its obligations hereunder released by the amount of the Proportionate Share assigned to the new Lender, (B) the parties to such assignment shall execute and deliver an appropriate agreement evidencing such sale, assignment, transfer or other disposition, in form and substance reasonably satisfactory to Administrative Agent and Borrower, (C) the parties to the sale, assignment, transfer or other disposition, excluding Borrower, shall collectively pay to Administrative Agent an administrative fee of $3,500; provided, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment, (D) at the assigning Lender's option, Borrower shall execute and deliver, to such new Lender, Notes in the forms attached hereto as Exhibit B-1, as requested, in a principal amount equal to such new Lender's Commitment, but only if it shall also be executing and exchanging with the assigning Lender a replacement note for any Note in an amount equal to the Commitment retained by the assigning Lender, if any; provided, that Borrower shall have received for cancellation the existing Note held by such assigning Lender, and (E) Administrative Agent shall amend Schedule 2.2(a) to reflect the Proportionate Shares of the Lenders following such assignment. Thereafter, such new Lender shall be deemed to be a Lender and shall have all of the rights and duties of a Lender (except as otherwise provided in this Article 9), in accordance with its Proportionate Share, under each of the Credit Documents. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in Section 2.1(i).

(c) Disqualified Institution. Any assignments and participations to Disqualified Institutions are void ab initio unless such assignment or participation, as the case may be, has been approved by the Borrower, in which case such assignee or participant shall not be considered a Disqualified Institutions solely for such particular assignment or participation, as the case may be. In case of such assignments not approved by the Borrower, the assignee who is a Disqualified Institutions shall be deleted from the Register upon written notification from the Borrower. Except for notifying the Lenders with a list of Disqualified Institutions, Administrative Agent shall have no responsibility or liability to monitor or enforce such list of Disqualified Institutions.

9.15 Laws

Notwithstanding the foregoing provisions of this Article 9, no sale, assignment, transfer, negotiation or other disposition of the interests of any Lender hereunder or under the other Credit Documents shall be allowed if it would require registration under the federal Securities Act of 1933, as then amended, any other federal securities laws or regulations or the securities laws or regulations of any applicable jurisdiction. Borrower shall, from time to time at the request and expense of Administrative Agent, execute and deliver to Administrative Agent, or to such party or parties as Administrative Agent may designate, any and all further instruments as may in the opinion of Administrative Agent be reasonably necessary or advisable to give full force and effect to such sale, assignment, transfer, negotiation or disposition which would not require any such registration.

9.16 Assignability as Collateral

Notwithstanding any other provision contained in this Agreement or any other Credit Document to the contrary, any Lender may assign all or any portion of the Loans or Notes held by it to the Federal Reserve Bank, any other central banking authorities in accordance with applicable law and the United States Treasury as collateral security; provided, that any payment in respect of such assigned Loans or Notes made by Borrower to or for the account of the assigning or pledging Lender in accordance with the terms of this Agreement shall satisfy Borrower's obligations hereunder in respect of such assigned Loans or Notes to the extent of such payment. No such assignment shall release the assigning Lender from its obligations hereunder and in no event shall the Federal Reserve Bank, any other central banking authorities in accordance with applicable law or the United States Treasury be considered a "Lender" hereunder.

9.17 Notices to Lenders

Administrative Agent promptly shall deliver all material documents, instruments and notices that it receives hereunder and under the other Credit Documents to each Lender. Except as expressly provided in this Agreement or the other Credit Documents, Borrower shall not be required to deliver any documents, instruments or notices directly to the Lenders.

9.18 First Lien Collateral Agent

First Lien Collateral Agent shall: (a) forward promptly to Administrative Agent any notice delivered to First Lien Collateral Agent pursuant to any Consent; (b) have the right, but not the obligation, to (i) refuse any item for credit to any Depositary Account except as required by the terms of the Credit Documents, (ii) refuse to honor any request for transfer in relation to any Depositary Account that is not consistent with the Credit Documents, (iii) charge to any Depositary Account all applicable charges related to maintaining such Depositary Accounts, and (iv) pay fees, interest and other charges owing by the Obligors as provided herein and in the other Credit Documents; (c) except as otherwise provided herein and in the Depositary Agreement (including by the provision of standing instructions therein), take all actions and make all determinations with respect to the Collateral, the First Lien Collateral Documents (including as to the advisability of taking additional steps to perfect, or cause the perfection of, any security interest) and the other Credit Documents to which it is a party as directed in writing by Administrative Agent (acting in accordance with Section 9.7); and (d) have the right at any time to seek clarification and instructions concerning the administration of the Credit Documents from Administrative Agent, legal counsel selected by it in good faith with reasonable care or any court of competent jurisdiction and shall be fully protected in relying upon such instructions.

9.19 Right to Realize on Collateral

Notwithstanding anything contained in any of the Credit Documents to the contrary notwithstanding, the Obligors, the Administrative Agent, the First Lien Collateral Agent and each Lender hereby agree that: (a) no Lender or Agent shall have any right individually to realize upon any of the Collateral, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by the Administrative Agent, on behalf of Lenders, in accordance with the terms hereof, and all powers, rights and remedies under the First Lien Collateral Documents may be exercised solely by the First Lien Collateral Agent, on behalf of the First Lien Secured Parties and (b) in the event of a foreclosure by the First Lien Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition, the First Lien Collateral Agent or any Lender may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and the First Lien Collateral Agent, as agent for and representative of the First Lien Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless Required Lenders shall otherwise agree in writing), shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the First Lien Obligations as a credit on account of the purchase price for any Collateral payable by the First Lien Collateral Agent at such sale or other disposition.

9.20 Depositary Agent

The Depositary Agent is an intended third party beneficiary of, and entitled to enforce on its respective behalf and for its own benefit and, if applicable, the benefit of the other First Lien Secured Parties, the provisions of this Agreement that purport to grant the Depositary Agent rights, privileges and benefits, entitlements, immunities, indemnities and/or benefits. Each Lender hereby (a) acknowledges that it has received and reviewed a copy of the Depositary Agreement and agrees to be bound by the terms thereof, and (b) authorizes and directs (i) the appointment of MUFG Union Bank, N.A. to act as the initial depositary agent under the Credit Documents, and (ii) the Depositary Agent to execute the Depositary Agreement and to take such actions as are contemplated by the terms of the Depositary Agreement. The Depositary Agent has, and shall have, no obligations under this Agreement.

9.21 Erroneous Payments

(a) If the Administrative Agent (x) notifies a Lender or Issuing Bank, or any Person who has received funds on behalf of a Lender or Issuing Bank (any such Lender, Issuing Bank or other recipient (and each of their respective successors and assigns), a "**Payment Recipient**") that the Administrative Agent has determined in its reasonable discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from the Administrative Agent) received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Issuing Bank or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "**Erroneous Payment**") and (y) demands in writing the return of such Erroneous Payment (or a portion thereof) (provided, that, without limiting any other rights or remedies (whether at law or in equity), the Administrative Agent may not make any such demand under this clause (a) with respect to an Erroneous Payment unless such demand is made within 30 days of the date of receipt of such Erroneous Payment by the applicable Payment Recipient), such Erroneous Payment shall at all times remain the property of the Administrative Agent pending its return or repayment as contemplated below in this Section 9.21 and held in trust for the benefit of the Administrative Agent, and such Lender or Issuing Bank shall use commercially reasonable efforts to (or, with respect to any Payment Recipient who received such funds on its behalf, shall use commercially reasonable efforts to cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter (or such later date as the Administrative Agent may, in its sole discretion, specify in writing), return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon (except to the extent waived in writing by the Administrative Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender, Issuing Bank or any Person who has received funds on behalf of a Lender or Issuing Bank (and each of their respective successors and assigns), agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender or Issuing Bank, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

(i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender or Issuing Bank shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 9.21(b).

For the avoidance of doubt, the failure to deliver a notice to the Administrative Agent pursuant to this Section 9.21(b) shall not have any effect on a Payment Recipient's obligations pursuant to Section 9.21(a) or on whether or not an Erroneous Payment has been made.

(c) Each Lender and Issuing Bank hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender or Issuing Bank under any Credit Document, or otherwise payable or distributable by the Administrative Agent to such Lender or Issuing Bank under any Credit Document with respect to any payment of principal, interest, fees or other amounts, against any amount that the Administrative Agent has demanded to be returned under immediately preceding clause (a).

(d)

(i) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor in accordance with immediately preceding clause (a), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "**Erroneous Payment Return Deficiency**"), upon the Administrative Agent's notice to such Lender at any time, then effective immediately (with the consideration therefor being acknowledged by the parties hereto), (A) such Lender shall be deemed to have assigned its Loans (but not its Commitments) with respect to which such Erroneous Payment was made (the "**Erroneous Payment Impacted Class**") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the "**Erroneous Payment Deficiency Assignment**") (on a cashless basis and such amount calculated at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance)), and is hereby (together with the Borrower) deemed to execute and deliver an assignment and assumption agreement (or, to the extent applicable, an agreement incorporating an assignment and assumption agreement by reference pursuant to the Platform as to which the Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent (but the failure of such Person to deliver any such Notes shall not affect the effectiveness of the foregoing assignment), (B) the Administrative Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (C) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender, (D) the Administrative Agent and the Borrower shall each be deemed to have waived any consents required under this Agreement to any such Erroneous Payment Deficiency Assignment, and (E) the Administrative Agent will reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement.

(ii) Subject to Section 11.17 (but excluding, in all events, any assignment consent or approval requirements (whether from the Borrower or otherwise)), the Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency owing by the applicable Lender (x) shall be reduced by the proceeds of prepayments or repayments of principal and interest, or other distribution in respect of principal and interest, received by the Administrative Agent on or with respect to any such Loans acquired from such Lender pursuant to an Erroneous Payment Deficiency Assignment (to the extent that any such Loans are then owned by the Administrative Agent) and (y) may, in the sole discretion of the Administrative Agent, be reduced by any amount specified by the Administrative Agent in writing to the applicable Lender from time to time.

(e) The parties hereto agree that (x) irrespective of whether the Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender or Issuing Bank, to the rights and interests of such Lender or Issuing Bank, as the case may be) under the Credit Documents with respect to such amount (the "**Erroneous Payment Subrogation Rights**") (provided that the Loan Parties' First Lien Obligations under the Credit Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such First Lien Obligations in respect of Loans that have been assigned to the Administrative Agent under an Erroneous Payment Deficiency Assignment) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any First Lien Obligations owed by the Borrower or any other Loan Party; provided that this Section 9.21 shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the First Lien Obligations of the Borrower relative to the amount (and/or timing for payment) of the First Lien Obligations that would have been payable had such Erroneous Payment not been made by the Administrative Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on "discharge for value" or any similar doctrine.

(g) Each party's obligations, agreements and waivers under this Section 9.21 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender or Issuing Bank, the termination of the Commitments and/or the repayment, satisfaction or discharge of all First Lien Obligations (or any portion thereof) under any Credit Document.

10. INDEPENDENT CONSULTANTS

10.1 Removal and Fees

Administrative Agent, in its reasonable discretion, may remove from time to time, any one or more of the Independent Consultants (other than the Independent Engineer) and Administrative Agent may appoint replacements, which, so long as no Default or Event of Default shall have occurred and be continuing, shall be reasonably acceptable to Borrower. Notice of any replacement such Independent Consultant shall be given by Administrative Agent to Borrower, the Lenders and to the Independent Consultant being replaced. All reasonable fees and expenses of the Independent Consultants (whether the original ones or replacements) shall be paid by Borrower pursuant to agreements reasonably acceptable to Borrower; provided, that no such acceptance shall be required at any time an Event of Default shall have occurred and be continuing.

10.2 Certification of Dates

Administrative Agent will request that the Independent Consultants act diligently in the issuance of all letters required to be delivered by the Independent Consultants hereunder, if their issuance is appropriate. Borrower shall provide the Independent Consultants with reasonable notice of the expected occurrence of any dates or events requiring the issuance of such letters.

11. MISCELLANEOUS

11.1 Addresses

Any communications between the parties hereto or notices provided herein to be given may be given to the following addresses:

If to Administrative Agent:

MUFG Bank, Ltd., as Administrative Agent
1221 Avenue of the Americas, 6th Floor
New York, NY 10020
Attention: Lawrence Blat / Peter Chi
Telephone: (212) 405-6621 / (213) 236-4128
E-mail: lawrence.blat@mufgsecurities.com;
~~agencydesk@us.sc.mufg.jp~~agencydesk@us.sc.mufg.jp
With a copy to: ~~PChi@us.mufg.jp~~Pchi@us.mufg.jp

If to First Lien Collateral Agent:

MUFG Union Bank, N.A.,
350 California Street, 17th Floor
San Francisco, CA 94104
Attention: Institutional Agency Services
Email:
~~thaddeus.smith@unionbank.com~~thaddeus.smith@unionbank.com

If to Borrower:

Geysers Power Company, LLC
717 Texas Avenue, Suite 11.043C
Houston, Texas 77002
Telephone: (832) 325-1581
Facsimile: (832) 325-1582
Attn: Chief Legal Officer

If to Holdings:

Geysers Intermediate Holdings LLC
717 Texas Avenue, Suite 11.059C
Houston, Texas 77002
Telephone: (832) 325-5039
Facsimile: (832) 325-5040
Attn: Chief Legal Officer

If to Geysers Company:

Geysers Company, LLC
717 Texas Avenue, Suite 11.059A
Houston, Texas 77002
Telephone: (832) 325-5045
Facsimile: (832) 325-5046
Attn: Chief Legal Officer

If to Calistoga:

Calistoga Holdings, LLC
717 Texas Avenue, Suite 11.059B
Houston, Texas 77002
Telephone: (832) 325-5031
Facsimile: (832) 325-5032
Attn: Chief Legal Officer

If to Wild Horse:

Wild Horse Geothermal, LLC
717 Texas Avenue, Suite 11.050B
Houston, Texas 77002
Telephone: (832) 325-5063
Facsimile: (832) 325-5064
Attn: Chief Legal Officer

All such notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service (including Federal Express, UPS, DHL and other similar overnight delivery services), (c) if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (d) if sent by facsimile with receipt confirmed by telephone, or (e) by electronic transmission. Notice so given shall be effective upon receipt by the addressee, except that communication or notice so transmitted by facsimile or other direct written electronic means shall be deemed to have been validly and effectively given on the day (if a Banking Day and, if not, on the next following Banking Day) on which it is transmitted if transmitted before 4:00 p.m., recipient's time, and if transmitted after that time, on the next following Banking Day; provided, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving of thirty days' notice to the other parties in the manner set forth above.

Borrower may deliver to Administrative Agent, First Lien Collateral Agent or Depositary Agent, as the case may be, any Borrowing certificate, collateral report or other material that Borrower is required to deliver to Administrative Agent, First Lien Collateral Agent or Depositary Agent (as the case may be) hereunder or under the other Credit Documents, by e-mail or other electronic transmission.

11.2 Right to Set-Off

If an Event of Default shall have occurred and be continuing, subject to the Intercreditor Agreement (which may limit the rights specified in this Section 11.2), each Lender Party is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by such Lender Party to or for the credit or the account of Borrower, against any and all obligations of Borrower, now or hereafter existing under this Agreement or any other Credit Document held by such Lender Party, irrespective of whether or not such Lender Party shall have made any demand under this Agreement or such other Credit Document and although the obligations may be unmatured; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (a) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.4(g) and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Banks, and the Lenders, and (b) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the First Lien Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender Party under this Section 11.2 are in addition to other rights and remedies (including other rights of set-off) that such Lender Party may have.

11.3 Delay and Waiver

No delay or omission to exercise any right, power or remedy accruing to the Lender Parties upon the occurrence of any Default, Event of Default or Material Adverse Effect or any breach or Default of Borrower or any other Obligor or unsatisfied condition precedent under this Agreement or any other Credit Document shall impair any such right, power or remedy of the Lender Parties, nor shall it be construed to be a waiver of any such breach or Default or unsatisfied condition precedent, or an acquiescence therein, or of or in any similar breach or Default or unsatisfied condition precedent thereafter occurring, nor shall any waiver of any single Default, Event of Default, Material Adverse Effect or other breach or Default or unsatisfied condition precedent be deemed a waiver of any other Default, Event of Default, Material Adverse Effect or other breach or Default or unsatisfied condition precedent theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of Administrative Agent, First Lien Collateral Agent or any other Lender Party of any Default, Event of Default, Material Adverse Effect or other breach or default or unsatisfied condition precedent under this Agreement or any other Credit Document, or any waiver on the part of Administrative Agent, First Lien Collateral Agent or any other Lender Party of any provision or condition of this Agreement or any other Credit Document, must be in writing and shall be effective only to the extent in such writing specifically set forth. All remedies, either under this Agreement or any other Credit Document or by law or otherwise afforded to Administrative Agent, First Lien Collateral Agent, Issuing Banks or any other Lender Party, shall be cumulative and not alternative.

11.4 Costs, Expenses and Attorneys' Fees; Syndication.

Borrower shall pay to each of the Agents, Coordinating Lead Arrangers, and Joint Lead Arrangers all of their respective actual, reasonable and documented out-of-pocket costs and expenses (net of any costs and expenses paid prior to the **Initial** Closing Date), in connection with the preparation, negotiation, closing and administering of this Agreement and the documents contemplated hereby but limited, in the case of legal expenses, to the actual, reasonable and documented expenses of Latham & Watkins LLP (or in the case of an actual or perceived conflict of interest, such other counsel reasonably acceptable to the Required Lenders and, prior to the delivery of a notice of a Trigger Event that has not been withdrawn, reasonably acceptable to the Borrower) for all Agents, Coordinating Lead Arrangers, and Joint Lead Arrangers taken as a whole and, if necessary, one firm in the State of California for all Agents, Coordinating Lead Arrangers, and Joint Lead Arrangers taken as a whole (and, in the case of an actual or perceived conflict of interest where the Agent, Coordinating Lead Arranger, or Joint Lead Arranger affected by such conflict informs the Borrower of such conflict, of another firm of counsel for such affected Agent, Coordinating Lead Arranger, or Joint Lead Arranger); provided, that Borrower shall not be required to pay the fees of the other attorneys of the Agents, Coordinating Lead Arrangers, and Joint Lead Arrangers). Borrower shall reimburse the Agents for all costs and expenses, including actual, reasonable and documented attorneys' fees and actual, reasonable and documented expert, consultant and advisor fees and expenses, expended or incurred by the Agents for their actual, reasonable and documented out-of-pocket expenses, but limited, in the case of legal expenses, to the actual, reasonable and documented expenses of Latham & Watkins LLP (or in the case of an actual or perceived conflict of interest, such other counsel reasonably acceptable to the Required Lenders and, prior to the delivery of a notice of a Trigger Event that has not been withdrawn, reasonably acceptable to the Borrower) for all Agents taken as a whole and, if necessary, one firm of local counsel in the State of California, in each case for all Agents taken as a whole (and, in the case of an actual or perceived conflict of interest where the Agent affected by such conflict informs the Borrower of such conflict, of another firm of counsel for such affected Agent), in enforcing this Agreement or the other Credit Documents in connection with a Default or Event of Default, in actions for declaratory relief in any way related to this Agreement, protecting its rights and interests under any First Lien Collateral Document, in collecting any sum which becomes due on the Notes or under the Credit Documents, in any restructuring of the Loans or otherwise relating to the occurrence of any Default or Event of Default.

11.5 Entire Agreement

This Agreement and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. Except as otherwise expressly provided, in the event of any conflict between the terms, conditions and provisions of this Agreement and any such agreement, document or instrument, the terms, conditions and provisions of this Agreement shall prevail.

11.6 Governing Law

THIS AGREEMENT AND ANY OTHER CREDIT DOCUMENT (UNLESS OTHERWISE EXPRESSLY PROVIDED FOR THEREIN), SHALL BE GOVERNED BY, AND CONSTRUED UNDER, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CONFLICTS OF LAWS (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

11.7 Severability

In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

11.8 Headings

Article, Section and Paragraph headings have been inserted in this Agreement as a matter of convenience for reference only and it is agreed that such headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

11.9 Accounting Terms

All accounting terms not specifically defined herein shall be construed in accordance with GAAP and practices consistent with those applied in the preparation of the financial statements submitted by Borrower to Administrative Agent, and all financial data submitted pursuant to this Agreement shall be prepared in accordance with such principles and practices.

11.10 No Partnership, Etc.

Neither the Administrative Agent nor any Lender has any fiduciary relationship with or duty to any Obligor arising out of or in connection with this Agreement or any of the other Credit Documents, and the relationship between Administrative Agent and Lenders, on one hand, and Borrower, on the other hand, in connection herewith or therewith shall be solely that of creditor and debtor. Nothing contained in this Agreement, the Notes or in any of the other Credit Documents shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership by or between the Lenders and Borrower or any other Person. None of the Coordinating Lead Arrangers, Joint Lead Arrangers, Administrative Agent, First Lien Collateral Agent or the Lenders shall be in any way responsible or liable for the debts, losses, obligations or duties of Borrower or any other Person with respect to the Projects or otherwise. All obligations to pay real property or other taxes, assessments, insurance premiums, and all other fees and charges arising from the ownership, operation or occupancy of the Projects (if any) and to perform all obligations and other agreements and contracts relating to the Projects shall be the sole responsibility of the Obligors.

11.11 Mortgage/Collateral Documents

Certain guaranties of the Loans shall be secured in part by the Mortgages encumbering certain properties in the State of California solely to the extent provided therein. Reference is hereby made to the Mortgages and the other First Lien Collateral Documents for the provisions, among others, relating to the nature and extent of the security provided thereunder, the rights, duties and obligations of the Obligors and the rights of Administrative Agent, First Lien Collateral Agent and the other Lender Parties with respect to such security.

11.12 Limitation on Liability

No claim shall be made by any Obligor against the Coordinating Lead Arrangers, Joint Lead Arrangers, Green Loan Coordinators, Senior Managing Agents, Administrative Agent, First Lien Collateral Agent, Depositary Agent, the Lenders, Issuing Banks or any of their respective Affiliates, directors, employees, attorneys or agents for any loss of profits, business or anticipated savings, special or punitive damages or any indirect or consequential loss whatsoever in respect of any breach or wrongful conduct (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or the other Credit Documents or any act or omission or event occurring in connection therewith, and each Obligor hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor, in each case, except to the extent such claim is based on gross negligence or willful misconduct of such Person. No claim shall be made by any Syndication Agent, Bookrunners, Green Loan Coordinator, Coordinating Lead Arranger, Joint Lead Arranger, Senior Managing Agent, Administrative Agent, First Lien Collateral Agent, Depositary Agent, Lender or Issuing Bank against any Obligor or any of their respective Affiliates, directors, employees, attorneys or agents for any loss of profits, business or anticipated savings, special or punitive damages or any indirect or consequential loss whatsoever in respect of any breach or wrongful conduct (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or the other Credit Documents or any act or omission or event occurring in connection therewith, and each of the Syndication Agent, Bookrunner, Green Loan Coordinator, Coordinating Lead Arranger, Joint Lead Arranger, Senior Managing Agent, Administrative Agent, First Lien Collateral Agent, Depositary Agent, the Lenders and Issuing Banks hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor, in each case, except to the extent such claim is based on gross negligence or willful misconduct of such Person.

11.13 Indemnity

Borrower agrees to indemnify the **Green Loan Coordinators,** Coordinating Lead Arrangers, Joint Lead Arrangers, and the Agents, the Lenders, Issuing Banks and each of their respective directors, trustees, officers, employees, Affiliates, and agents (each such Person being called an "**Indemnitee**") against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (other than Taxes), including reasonable and documented counsel fees, charges and disbursements, but limited, in the case of legal expenses, to the actual, reasonable and documented expenses of one counsel for the Indemnitees taken as a whole, and, if necessary, one firm of local counsel in each material jurisdiction, in each case for the Indemnitees taken as a whole (and in the case of an actual or perceived conflict of interest where the Indemnitee affected by such conflict informs the Borrower of such conflict, of another firm of counsel for such affected Indemnitee), incurred by or asserted against any Indemnitee (collectively, "**Subject Claims**") arising out of, in any way connected with, or as a result of (a) the execution or delivery of this Agreement or any other Credit Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto and thereto of their respective obligations hereunder or thereunder or the consummation of the other transactions contemplated hereby, (b) the use of the proceeds of the Loans or the use of any Letter of Credit, or (c) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto (other than claims solely as between the Indemnitees); provided, that such indemnity shall not, as to any Indemnitee, be available to the extent that (i) the applicable Subject Claim results from the gross negligence or willful misconduct of such Indemnitee, as determined by the final judgment of a court of competent jurisdiction, or (ii) such Subject Claims arise out of any dispute solely among Indemnitees (other than claims against any Indemnitee in its capacity or in fulfilling its role as Agent under this Agreement and the other Credit Documents, and other than any claims involving any act or omission on the part of the Borrower or any Guarantor). Subject to and without limiting the generality of the foregoing sentence, Borrower agrees to indemnify each Indemnitee against, and hold each Indemnitee harmless from, any and all Subject Claims arising out of, in any way connected with, or as a result of (x) any claim or enforcement action under Environmental Laws alleging a violation of Environmental Laws issued to or against Obligors or the Projects, or (y) any Release or threatened Release of Hazardous Substances at, under, on or from the Projects, or, to the extent related in any way to any Project, any property to which any Obligor has sent Hazardous Substances for treatment, storage or disposal; provided, that such indemnity shall not, as to any Indemnitee, be available to the extent that the applicable Subject Claim results from (i) the gross negligence or willful misconduct of such Indemnitee or any of its Affiliates employees, or agents, as determined by the final judgment of a court of competent jurisdiction or (ii) any act or omission by any Indemnitee or any of its Affiliates, employees, or agents, occurring on or after the date of foreclosure on any Collateral. The provisions of this Section 11.13 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the First Lien Obligations under this Agreement or any other Credit Document, the invalidity or unenforceability of any term or provision of this Agreement or any other Credit Document, or any investigation made by or on behalf of any Indemnitee. All amounts due under this Section 11.13 shall be payable within thirty days at the written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested. This Section 11.13 shall not apply to Taxes. Each of the Indemnitees, on behalf of itself and its respective directors, trustees, officers, employees, Affiliates, and agents, agrees to provide Borrower with written notice of a proposed compromise or settlement of any Subject Claim specifying in detail the nature and amount of such proposed settlement or compromise. Each such Indemnitee shall consult with Borrower before compromising or settling such Subject Claim for at least thirty days after Borrower receives such notice of intended compromise or settlement and shall take into consideration any views or issues communicated by Borrower in connection with such compromise or settlement. Such Indemnitee shall act in good faith and reasonably, taking into account the interests of Borrower, in agreeing to any compromise or settlement.

11.14 Waiver of Jury Trial

ADMINISTRATIVE AGENT, FIRST LIEN COLLATERAL AGENT, THE LENDERS, THE HEDGE BANKS, THE ISSUING BANKS AND THE OBLIGORS HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ADMINISTRATIVE AGENT, FIRST LIEN COLLATERAL AGENT, THE LENDERS, THE HEDGE BANKS, THE ISSUING BANKS, OR THE OBLIGORS. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE OBLIGORS, ADMINISTRATIVE AGENT, FIRST LIEN COLLATERAL AGENT, THE LENDERS, THE HEDGE BANKS AND THE ISSUING BANKS TO ENTER INTO THIS AGREEMENT.

11.15 Consent to Jurisdiction

Administrative Agent, First Lien Collateral Agent, the Lenders, the Hedge Banks, the Issuing Banks and the Obligors agree that any legal action or proceeding by or against any Obligor or with respect to or arising out of this Agreement, the Notes, or any other Credit Document may be brought in or removed to the courts of the State of New York, in and for the County of New York, or of the United States of America for the Southern District of New York, as Administrative Agent may elect. By execution and delivery of this Agreement, the Lenders, the Hedge Banks, the Issuing Banks, Administrative Agent, First Lien Collateral Agent and the Obligors accept, for themselves and in respect of their property, generally and unconditionally, the jurisdiction of the aforesaid courts. Administrative Agent, First Lien Collateral Agent, the Lenders, the Hedge Banks, the Issuing Banks and the Obligors irrevocably consent to the service of process out of any of the aforementioned courts in any manner permitted by law. Nothing herein shall affect the right of Administrative Agent to bring legal action or proceedings in any other competent jurisdiction, including judicial or non-judicial foreclosure of the Mortgages. Administrative Agent, First Lien Collateral Agent, the Lenders, the Hedge Banks, the Issuing Banks and the Obligors further agree that the aforesaid courts of the State of New York and of the United States of America shall have exclusive jurisdiction with respect to any claim or counterclaim of any Obligor based upon the assertion that the rate of interest charged by the Lenders on or under this Agreement, the Loans or the other Credit Documents is usurious.

Administrative Agent, First Lien Collateral Agent, the Lenders, the Hedge Banks, the Issuing Banks and the Obligors hereby waive any right to stay or dismiss any action or proceeding under or in connection with the Projects, this Agreement or any other Credit Document brought before the foregoing courts on the basis of *forum non-conveniens*.

11.16 Knowledge and Attribution

References in this Agreement and the other Credit Documents to the "knowledge", "best knowledge" or facts and circumstances "known to" the Obligors, and all like references, mean facts or circumstances of which a Responsible Officer of the applicable Obligor has actual knowledge.

11.17 Successors and Assigns

The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Borrower may not assign or otherwise transfer any of its rights under this Agreement, and the Lenders may not assign or otherwise transfer any of their rights under this Agreement except as provided in Article 9.

11.18 Counterparts

This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in one or more duplicate counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Delivery of an executed counterpart to this Agreement by facsimile transmission or electric transmission in ".pdf" format shall be as effective as delivery of a manually signed original.

11.19 Usury

Nothing contained in this Agreement or the Notes shall be deemed to require the payment of interest or other charges by Borrower or any other Person in excess of the amount which the holders of the Notes may lawfully charge under applicable usury laws. In the event that the Lenders shall collect moneys which are deemed to constitute interest which would increase the effective Interest Rate to a rate in excess of that permitted to be charged by applicable Legal Requirements, all such sums deemed to constitute interest in excess of the legal rate shall, upon such determination, at the option of the Lenders, be returned to Borrower or credited against the principal balance then outstanding.

11.20 Survival

All representations, warranties, covenants and agreements made herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement and the other Credit Documents shall be considered to have been relied upon by the parties hereto and shall survive the execution and delivery of this Agreement, the other Credit Documents and the making of the Loans. Notwithstanding anything in this Agreement or implied by law to the contrary, the agreements of the Obligors set forth in Sections 2.1(f), 2.4(d), 2.6(c), 2.6(d), 11.4, 11.13 and 11.22 and the agreements of the Lenders set forth in Sections 9.1, 9.5, 9.8 and 11.22 shall survive the payment and performance of the Loans and the other First Lien Obligations under this Agreement and the other Credit Documents and the reimbursement of any amounts drawn hereunder, and the termination of this Agreement.

11.21 Patriot Act Notice

Each Lender, First Lien Collateral Agent (for itself and not on behalf of any other Person, including any Lender), Administrative Agent (for itself and not on behalf of any other Person, including any Lender) and Issuing Bank (for itself and not on behalf of any other Person, including any Lender) hereby notifies the Obligors and Sponsor that, pursuant to the requirements of the USA Patriot Act (2001 H.R. 3162 (signed into law October 26, 2001)) (the "**Patriot Act**"), it is required to obtain, verify and record information that identifies the Obligors and Sponsor which information includes the name, address, the tax identification number and other identifying information that shall allow such Lender, First Lien Collateral Agent, Administrative Agent or Issuing Bank, as applicable, to identify the Obligors and Sponsor in accordance with the Patriot Act.

11.22 Treatment of Certain Information; Confidentiality

Each Lender, each Hedge Bank and each Agent agrees (on behalf of itself and each of its Affiliates, directors, officers, members, employees, agents and third party service providers and representatives) to keep confidential any nonpublic information supplied to it by Borrower or any other Obligor; provided, that nothing herein shall limit the disclosure of any such information: (a) to the extent such information is required to be disclosed by any Governmental Rule or judicial or administrative process, or to any Governmental Authority in connection with a tax audit or dispute or otherwise; (b) to counsel for any of the Lenders or any Agent; (c) to banking, securities exchange or other regulatory or supervisory authorities, auditors or accountants having proper jurisdiction and authority to require such disclosure; (d) to any Agent or any other Lender; (e) to any entity in connection with a securitization or proposed securitization of, among other things, all or a part of any amounts payable to or for the benefit of any Lender or its Affiliates under the Credit Documents so long as such entity agrees to keep such information confidential in a manner consistent with this Section 11.22; (f) in connection with the exercise of any remedies hereunder or under any of the other Credit Documents, including without limitation upon the occurrence of any Event of Default and any enforcement or collection proceedings resulting therefrom or in connection with the negotiation of any restructuring or "work-out", whether or not consummated, of the obligations of Borrower under this Agreement or the obligations of any Obligor or Major Project Participant under any other Credit Document or any suit, action or proceeding relating to this Agreement or any other Credit Document or the enforcement of rights hereunder or thereunder, so long as such Major Project Participant agrees to keep such information confidential in a manner consistent with this Section 11.22; (g) to the Independent Engineer, the Market Consultant, the Reserve Consultant, the Insurance Consultant, the Environmental Consultant or to other experts engaged by Administrative Agent or any Lender in accordance with the provisions of this Agreement and in connection with the transactions contemplated hereby so long as such expert agrees to keep such information confidential in a manner consistent with this Section 11.22; (h) to any assignee or Participant (or prospective assignee or Participant) so long as such assignee or Participant (or prospective assignee or Participant) agrees to keep such information confidential in a manner consistent with this Section 11.22, (i) with the consent of Borrower or the relevant Obligor; (j) in connection with the collateral assignment of all or any portion of the Loans or Notes held by it to the Federal Reserve Bank, any other central banking authorities in accordance with applicable law and the United States Treasury as collateral security; or (k) to credit insurers of the Lenders in connection with the transactions contemplated hereby so long as such credit insurers agree to keep such information confidential in a manner consistent with this Section 11.22. In no event shall any Lender, Administrative Agent or First Lien Collateral Agent be obligated or required to return any materials furnished by Borrower. Notwithstanding the foregoing provisions of this Section 11.22, the foregoing obligation of confidentiality shall not apply to any such information that (x) was known to any Lender or Agent prior to the time it received such confidential information from Borrower or its Affiliates, (y) becomes part of the public domain independently of any act of any Lender or Agent not permitted hereunder (through publication or otherwise), or (z) is received by any Lender or any Agent, as applicable, without restriction as to its disclosure or use, from a Person other than an Obligor. Notwithstanding anything to the contrary set forth herein or in any other agreement to which the parties hereto are parties or by which they are bound, any obligations of confidentiality contained herein and therein, as they relate to the transactions contemplated by this Agreement (the "**Loan Transactions**"), shall not apply to the federal tax structure or federal tax treatment of the Loan Transactions, and each party hereto (and any employee, representative, or agent of any party hereto) may disclose to any and all Persons, without limitation of any kind, the federal tax structure and federal tax treatment of the Loan Transactions. The preceding sentence is intended to cause the Loan Transactions not to be treated as having been offered under conditions of confidentiality for purposes of Section 1.6011-4(b)(3) (or any successor provision) of the Treasury Regulations promulgated under Section 6011 of the Code and shall be construed in a manner consistent with such purpose. In addition, each party hereto acknowledges that it has no proprietary or exclusive rights to any tax concept, tax matter or tax idea related to the Loan Transactions. Nothing herein shall permit the disclosure of such confidential information to Disqualified Institutions by any party under the Agreement (or any Person receiving information under this Section 11.22) unless agreed to by Borrower.

11.23 Communications

(a) Delivery.

(i) Each Obligor hereby agrees that it shall use all reasonable efforts to provide to Administrative Agent all information, documents and other materials that it is obligated to furnish to Administrative Agent pursuant to this Agreement and any other Credit Document, including all notices, requests, financial statements, financial and other reports, certificates and other information materials (collectively, the "**Communications**"), by transmitting the Communications in an electronic/soft medium in a format reasonably acceptable to Administrative Agent at the address referenced on Section 11.1. Nothing in this Section 11.23 shall prejudice the right of the Coordinating Lead Arrangers, Joint Lead Arrangers, any Lender or Borrower to give any notice or other communication pursuant to this Agreement or any other Credit Document in any other manner specified in this Agreement or any other Credit Document.

(ii) Administrative Agent agrees that receipt of the Communications by Administrative Agent at the email address referenced in Section 11.1 shall constitute effective delivery of the Communications to Administrative Agent for purposes of the Credit Documents. Each Lender agrees that notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform (as defined below) shall constitute effective delivery of the Communications to such Lender for purposes of the Credit Documents. Each Lender agrees (A) to notify Administrative Agent in writing (including by electronic communication) from time to time of such Lender's email address to which the foregoing notice may be sent by electronic transmission, and (B) that the foregoing notice may be sent to such email address.

(b) Posting. Borrower further agrees that Administrative Agent may make the Communications available to the Lenders by posting the Communications on IntraLinks, SyndTrak or a substantially similar electronic transmission system (the "**Platform**").

(c) The Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the accuracy or completeness of the Communications or the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall Administrative Agent, Collateral Agent, Syndication Agent, any other Agent, Coordinating Lead Arranger, or Joint Lead Arrangers or any of their Affiliates or any of their respective officers, directors, employees, agents advisors or representatives (collectively, the "**Agent Parties**") have any liability to any Obligor, any Lender or any other Person or entity for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of such Obligor's or such Person's transmission of Communications through the internet, except to the extent the liability of any Agent Party is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted primarily from such Agent Party's gross negligence or willful misconduct.

11.24 Acknowledgement and Consent to Bail-In of Affected Financial Institutions

Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Credit Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership shall be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Credit Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

11.25 Certain ERISA Matters

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender hereto, to, and (y) covenants, from the date such Person became a Lender hereto to the date such Person ceases being a Lender hereto, for the benefit of, the Administrative Agent and its Affiliates and not, for the avoidance of doubt, to or for the benefit of the Borrower, that at least one of the following is and shall be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) of one or more Benefit Plans in connection with the Loans, the Letters of Credit, the Commitments or this Agreement;

(ii) the prohibited transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable so as to exempt from the prohibitions of Section 406 of ERISA and Section 4975 of the Code such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of sub-section (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (i) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (ii) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (A) represents and warrants, as of the date such Person became a Lender hereto, and (B) covenants, from the date such Person became a Lender hereto to the date such Person ceases being a Lender hereto, for the benefit of, the Administrative Agent and its Affiliates and not, for the avoidance of doubt, to or for the benefit of the Borrower, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Credit Document or any documents related hereto or thereto).

11.26 Keepwell

Each Qualified ECP Guarantor hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Obligor to honor all of its obligations to (a) the First Lien Secured Parties under the First Lien Collateral Documents in respect of Swap Obligations that are First Lien Obligations and (b) the guaranty provided within the Intercreditor Agreement; provided, that each Qualified ECP Guarantor shall only be liable under this Section 11.26 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 11.26, or otherwise under the First Lien Collateral Documents, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount. The obligations of each Qualified ECP Guarantor under this Section 11.26 shall remain in full force and effect until the termination of this Agreement. Each Qualified ECP Guarantor intends that this Section 11.26 constitute, and this Section 11.26 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Obligor for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

11.27 Security Agreement and Intercreditor Agreement

Each Lender hereby acknowledges and agrees on behalf of itself that the Lien priorities and other matters related to the Credit Documents and the Collateral are subject to and governed by the Security Agreement, Intercreditor Agreement and the other First Lien Collateral Documents. Each Lender, by delivering its signature page hereto, funding its Loans on the **Initial** Closing Date and/or executing an assignment and assumption agreement, in form and substance reasonably satisfactory to the Administrative Agent, (as applicable) shall be deemed to have (a) acknowledged receipt of, consented to and approved of the Security Agreement, the Intercreditor Agreement, the Depositary Agreement and the other First Lien Collateral Documents and (b) authorized and directed the Administrative Agent and the First Lien Collateral Agent to perform their respective obligations thereunder.

11.28 Acknowledgement Regarding Any Supported QFCs

To the extent that the Financing Documents provide support, through a guarantee or otherwise, for a Swap Obligation or any other agreement or instrument that is a QFC (such support, "**QFC Credit Support**" and each such QFC a "**Supported QFC**"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "**U.S. Special Resolution Regimes**") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Financing Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a "**Covered Party**") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party shall be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Financing Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Financing Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

11.29 Climate Bonds Standard and Certification Scheme

The Loan Parties obtained a certification of the Term Loans under the applicable standards of the then-applicable "Climate Bonds Standard and Certification Scheme", and obtained a post-issuance certification of the Term Loans under such standards on June 4, 2021. The Obligors will use commercially reasonable efforts to (a) obtain on or prior to the **Second** Omnibus Amendment Date certification of the Term Loans under the applicable standards of the Climate Bonds Standard and Certification Scheme and, within twelve months after the **Second** Omnibus Amendment Date, obtain a post-issuance certification of the Term Loans under the applicable standards of the Climate Bonds Standard and Certification Scheme and (b) comply in all material respects with the reporting requirements set forth in Section 2.4 of the Green Financing Framework; provided, that, notwithstanding the foregoing or anything in this Agreement or any other Financing Document to the contrary, no failure by any Obligor to comply with this Section 11.29, any terms of the Climate Bonds Standard and Certification Scheme or any reporting requirements or any other terms of the Green Financing Framework shall (i) constitute a Default, a CTA Default, an Event of Default or a CTA Event of Default under this Agreement or any other Financing Document, (ii) give rise to any claim, liability, remedy or other cause of action (including any remedy of specific performance), (iii) operate in any matter to limit, restrict or otherwise affect the use of proceeds of the Term Loans or (iv) otherwise affect Obligor's right or ability to take any actions otherwise permitted under this Agreement or any other Financing Document.

11.30 Electronic Execution

The words "execution," "execute", "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation assignments, amendments or other Notices of Borrowing, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

11.31 Climate Loan Disclaimer

The certification of the Loans by the Climate Bonds Initiative is based solely on the Climate Bond Standard and does not, and is not intended to, make any representation**, warranty, undertaking, express or implied,** or give any assurance with respect to any other matter relating to the Loans or any Project, including but not limited to the Information Memorandum, the transaction documents, the Borrower or the management of the Borrower.

The certification of the Loans as Climate Bonds by the Climate Bonds Initiative was addressed solely to the board of directors of the Borrower and is not a recommendation to any person to purchase, hold or sell the Loans and such certification does not address the market price or suitability of the Loans for a particular investor. **Each potential purchaser of the Loans should determine for itself the relevance of this certification. Any purchase of bonds should be based upon such investigation that each potential purchaser deems necessary.** The certification also does not address the merits of the decision by the Borrower or any third party to participate in any Project and does not express and should not be deemed to be an expression of an opinion as to the Borrower or any aspect of any Project (including but not limited to the financial viability of any Project) other than with respect to conformance with the Climate Bond Standard.

In issuing or monitoring, as applicable, the certification, the Climate Bonds Initiative has assumed and relied upon and will assume and rely upon the **fairness,** accuracy**, reasonableness** and completeness in all material respects of the information supplied or otherwise made available to the Climate Bonds Initiative. The Climate Bonds Initiative does not assume or accept any responsibility **or liability** to any person for independently verifying (and it has not verified) such information or to undertake (and it has not undertaken) any independent evaluation of any Project or the Borrower. In addition, the Climate Bonds Initiative does not assume any obligation to conduct (and it has not conducted) any physical inspection of any Project. The certification may only be used with the Loans and may not be used for any other purpose without the Climate Bonds Initiative's prior written consent.

The certification does not and is not in any way intended to address the likelihood of timely payment of interest when due on the Loans and/or the payment of principal at maturity or any other date.

The certification may be withdrawn at any time in the Climate Bonds Initiative's sole and absolute discretion and there can be no assurance that such certification will not be withdrawn.

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DEFINITIONS

"**2021 LC ~~Commitment~~Commitment**" has the meaning assigned to such term in the Omnibus Amendment.

"**2021 Term Loans**" has the meaning assigned to such term in the Omnibus Amendment.

"**2021 Term Loan Commitment**" has the meaning assigned to such term in the Omnibus Amendment.

"2022 Term Loans" has the meaning assigned to such term in the Second Omnibus Amendment.

"2022 Term Loan Commitment" has the meaning assigned to such term in the Second Omnibus Amendment.

"Abandonment" means, with respect to any Battery Project, (a) any Obligor shall make a formal, public announcement of its decision to abandon the Battery Project or (b) the Obligors shall have decided to permanently cease all activities relating to such Battery Project and such cessation shall have continued for a period of more than thirty consecutive days for any reason other than force majeure, a Casualty Event or a Legal Requirement; provided, that in each case, none of (A) scheduled maintenance of such Battery Project, (B) repairs to such Battery Project, whether or not scheduled, or (C) a forced outage or scheduled downtime with respect to such Battery Project shall constitute abandonment or suspension of such Battery Project so long as the Borrower is diligently attempting to end such cessation.

"**Additional Major Project Contract**" has the meaning given in the First Lien Common Terms Agreement.

"Adjusted Term SOFR" means, for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment; provided that if Adjusted Term SOFR as so determined shall ever be less than the Floor, then Adjusted Term SOFR shall be deemed to be the Floor.

"**Administrative Agent**" has the meaning given in the preamble hereto.

"**Administrative Services Agreement**" has the meaning given in the First Lien Common Terms Agreement.

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

"**Affiliate**" has the meaning given in the Intercreditor Agreement.

"**Agency Fee Letter**" means that certain letter agreement regarding fees, dated June 9, 2020, by and among Administrative Agent and Borrower.

"**Agent(s)**" means the Administrative Agent, the First Lien Collateral Agent and the Depositary Agent.

"**Agent Parties**" has the meaning given in Section 11.23(c).

"**Agreement**" has the meaning given in the preamble hereto.

"**Annual Operating Budget**" has the meaning given in Section 5.3(a).

"**Anti-Corruption Laws**" has the meaning given in Section 4.23(b).

"**Anti-Money Laundering Laws**" has the meaning given in Section 4.23(b).

"**Applicable Margin**" means, for any period, in respect of Base Rate Loans and respect of ~~LIBOR~~SOFR Loans, the applicable rate per annum set forth below in respect of such period.

Term Period	Base Rate Loans	~~LIBOR~~SOFR Loans
From the Second Omnibus Amendment Date until the third anniversary of the Second Omnibus Amendment Date	~~0.625~~0.50%	~~1.625~~1.50%
From the day immediately following the third anniversary of the Second Omnibus Amendment Date until the sixth anniversary of the Second Omnibus Amendment Date	~~0.750~~0.625%	~~1.750~~1.625%
From and after the day immediately following the sixth anniversary of the Second Omnibus Amendment Date	~~0.875~~0.75%	~~1.875~~1.75%

"**Available Tenor**" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if ~~the then-current~~such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an ~~Interest Period~~interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark~~, as applicable, pursuant to this Agreement as of such date.~~ (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to Section 2.6(a)(iv).

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

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

"**Banking Day**" means any day other than a Saturday, Sunday or other day on which commercial banks are or Administrative Agent is authorized or required to be closed in the State of California or the State of New York ~~and, where such term is used in any respect relating to a LIBOR Loan, which is also a day on which dealings in U.S. Dollar deposits are carried out in the London interbank market~~.

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

"**Base Case Projections**" means a projection of operating results for the Projects, showing at a minimum Borrower's reasonable good faith estimates, as of the **Second** Omnibus Amendment Date, of revenues, O&M Costs, Major Maintenance, Capital Expenditures, the Debt Service Coverage Ratio, and sources and uses of revenues over the forecast period, which projections were delivered pursuant to Section 7(o) of the **Second** Omnibus Amendment.

"**Base Rate**" means, for any day, **a rate per annum equal to** the ~~greatest~~**highest** of (a) the prime rate published in the Wall Street Journal, (b) the Federal Funds Rate ~~for~~**in effect on** such day plus 0.50%~~,~~ and (c) **Adjusted Term SOFR for a one-month tenor in effect on such day plus** 1.00%. Any change in the Base Rate due to a change in the prime rate, bank prime rate ~~or~~**,** the Federal Funds Rate **or Adjusted Term SOFR** shall be effective from and including the effective date of such change in the prime rate, bank prime rate, the Federal Funds Rate~~, as the case may be.~~ **or Adjusted Term SOFR, respectively.**

"**Base Rate ~~LC~~Multi-Draw Facility Loan**" means ~~an LC~~**a Multi-Draw Facility** Loan that shall bear interest at the rate set forth in Section 2.1(c)(i)(D).

"**Base Rate Loans**" means, collectively, the Base Rate Term Loans and the Base Rate ~~LC~~**Multi-Draw Facility** Loans.

"**Base Rate Term Loan**" means a Term Loan which bears interest as provided in Section 2.1(c)(i)(A).

"Battery Projects" has the meaning give in the Intercreditor Agreement.

"**Benchmark**" means, initially, ~~LIBO~~**the Term SOFR Reference** Rate; provided that if a ~~replacement of the~~ Benchmark **Transition Event** has occurred ~~pursuant to Section 2.6(a)~~**with respect to the Term SOFR Reference Rate or the then-current Benchmark**, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate~~. Any reference to "Benchmark" shall include, as applicable, the published component used in the calculation thereof~~ **pursuant to Section 2.6(a)(i)**.

~~"Benchmark Replacement" means, for any Available Tenor:~~

~~(a) For purposes of clause (i) of Section 2.6(a), the first alternative set forth below that can be determined by the Administrative Agent:~~

~~(i) the sum of: (A) Term SOFR and (B) 0.11448% (11.448 basis points) for an Available Tenor of one-month's duration, 0.26161% (26.161 basis points) for an Available Tenor of three-months' duration, and 0.42826% (42.826 basis points) for an Available Tenor of six-months' duration, or~~

~~(ii) the sum of: (A) Daily Simple SOFR and (B) the spread adjustment selected or recommended by the Relevant Governmental Body for the replacement of the tenor of LIBO Rate with a SOFR-based rate having approximately the same length as the interest payment period specified in clause (i) of Section 2.6(a); and~~

~~For purposes of clause (ii) of Section 2.6(a)~~"Benchmark Replacement" means, with respect to any Benchmark Transition Event, the sum of~~:~~ (~~i~~a) the alternate benchmark rate ~~and (ii) an adjustment (which may be a positive or negative value or zero), in each case,~~ that has been selected by the Administrative Agent and the Borrower ~~as the replacement for such Available Tenor of such Benchmark~~ giving due consideration to ~~the then-prevailing market convention or any evolving market convention, including any applicable recommendations made~~(i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body~~;~~ or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for U.S. dollar-denominated ~~broadly~~ syndicated credit facilities ~~at such time~~and (b) the related Benchmark Replacement Adjustment;

provided that, if the Benchmark Replacement as determined ~~pursuant to clause (a) or (b) above~~ would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Credit Documents.

"**Benchmark Replacement** ~~Conforming Changes~~Adjustment" means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, ~~any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "Business Day," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides are appropriate to reflect the adoption and implementation of such Benchmark Replacement that permit the administration thereof by the Administrative Agent in a manner substantially consistent with the prevailing market practice~~the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated ~~broadly~~ syndicated credit facilities ~~(or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent decides that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Credit Documents).~~at such time.

"Benchmark Replacement Date" means a date and time determined by the Administrative Agent and the Borrower, which date shall be no later than the earlier to occur of the following events with respect to the then-current Benchmark:

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

(b) in the case of clause (c) of the definition of "Benchmark Transition Event," the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

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

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

(b) ~~"Benchmark Transition Event" means, with respect to any then-current Benchmark other than LIBO Rate, the occurrence of~~ a public statement or publication of information by ~~or on behalf of the administrator of the then-current Benchmark,~~ the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors of the Federal ~~Reserve~~Reserves System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark~~, announcing or stating that (a) such~~ (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease ~~on a specified date~~ to provide all Available Tenors of such Benchmark~~;~~ (or such component thereof) permanently or indefinitely~~;~~; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark ~~or (b) all Available Tenors of such Benchmark are or will no longer be representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored.~~(or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

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

"Benchmark Unavailability Period" means, the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Credit Document in accordance with Section 2.6(a) and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Credit Document in accordance with Section 2.6(a).

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

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

"**Beneficially Owns**" shall have the corresponding meaning to the term "Beneficial Owner" as defined in Rule 13d-3 and Rule 13d-5 under the Exchange Act.

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

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

"**Bona Fide Debt Fund**" means any fund or investment vehicle that is primarily engaged in the making, purchasing, holding or otherwise investing in commercial loans, bonds and other similar extensions of credit or securities in the ordinary course.

"**Bookrunner**" means MUFG Union Bank, N.A., BNP Paribas, CoBank, ACB, Coöperatieve Rabobank, U.A., New York Branch, ING Capital LLC, Mizuho Bank, Ltd., MUFG Union Bank, N.A., National Bank of Canada, Sumitomo Mitsui Banking Corporation, Truist Securities, Inc., Crédit Agricole Corporate and Investment Bank and Natixis, New York Branch, each acting in its capacity as a Bookrunner under this Agreement.

"**Borrower**" has the meaning given in the preamble hereto.

"**Borrowing**" means a borrowing by Borrower of any Loan.

"**Borrowing Date**" has the meaning given in Section 3.2.

"**Calculation Period**" has the meaning given in the First Lien Common Terms Agreement.

"**Calistoga**" has the meaning given in the preamble hereto.

"**Capital Expenditures**" has the meaning given in the First Lien Common Terms Agreement.

"**Cash Collateralize**" means, with respect to any Letter of Credit or any other First Lien Obligation, the deposit of immediately available funds into a cash collateral account maintained with (or on behalf of) the applicable Issuing Bank on terms reasonably satisfactory to such Issuing Bank in an amount equal to 102.5% of the Stated Amount of such Letter of Credit or such other First Lien Obligation. "Cash Collateral", "Cash Collateralized", and "Cash Collateralization" shall have correlative meanings.

"**Casualty Event**" has the meaning given in the First Lien Common Terms Agreement.

"**Change in Law**" has the meaning given in Section 2.6(b).

"**Change of Control**" means the occurrence of one or more of the following events:

(a) the Borrower ceases to Beneficially Own 100% of the Equity Interests of the Project Companies on a fully diluted basis (except as permitted by the Financing Documents);

(b) the Sponsor ceases to own, directly or indirectly, at least 20% of the Equity Interests in the Borrower on a fully diluted basis;

(c) the Sponsor ceases to maintain, directly or indirectly, day-to-day operational control of the Borrower; or

(d) Holdings ceases to own, directly, 100% of the Equity Interests in the Borrower on a fully diluted basis;

provided, that no Change of Control will be deemed to have occurred in the case of clauses (b) or (c) above if the Borrower (x) is directly or indirectly controlled by one or more Persons, at least one of which (i) either (A) is a Qualified Operator or (B) has engaged the Sponsor or another Qualified Operator to operate the Projects; and (ii) has a tangible net worth (or has an Affiliate that has a tangible net worth) of at least $750,000,000); (y) obtains a ratings reaffirmation of at least two of the then-current ratings of any then-outstanding First Lien Secured Bond Debt in the capital markets (or, if such First Lien Secured Bond Debt has a rating at such time that is higher than the lowest Investment Grade rating, confirmation by at least two of S&P, Fitch, Kroll and Moody's that after such giving effect to the transaction such indebtedness has an Investment Grade rating); provided, that this clause (y) shall only apply if the Borrower has incurred First Lien Secured Bond Debt in the capital markets which requires such ratings reaffirmation, and (z) shall have provided the Administrative Agent with all information reasonably necessary for the Lenders and Issuing Banks to identify the Qualified Operator in accordance with the requirements of the PATRIOT Act (including applicable, and uniformly applied, "know your customer" regulations) and all other applicable anti-money laundering laws and anti-terrorism laws.

"**Climate Bonds Standard and Certification Scheme**" means a labelling scheme for bonds, loans and other debt instruments under the Climate Bonds Standard V3.0, published by the Climate Bonds Initiative and as in effect on the **Initial** Closing Date.

~~**"Closing Date" has the meaning given in Section 3.1.**~~

~~**"Closing Date Credit Document" means any Credit Document to be entered into on the Closing Date.**~~

"**Collateral**" has the meaning given in the Intercreditor Agreement.

"**Collateral Agents**" has the meaning given in the Intercreditor Agreement.

"**Commitments**" means, with respect to each Lender, such Lender's Term Loan Commitment, ~~LC~~**Multi-Draw Facility** Commitment and with respect to all Lenders, the Total Term Loan Commitment and the Total **Multi-Draw Facility** LC Commitment.

" **Commodity Exchange Act**" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"**Communications**" has the meaning given in Section 11.23(a).

"**Confirmation of Interest Period Selection**" has the meaning given in Section 2.1(e)(iii)(B).

"Conforming Changes" means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "Banking Day," the definition of "U.S. Government Securities Business Day," the definition of "Interest Period" or any similar or analogous definition (or the addition of a concept of "interest period"), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.7 and other technical, administrative or operational matters) that the Administrative Agent (in consultation with the Borrower) decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent (in consultation with the Borrower) decides is reasonably necessary in connection with the administration of this Agreement and the other Credit Documents).

"**Consent**" means (a) the consents to collateral assignment entered into on the **Initial** Closing Date pursuant to Section 3.1(y) and (b) the consents to collateral assignment entered into after the **Initial** Closing Date from the counterparties to all Major Project Contracts, in each case, to the extent required by the Credit Documents and in substantially the form of Exhibit E, with such changes as are reasonably acceptable to Administrative Agent.

"**Coordinating Lead Arrangers**" means MUFG Union Bank, N.A., BNP Paribas, CoBank, ACB, Coöperatieve Rabobank, U.A., New York Branch, ING Capital LLC, Mizuho Bank, Ltd., National Bank of Canada, Sumitomo Mitsui Banking Corporation, Truist Securities, Inc., Crédit Agricole Corporate and Investment Bank and Natixis, New York Branch.

"**Covered Entity**" means any of the following:

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

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

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

"**Covered Party**" has the meaning given in Section 11.28.

"**Credit Document**" means (a) the First Lien Common Terms Agreement, (b) this Agreement, (c) the First Lien Collateral Documents, (d) the other financing and security agreements, documents and instruments delivered in connection with this Agreement (excluding, for the avoidance of doubt, (A) any Permitted Interest Rate Agreements and any Permitted Commodity Hedge Agreements and (B) any Second Lien Documents (other than the Intercreditor Agreement and the Depositary Agreement)), and (e) each other document designated as a Credit Document by the Borrower and the Administrative Agent.

"**Credit Event**" means the making or continuation of Term Loans in accordance with Section 2.1 or the issuance, amendment, renewal or extension of a Letter of Credit.

"**CTA Default**" has the meaning given in the First Lien Common Terms Agreement.

"**CTA Event of Default**" has the meaning given in the First Lien Common Terms Agreement.

~~**"Daily Simple SOFR" means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent (which shall be substantially consistent with market practice for U.S. dollar-denominated broadly syndicated credit facilities and administratively feasible for the Administrative Agent) in accordance with the conventions for this rate recommended by the Relevant Governmental Body for determining "Daily Simple SOFR"; provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.**~~

"**Debt Service**" has the meaning given in the First Lien Common Terms Agreement.

"**Debt Service Coverage Ratio**" has the meaning given in the First Lien Common Terms Agreement.

"**Debt Service Reserve Account**" has the meaning given in the Depositary Agreement.

"**Debt Service Reserve Requirement**" means, as of any date, an amount equal to the amount of interest and commitment fees, and required amortization payments in respect of the Term Loans (net of any ordinary course hedge payments to be made under the Permitted Interest Rate Agreements with respect to the Term Loans) reasonably anticipated to be payable over the next six-month period (other than the final principal payment of the Loans on the final Maturity Date and excluding, for the avoidance of doubt, any principal required to be repaid pursuant to Section 2.1(h)(iii)).

"**Default**" means any event that is, or with the passage of time or the giving of notice or both, would be, an Event of Default.

"**Default Rate**" has the meaning given in Section 2.4(c).

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

"**Defaulting Lender**" means, subject to Section 2.4(g)(vi), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Banking Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two Banking Days of the date when due, (b) has become the subject of a Bail-In Action, (c) has notified Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (d) has failed, within three Banking Days after written request by the Administrative Agent or Borrower, to confirm in writing to the Administrative Agent and Borrower that it shall comply with its prospective funding obligations hereunder; provided, that such Lender shall cease to be a Defaulting Lender pursuant to this clause (d) upon receipt of such written confirmation by the Administrative Agent and Borrower, or (e) has, or has a direct or indirect parent company that has, other than via an Undisclosed Administration, (i) become the subject of a proceeding under any Bankruptcy Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal or national regulatory authority acting in such a capacity; provided, that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (e) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.4(g)(vi) upon delivery of written notice of such determination to Borrower and each Lender).

"**Depositary Accounts**" has the meaning given in the Depositary Agreement.

"**Depositary Agent**" means MUFG Union Bank, N.A., not in its individual capacity but solely as depositary agent, bank and securities intermediary under the Depositary Agreement and its permitted successors and assigns.

"**Depositary Agreement**" has the meaning given in the Intercreditor Agreement and is substantially in the form of Exhibit D-2.

"**Depositary and Collateral Agency Fee Letter**" has the meaning given in Section 2.3(a).

"**Discharge of First Lien Obligations**" has the meaning given in the Intercreditor Agreement.

"**Disqualified Institutions**" means (a) those Persons identified by the Borrower or the Sponsor to the Administrative Agent in writing prior to the **Initial** Closing Date (and such Persons' Affiliates clearly identifiable as such solely on the basis of their names (other than an Affiliate that is a Bona Fide Debt Fund)), (b) competitors of any Obligor separately identified by the Borrower or the Sponsor to the Administrative Agent in writing from time to time and (c) any Affiliate of any competitor described in clause (b) that is identified by the Borrower or the Sponsor to the Administrative Agent in writing from time to time or clearly identifiable solely by name as an Affiliate of such Person, other than an Affiliate of such Person that is a Bona Fide Debt Fund; provided, that no updates to the Disqualified Institution list shall be deemed to retroactively disqualify any parties that have previously acquired an assignment or participation in respect of the Loans or Commitments from continuing to hold or vote such previously acquired assignments and participations on the terms set forth herein for Lenders that are not Disqualified Institutions. Any supplement to the list of Disqualified Institutions pursuant to clause (b) or (c) above shall be made by the Borrower to the Administrative Agent in writing (including by email) and such supplement shall take effect three Banking Days after such notice is received by the Administrative Agent. The list of Disqualified Institutions shall be made available to any Lender, any Participant, prospective Lender or prospective Participant upon request to the Administrative Agent, subject to customary confidentiality requirements.

"**Division**" means the division of a limited liability company into two or more limited liability companies pursuant to a "plan of division" or similar method within the meaning of the Delaware Limited Liability Company Act.

"**Drawing Payment**" means any payment by an Issuing Bank honoring a drawing under a Letter of Credit.

"**DSR Issuing Bank**" means each Lender listed on Schedule 2.2(a) holding ~~LC~~Multi-Draw Facility Commitments and each other Lender designated as DSR Issuing Bank pursuant to Section 2.2(g), in each case in its capacity as an issuer of any DSR Letter of Credit hereunder, and its successors in such capacity pursuant to Section 2.2(i). A DSR Issuing Bank may, in its discretion, arrange for any DSR Letter of Credit to be issued by an Affiliate of such DSR Issuing Bank, in which case the term "DSR Issuing Bank" shall include any such Affiliate with respect to the DSR Letters of Credit issued by such Affiliate.

"**DSR LC Fee**" has the meaning given in Section 2.3(c)(ii).

"**DSR Letter of Credit**" has the meaning given in Section 2.2(a).

" **DSR LC Reimbursement Obligation**" means the obligation of the Borrower to repay any Drawing Payments relating to any DSR Letter of Credit.

~~**"Early Opt-in Effective Date" means, with respect to any Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt- in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.**~~

~~**"Early Opt-in Election" means the occurrence of:**~~

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

~~**(b) the joint election by the Administrative Agent and the Borrower to trigger a fallback from LIBO Rate and the provision by the Administrative Agent of written notice of such election to the Lenders.**~~

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

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

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

"**Electronic Transmission**" has the meaning given in Section 11.1.

"**Eligible Assignee**" means a commercial bank, financial institution, insurance company, investment or mutual fund or other entity that is an "accredited investor" (as defined in Regulation D under the Securities Act) and which extends credit or buys loans in the ordinary course of business.

"**Eminent Domain Proceeds**" has the meaning given in the Depositary Agreement.

"**Environmental Consultant**" means West Yost Associates.

"**Environmental Law**" has the meaning given in the Intercreditor Agreement.

"**Equity Interests**" has the meaning given in the Intercreditor Agreement.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended.

"**ERISA Affiliate**" means any corporation or trade or business (whether or not incorporated) under common control with any of the Borrower or Guarantors within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

"**ERISA Event**" means (a) the occurrence of any "reportable event" as defined in Section 4043(c) of ERISA or the regulations issued thereunder, other than those events as to which the thirty-day notice period has been waived, with respect to an ERISA Plan, (b) any failure by any ERISA Plan to satisfy the minimum funding standard (within the meaning of Section 412 or 430 of the Code or Section 302 of ERISA) applicable to such ERISA Plan, in each case, whether or not waived, (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any ERISA Plan, the failure to make by its due date a required installment under Section 430(j) of the Code with respect to any ERISA Plan or the failure to make any required contribution to a Multiemployer Plan, (d) a determination that any ERISA Plan is, or is expected to be, in "at risk" status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code), (e) the incurrence by the Borrower or any Guarantor or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any ERISA Plan, (f) the receipt by the Borrower or any Guarantor or any ERISA Affiliate from the Pension Benefit Guaranty Corporation or a plan administrator of any notice relating to an intention to terminate any ERISA Plan or to appoint a trustee to administer any ERISA Plan under Section 4042 of ERISA, or the occurrence of any event or condition which could reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any ERISA Plan, (g) the incurrence by the Borrower or any Guarantor or any ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any ERISA Plan or Multiemployer Plan, (h) the receipt by the Borrower or any Guarantor or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any Guarantor or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent, or in endangered or critical status (within the meaning of Section 432 of the Code or Section 305 of ERISA), or (i) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could reasonably be expected to result in liability to the Borrower or any Guarantor.

"**ERISA Plan**" means any employee pension benefit plan (other than a Multiemployer Plan) that is maintained or is contributed to by the Borrower or any Guarantor or any ERISA Affiliate and is covered by Title IV of ERISA or is subject to minimum funding standards under Section 412 of the Code or Section 302 of ERISA and in respect of which the Borrower, the Guarantors or any ERISA Affiliate is (or if such plan were terminated the Borrower or any Guarantor would, under Section 4069 of ERISA, be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"**Erroneous Payment**" has the meaning assigned to it in Section 9.21(a).

"**Erroneous Payment Deficiency Assignment**" has the meaning assigned to it in Section 9.21(d)(i).

"**Erroneous Payment Impacted Class**" has the meaning assigned to it in Section 9.21(d)(i).

"**Erroneous Payment Return Deficiency**" has the meaning assigned to it in Section 9.21(d)(i).

"**Erroneous Payment Subrogation Rights**" has the meaning assigned to it in Section 9.21(e).

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

"**Event of Default**" has the meaning given in Section 7.1.

"**Event of Eminent Domain**" has the meaning given in the Depositary Agreement.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, or any successor statute or statutes thereto.

"**Excluded Taxes**" means any of the following Taxes imposed on or with respect to a Lender Party or required to be withheld or deducted from a payment to a Lender Party, (a) Taxes imposed on or measured by net income (however denominated), franchise and branch profits taxes, which include Taxes imposed on or measured by the net income, net profits or capital of such Lender Party by any jurisdiction or any political subdivision or taxing authority thereof or therein as a result of a connection between such Lender Party and such jurisdiction or political subdivision, unless such connection results solely from such Lender Party's executing, delivering or performing its obligations or receiving a payment under, or enforcing, this Agreement or any Note, (b) any withholding Tax imposed by the United States that is in effect and would apply to amounts payable hereunder to such Lender Party at the time such Lender Party becomes a party to this Agreement (other than pursuant to an assignment request by Borrower under Section 2.8(b)) or at the time such Lender Party designates a new Lending Office (except to the extent that such Lender or other Lender Party (or its assignor, if any) was entitled, at the time of the designation of a new Lending Office (or assignment) to receive additional amounts from Borrower with respect to such withholding tax pursuant to Section 2.4(d)(i)), (c) Taxes attributable to such Lender Party's failure to comply with Section 2.4(f), and (d) any withholding taxes imposed under FATCA.

"**Exempt Wholesale Generator**" means an "exempt wholesale generator" under PUHCA.

"**Existing Letter of Credit**" has the meaning given in Section 2.2(b).

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

"**FCA**" has the meaning given in Section 2.6(a)(i).

"**FCPA**" has the meaning given in Section 4.23(b).

"**Federal Funds Rate**" means, for any day, the rate *per annum* equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System on such day, as published by the Federal Reserve Bank of New York on the Banking Day next succeeding such day; provided, that (a) if such day is not a Banking Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Banking Day as so published on the next succeeding Banking Day, and (b) if no such rate is so published on such next succeeding Banking Day, the Federal Funds Rate for such day shall be the average rate charged to Administrative Agent on such day on such transactions as determined by Administrative Agent.

"**FERC**" means the Federal Energy Regulatory Commission and its successors.

"**First Lien Collateral Agent**" has the meaning given in the preamble hereto.

"**First Lien Collateral Documents**" has the meaning given in the Intercreditor Agreement.

"**First Lien Common Terms Agreement**" means the First Lien Common Terms Agreement, to be dated the **Initial** Closing Date (as amended, amended and restated, supplemented or otherwise modified from time to time), among the Obligors, the First Lien Secured Debt Representative and the First Lien Collateral Agent.

"**First Lien Secured Debt Representative**" has the meaning given in the Intercreditor Agreement.

"**First Lien Secured Parties**" has the meaning given in the Intercreditor Agreement.

"**Fitch**" has the meaning given in the First Lien Common Terms Agreement.

"**Floor**" means ~~**the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to LIBO Rate.**~~**a rate of interest equal to 0%.**

"**FPA**" means the Federal Power Act and rules and regulations promulgated by FERC thereunder.

"**Funds Flow Memorandum**" means the memorandum, dated as of June 9, 2020, delivered by Borrower to the Administrative Agent and the Depositary Agent with respect to the disbursement of funds on the **Initial** Closing Date, attached to a letter of direction executed by the Borrower.

"**Geysers Company**" has the meaning given in the preamble hereto.

"**Governmental Authority**" has the meaning given in the Intercreditor Agreement.

"**Governmental Rule**" has the meaning given in the Intercreditor Agreement.

"**Green Financing Framework**" means the Borrower's Green Financing Framework, dated as of June 2020.

"**Green Loan Coordinators**" means Crédit Agricole Corporate and Investment Bank, Natixis, New York Branch, each acting in its capacity as a Green Loan Coordinator under this Agreement.

"**Guarantor(s)**" has the meaning given in the preamble hereto.

"**Hazardous Substances**" means substances and materials regulated as hazardous, toxic, pollutants, or contaminants under Environmental Law.

"**Hedge Bank**" means (a) any Person that was, at the time of entering into an Interest Rate Agreement, an Agent, Coordinating Lead Arranger, Joint Lead Arranger, Term Lender, ~~LC~~**Multi-Draw Facility** Lender, or any Affiliate thereof or (b) any other Person (other than any Affiliate of an Obligor) that was, at the time of entering into an Interest Rate Agreement, a commercial bank, investment bank, swap dealer, insurance company or any other financial institution, or any Affiliate thereof, whose long-term senior unsecured debt is rated at least BBB+ by S&P and Baa1 by Moody's.

"**Hedge Breaking Fee**" means all costs, fees and expenses incurred by any Obligor in connection with any unwinding, breach or termination of any Permitted Commodity Hedge Agreements and Permitted Interest Rate Agreements

"**Holdings**" has the meaning given in the preamble hereto.

"**IBA**" has the meaning given in Section 2.6(a)(i).

"**Indebtedness**" has the meaning given in the Intercreditor Agreement.

"**Indemnified Taxes**" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Obligors under any Credit Document and (b) to the extent not otherwise described in (a), Other Taxes.

"**Indemnitee**" has the meaning given in Section 11.13.

"**Independent Consultants**" means, collectively, the Market Consultant, the Environmental Consultant, the Insurance Consultant, and the Independent Engineer.

"**Independent Engineer**" has the meaning given in the First Lien Common Terms Agreement.

"Initial Closing Date" has the meaning given in Section 3.1.

"Initial Closing Date Credit Document" means any Credit Document to be entered into on the Initial Closing Date.

"**Insurance Consultant**" means Aon Risk Consultants, Inc.

"**Intellectual Property Rights**" has the meaning given in Section 4.21.

"**Intercreditor Agreement**" has the meaning given in the First Lien Common Terms Agreement and is substantially in the form of Exhibit D-3.

"**Interest Period**" means, with respect to any ~~LIBOR~~**SOFR** Loan, the time period selected by Borrower or provided for pursuant this Agreement which commences on the first day of such Loan, or the effective date of any conversion (as the case may be) and ends on the last day of such time period.

"**Interest Rate**" means the Base Rate or the ~~LIBO Rate~~Term SOFR, as the case may be.

"**Interest Rate Agreement**" has the meaning given in the Intercreditor Agreement.

"**Interest Rate Determination Date**" means, with respect to any Interest Period, the second Banking Day prior to the first day of such Interest Period.

~~"Interpolated Rate" means, in relation to the LIBO Rate, the rate which results from interpolating on a linear basis between: (a) the applicable LIBO Rate for the longest period (for which that LIBO Rate is available) which is less than the Interest Period of the Loans; and (b) the applicable LIBO Rate for the shortest period (for which that LIBO Rate is available) which exceeds the Interest Period of the Loans, each as of approximately 11:00 a.m. (London, England time) on the Interest Rate Determination Date prior to the commencement of such Interest Period of the Loans.~~

"**Issuing Bank**" means, collectively, each DSR Issuing Bank and Revolving Issuing Bank, as applicable.

"**Issuing Bank Limit**" means the limitation on the obligation of each Issuing Bank to issue Letters of Credit as identified in the column "Issuing Bank Limit" on Schedule 2.2(a) with respect to each Issuing bank.

"**Joint Lead Arrangers**" means Bank of China, New York Branch, Bank of Montreal, Barings, LLC, HSBC Bank USA, N.A., and Kookmin Bank, New York Branch, each acting in its capacity as a Joint Lead Arranger under this Agreement.

~~"LC Commitments" has the meaning given in the Recitals.~~

"**LC Exposure**" means, with respect to any Issuing Bank, at any time the sum of (a) the aggregate amount of all LC Loans (including any LC Loans resulting from the drawing on Sub-facility Letters of Credit) made by such Issuing Bank and in which no other ~~LC~~Multi-Draw Facility Lender is required to participate that have not yet been repaid at such time, (b) any unreimbursed drawing under any Letter of Credit issued by such Issuing Bank that have not yet been reimbursed at such time from the proceeds of LC Loans or otherwise, and (c) the Stated Amount of all Letters of Credit issued by such Issuing Bank outstanding at such time.

~~"LC Facility" has the meaning given in the Recitals.~~

"LC Fees" means, collectively, the DSR LC Fees and the Revolving LC Fees.

~~"LC Lender" has the meaning given in Section 2.2(a).~~

"**LC Loans**" has the meaning given in the Recitals.

~~"LC Maturity Date" means November 9, 2028.~~

~~"LC Note" has the meaning given in Section 2.1(f).~~

"**Legal Requirements**" has the meaning given in the Intercreditor Agreement.

"**Lender Parties**" means the Administrative Agent, Coordinating Lead Arrangers, Joint Lead Arrangers, the First Lien Collateral Agent, the Depositary Agent, any Issuing Bank, each Lender and each of their respective successors, transferees and assigns; provided, that no Affiliate of Sponsor shall be a "Lender Party" hereunder or under any other Credit Document.

"**Lender(s)**" has the meaning given in the preamble hereto.

"**Lending Office**" means, with respect to any Lender, the office designated in writing as such to Administrative Agent and Borrower from time to time.

"**Letter of Credit**" means a Revolving Letter of Credit or DSR Letter of Credit, as applicable.

~~**"LIBO Rate" means with respect to each day during each Interest Period pertaining to a LIBOR Loan, the rate per annum equal to the London Interbank Offered Rate (or a comparable or successor rate which rate is approved by the Administrative Agent), as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m. (London time) on the date that is two (2) Business Days prior to the beginning of the relevant Interest Period for deposits in Dollars for a period equal to such Interest Period; provided that, to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, the "LIBO Rate" shall be the interest rate per annum determined by the Administrative Agent through the use of straight-line interpolation by reference to two such rates, one of which shall be determined as if the length of the period of such deposits were the period of time for which the rate for such deposits are available is the period next shorter than the length of such Interest Period and the other of which shall be determined as if the period of time for which the rate for such deposits are available is the period next longer than the length of such Interest Period; provided, further, that at no time shall "LIBOR" be less than 0.00%.**~~

~~**"LIBOR LC Loan" means an LC Loan that shall bear interest at the rate set forth in Section 2.1(c)(i)(D).**~~

~~**"LIBOR Loans" means the Loans, the interest in respect of which is determined by reference to the LIBO Rate.**~~

~~**"LIBOR Term Loan" means a Term Loan that bears interest as provided in Section 2.1(c)(i)(C).**~~

"**Lien**" has the meaning given in the Intercreditor Agreement.

"**Liquidation Costs**" has the meaning given in Section 2.7.

"**Loan Transactions**" has the meaning given in Section 11.22.

"**Loans**" means the Term Loans and ~~**LC**~~**Multi-Draw Facility** Loans.

"**Major Maintenance**" has the meaning given in the Depositary Agreement.

"**Major Maintenance Reserve Account**" has the meaning given in the Depositary Agreement.

"**Major Project Participants**" means any counterparty to a Major Project Contract.

"**Mandatory Prepayment**" has the meaning given in Section 2.1(h)(iii).

"**Market Consultant**" means PA Consulting Group, Inc.

"**Maturity Dates**" means, collectively, the Term Maturity Date and the Revolving Maturity Date.

" **Minimum Notice Period**" means (a) at least three ~~**Banking Days**~~ **U.S. Government Securities Business Day** before the date of any Borrowing, continuation or conversion of a Type of Loan resulting in whole or in part in one or more ~~**LIBOR**~~**SOFR** Term Loans, and (b) at least one Banking Day before any Borrowing or conversion of a Type of Loan resulting in whole or in part in one or more Base Rate Term Loans.

"**Moody's**" has the meaning given in the Intercreditor Agreement.

"Multi-Draw Facility" has the meaning given in the Recitals.

"Multi-Draw Facility Commitments" has the meaning given in the Recitals.

"Multi-Draw Facility Lender" has the meaning given in Section 2.2(a).

"Multi-Draw Facility Loans" has the meaning given in the Recitals.

"Multi-Draw Facility Maturity Date" means May 31, 2029.

"Multi-Draw Note" has the meaning given in Section 2.1(f).

" **Multiemployer Plan**" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA subject to the provisions of Title IV of ERISA and in respect of which the Borrower and Guarantors or any ERISA Affiliate is an "employer" as defined in Section 3(5) of ERISA.

"**Non-Advancing Bank**" has the meaning given in Section 9.12.

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

"**Non-Recourse Persons**" has the meaning given in Article 8.

"**Non-U.S. Lender Party**" means each Lender or Issuing Bank, as applicable, that is not a U.S. Person.

"**Notes**" means, collectively, any Term Notes and any ~~LC~~**Multi-Draw** Notes.

"Notice of Borrowing" means, a Term Loan Notice of Borrowing or Sub-facility Loan Notice of Borrowing, as applicable.

~~**"Notice of Borrowing"**~~ has the meaning given in Section 2.1(a)(ii).

"**Notice of Conversion of Loan Type**" has the meaning given in Section 2.1(g).

"Notice of Sub-facility Loan Designation" has the meaning given in Section 2.2(c).

"**Notice of LC Activity**" means a request by Borrower in accordance with the terms of Section 2.2 and substantially in the form of Exhibit C-4.

"**O&M Costs**" has the meaning given in the First Lien Common Terms Agreement.

"**Obligors**" has the meaning given in the Intercreditor Agreement.

"**Omnibus Amendment**" has the meaning given in the First Lien Common Terms Agreement.

"**Omnibus Amendment Date**" ~~**has the meaning given in the First Lien Common Terms Agreement**~~**means November 9, 2021**.

"**Omnibus Amendment Date Funds Flow Memorandum**" means the memorandum, dated as of November 9, 2021, delivered by Borrower to the Administrative Agent and the Depositary Agent with respect to the disbursement of funds on the Omnibus Amendment Date, attached to a letter of direction executed by the Borrower.

"**Optional Prepayment**" has the meaning given in Section 2.1(h)(ii).

"**Other Taxes**" means any present or future stamp, recording or documentary taxes and any other excise or property taxes, charges or similar levies (and interest, fines, penalties and additions related thereto) (not including income, branch profits or franchise taxes) that arise from any payment made hereunder or under any other Credit Document or from the execution or delivery or otherwise with respect to this Agreement or any other Credit Document.

"**Participant**" has the meaning given in Section 9.13.

"**Participant Register**" has the meaning given in Section 9.13.

"**PATRIOT Act**" has the meaning given in Section 11.21.

"**Payment Period**" means the three-month period commencing on a Quarterly Date and ending on the day prior to the next Quarterly Date.

"Periodic Term SOFR Determination Day" has the meaning specified in the definition of "Term SOFR".

"**Permit**" has the meaning given in the Intercreditor Agreement.

"**Permitted Commodity Hedge Agreement**" has the meaning given in the Intercreditor Agreement.

"**Permitted Debt**" has the meaning given in the First Lien Common Terms Agreement.

"**Permitted Interest Rate Agreement**" has the meaning given in the First Lien Common Terms Agreement.

"**Permitted Investments**" has the meaning given in the First Lien Common Terms Agreement.

"**Permitted Liens**" has the meaning given in the First Lien Common Terms Agreement.

"**Person**" has the meaning given in the Intercreditor Agreement.

"**Platform**" has the meaning given in Section 11.23(b).

"**PPA**" has the meaning given in the First Lien Common Terms Agreement.

"**Principal Repayment Dates**" means (a) each Quarterly Date, and (b) the Maturity Date.

"**Project Companies**" means, collectively, Calistoga Holdings, LLC, a Delaware limited liability company, Geysers Company, LLC, a Delaware limited liability company, and Wild Horse Geothermal, LLC, a Delaware limited liability company, any other Person owning a Project, and their respective successors and assigns.

"**Project Contract Modification**" has the meaning given in Section 6.2(a).

"**Project Revenue**" has the meaning given in the Depositary Agreement.

"**Projected Notional Principal Amount**" means, with respect to any date, the aggregate principal amount of the Term Loans and Additional Ratio Indebtedness (excluding any Additional Ratio Indebtedness that bears interest at a fixed rate) that is projected to be outstanding through the Term Maturity Date on such date, as set forth in the Base Case Projections or in any projections delivered by the Borrower in connection with any such Additional Ratio Indebtedness, after giving effect to any prepayments made since the delivery of the applicable projections.

"**Projects**" has the meaning give in the Intercreditor Agreement.

"**Proportionate Share**" means (a) in the context of voting in matters requiring the vote of all or a percentage of the Lenders and indemnification obligations of the Lenders under Section 9.5, with respect to each Lender at any time, a percentage equal to the quotient of (i) the sum of (A) the percentage interest of such Lender in the aggregate amount of all Commitments and Loans (without duplication), and as may be amended pursuant to Article 9), *multiplied by* the aggregate amount of all Commitments and Loans (without duplication) *plus* (B) (1) prior to the termination of the transactions under the Interest Rate Agreement, zero, and (2) thereafter, the percentage interest of such Lender (or its Affiliate) in the Interest Rate Agreements (as communicated in a written notice by such Lender to the Administrative Agent), *multiplied by* the Hedge Breaking Fees actually payable (and not on a "marked to market" basis) at such time (reasonably determined upon the close of the applicable voting period in accordance with the terms of such Interest Rate Agreement), *divided by* (ii) the sum of (A) the aggregate amount of all Commitments *plus* (B) (1) prior to the termination of the transactions under the Interest Rate Agreement, zero, and (2) thereafter, the Hedge Breaking Fees actually payable (and not on a "marked to market" basis) at such time (reasonably determined upon the close of the applicable voting period in accordance with the terms of such Interest Rate Agreement), and (b) with respect to each Lender at any time in the context of funding Loans, receiving payments, or any purpose under this Agreement other than as set forth in clause (a) above, (i) as to any Term Lender, the percentage participation of such Term Lender in the Total Term Loan Commitment, as set forth on Schedule 2.2(a) (as may be amended pursuant to Article 9), (ii) as to any ~~LC~~**Multi-Draw Facility** Lender, a percentage equal to (1)(A) such ~~LC~~**Multi-Draw Facility** Lender's ~~LC~~**Multi-Draw Facility** Commitment as set forth on Schedule 2.2(a) (as may be amended pursuant to Article 9) ~~**less (B) its LC Exposure**~~ divided by (2)(A) the Total ~~LC~~**Multi-Draw Facility** Commitment ~~**less (B) the total LC Exposure of all LC Lenders**~~ and (iii) as to any Issuing Bank at any time, the percentage that such Issuing Bank's Issuing Bank Limit less the stated amount of Letters of Credit issued by such Issuing Bank then constitutes of the Total ~~LC~~**Multi-Draw Facility** Commitments for all Issuing Banks less the total stated amount of Letters of Credit issued by all Issuing Banks.

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

"**PUHCA**" has the meaning given in the First Lien Common Terms Agreement.

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

"**QFC Credit Support**" has the meaning given in Section 11.28.

"**Qualified ECP Guarantor**" means, in respect of any Swap Obligation, each Obligor that has total assets exceeding $10,000,000 at the time the relevant guaranty or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another Person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"**Qualified Operator**" means any Person that has substantial (prior or current) experience as an owner, operator, or manager of power generation facilities totaling at least 1000 MW; provided, that, if the ratings reaffirmation requirement in clause (y) of the definition of "Change of Control" is not applicable as provided in the proviso therein, "Qualified Operator" shall mean any Person that either (x) has substantial (prior or current) experience as an owner, operator, or manager of geothermal facilities totaling at least 100 MW or (y) has engaged at least half of the individuals who, immediately prior to the occurrence of the event that would otherwise constitute a Change of Control, held the title of "Area Operator" in connection with the operation of the Projects.

"**Quarterly Date**" means the last Banking Day of each December, March, June, and September.

"**Recipient**" means any Lender Party.

"**Register**" has the meaning given in Section 2.1(i).

"**Regulation D**" means Regulation D of the Board of Governors of the Federal Reserve System (or any successor).

"**Related Parties**" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's Affiliates.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing in the environment.

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

"**Replacement Major Project Contract**" has the meaning given in the First Lien Common Terms Agreement.

"**Required First Lien Secured Parties**" has the meaning given in the Intercreditor Agreement.

"**Required Lenders**" means, at any time, Lenders having Proportionate Shares which in the aggregate exceed 50%. A Defaulting Lender shall be disregarded in determining Required Lenders at any time.

"**Reserve Consultant**" means GeothermEx, Inc.

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

"**Responsible Officer**" has the meaning given in the First Lien Common Terms Agreement.

"**Revenue Account**" has the meaning given in the Depositary Agreement.

"**Revolving LC Fee**" has the meaning given in Section 2.3(c)(i).

"**Revolving Issuing Bank**" means Natixis, New York Branch, in its capacity as an issuer of any Revolving Letter of Credit hereunder, and its successors in such capacity pursuant to Section 2.2(i). A Revolving Issuing Bank may, in its discretion, arrange for any Revolving Letter of Credit to be issued by an Affiliate of such Revolving Issuing Bank, in which case the term "Revolving Issuing Bank" shall include any such Affiliate with respect to Revolving Letters of Credit issued by such Affiliate.

"**Revolving Letter of Credit**" has the meaning given in Section 2.2(a).

"**Revolving Letter of Credit Fronting Fee**" has the meaning given in Section 2.3(d).

"**Revolving LC Reimbursement Obligation**" means the obligation of the Borrower to repay any Drawing Payments relating to any Revolving Letter of Credit.

"**Revolving Maturity Date**" means ~~November 9~~May 31, ~~2028~~2029.

"**Sanctioned Country**" has the meaning given in Section 4.23(a).

"**Sanctioned Persons**" has the meaning given in Section 4.23(a).

"**Sanctions**" has the meaning given in Section 4.23(a).

"**Second Lien Documents**" has the meaning given in the Intercreditor Agreement.

"Second Omnibus Amendment" has the meaning given in the First Lien Common Terms Agreement.

"Second Omnibus Amendment Date" means May 31, 2022.

"Second Omnibus Amendment Date Funds Flow Memorandum" means the memorandum, dated as of May 31, 2022, delivered by Borrower to the Administrative Agent and the Depositary Agent with respect to the disbursement of funds on the Second Omnibus Amendment Date, attached to a letter of direction executed by the Borrower.

"**Security Agreement**" means the First Lien Pledge and Security Agreement, dated as of the **Initial** Closing Date, substantially in the form of Exhibit D-1, among the Obligors and First Lien Collateral Agent.

"**Senior Managing Agent**" means The Huntington National Bank and National Australia Bank Limited.

~~**"SOFR" means a rate per annum equal to the secured overnight financing rate for such Business Day published by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate) on the website of the Federal Reserve Bank of New York, currently at http://www.newyorkfed.org (or any successor source for the secured overnight financing rate identified as such by the administrator of the secured overnight financing rate from time to time).**~~

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

"SOFR Borrowing" means, as to any Borrowing, the SOFR Loans comprising such Borrowing.

"SOFR Multi-Draw Facility Loan" means an Multi-Draw Facility Loan that shall bear interest at the rate set forth in Section 2.1(c)(i)(D).

"SOFR Loan" means a Loan that bears interest at a rate based on Adjusted Term SOFR, other than pursuant to clause (c) of the definition of "Base Rate".

"SOFR Term Loan" means a Term Loan that bears interest as provided in Section 2.1(c)(i)(C).

"**Specified Major Project Contract**" means, at any time, a Material Water Supply Agreement and/ or PPA that is a Major Project Contract at such time.

"**Sponsor**" has the meaning given in the Intercreditor Agreement.

"Stated Amount" means with respect to the Letters of Credit, the total amount available to be drawn thereunder at the time in question in accordance with the terms of the Letters of Credit. The Stated Amount of any Letter of Credit shall be reduced by the amount of Drawing Payments made in respect thereof.

"Sub-facility Cap" has the meaning given in the Recitals.

"Sub-facility Commitment" means the commitment of each applicable Multi-Draw Facility Lender specified in Schedule 2.2(a) to make Sub-facility Loans up to the amounts specified in such schedule.

"Sub-facility Letter of Credit" means any Letter of Credit issued to satisfy credit support obligations in connection with the development, construction, financing, ownership, operation and maintenance of Battery Projects, which shall be designated as a "Sub-facility Letter of Credit" on a Notice of LC Activity submitted in accordance with Section 2.2(a)(i)(A).

"Sub-facility Loan" has the meaning given in the Recitals.

"Sub-facility Loan Notice of Borrowing" has the meaning given in Section 2.2(a)(iii).

"Sub-facility LC Loan" has the meaning given in the Recitals.

"Sub-facility Revolving Loan" has the meaning given in the Recitals.

"Sub-facility Term Loan" has the meaning given in the Recitals.

"**Subject Claims**" has the meaning given in Section 11.13.

"**Subsidiary**" has the meaning given in the Intercreditor Agreement.

"**Supported QFC**" has the meaning given in Section 11.28.

"**Swap Obligation**" means any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act.

"**Syndication Agent**" means BNP Paribas, acting in its capacity as a Syndication Agent under this Agreement.

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

"**Template Operating Report**" means an operating report required by Section 5.3(b), in substantially the form of Exhibit G-1.

"**Term Lender**" has the meaning given in Section (i).

"**Term Loan**" has the meaning given in the Recitals.

"**Term Loan Commitment**" means, at any time with respect to each Lender, such Lender's Proportionate Share of the Total Term Loan Commitment at such time.

"Term Loan Notice of Borrowing" has the meaning given in Section 2.1(a)(ii).

"**Term Maturity Date**" means ~~November 9~~**May 31**, ~~2028~~**2029**.

"**Term Note**" has the meaning given in Section 2.1(f).

"Term SOFR" means,

(a) **for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the "Periodic Term SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and**

(b) **for any calculation with respect to a Base Rate Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the "Base Rate Term SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Base Rate Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Base Rate Term SOFR Determination Day;**

provided, further, that if Term SOFR determined as provided above (including pursuant to the proviso under clause (a) or clause (b) above) shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

"Term SOFR Adjustment" means a percentage equal to (a) 0.10% per annum for 1-month Interest Periods, (b) 0.15% per annum for 3-month Interest Periods and (c) 0.25% per annum for 6-month Interest Periods

"Term SOFR Administrator" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

"**Term SOFR**~~" means, for the applicable corresponding tenor,~~ **Reference Rate" means** the forward-looking term rate based on SOFR ~~that has been selected or recommended by the Relevant Governmental Body~~.

"**Third Amended and Restated Power Purchase and Sale Agreement**" has the meaning given in the First Lien Common Terms Agreement.

"**Total** ~~LC~~**Multi-Draw Facility Commitment**" has the meaning given in Section 2.2(a).

"**Total Term Loan Commitment**" has the meaning given in Section 2.1(a)(i).

"**Transferee Hedge Provider**" has the meaning given in Section 2.4(g)(v).

"**Transferor Hedge Provider**" has the meaning given in Section 2.4(g)(v).

"**Type**" means the type of Loan, whether a Base Rate Loan or ~~LIBOR~~**SOFR** Loan.

"**UK Financial Institution**" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended form time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

" **UK Resolution Authority**" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Unadjusted Benchmark Replacement" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

" **Undisclosed Administration**" means in relation to a Lender or its direct or indirect parent company the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official by a supervisory authority or regulator under or based on the law in the country where such Lender or its direct or indirect parent company is subject to home jurisdiction supervision if applicable law requires that such appointment is not to be publicly disclosed.

"U.S. Government Securities Business Day" means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"**U.S. Special Resolution Regime**" has the meaning given in Section 11.28.

"**U.S. Tax Compliance Certificates**" has the meaning given in Section 2.4(f)(ii)(B)(3).

"**Wild Horse**" has the meaning given in the preamble hereto.

"**Withdrawal Liability**" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part 1 of Subtitle E of Title IV of ERISA.

"**Write-Down and Conversion Powers**" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

RULES OF INTERPRETATION

1. The singular includes the plural and the plural includes the singular.

2. "or" is not exclusive.

3. A reference to a Governmental Rule includes any amendment or modification to such Governmental Rule, and all regulations, rulings and other Governmental Rules promulgated under such Governmental Rule.

4. A reference to a Person includes its permitted successors, permitted replacements and permitted assigns.

5. Accounting terms have the meanings assigned to them by GAAP, as applied by the accounting entity to which they refer.

6. The words "include", "includes" and "including" are not limiting.

7. A reference in a document to an Article, Section, Exhibit, Schedule, Annex or Appendix is to the Article, Section, Exhibit, Schedule, Annex or Appendix of such document unless otherwise indicated. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed incorporated by reference in such document. In the event of any conflict between the provisions of this Agreement (exclusive of the Exhibits, Schedules, Annexes and Appendices thereto) and any Exhibit, Schedule, Annex or Appendix thereto, the provisions this Agreement shall control.

8. Unless otherwise expressly provided, references to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) means such document, instrument or agreement, or replacement or predecessor thereto, as amended, amended and restated, modified and supplemented from time to time and in effect at any given time.

9. The words "hereof", "herein" and "hereunder" and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.

10. References to "days" means calendar days, unless the term "Banking Days" shall be used. References to a time of day means such time in New York, New York, unless otherwise specified.

11. The time period specified in Section 5.6, shall be extended (a) automatically to account for any period during which any applicable Obligor is unable, after exercising commercially reasonable efforts, to perform its obligations under such Section due to any circumstances existing in connection with the COVID-19 pandemic, or (b) as may otherwise be agreed by the Administrative Agent, acting reasonably.

12. If, at any time after the **Initial** Closing Date, Moody's or S&P shall change its respective system of classifications, then any Moody's or S&P "rating" referred to herein shall be considered to be at or above a specified level if it is at or above the new rating which most closely corresponds to the specified level under the old rating system.

13. The Credit Documents are the result of negotiations between, and have been reviewed by the Obligors, each Affiliate of each Obligor, Administrative Agent, Coordinating Lead Arrangers, Joint Lead Arrangers, each Lender and their respective counsel. Accordingly, the Credit Documents shall be deemed to be the product of all parties thereto, and no ambiguity shall be construed in favor of or against the Obligors, any Affiliate of the Obligors, Administrative Agent or any Lender solely as a result of any such party having drafted or proposed the ambiguous provision.

14. For all purposes under the Credit Documents, in connection with any Division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

Exhibit B
Common Terms Agreement

[*Attached*]

Final Form
Conformed to Omnibus Amendment dated as of November 9, 2021
Conformed to Second Omnibus Amendment dated as of May 31, 2022

FIRST LIEN COMMON TERMS AGREEMENT

Dated as of June 9, 2020

(as amended by the Omnibus Amendment, dated November 9, 2021 and the Second Omnibus Amendment, dated as of May 31, 2022)

among

GEYSERS POWER COMPANY, LLC,
as Borrower,

GEYSERS INTERMEDIATE HOLDINGS LLC,
as Holdings,

THE GUARANTORS PARTY HERETO,
as Guarantors,

MUFG UNION BANK, N.A.,
as First Lien Collateral Agent,

and

THE FIRST LIEN SECURED DEBT REPRESENTATIVES PARTY HERETO

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Exhibit A	Definitions and Rules of Interpretation
Exhibit B	Form of First Lien Common Terms Accession Agreement

This FIRST LIEN COMMON TERMS AGREEMENT, dated as of June 9, 2020 (this "**Agreement**"), is entered into among GEYSERS POWER COMPANY, LLC, a Delaware limited liability company, as borrower ("**Borrower**"), GEYSERS INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, as Holdings ("**Holdings**"), GEYSERS COMPANY, LLC, a Delaware limited liability company ("**Geysers Company**"), WILD HORSE GEOTHERMAL, LLC, a Delaware limited liability company ("**Wild Horse**"), and CALISTOGA HOLDINGS, LLC, a Delaware limited liability company ("**Calistoga**" and, together with Holdings, Geysers Company, Wild Horse, and each subsidiary of an Obligor that becomes a "Guarantor" from time to time in accordance with the terms hereof, each a "**Guarantor**" and together, the "**Guarantors**"), each FIRST LIEN SECURED DEBT REPRESENTATIVE party to this Agreement from time to time in accordance with the terms of this Agreement; and MUFG UNION BANK, N.A., as First Lien Collateral Agent for the First Lien Secured Parties (together with its permitted successors and assigns in such capacity appointed pursuant to the Intercreditor Agreement, "**First Lien Collateral Agent**").

WHEREAS:

(A) The Borrower is the owner of thirteen geothermal electric generating facilities located in the Geysers area of Northern California (Sonoma and Lake Counties); and

(B) The Obligors, the First Lien Secured Debt Representatives, and the First Lien Collateral Agent desire to enter into this Agreement in order to set out certain provisions regarding, among other things: (1) common representations and warranties of the Borrower; (2) common covenants of the Borrower; and (3) common events of default under certain First Lien Documents.

NOW, THEREFORE, In consideration of the forgoing, and for other good and valuable consideration, the receipt and adequacy of which are acknowledge, the parties hereto agree as follows:

1. DEFINITIONS

1.1 Definitions

Unless otherwise defined in Exhibit A or otherwise expressly provided in this Agreement, capitalized terms used herein shall have the meanings provided in the Intercreditor Agreement.

1.2 Rules of Interpretation

Except as otherwise expressly provided, the rules of interpretation set forth in Exhibit A shall apply to this Agreement.

2. FIRST LIEN SECURED DEBT OBLIGATIONS

2.1 Accession Agreements

(a) Each First Lien Secured Debt Representative that is not party to this Agreement on the date hereof shall enter into (i) a First Lien Common Terms Accession Agreement substantially in the form set out in Exhibit B and (ii) a CIA Accession Agreement.

(b) Each First Lien Common Terms Accession Agreement shall specify in Appendix A thereto:

(i) the identity of the relevant First Lien Secured Debt Representative;

(ii) the First Lien Secured Debt Obligations subject thereof; and

(iii) the First Lien Secured Debt Documents subject thereof.

(c) Each First Lien Common Terms Accession Agreement shall contain a certification from the Borrower that the conditions for the incurrence of such First Lien Secured Debt Obligations in the First Lien Secured Debt Documents have been satisfied (or waived by the applicable First Lien Secured Parties).

(d) Upon receipt of the relevant First Lien Common Terms Accession Agreement and compliance with the requirements of Section 5.3, the Borrower shall update Schedule 2.1(c) accordingly and shall deliver each such revised Schedule 2.1(c) to the First Lien Collateral Agent and each First Lien Secured Debt Representative.

2.2 Transfers and Holding of First Lien Secured Debt Obligations

(a) The First Lien Secured Debt Obligations may be held, sold, exchanged, traded, assigned, or otherwise transferred by each First Lien Secured Debt Holder as provided in the relevant First Lien Secured Debt Document. Any Person becoming a First Lien Secured Debt Holder from time to time in accordance with such First Lien Secured Debt Document shall be and become a First Lien Secured Debt Holder for the purposes of this Agreement and each Person ceasing to be a First Lien Secured Debt Holder from time to time in accordance with such First Lien Secured Debt Document shall cease to be a First Lien Secured Debt Holder for the purposes of this Agreement.

(b) Any First Lien Secured Debt Representative may be replaced in accordance with the relevant First Lien Secured Debt Document, and the First Lien Collateral Agent shall be notified promptly of any such replacement, which shall become effective only upon the replacement First Lien Secured Debt Representative executing and delivering to the First Lien Collateral Agent an agreement to be bound by the First Lien Common Terms Accession Agreement and the CIA Accession Agreement to which its predecessor was a party, and the Borrower shall amend Schedule 2.1(c) accordingly and shall deliver each such revised Schedule 2.1(c) to the First Lien Collateral Agent and each First Lien Secured Debt Representative.

2.3 Payment in Full of First Lien Secured Debt Obligations

(a) Upon the payment in full of all First Lien Secured Debt Obligations under (or defeasance thereof in accordance with the terms of) any First Lien Secured Debt Document (other than the First Lien Obligations thereunder that by their terms survive and with respect to which no claim has been made by the applicable First Lien Secured Debt Holder(s)) and the expiration or termination of all commitments and other obligations under such First Lien Secured Debt Document in accordance with the terms thereof and the cancellation and return by the Borrower of any outstanding letters of credit issued under such First Lien Secured Debt Document, the relevant First Lien Secured Debt Representative shall give notice thereof to the TLA Administrative Agent and the First Lien Collateral Agent, whereupon, without further action by any Person:

(i) the former First Lien Secured Debt Holders shall no longer be the First Lien Secured Debt Holders under this Agreement and shall no longer have any rights or obligations under this Agreement, except for those provisions that by their terms expressly survive termination;

(ii) the related First Lien Secured Debt Document shall no longer be the First Lien Secured Debt Document under this Agreement; and

(iii) such First Lien Secured Debt Representative, in such capacity, shall no longer be a First Lien Secured Debt Representative or a First Lien Secured Party.

3. REPRESENTATIONS AND WARRANTIES

Each Obligor makes the following representations and warranties in favor of the First Lien Secured Debt Holders as of the **Initial** Closing Date:

3.1 Organization

(a) Each Obligor is (i) a limited liability company duly formed, validly existing and in good standing under the laws of the state of its formation and (ii) is duly qualified as a foreign limited liability company in each other jurisdiction in which such qualification is required by law in light of the business it conducts and the property it owns or leases and in light of the transactions contemplated by this Agreement, except where the failure to be so qualified or be in good standing could not reasonably be expected to have a Material Adverse Effect.

(b) Each Obligor has all requisite limited liability company power and authority to execute, deliver, and perform its obligations under this Agreement.

3.2 Authorization; No Conflict

Each Obligor has duly authorized, executed and delivered this Agreement and neither any Obligor's execution and delivery hereof, nor its consummation of the transactions contemplated hereby, nor its compliance with the terms hereof, shall:

(a) violate in any material respect any of its Governing Documents;

(b) violate any Legal Requirement applicable to or binding on such Obligor or any of such Obligor's properties in a manner which could reasonably be expected to result in a Material Adverse Effect;

(c) violate in any respect or result in any breach of or constitute any default under, or result in or require the creation of any Lien (other than Permitted Liens) upon any of its property under, any agreement or instrument to which it is a party or by which it or any of its properties may be bound or affected which, in each case, could reasonably be expected to result in a Material Adverse Effect; or

(d) require any consent or approval of any Person, and with respect to any Governmental Authority, does or will require any registration with, or notice to, or any other action of, with or by any applicable Governmental Authority, in each case which has not already been obtained and disclosed in writing to the TLA Administrative Agent (except (i) any Permits that are not yet Applicable Permits, (ii) for those that are required by securities, regulatory or applicable law in connection with an exercise of remedies, (iii) as set forth on Schedule 3.2(d) (iv) the filing of any required continuation statements, (v) for those that, by the terms of the First Lien Collateral Documents, are not required to be obtained or completed or are required to be obtained or completed only after the **Initial** Closing Date, or (vi) for those the absence of which could not reasonably be expected to have a Material Adverse Effect).

4. AFFIRMATIVE COVENANTS

Each of the Obligors covenants and agrees that until the Discharge of First Lien Obligations, it shall perform or observe or cause to be performed or observed (as applicable) the obligations set forth in this Article 4.

4.1 Maintenance of Existence

Except to the extent permitted under this Agreement, each of the Obligors shall maintain its respective existence and obtain and maintain, or cause to be obtained or maintained, as the case may be, as and when needed, all franchises, permits, rights, privileges, licenses or government permissions necessary for the development and operation of the Projects and conduct of its business, except, in each case, where failure to do so would not reasonably be expected to result in a Material Adverse Effect.

4.2 Separate Existence

Each of the Obligors shall (a) maintain entity records and books of account separate from those of any other entity which is its Affiliate (other than any other Obligor), (b) not commingle its funds or assets with those of any other entity which is its Affiliate (other than any other Obligor), and (c) observe limited liability company formalities; provided, that notwithstanding the foregoing, the Obligors may (x) exchange or borrow spare parts, components for equipment and tools relating to the Projects from any Affiliate in accordance with the terms of the O&M Agreement or otherwise pursuant to an arm's-length transaction documented in writing (it being understood that, for purposes of this covenant, an exchange or borrowing of spare parts with an Affiliate based on net book value or Fair Market Value shall be deemed to be an arm's-length transaction) and (y) participate in shared insurance arrangements with Affiliates.

4.3 Maintenance of Books and Records; Inspection Rights

Each Obligor shall maintain adequate books, accounts, and records. Subject to the requirements of Governmental Rules, safety requirements, and existing confidentiality restrictions imposed upon any Obligor by any other Person, the Obligors shall grant the First Lien Collateral Agent, the TLA Administrative Agent or the Independent Engineer from time to time, and upon reasonable prior written notice to the Obligors, but no more than once per calendar year, reasonable access to the Projects, the Projects' material properties, and each Obligor's books and records; provided, that all such inspections are conducted during normal business hours in a manner that does not disrupt the operation of any Project.

4.4 Conduct of Business; Maintenance of Properties, Etc.

Except as otherwise permitted by this Agreement, the Obligors shall operate, manage, and maintain (or cause to be operated, managed, and maintained) (ordinary wear and tear excepted) each Project in a manner consistent with Prudent Industry Practices, except where the failure to so operate, manage, or maintain such Project would not reasonably be expected to result in a Material Adverse Effect.

4.5 Maintenance of Rights in Project Property

Except as otherwise permitted by this Agreement, each of the Obligors shall preserve and maintain good and valid title or valid leasehold or other rights to all of its respective properties and assets related to the Projects (subject, in all cases, to Permitted Liens), unless failure to preserve or maintain such title or rights would not reasonably be expected to result in a Material Adverse Effect.

4.6 Compliance with Laws

Each of the Obligors shall comply with all applicable laws and regulations (including any Environmental Laws) of any Governmental Authority having jurisdiction over such Obligor or its business and the operation of the Projects, except where the failure to comply would not reasonably be expected to result in a Material Adverse Effect.

4.7 Taxes, Other Government Charges and Utility Charges

Each Obligor shall:

(a) timely file all tax returns; and

(b) pay, or cause to be paid, prior to delinquency (after giving effect to any applicable extensions) all taxes, assessments and governmental charges of any kind that may at any time be lawfully assessed or levied against or with respect the Obligors or the Projects, including material sales and use taxes and real estate taxes, all material utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Projects, and all material assessments and charges lawfully made by any Governmental Authority for public improvements that may be secured by a Lien on the Projects,

except, in each case, (x) to the extent any such amounts payable are contested in good faith by appropriate proceedings commenced or to be commenced within the applicable time period provided under applicable Legal Requirements or (y) where the failure to file or effect such payment would not reasonably be expected to have a Material Adverse Effect.

4.8 Exercise of Rights

To the extent commercially reasonable under the circumstances in accordance with Prudent Industry Practices, each Obligor shall diligently pursue all rights and remedies under any insurance policy or Project Contract to which it is a party with respect to the receipt of Loss Proceeds or other compensation available to such Obligor upon the occurrence of a Casualty Event or Event of Eminent Domain, except, in each case, where any failure would not reasonably be expected to result in Material Adverse Effect.

4.9 Additional Guarantors

If (a) the Borrower acquires or creates a Subsidiary after the **Initial** Closing Date that does not constitute an Excluded Subsidiary, (b) any Subsidiary of the Borrower ceases to constitute an Excluded Subsidiary, or (c) any Excluded Subsidiary that is referred to in clause (b) of the definition thereof guarantees or pledges any property or assets to secure any First Lien Obligations in excess of $25,000,000, then such Subsidiary shall become a Guarantor under the Intercreditor Agreement and the other applicable First Lien Collateral Documents and shall execute a joinder to the Intercreditor Agreement and the other applicable First Lien Collateral Documents.

4.10 Covenant to Give Security over Additional Guarantors

Upon the formation or acquisition of any new Subsidiary by an Obligor (other than any Excluded Subsidiary) and the joinder of such Subsidiary pursuant to Section 4.9, such Obligor shall, at its expense:

(a) within 45 Business Days (or ninety days in the case of After-Acquired Real Property) after such joinder, furnish to the First Lien Collateral Agent and the First Lien Collateral Agent a description of the After-Acquired Real Property and personal properties of such Subsidiary, in reasonable detail necessary for the First Lien Collateral Agent to perfect a Lien on such properties;

(b) within 45 Business Days (or ninety days in the case of mortgages or deeds of trust) after such joinder, duly execute and deliver and cause such Subsidiary and any Obligor acquiring Capital Stock in such Subsidiary to duly execute and deliver to the First Lien Collateral Agent guaranties, guaranty supplements, pledges, assignments, security agreement supplements, intellectual property security agreement supplements and other security agreements as reasonably specified by the First Lien Collateral Agent (acting at the direction of the Directing Agent) over the applicable property (other than Excluded Assets) and mortgages or deeds of trust on any After-Acquired Real Property (as reasonably determined by the Borrower and its counsel), securing payment of all of the obligations of such Obligor or Subsidiary, respectively, under the First Lien Documents;

(c) within 45 Business Days (or ninety days in the case of mortgages or deeds of trust) after such joinder, take, and cause the Obligors and each such Subsidiary to take, whatever action (including the recording of mortgages, the filing of UCC financing statements, the giving of notices and the endorsement of notices on title documents) may be reasonably necessary to vest in the First Lien Collateral Agent (or any representative of the First Lien Collateral Agent designated by it) valid and subsisting Liens on the properties (other than Excluded Assets) purported to be subject to the mortgages, deeds of trust, pledges, assignments, security agreement supplements, intellectual property security agreements, intellectual property security agreement supplements and security agreements delivered pursuant to this paragraph, enforceable against all third parties in accordance with their terms; and

(d) within 45 Business Days (or ninety days in the case of mortgages or deeds of trust) (or such longer period as may be agreed by the First Lien Collateral Agent (acting at the direction of the Directing Agent, acting reasonably)) after such joinder, deliver to the First Lien Collateral Agent an opinion of counsel (containing customary exceptions and limitations) addressed to the First Lien Collateral Agent and the Directing Agent, as to, with respect to such mortgages or deeds of trust and otherwise (i) the matters contained in clause (b) above, with respect to due authorization, execution and delivery, (ii) such guaranties, guaranty supplements, mortgages, deeds of trust, pledges, assignments, security agreement supplements, intellectual property security agreements, intellectual property security agreement supplements and security agreements being legal, valid and binding obligations of the Obligor(s) party thereto enforceable in accordance with their terms, as to the matters contained in clause (c) above, (iii) such recordings, filings, notices, endorsements and other actions being sufficient to create valid perfected Liens on such properties, (iv) corporate formalities, and (v) such other matters as the First Lien Collateral Agent or the Directing Agent may reasonably request.

4.11 Maintenance of Insurance

The Obligors shall maintain insurance policies (or self-insurance) on their respective properties in at least such amounts and against at least such risks as are usually insured against by companies of a similar size engaged in the same or a similar business (in each case as determined by the Borrower) or otherwise in accordance with Prudent Industry Practices. The First Lien Collateral Agent shall be named as an additional insured and loss payee as its interests may appear, to the extent required by the First Lien Collateral Documents. Upon the request of the First Lien Collateral Agent, the Obligors shall furnish to the First Lien Collateral Agent all relevant information as to their property and liability insurance carriers.

4.12 Preservation of Rights; After-Acquired Real Property

(a) Each Obligor shall do or cause to be done all acts and things that may be required, or that the First Lien Collateral Agent from time to time may reasonably request, to assure and confirm that the First Lien Collateral Agent holds, for the benefit of the First Lien Secured Parties, duly created and enforceable and perfected Liens upon the Collateral (including with respect to any property or assets that are acquired or otherwise become Collateral after the **Initial** Closing Date), in each case, as contemplated by, and with the Lien priority required under, this Agreement and the First Lien Collateral Documents.

(b) Upon the reasonable request of the First Lien Collateral Agent (acting at the direction of the Directing Agent) at any time and from time to time, each Obligor shall promptly execute, acknowledge and deliver such security documents, instruments, certificates, notices and other documents, and take such other actions the First Lien Collateral Agent (acting at the direction of the Directing Agent) may reasonably request, to create, perfect, protect, assure or enforce the Liens and benefits intended to be conferred, in each case as contemplated by this Agreement for the benefit of the First Lien Secured Parties and as otherwise consistent with the First Lien Collateral Documents.

(c) If, after the **Initial** Closing Date, any Obligor acquires any real property or leasehold or other interest in real property that is not an Excluded Asset and is a Project Site or geothermal mineral lease, in each case, which is necessary or material to the operation of the Projects or that has a purchase price in excess of $10,000,000 (other than licenses, easements and similar types of property that are expressly excluded from any Mortgage by its terms) and is not covered by any Mortgage (any such Project Site and/or geothermal mineral lease, "**After-Acquired Real Property**"), then within ninety days after such acquisition, such Obligor shall, at its expense, execute, deliver and record a supplement to any Mortgage, reasonably satisfactory in form and substance to the First Lien Collateral Agent (acting at the direction of the Directing Agent, acting reasonably) and the Borrower, subjecting the After-Acquired Real Property to the Lien and security interest created by any Mortgage in favor of the First Lien Collateral Agent. If reasonably requested by the First Lien Collateral Agent (acting at the direction of the Directing Agent) and if such property is a Project Site, the Borrower shall, within ninety days after such acquisition, obtain surveys (only to the extent such surveys were obtained at the time the property was acquired) and an A.L.T.A. lender's extended coverage title insurance policy (or a customary marked, unconditional, binding title commitment to issue such policy) with respect to such Project Site, insuring the Lien of the First Lien Secured Parties in such Project Site in an amount equal to the lesser of the amount paid for such After-Acquired Real Property or the insured value of such After-Acquired Real Property, in each case subject only to Permitted Liens and other exceptions to title approved by the First Lien Collateral Agent (acting at the direction of the Directing Agent, acting reasonably) and with such changes as may be necessary or advisable (as reasonably determined by the Borrower and its counsel) to account for local law matters and (with respect to the additional title policy) in amounts determined in a manner consistent with the amount of the Title Policy and to the extent reasonably requested by the First Lien Collateral Agent (acting at the direction of the Directing Agent, acting reasonably), an engineering report and a non-invasive environmental assessment report (provided, that an invasive environmental assessment report shall only be provided if requested by the TLA Administrative Agent after such has been recommended by a non-invasive environmental assessment report), each in scope, form and substance reasonably satisfactory to the First Lien Collateral Agent (acting at the direction of the Directing Agent, acting reasonably); provided, that to the extent that any Obligor has otherwise received any of the foregoing items with respect to such property, such items shall, promptly after the receipt thereof, be delivered to the First Lien Collateral Agent.

4.13 Post-Closing Covenant

(a) The Borrower shall deliver to the First Lien Collateral Agent, within ninety days after the **Second** Omnibus Amendment Date, in connection with the Obligors' real property on the **Second** Omnibus Amendment Date (in each case, to the extent not constituting Excluded Assets):

(i) amendments to the existing Mortgages on each Obligor's interest in the Project Sites and any leasehold interests in geothermal mineral rights; and

(ii) date-down and modification endorsements to lender's existing A.L.T.A. extended coverage policy of title insurance (together with such date-down and modification endorsements, the "**Title Policy**") with respect to the land upon which each Project Site is located including all real property improvements of the applicable Obligor, thereon amending the insurance amount to an amount equal to 50% of the aggregate principal amount of the Term Loans (as defined in the TLA Credit Agreement) on the **Second** Omnibus Amendment Date, for the Project Sites (with such reinsurance as is requested by the First Lien Collateral Agent (acting at the direction of the Directing Agent, acting reasonably)) issued by the applicable Title Insurer in form and substance satisfactory to the TLA Administrative Agent, insuring (or agreeing to insure), among other things, that the Mortgages, as amended, shall constitute a valid first lien on Borrower's interest in the Project Sites, free and clear of all Liens and exceptions to title whatsoever, other than (A) the Title Exceptions and other Permitted Liens, and (B) such Liens or other exceptions to title as are reasonably satisfactory to the TLA Administrative Agent.

(b) Notwithstanding anything in this Agreement or the TLA Credit Agreement to the contrary, at least twenty days prior to the execution of any Mortgage in respect of any After-Acquired Real Property with a "Building" (as defined in the Flood Laws) located on it and owned by an Obligor, Borrower shall deliver to the First Lien Collateral Agent and to the TLA Administrative Agent (who shall post such documents for the TLA Lenders) (i) a completed "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination for such real property subject to such Mortgage and (ii) if any such After-Acquired Real Property is in a Flood Zone with respect to which flood insurance has been made available under the Flood Laws, a policy of flood insurance in compliance with the Flood Laws and a Borrower notice regarding flood insurance, provided, that, each Obligor's obligation to grant a Mortgage in respect of such After-Acquired Real Property within the applicable period specified under this Agreement shall be automatically extended for so long as is required to ensure compliance with the requirements of this clause.

5. NEGATIVE COVENANTS

Each of the Obligors covenants and agrees that until the Discharge of First Lien Obligations, it shall perform or observe or cause to be performed or observed (as applicable) the obligations set forth in this Article 5.

5.1 Restricted Payments

(a) The Obligors shall not, and shall not permit any Excluded Subsidiary (other than a Non-Recourse Subsidiary) to, directly or indirectly make any Restricted Payment other than:

(i) the payment of any dividend or distribution or the consummation of any redemption within sixty days after the date of declaration of the dividend or distribution or giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend or redemption payment would have complied with the provisions of this Agreement;

(ii) the purchase, redemption, defeasance or other acquisition or retirement for value of Indebtedness of any Obligor or any Excluded Subsidiary that is by its terms contractually subordinated to the First Lien Obligations or to any Guarantee with the net cash proceeds from a substantially concurrent incurrence of Permitted Debt;

(iii) Permitted Tax Distributions;

(iv) payments pursuant to related party contracts, agreements or understandings existing on the **Initial** Closing Date or entered into after the **Initial** Closing Date in accordance with this Agreement (including, in each case, any transactions or arrangements entered into thereunder from time to time (if any)), and amendments thereto or replacements thereof in accordance with this Agreement;

(v) payments from any Non-Recourse Subsidiary Account;

(vi) (A) Restricted Payments using the net proceeds pursuant to the First Lien Documents (including the net proceeds of the 2021 Term Loans on the Omnibus Amendment Date **and the net proceeds of the 2022 Term Loans on the Second Omnibus Amendment Date**) and (B) any netting payments on the **Initial** Closing Date of intercompany balances between the Obligors on one hand, and Calpine and its Affiliates (excluding the Obligors) on the other;

(vii) Restricted Payments from the Distribution Suspense Account if the following conditions (such conditions, the "**Restricted Payment Conditions**") shall have been satisfied as of the date of such Restricted Payment:

(A) no Default (as defined in the TLA Credit Agreement), Event of Default (as defined in the TLA Credit Agreement), CTA Default or CTA Event of Default has occurred and is continuing or would occur and be continuing as a consequence of such Restricted Payment;

(B) all amounts then-required to be on deposit in the Debt Service Reserve Account and, if applicable, each Additional Debt Service Reserve Account and the Major Maintenance Reserve Account are on deposit therein;

(C) the Debt Service Coverage Ratio for the Calculation Period of the most recent Quarterly Date is greater than or equal to 1.2 to 1.0;

(D) such Restricted Payment shall be made within sixty days after the end of the preceding fiscal quarter;

(E) no LC Loans (as defined in the TLA Credit Agreement) shall be outstanding on the date of such Restricted Payment; and

(F) the Borrower has delivered to the First Lien Collateral Agent an officer's certificate of the Borrower to the effect that all conditions for a Restricted Payment on the date of such Restricted Payment have been satisfied;

(viii) any amounts paid in reimbursement of Fronted Equity Contributions;

(ix) any insurance proceeds received by the Obligors in respect of any event occurring prior to the **Initial** Closing Date;

(x) any proceeds of Commercial Tort Claims (as referenced in the First Lien Security Agreement) or contractual claims related to any wildfires that have occurred prior to the **Initial** Closing Date;

(xi) **(A) the proceeds of any 2022 Term Loans (as defined in the Second Omnibus Amendment) on the Second Omnibus Amendment Date, (B)** the proceeds of any 2021 Term Loans (as defined in the Omnibus Amendment) on the Omnibus Amendment Date~~;~~ **and (C) any cash collateral posted by one or more parent companies of Borrower on or around the Omnibus Amendment Date to Southern California Edison Company (or one of its Affiliates) on behalf of the Obligors, which cash collateral is returned by Southern California Edison Company either to an Obligor or directly to one or more parent companies of the Borrower;**

(xii) the proceeds of any Additional Ratio Indebtedness;

(xiii) Restricted Payments in accordance with the Depositary Agreement; and

(xiv) the proceeds of any Indebtedness incurred pursuant to Section 5.3(a)(xvi) so long as permitted by the debt instruments governing such Indebtedness.

(b) For the avoidance of doubt, the Obligors and any such Excluded Subsidiaries shall not be prohibited from receiving contributions of equity from time to time.

5.2 Investments

None of the Obligors shall make any Investments other than Permitted Investments.

5.3 Incurrence of Indebtedness and Issuance of Preferred Stock

(a) None of the Obligors shall, nor shall any of the Obligors permit any Excluded Subsidiary (other than Non-Recourse Subsidiaries) to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "**incur**") any Indebtedness other than the following items of Indebtedness (collectively, "**Permitted Debt**"):

(i) Indebtedness incurred under the TLA Credit Agreement (including any additional or incremental facilities thereunder) and any other Indebtedness constituting First Lien Obligations under the Intercreditor Agreement;

(ii) Indebtedness constituting Second Lien Obligations under the Intercreditor Agreement solely to the extent such Second Lien Obligations relate to Indebtedness of the Obligors and/or any Subsidiary of any Obligor in respect of one or more Permitted Commodity Hedge Agreements;

(iii) Additional Ratio Indebtedness;

(iv) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business of the Obligors or any such Excluded Subsidiaries;

(v) Indebtedness in respect of Permitted Commodity Hedge Agreements and/or Permitted Interest Rate Agreements;

(vi) Indebtedness incurred for Required Modifications, so long as immediately after giving effect to the incurrence of such Indebtedness, (A) no Event of Default (as defined in the TLA Credit Agreement) or CTA Event of Default has occurred and is continuing or will result from such incurrence and (B) no Material Adverse Effect has occurred and is continuing or could reasonably be expected to result from such incurrence;

(vii) Refinancing Indebtedness so long as, (A) no Event of Default (as defined in the TLA Credit Agreement) or CTA Event of Default shall have occurred and be continuing or would result from the incurrence of such Refinancing Indebtedness, (B) such Refinancing Indebtedness ranks *pari passu* in all respects with all other First Lien Obligations, (C) the weighted average life to maturity of such Refinancing Indebtedness shall be no less than the remaining weighted average life to maturity of the First Lien Secured Debt Obligations being refinanced, (D) the final maturity date of such Refinancing Indebtedness shall occur on or after the final maturity date of the Indebtedness that is being refinanced, (E) the net cash proceeds of such Refinancing Indebtedness are used to redeem or prepay any First Lien Secured Debt Obligations (as selected by the Borrower) on a pro rata basis within each such tranche of First Lien Secured Debt Obligations being redeemed or prepaid, and pay all interest, premiums, fees and expenses (including interest rate hedge breakage costs), and reserves (including any incremental increase in the Debt Service Reserve Requirement (as defined in the TLA Credit Agreement) resulting from the incurrence of such Refinancing Indebtedness), (F) the aggregate principal amount of any Refinancing Indebtedness shall not exceed the aggregate amount of debt that is being refinanced, plus interest, premiums, fees and expenses (including interest rate hedge breakage costs), any amounts required to fund any debt service reserve account thereunder and any incremental increase in the Debt Service Reserve Requirement (as defined in the TLA Credit Agreement), (G) the representative of the holders of such Refinancing Indebtedness shall have acceded to this Agreement pursuant to Section 2.1 and to the Intercreditor Agreement, and (H) the Borrower shall have certified as to the satisfaction of the foregoing conditions in clauses (A) to (F);

(viii) Indebtedness (other than for borrowed money) incurred pursuant to the terms of any Project Contract, that is either not more than ninety days past due or being contested in good faith;

(ix) trade or other similar Indebtedness (other than for borrowed money) incurred in the ordinary course of business of the Obligors, that is either not more than ninety days past due or being contested in good faith;

(x) contingent liabilities, to the extent otherwise constituting Indebtedness, including those relating to (A) the acquisition of goods, supplies or merchandise in the normal course of business or normal trade credit, (B) the endorsement of negotiable instruments received in the normal course of its business, and (C) contingent liabilities incurred with respect to any Applicable Permit, Financing Document or Project Contract;

(xi) Finance Lease Obligations and any other Indebtedness (including purchase money obligations incurred to finance the purchase price of discrete items of equipment not comprising an integral part of the Projects that extend only to the equipment being financed), in an aggregate amount of secured principal not exceeding $10,000,000 at any one time outstanding;

(xii) Indebtedness incurred in respect of workers' compensation claims, self-insurance obligations, bankers' acceptances, and performance and surety bonds in the ordinary course of business;

(xiii) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Indebtedness is covered within five Business Days;

(xiv) Indebtedness arising from netting services, overdraft protection, cash management obligations, and otherwise in connection with deposit, securities, and commodities accounts in the ordinary course of business;

(xv) the incurrence by any Obligor of intercompany Indebtedness between or among the Obligors;

(xvi) additional Indebtedness of any Obligor in an aggregate principal amount not to exceed $80,000,000 at any time outstanding the proceeds of which shall be used to finance the development, construction, ownership, operation or maintenance of energy storage and/or carbon sequestration projects owned by the Obligors so long as no Event of Default (as defined in the TLA Credit Agreement) or CTA Event of Default shall have occurred and be continuing or would result from the incurrence of such indebtedness;

(xvii) to the extent constituting Indebtedness, purchase of the CoBank Service Share;

(b) For purposes of determining compliance with Section 5.3:

(i) in the event that an item of Indebtedness meets the criteria of more than one of the categories of Permitted Debt described in Section 5.3, the Borrower shall be permitted to classify such item of Indebtedness on the date of its incurrence, or later reclassify such item of Indebtedness, in any manner that complies with Section 5.3;

(ii) all Indebtedness shall be denominated in U.S. Dollars; and

(iii) the amount of any Indebtedness outstanding as of any date will be:

(A) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue discount;

(B) the principal amount of the Indebtedness, in the case of any other Indebtedness; and

(C) in respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the lesser of:

(1) the Fair Market Value of such assets at the date of determination; and

(2) the amount of the Indebtedness of the other Person.

(c) None of the Obligors shall, nor shall the Obligors permit any Excluded Subsidiary (other than Non-Recourse Subsidiaries) to, issue any Disqualified Capital Stock.

5.4 Subsidiaries

The Borrower shall not create any Subsidiaries other than the Guarantors and Excluded Subsidiaries.

5.5 Accounts

Except as permitted by this Agreement, no Obligor shall open and/or maintain any bank, brokerage or other account other than the Depositary Accounts and Local Accounts.

5.6 Replacement Major Project Contracts

The Obligors shall not enter into any Replacement Major Project Contract if entering into such contract or agreement would reasonably be expected to (a) result in a Material Adverse Effect or (b) result in the breach of, or conflict with the terms of, any Major Project Contract, which breach or conflict would reasonably be expected to have a Material Adverse Effect.

5.7 Transactions with Affiliates

(a) No Obligor shall, directly or indirectly, enter into any transaction or series of transactions relating to the Projects with or for the benefit of any Affiliate of the Borrower other than any Obligor ("**Affiliate Transactions**") other than:

(i) any Affiliate Transaction that (A) contains terms no less favorable to such Obligor than would be included in an arm's-length transaction entered into by a prudent Person with a non-Affiliated third party, or (B) if no comparable arm's-length transaction with a Person that is not an Affiliate is available, then on terms reasonably believed by the Borrower to be fair and reasonable (in the case of this clause (B), as set forth in an officer's certificate of the Borrower delivered to the First Lien Collateral Agent within fifteen Business Days after the entry into such transaction, together with copies of documents evidencing such transaction) (it being understood that an exchange or borrowing of spare parts with an Affiliate based on net book value or Fair Market Value will be deemed to be an arm's-length transaction);

(ii) any contracts, agreements or understandings with Affiliates existing on the **Initial** Closing Date (and any transactions or arrangements entered into thereunder from time to time, and any amendments to or replacements of such contracts, agreements or understandings so long as any such amendment or replacement (A) does not contain terms less favorable in any material respect to such Obligor than would be included in an arm's-length transaction entered into by a prudent Person with a non-affiliated third party, or (B) if no comparable arm's-length transaction with a Person that is not an Affiliate is available, then on terms reasonably believed by the Borrower to be fair and reasonable (in the case of this clause (B), as set forth in an officer's certificate of the Borrower delivered to the First Lien Collateral Agent within fifteen Business Days after the entry into such transaction, together with copies of documents evidencing such transaction));

(iii) any employment agreement, employee benefit plan, officer or director indemnification agreement, non-competition, confidentiality agreement or any similar arrangement entered into by such Obligor in the ordinary course of business and payments pursuant thereto;

(iv) transactions with an Affiliate of an Obligor solely on account of such Obligor's ownership, directly or indirectly, of Equity Interest in, or controls, such Affiliate;

(v) payment of directors' fees to Persons who are not otherwise Affiliates of the Borrower;

(vi) any issuance of Equity Interests (other than Disqualified Capital Stock) of an Obligor to Affiliates of such Obligor;

(vii) (A) any Permitted Investments and (B) any transfer of any assets or contracts relating to an energy storage Project or carbon capture Project ~~that was~~ contributed to one or more Obligors on or after the Omnibus Amendment Date (other than (i) to the extent the Obligors have spent cash or cash equivalents relating to such assets or contracts, in which case, such transferee reimburses the Obligors for such expenses or (ii) any other asset or contract without which the condition specified in clause (a) of the definition of Additional Ratio Indebtedness would not have been satisfied);

(viii) Restricted Payments that do not violate Section 5.1 **(including Section 5.1(a)(xi)(B))**;

(ix) loans or advances to employees in the ordinary course of business not to exceed $3,000,000 in the aggregate at any one time outstanding; and

(x) as otherwise expressly permitted (or, if not addressed therein, not prohibited) by the First Lien Documents.

5.8 Liens

No Obligor shall, directly or indirectly, create, incur, assume or suffer to exist any Lien securing Indebtedness on any asset now owned or hereafter acquired, except Permitted Liens.

5.9 Limitation on Asset Dispositions

The Obligors shall not, directly or indirectly, consummate an Asset Disposition, except Permitted Asset Dispositions.

5.10 Fundamental Changes

(a) The Borrower shall not, directly or indirectly: (x) consolidate with or merge into another Person (whether or not the Borrower is the surviving corporation) or (y) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Obligors, taken as a whole, in one or more related transactions, to another Person, unless:

(i) either:

(A) the Borrower is the surviving entity; or

(B) the Person formed by or surviving any such consolidation or merger (if other than the Borrower) or to which such sale, assignment, transfer, conveyance, allocation of assets, division or other disposition has been made is a corporation, partnership or limited liability company organized or existing under the laws of the United States, any state thereof or the District of Columbia;

(ii) the Person formed by or surviving any such consolidation or merger (if other than the Borrower) or the Person to which such sale, assignment, transfer, conveyance, allocation of assets, division or other disposition has been made assumes all the obligations of the Borrower under the First Lien Secured Debt Documents and the First Lien Collateral Documents; and

(iii) immediately after such transaction, no CTA Event of Default shall exist;

(b) The Borrower shall not, directly or indirectly, lease all or substantially all of the properties and assets of the Obligors, taken as a whole, in one or more related transactions, to any other Person;

(c) Notwithstanding anything herein to the contrary, Section 5.10(a) and Section 5.10(b) shall not apply to, and the Obligors shall be permitted to, take any of the following actions:

(i) Any merger of the Borrower with an Affiliate solely for the purpose of reincorporating the Borrower in another jurisdiction or forming a direct holding company of the Borrower;

(ii) Any consolidation or merger of any Obligor into another Obligor; and

(iii) Any sale, assignment, transfer, conveyance, lease, allocation of assets, divisions or other disposition of assets by any Obligor to another Obligor.

5.11 Limitation on Hedging

The Obligors shall not, directly or indirectly, enter into any hedge agreement, except Permitted Commodity Hedge Agreements and Permitted Interest Rate Agreements; provided, that, to the extent such Permitted Commodity Hedge Agreement or Permitted Interest Rate Agreement is secured by the Collateral, the counterparty party thereto shall have become party to the Intercreditor Agreement.

5.12 Limitation on Sale and Leaseback Transactions

No Obligor shall enter into any sale and leaseback transaction; provided, that the Obligors may enter into a sale and leaseback transaction if (a) such Obligor could have incurred a Lien (other than a Lien created under the First Lien Collateral Documents) to secure Indebtedness pursuant to Section 5.8, and (b) the gross cash proceeds of such sale and leaseback transaction are at least equal to the Fair Market Value, as determined in good faith by the Board of Directors of the Borrower and set forth in an officer's certificate delivered to the First Lien Collateral Agent, of the property that is the subject of that sale and leaseback transaction.

5.13 Nature of Business

No Obligor shall engage in any business or activities other than the Permitted Businesses, except to such extent as would not be material to the Obligors, taken as a whole.

5.14 Tax Status

Each of the Obligors is classified, as of the **Initial** Closing Date, as a partnership or an entity disregarded from its owner for U.S. federal, state and local income tax purposes. None of the Obligors will make or permit to be made any election to be treated as, or take any actions that could cause it to be treated as, an association taxable as a corporation for U.S. federal, state or local income tax purposes.

6. EVENTS OF DEFAULT

6.1 Events of Default

The occurrence of any of the following events shall constitute an event of default (each, a "**CTA Event of Default**") in respect of all First Lien Secured Debt Obligations:

(a) Principal Payment Default. The Borrower shall fail to pay when due any principal on the First Lien Obligations (other than any First Lien Secured Hedge) in excess $50,000,000 and such default continues unremedied for a period of five days;

(b) Interest Payment Default. The Borrower shall fail to pay when due any interest in respect of First Lien Obligations (other than any First Lien Secured Hedge) or any commitment or similar fee payable by it under any First Lien Secured Debt Document and such failure continues unremedied for a period of thirty days;

(c) Breach of Terms of Agreement.

(i) Defaults without Cure Periods. Any Obligor shall fail to perform or observe any of the covenants set forth in Sections 4.1 or Article 5 (other than Section 5.4).

(ii) Defaults with Cure Periods. Any Obligor shall fail to perform or observe any of the covenants set forth in Section 5.4, and such failure shall continue unremedied for a period of five Business Days.

(iii) Other Defaults. Any Obligor shall fail to perform or observe any of its covenants set forth hereunder or any other First Lien Collateral Document not otherwise specifically provided for in Section 6.1(c)(i), Section 6.1(c)(ii) or elsewhere in this Article 6, and such failure shall continue unremedied for a period of thirty days after such Obligor receives written notice thereof from the TLA Administrative Agent; provided, that if (A) such failure cannot be cured within such thirty-day period, (B) such failure is susceptible of cure within ninety days, (C) such Obligor is proceeding with diligence and in good faith to cure such failure, (D) the existence of such failure has not had and could not, after considering the nature of the cure, be reasonably expected to have a Material Adverse Effect, and (E) the TLA Administrative Agent shall have received an officer's certificate signed by a Responsible Officer to the effect of clauses (A), (B), (C), and (D) above and stating what action such Obligor is taking to cure such failure, then such thirty-day cure period shall be extended to such date, not to exceed a total of ninety days, as shall be necessary for such Obligor diligently to cure such failure.

(d) Security. Any First Lien Collateral Document ceases, for any reason, to be in full force and effect (other than in accordance with its terms) with respect to a material portion of the Collateral, or any Obligor so asserts, or any Lien created by any First Lien Collateral Document ceases to be enforceable and of the same effect and priority purported to be created thereby with respect to a material portion of the Collateral (**subject to Permitted Liens) (**other than, in each case, pursuant to a failure of any First Lien Secured Debt Representative, any other agent appointed by a First Lien Secured Debt Representative or the holders of any First Lien Secured Debt Holders to take any action within the sole control of such Person); provided, that the Borrower will have ten Business Days after the discovery thereof by the Borrower to cure any such cessation and restore such priority or to furnish to the First Lien Collateral Agent all documents or instruments reasonably required to cure any such cessation and restore such priority; provided, further, that the release of Collateral from the First Lien Collateral Documents or the discharge of a Guarantor therefrom shall not be construed (i) as any First Lien Collateral Document ceasing to be in full force and effect or (ii) as any Lien created thereunder ceasing to be enforceable or of the same priority and effect purported to be created thereby;

(e) Guarantees. Except as permitted by the First Lien Documents or the First Lien Security Agreement, any Guarantee ceases, for any reason, to be in full force and effect (other than in accordance with its terms), or a Guarantor denies or disaffirms in writing its obligations under its Guarantee;

(f) Judgements. A final judgment or judgments for the payment of money exceeding $50,000,000 in the aggregate shall be rendered against any Obligor by one or more courts, administrative tribunals or other bodies having jurisdiction over such Obligor and the same shall not have been paid or discharged, or for which no bond is posted, for a period of sixty consecutive days after its entry, which judgment(s) are neither (i) covered by available insurance as acknowledged in writing by the provider of such insurance or as certified to the First Lien Collateral Agent and the TLA Administrative Agent by an insurance consultant and the same is not nor (ii) effectively stayed within ninety days after such judgment(s) entry;

(g) Abandonment. (i) Any Obligor shall make a formal, public announcement of its decision to abandon the Projects or (ii) the Obligors shall have ceased all activities relating to the Projects for a period of more than thirty consecutive days for any reason other than force majeure, a Casualty Event or a Legal Requirement; provided, that in each case, none of (A) scheduled maintenance of the Projects, (B) repairs to the Projects, whether or not scheduled, (C) a forced outage or scheduled outage of the Projects, or (D) the abandonment of any single Project, shall constitute abandonment or suspension of the Projects so long as the Borrower is diligently attempting to end such cessation; provided, further, that any period of cessation shall be deemed to end on the date that operations of a substantial nature are resumed and thereafter diligently pursued;

(h) Unenforceability. At any time after the execution and delivery hereof, this Agreement or the Intercreditor Agreement shall cease to be in full force and effect (other than by reason of the satisfaction in full or release of an Obligor's First Lien Obligations hereunder or thereunder or any other termination of a Financing Document in accordance with the terms hereof or thereof) or this Agreement or the Intercreditor Agreement shall be declared null and void by a Governmental Authority of competent jurisdiction.

(i) Bankruptcy. Any Obligor shall be subject to a Bankruptcy Event.

7. MISCELLANEOUS

7.1 Effectiveness; Continuing Nature of this Agreement; Severability

(a) This Agreement shall become effective when executed and delivered by each of the parties hereto.

(b) Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. All references to any Obligor shall include such Obligor as debtor and debtor-in-possession and any receiver or trustee for such Obligor (as the case may be) in any Insolvency or Liquidation Proceeding.

(c) This Agreement shall terminate and be of no further force and effect with respect to the First Lien Collateral Agent, the First Lien Secured Parties and the First Lien Obligations, upon the Discharge of First Lien Obligations.

7.2 Amendments; Waivers

(a) No amendment, modification or waiver of any of the provisions of this Agreement by the parties hereto shall be deemed to be made unless the same shall be in writing signed by the authorized agents of or on behalf of the Obligors, First Lien Collateral Agent and First Lien Secured Debt Representatives constituting the Required First Lien Secured Debt Parties and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the parties making such waiver or the obligations of the other parties to such party in any other respect or at any other time.

(b) 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.

7.3 Consent to Jurisdiction and Service of Process; Waiver of Jury Trial

(a) EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT SITTING IN NEW YORK COUNTY, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO 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 FULLEST EXTENT PERMITTED BY LEGAL REQUIREMENT, 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. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS AGREEMENT OR IN ANY OTHER FINANCING DOCUMENT SHALL AFFECT ANY RIGHT THAT THE FIRST LIEN COLLATERAL AGENT OR ANY FIRST LIEN SECURED DEBT REPRESENTATIVE MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER FIRST LIEN DOCUMENT AGAINST THE OBLIGORS OR THEIR RESPECTIVE PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(b) EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LEGAL REQUIREMENT, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER FIRST LIEN DOCUMENT IN ANY COURT REFERRED TO IN SECTION 7.3(a). EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LEGAL REQUIREMENT, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(c) Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 7.4. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by Legal Requirement.

(d) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY 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 OR ANY OTHER FINANCING DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE FINANCING DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

7.4 Notices

Unless otherwise specifically provided herein, any notice hereunder shall be in writing and may be personally served, telexed or sent by facsimile, electronic mail or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of facsimile or telex, or three Business Days after depositing it in the United States mail with postage prepaid and properly addressed. For the purposes hereof, the addresses of the parties hereto shall be as set forth on Annex I to the Intercreditor Agreement, or, as to each party, at such other address as may be designated by such party on its signature page hereto or in a written notice to all of the other parties.

7.5 Further Assurances

The First Lien Collateral Agent, on behalf of itself and the First Lien Secured Parties, each First Lien Secured Debt Representative, on behalf of itself and the First Lien Secured Parties represented by it, and each Obligor agree that each of them shall take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as the Obligors or the First Lien Collateral Agent may reasonably request to effectuate the terms of this Agreement.

7.6 Applicable Law

THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

7.7 Binding on Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the Obligors, First Lien Collateral Agent and the First Lien Secured Parties, and their respective successors and assigns. If the First Lien Collateral Agent resigns or is replaced pursuant to this Agreement, its successor shall be deemed to be a party to this Agreement and shall have all the rights of, and be subject to all the obligations of, this Agreement.

7.8 Headings

Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

7.9 Counterparts; Integration; Effectiveness

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Financing Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall become effective when it shall have been executed by the First Lien Collateral Agent and when the First Lien Collateral Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith by telecopy or by email with a portable document format (.pdf) attached or by similar electronic means shall be effective as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable.

7.10 Authorization

By its signature, each Person executing this Agreement on behalf of a party hereto represents and warrants to the other parties hereto that it is duly authorized to execute this Agreement.

7.11 Third Party Beneficiaries

This Agreement and the rights and benefits hereof shall inure to the benefit of each of the parties hereto and their respective successors and assigns and shall inure to the benefit of each of the Secured Parties.

7.12 Electronic Execution

The words "execution," "execute", "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation amendments, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Directing Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

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EXHIBIT A
to First Lien Common Terms Agreement

DEFINITIONS

"**2014 SCE PPA**" means that certain Renewable Power Purchase and Sale Agreement, dated July 29, 2014, between Southern California Edison Company and the Borrower.

"**2015 SCE PPA**" means that certain Renewable Power Purchase and Sale Agreement, dated July 28, 2015, between Southern California Edison Company and the Borrower.

"**A.L.T.A.**" means American Land Title Association.

"**Additional Major Project Contract**" means each contract, agreement, letter agreement or other instrument to which any Obligor becomes a party after the **Initial** Closing Date that:

(a) is a Replacement Major Project Contract;

(b) is a power purchase agreement (including any Permitted Commodity Hedge Agreement) that contains obligations and liabilities or payments to the such Obligor (i) that as of the date of determination, are in excess of $225,000,000 over its remaining term (including after taking into account all amendments, amendments and restatements, supplements, or waivers to any such contract, agreement, letter agreement or other instrument as of such date), or (ii) without which the condition specified in clause (a) of the definition of Additional Ratio Indebtedness would not have been satisfied; or

(c) is any contract or other arrangement to which any Obligor is a party (other than the Financing Documents) for which a breach, non-performance, cancellation or failure to renew would reasonably be expected to have a Material Adverse Effect.

"**Additional Ratio Indebtedness**" means additional Indebtedness subject to satisfaction of the following conditions as of the date such Indebtedness is incurred: (a)(i) either (x) the Debt Service Coverage Ratio for the Calculation Period of each Quarterly Date through the Term Maturity Date (with respect to future Calculation Periods, as reasonably projected by the Borrower for such future Calculation Period) is either at least 2.00:1.00 or (y) the Debt Service Coverage Ratio for the Calculation Period of each Quarterly Date through the Term Maturity Date (with respect to future Calculation Periods, as reasonably projected by the Borrower for such future Calculation Period) is at least 1.50:1.00 and the average Debt Service Coverage Ratio for all Calculation Periods of all Quarterly Dates through the Term Maturity Date (with respect to future Calculation Periods, as reasonably projected by the Borrower for such future Calculation Period) is at least 1.75:1.00; provided, that, the aggregate amount of Additional Ratio Indebtedness at any time outstanding pursuant to this clause (y) shall not exceed $100,000,000; provided, further, that the Debt Service Coverage Ratio for purposes of this definition shall be calculated (A) taking into account such incurrence and the amortization profile relating to such Additional Ratio Indebtedness and (B) using contracted cash flows under power purchase or other offtake agreements with utilities or community choice aggregators or under other Permitted Commodity Hedge Agreements, which agreements shall, in each case, (1) provide for the sale of capacity, energy, green attributes or other products or services by the Obligors, (2) specify an agreed price or a pricing formula or pricing procedures or mechanics for the sale of such products or services, (3) have a term of no less than six months, and (4) have pricing assumptions referenced in clause (2) above that are based on market pricing consistent with a report of a nationally or regionally recognized market consultant for the applicable periods (it being acknowledged that PA Consulting Group, Inc. or its successor shall be deemed to be a nationally or regionally recognized market consultant for purposes hereof); provided, further, that (A) the proportion of the contracted cash flows under such agreements with any Affiliates of the Obligors, including the Third Amended and Restated Power Purchase and Sale Agreement, as a percentage of all such contracted cash flows of the Obligors included in any such Debt Service Coverage Ratio calculation, shall not exceed 20% and (B) any merchant revenues and revenues indexed to daily market prices shall not be included in any such Debt Service Coverage Ratio calculation; (b) the final maturity date of any such additional Indebtedness shall occur after the Term Maturity Date; (c) in the case of additional term loan facilities, establishment of an additional debt service reserve account that reserves an amount at least equal to the amount of interest, commitment fees and principal in respect of such term loan facilities reasonably anticipated to be payable over the succeeding six-month period; (d) in the case of any such additional Indebtedness issued in the capital markets, the Borrower obtaining an Investment Grade rating for such additional indebtedness; (e) the Borrower shall have obtained a ratings reaffirmation confirming no downgrade of the ratings issued by Kroll on or prior to the **Second** Omnibus Amendment Date; (f) satisfaction of any conditions to the incurrence of such Indebtedness as required by the First Lien Secured Debt Documents under which any other First Lien Obligations are then-outstanding; (g) no Event of Default (as defined in the TLA Credit Agreement) or CTA Event of Default shall have occurred and be continuing or would result therefrom; (h) no TLA Lender will be required to participate in any such Additional Ratio Indebtedness (and the Borrower shall not have any obligation to approach any existing TLA Lender to provide such Additional Ratio Indebtedness); and (i) the Borrower shall have certified the satisfaction of the foregoing conditions to the TLA Administrative Agent, the First Lien Secured Debt Representative and the First Lien Collateral Agent.

"**Administrative Services Agreement**" means the administrative services agreement among the Borrower, Geysers Company, Wild Horse, Calistoga, and Calpine Administrative Services Company, Inc., to be entered into on or about the **Initial** Closing Date (as amended, amended and restated, supplemented or otherwise modified from time to time).

"**Affiliate**" has the meaning given in the Intercreditor Agreement.

"**Affiliate Transactions**" has the meaning given in Section 5.7(a).

"**After-Acquired Real Property**" has the meaning given in Section 4.12(c).

"**Agreement**" has the meaning given in the Recitals.

"**Applicable Permits**" means, at any time, any Permit, including any zoning or land use Permit, any Permit required under any Environmental Law to conduct the business and operations as currently conducted, or any FERC, state fire marshal, import, export, safety, siting or building Permit that is: necessary under applicable Legal Requirements or any of the Major Project Contracts to be obtained by or on behalf of any Obligor at such time in light of the stage of development, construction or operation of the Projects to construct, test, operate, maintain, repair, lease, own or use the Projects as contemplated by the Major Project Contracts, to sell electricity from the Projects or deliver steam or fuel to any Project, or for any Obligor to enter into any Major Project Contract or to consummate any transaction contemplated thereby, in each case in accordance with all applicable Legal Requirements; or necessary so that none of the Obligors, any First Lien Secured Debt Representative under any First Lien Secured Debt Document, or the First Lien Collateral Agent or the First Lien Secured Debt Holder nor any Affiliate of any of them may be deemed by any Governmental Authority to be subject to, or not exempt from, regulation under the FPA or the federal access to books and records requirements of PUHCA or treated as a public utility under the Constitution and the laws of the State of California as presently constituted and as construed by the courts of California with respect to the regulation of the rates of, or the financial or organizational regulation of, electric utilities solely as a result of the development and construction or operation of the Projects or the sale of electricity therefrom, except that:

(a) the Borrower and certain of the Guarantors are subject to the compliance requirements under PUHCA applicable to Exempt Wholesale Generators and/or owners of Qualifying Facilities that are directly or indirectly owned by entities that are "holding companies" under PUHCA solely with respect to Exempt Wholesale Generators, Qualifying Facilities under PURPA or "foreign utility companies" under PUHCA; and

(b) the Borrower is a "public utility" under the FPA with authority to sell wholesale electric power, capacity and certain ancillary services at market-based rates and with all waivers of regulations and blanket authorizations as are customarily granted by FERC to a "public utility" that sells wholesale electric power, capacity and certain ancillary services at market-based rates.

"**Asset Disposition**" has the meaning given in the Intercreditor Agreement.

"**Asset Disposition Proceeds**" has the meaning given in the Depositary Agreement.

"**Bankruptcy Event**" means shall be deemed to occur, with respect to any Person if ~~θ~~(a) such Person shall institute a voluntary case seeking liquidation or reorganization under the Bankruptcy Law, or shall consent to the institution of an involuntary case thereunder against it; or (b) such Person shall file a similar petition or shall otherwise institute any similar proceeding under any other applicable Federal or state law, or shall consent thereto; or (c) such Person shall apply for the appointment, or by consent or acquiescence there shall be an appointment, of a receiver, liquidator, sequestrator, trustee or other officer or custodian with similar powers for itself or any substantial part of its property or assets; or (d) such Person shall make an assignment for the benefit of its creditors; or (e) such Person shall become insolvent, or admit in writing its inability to pay its debts generally as they become due; or (f) an involuntary case shall be commenced seeking liquidation or reorganization of such Person under the Bankruptcy Law or any similar proceedings shall be commenced against such Person under any other applicable Federal or state law and (i) the petition commencing the involuntary case is not timely controverted, (ii) the petition commencing the involuntary case is not dismissed within sixty days of its filing, (iii) an interim trustee is appointed to take possession of all or a portion of the property, and/or to operate all or any material part of the business, of such Person and such appointment is not vacated within sixty days, or (iv) an order for relief shall have been issued or entered therein; (g) a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee or other officer having similar powers of such Person or all or a material part of its property shall have been entered; or (h) any other similar relief shall be granted against such Person under any applicable Bankruptcy Law.

"**Bankruptcy Law**" has the meaning given in the Intercreditor Agreement.

"**Board of Directors**" means:

(a) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board;

(b) with respect to a partnership, the board of directors of the general partner of the partnership;

(c) with respect to a limited liability company, the managing member or members or any controlling committee of managing members thereof; and

(d) with respect to any other Person, the board or committee of such Person serving a similar function.

"**Borrower**" has the meaning given in the Recitals.

"**Business Day**" has the meaning given in the Intercreditor Agreement.

"**CAISO**" has the meaning given in the Intercreditor Agreement.

"**Calculation Period**" means, as to a particular date, the four consecutive fiscal quarters most recently ended immediately preceding such date.

"**Calistoga**" has the meaning given in the Recitals.

"**Calistoga Geothermal Steam Sales Agreement**" means the steam sales agreement between Calistoga and Borrower, to be dated on or about the **Initial** Closing Date (as amended, amended and restated, supplemented or otherwise modified from time to time).

"**Calpine**" has the meaning given in the Intercreditor Agreement.

"**Capital Expenditures**" means expenditures made by any Obligor to acquire, construct, repair, improve, replace, expand, install and/or similar actions with respect to fixed assets, plant and equipment which, in accordance with GAAP, are or should be included in "purchase of property and equipment" or similar items reflected in the consolidated statement of cash flows of the Borrower (including renewals, improvements and replacements thereto, but, notwithstanding the foregoing, excluding any such expenditures that are paid out of Loss Proceeds, Asset Disposition Proceeds or the proceeds of any Permitted Asset Disposition).

"**Capital Stock**" has the meaning given in the Intercreditor Agreement.

"**Cash**" has the meaning given in the Intercreditor Agreement.

"**Casualty Event**" means a casualty event that causes all or a portion of the Projects to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever, other than (a) ordinary use and wear and tear, (b) any Event of Eminent Domain or (c) any casualty event in respect of which (x) any Obligor reasonably expects to receive Insurance Proceeds of less than $10,000,000 or (y) in the case of an uninsured event, any Obligor reasonably expects to incur repair, restoration, replacement and/or demolition costs of less than $10,000,000.

"**CIA Accession Agreement**" means the "Accession Agreement" as defined in the Intercreditor Agreement.

~~**"Closing Date" means the date hereof.**~~

"**CoBank Service Share**" means a single, fully paid and non-assessable share of common stock in CoBank, ACB with a par value of $100.

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

"**Collateral**" has the meaning given in the Intercreditor Agreement.

"**Collection Expenses**" means all reasonable and documented out-of-pocket costs and expenses (if any) and, if applicable, reasonable transaction costs (including reasonable legal and accounting fees and expenses, taxes paid or payable as a result thereof and amounts payable to holders of senior Liens on such asset (to the extent such Liens are Permitted Liens)), incurred or reasonably anticipated to be incurred by any Obligor in connection with the collection, enforcement, negotiation, consummation, settlement, proceedings, administration or other activity related to the receipt or collection of Asset Disposition Proceeds, Loss Proceeds or Project Payments, as applicable.

"**Commodity Hedge Agreement**" has the meaning given in the Intercreditor Agreement.

"**CPA PPA**" means that certain Renewable Power Purchase Agreement, dated as of June 4, 2021, between the Borrower and Clean Power Alliance of Southern California.

"**CTA Default**" means any event that is, or with the passage of time or the giving of notice or both, would be, a CTA Event of Default.

"**CTA Event of Default**" has the meaning given in Section 6.1.

"**Debt Service**" means, for any period, the sum of (a) all scheduled interest and scheduled principal payable during such period in respect of First Lien Secured Debt Obligations (other than the final principal payment of any Indebtedness on the final maturity date thereof), (b) any letter of credit fees relating thereto, and (c) (for purposes of calculating the Debt Service Coverage Ratio) any payments paid by the Borrower during such period pursuant to Interest Rate Agreements *less* (for purposes of calculating the Debt Service Coverage Ratio) any payments received or to be received by the Borrower during such period pursuant to Interest Rate Agreements; provided, that such Debt Service shall not include mandatory prepayments pursuant to, any First Lien Secured Debt Document.

"**Debt Service Coverage Ratio**" means, for any period, the ratio of (a) Operating Cash Available for Debt Service for such period to (b) Debt Service for such period; provided, that for purposes of calculating the Debt Service Coverage Ratio, (i) Debt Service, for the Calculation Period ending on September 30, 2020 shall be deemed to be the product of four times Debt Service for the fiscal quarter ending on such date, (ii) Debt Service, for the Calculation Period ending on December 31, 2020 shall be deemed to be the product of two times the Debt Service for the two fiscal quarters ending on such date, and (iii) Debt Service, for the Calculation Period ending on March 31, 2021 shall be deemed to be the product of four thirds Debt Service for the three fiscal quarters ending on such date.

"**Debt Service Reserve Account**" has the meaning given in the Depositary Agreement.

"**Depositary Accounts**" has the meaning given in the Depositary Agreement.

"**Depositary Agent**" has the meaning given in the Intercreditor Agreement.

"**Depositary Agreement**" has the meaning given in the Intercreditor Agreement.

"**Directing Agent**" means (a) the TLA Administrative Agent, (b) if the TLA Credit Agreement is no longer in effect, the First Lien Secured Debt Representative(s) collectively representing any other outstanding commercial bank debt, including any letter of credit facility, and (c) if there is no commercial bank debt referred to in clause (b) outstanding, the First Lien Secured Debt Representative representing the then-largest amount of Additional Ratio Indebtedness.

"**Discharge of First Lien Obligations**" has the meaning given in the Intercreditor Agreement.

"**Disqualified Capital Stock**" means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder of the Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the date that is 91 days after the latest maturity date of the promissory notes issued by the Borrower evidencing the borrowing of a loan, issuance of or drawing upon a letter of credit, or the issuance of debt securities pursuant to any First Lien Secured Debt Document (other than pursuant to a change of control or asset sale prepayment offer provision).

"**Distribution Suspense Account**" has the meaning given in the Depositary Agreement.

"**Division**" means the division of a limited liability company into two or more limited liability companies pursuant to a "plan of division" or similar method within the meaning of the Delaware Limited Liability Company Act.

"**Emergency Operating Costs**" means those amounts required to be expended, in the good faith judgment of Borrower (as confirmed by the Independent Engineer) as a result of the occurrence of an unanticipated event in order to prevent or mitigate an emergency situation involving endangerment of life, human health, safety or the environment or damage to property.

"**Environmental Law**" has the meaning given in the Intercreditor Agreement.

"**Equity Interests**" has the meaning given in the Intercreditor Agreement.

"**Event of Eminent Domain**" has the meaning given in the Depositary Agreement.

"**Excluded Asset**" has the meaning given in the Intercreditor Agreement.

"**Excluded Subsidiary**" means (a) any non-wholly owned Subsidiary formed or acquired by any Obligor after the **Initial** Closing Date, (b) any Subsidiary that is not a Material Subsidiary, and (c) any Non-Recourse Subsidiary.

"**Exempt Wholesale Generator**" means an "exempt wholesale generator" within the meaning of PUHCA and FERC's regulations thereunder.

"**Fair Market Value**" means the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party, determined in good faith by the chief financial officer of the Borrower (unless otherwise provided under this Agreement).

"**FERC**" has the meaning given in the Intercreditor Agreement.

"**Finance Lease Obligation**" has the meaning given in the Intercreditor Agreement.

"**Financing Documents**" has the meaning given in the Intercreditor Agreement.

"**First Lien Collateral Agent**" has the meaning given in the Recitals.

"**First Lien Collateral Documents**" has the meaning given in the Intercreditor Agreement.

"**First Lien Common Terms Accession Agreement**" means an accession agreement to this Agreement entered into (or to be entered into) by any acceding First Lien Secured Debt Representative, substantially in the form set forth on Exhibit B.

"**First Lien Documents**" has the meaning given in the Intercreditor Agreement.

"**First Lien Obligations**" has the meaning given in the Intercreditor Agreement.

"**First Lien Secured Debt Documents**" has the meaning given in the Intercreditor Agreement.

"**First Lien Secured Debt Holder**" has the meaning given in the Intercreditor Agreement.

"**First Lien Secured Debt Obligations**" has the meaning given in the Intercreditor Agreement.

"**First Lien Secured Debt Representative**" has the meaning given in the Intercreditor Agreement.

"**First Lien Secured Hedge**" has the meaning given in the Intercreditor Agreement.

"**First Lien Secured Parties**" has the meaning given in the Intercreditor Agreement.

"**Fitch**" means Fitch Ratings, Ltd., or any successor thereto.

"**Flood Laws**" means, collectively, (a) the National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973), (b) the Flood Insurance Reform Act of 2004 and (c) the Biggert-Waters Flood Insurance Reform Act of 2012 and any and all official rulings and interpretation thereunder or thereof.

"**Flood Zone**" means areas having special flood hazards as determined by the Federal Emergency Management Agency or any successor Governmental Authority performing a similar function.

"**FPA**" means the Federal Power Act, as amended, and FERC's implementing regulations thereunder.

"**Fronted Equity Contributions**" means contributions of cash equity made to any Obligor if and to the extent that such contributions are used to fund actual or reasonably anticipated Loss Proceeds, O&M Costs, Capital Expenditures or any other cost, expense or liability of any Obligor (in each case, without netting Collection Expenses) as certified to the First Lien Collateral Agent and the TLA Administrative Agent by a Responsible Officer, which contributions shall not be required to be deposited into the Depositary Accounts under the Depositary Agreement.

"**GAAP**" has the meaning given in the Intercreditor Agreement.

"**Geysers Company**" has the meaning given in the Recitals.

"**Governing Documents**" means, with respect to any Person, the certificate or articles of incorporation, bylaws, operating agreement or other organizational or governing documents of such Person.

"**Governmental Authority**" has the meaning given in the Intercreditor Agreement.

"**Governmental Rule**" has the meaning given in the Intercreditor Agreement.

"**Guarantee**" has the meaning given in the Intercreditor Agreement.

"**Guarantors**" has the meaning given in the Recitals.

"**Holdings**" has the meaning given in the Recitals.

"**Indebtedness**" has the meaning given in the Intercreditor Agreement.

"**Independent Engineer**" means Leidos Engineering, LLC, its successors, and any replacement thereof appointed by the Borrower with the consent of the First Lien Collateral Agent (acting at the direction of the Directing Agent, acting reasonably).

"Initial Closing Date" means June 9, 2020.

"**Insurance Proceeds**" has the meaning given in the Depositary Agreement.

"**Intercreditor Agreement**" means the Collateral Agency and Intercreditor Agreement, dated as of the **Initial** Closing Date (as amended, amended and restated, supplemented or otherwise modified from time to time), among the Obligors, the First Lien Collateral Agent, the Second Lien Collateral Agent, each First Lien Secured Debt Representatives, each First Lien Commodity Hedge Counterparty and each Second Lien Commodity Hedge Counterparty party thereto from time to time.

"**Interest Rate Agreement**" has the meaning given in the Intercreditor Agreement.

"**Investment**" by any Person means any direct or indirect loan, advance or other extension of credit or capital contribution to (by means of transfers of cash or other property to others or payments for property or services for the account or use of others, or otherwise), or purchase or acquisition of Capital Stock, bonds, notes, debentures or other securities or evidence of Indebtedness issued by any other Person and any Capital Expenditures.

"**Investment Grade**" means with respect to any Person, that such Person's unsecured senior debt obligations are rated by at least one rating agency and are no less than BBB- by S&P, BBB- by Fitch, Baa3 by Moody's (or any corresponding future ratings levels by such ratings agencies), or an equivalent rating by any other rating agency (it being acknowledged that if more than one rating agency rates the unsecured senior obligations of such Person, only one such rating shall be required to be "Investment Grade" in order for such Person to be considered "Investment Grade" under this Agreement).

"**Kroll**" means Kroll Bond Rating Agency, Inc., or any successor thereto.

"**Legal Requirements**" has the meaning given in the Intercreditor Agreement.

"**Lien**" has the meaning given in the Intercreditor Agreement.

"**Local Account**" has the meaning given in the Depositary Agreement.

"**Loss Proceeds**" has the meaning given in the Depositary Agreement.

"**Major Maintenance Reserve Account**" has the meaning given in the Depositary Agreement.

"**Major Project Contracts**" means:

(a) each of the following agreements, in each case, during the stated term of such agreement:

(i) the Material Electrical Interconnection Agreements, (ii) the Material Water Supply Agreements, (iii) the O&M Agreement, (iv) the Administrative Services Agreement, (v) the Third Amended and Restated Power Purchase and Sale Agreement, (vi) the 2014 SCE PPA, (vii) the 2015 SCE PPA, (viii) the ~~PG&E~~Peninsula PPA, (ix) the ~~Peninsula~~CPA PPA and (x) the ~~CPA~~SMUD PPA ;

(b) each Additional Major Project Contract; and

(c) each Replacement Major Project Contract.

"**Material Adverse Effect**" means a material adverse effect on (a) the business, operations, properties, assets or financial condition of the Obligors, taken as a whole, (b) the ability of the Obligors, as a whole, to perform their obligations in accordance with the terms of First Lien Documents, or (c) the material rights, remedies or benefits available to, or conferred upon, any First Lien Secured Party under the First Lien Documents; provided, that (i) the bankruptcy of Pacific Gas & Electric Company or any effects thereof or relating thereto shall not constitute a Material Adverse Effect and (ii) other than in respect of representations and warranties made on the Initial Closing Date and the conditions precedent set forth in Section 3.1 (*Conditions Precedent to the Closing Date*) of the TLA Credit Agreement, a "Material Adverse Effect" shall exclude any adverse effect on the business, operations, properties, assets or financial condition of the Obligors, taken as a whole, as a result of direct or reasonably foreseeable and expected consequences of the COVID-19 pandemic or the related restrictions imposed by applicable Governmental Authorities.

"**Material Electrical Interconnection Agreements**" means (a) the generator interconnection agreement, dated as of September 26, 2003, between the Borrower and Pacific Gas & Electric Company, which interconnects each of the Projects as of the Initial Closing Date other than the Aidlin project and the Calistoga project, (b) the large generator interconnection agreement, dated as of November 14, 2008, among the Borrower, Pacific Gas & Electric Company and the CAISO, which interconnects the Aidlin project, and (c) the large generator interconnection agreement, dated as of November 14, 2008, among the Borrower, Pacific Gas & Electric Company and the CAISO, which interconnects the Calistoga project, in each case as amended, amended and restated, supplemented or otherwise modified from time to time.

"**Material Subsidiary**" means: (a) any Subsidiary which directly or indirectly owns all or a part of any of the Projects in existence as of the Initial Closing Date; (b) any Subsidiary acquired or formed after the Initial Closing Date without which the condition specified in clause (a) of the definition of Additional Ratio Indebtedness would not have been satisfied; and (c) any Subsidiary of the Borrower (other than a Non-Recourse Subsidiary) (i) whose total assets exceed 7.5% of the total assets (after intercompany eliminations) (or 15% of the total assets taken as a whole with all other Subsidiaries under this clause (c)) or (ii) that accounted for more than 7.5% of the revenues (or 15% of the revenues taken as a whole with all other Subsidiaries under this clause (c), in each case of the Borrower and its Subsidiaries (other than Non-Recourse Subsidiaries) as determined on a consolidated basis in all material respects in accordance with GAAP and as reflected in the Borrower's most recently available monthly internal financial statements (including, if applicable, reasonable pro forma adjustments as determined in good faith by the Borrower, which determination shall be conclusive)).

"**Material Water Supply Agreements**" means (a) the construction and operating agreement, dated April 14, 1998, between the Borrower and the City of Santa Rosa, (b) the joint operating agreement, dated July 25, 1995, among the Lake County Sanitation District, the Northern California Power Agency and the Sponsor (as assigned to the Borrower), and (c) the Second Amendment and Restatement of the Steam Suppliers Joint Operating Agreement Southeast Geysers Effluent Pipeline Project, dated as of September 18, 2003, among the Northern California Power Agency and the Sponsor (as assigned to the Borrower), in each case as amended, amended and restated, supplemented or otherwise modified from time to time.

"**Moody's**" has the meaning given in the Intercreditor Agreement.

"**Mortgages**" means such first priority deeds of trust by the Borrower in favor of the First Lien Collateral Agent, in proper form for recording in all applicable jurisdictions, in form reasonably satisfactory to the First Lien Collateral Agent (acting at the reasonable direction of the TLA Administrative Agent), as each may be amended, restated, supplemented or otherwise modified from time to time.

"**Net Proceeds**" means:

(a) with respect to any disposition of assets, the excess, if any, of (i) the amounts received by the Obligors in connection with such disposition (including business interruption insurance proceeds, or payments in lieu thereof, any amounts received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) *over* (ii) the sum of (A) the reasonable out of pocket costs, fees, commissions, premiums and expenses (including legal fees and expenses) incurred by the Obligors in connection with such disposition to the extent such amounts were not deducted in determining the amount referred to in clause (i), (B) federal, state, provincial, foreign and local taxes reasonably estimated (on a consolidated basis) to be actually payable by the Obligors within the current or the immediately succeeding tax year as a result of any gain recognized in connection therewith to the extent such amounts were not deducted in determining the amount referred to in clause (i), and (C) a reasonable reserve determined by a Responsible Officer in its reasonable business judgment and to the extent required under GAAP for any purchase price adjustments (including working capital adjustments or adjustments attributable to seller's indemnities and representations and warranties to purchaser in respect of such disposition) expressly contemplated by the purchase agreement relating to such disposition;

(b) with respect to any receipt of contract termination payments, the excess if any, of (i) all termination payments or cancellation payments to the Obligors under any Major Project Contract *over* (ii) the reasonable out of pocket costs, fees, commissions, premiums and expenses (including legal fees and expenses) incurred by the Obligors in connection with the receipt of such payments; and

(c) with respect to any proceeds of or under any casualty or property insurance, indemnity, condemnation awards, warranty or guaranty (other than business interruption insurance proceeds) received by the Obligors in connection with the occurrence of any Casualty Event or Event of Eminent Domain, the excess, if any, of (i) the amounts received by the Obligors in connection with such Casualty Event or Event of Eminent Domain *over* (ii) the sum of (A) the reasonable out of pocket costs and expenses (including legal fees and expenses) incurred by the Obligors in connection with the collection, enforcement, negotiation, consummation, settlement, proceedings, administration or other activity related to the receipt or collection of the relevant proceeds to the extent such amounts were not deducted in determining the amount referred to in clause (i) and (B) federal, state, provincial, foreign and local taxes reasonably estimated (on a consolidated basis) to be actually payable by the Obligors within the current or the immediately succeeding tax year as a result of any gain recognized in connection therewith (taking into account any tax benefit resulting from the event giving rise to the payment of such proceeds) to the extent such amounts were not deducted in determining the amount referred to in clause (i).

"**Non-Recourse Debt**" means Indebtedness:

(a) as to which no Obligor (i) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness), (ii) is directly or indirectly liable as a guarantor or otherwise, or (iii) constitutes the lender;

(b) no default with respect to which (including any rights that the holders of such Indebtedness may have to take enforcement action against a Non-Recourse Subsidiary) would permit upon notice, lapse of time or both, any holder of any other Indebtedness of any Obligor to declare a default on such other Indebtedness or cause the payment of such other Indebtedness to be accelerated or payable prior to its stated maturity; and

(c) as to which the lenders have been notified in writing that they will not have any recourse to the stock or assets of any Obligor.

"**Non-Recourse Subsidiary**" means any direct or indirect Subsidiary formed or acquired by any Obligor or any Non-Recourse Subsidiary after the **Initial** Closing Date so long as the following conditions are satisfied:

(a) such Subsidiary is funded solely by (i) equity contributions from a Person other than any Obligor (except as permitted by clause (b) hereof), (ii) amounts permitted to be distributed in accordance with Section 5.1 or (iii) Non-Recourse Debt, or any combination of clauses (i) through (ii) above;

(b) to the extent such Subsidiary enters into a management services agreement, shared facilities agreement or other agreement or arrangement relating to shared facilities between a Non-Recourse Subsidiary, on one hand, and any Obligor, on the other hand, (i) such agreement or arrangement would not reasonably be expected to materially and adversely affect the business of the Obligors (taken as a whole) and (ii) a copy of any such agreement or arrangement has been provided to the TLA Administrative Agent on or prior to the entry into any such agreement or arrangement; and

(c) such Non-Recourse Subsidiary does not own any of the Projects described in clauses (a) through (m) of the definition of Projects.

"**Non-Recourse Subsidiary Account**" means any account held by any Non-Recourse Subsidiary.

"**O&M Agreement**" means the Third Amended and Restated Operation and Maintenance Agreement, dated as of the **Initial** Closing Date (as amended, amended and restated, supplemented or otherwise modified from time to time), among the Borrower, the Obligors party thereto and Calpine Operating Services Company, Inc.

"**O&M Costs**" means, without duplication, for any period, cash amounts incurred and paid by the Borrower or any of its Subsidiaries (other than Excluded Subsidiaries) for the operation and maintenance of such entities, the Projects or any portion thereof (other than as funded from the Major Maintenance Reserve Account) and for the purchase of goods and services in connection therewith, in each case including: (a) premiums for insurance policies; (b) fuel supply and fuel transportation costs, costs of additives or chemicals and transportation costs related thereto and the cost of other consumables; (c) costs of obtaining any other materials, supplies, spare parts, utilities or services for the Projects; (d) costs of obtaining, transferring, maintaining, renewing and amending Permits; (e) franchise, licensing, property, real estate, sales and excise taxes (including, and without duplication, any such taxes the Borrower pays pursuant to any tax sharing agreement); (f) general and administrative expenses; (g) employee salaries, wages and other employment-related costs; (h) business management and administrative service fees; (i) costs and fees required to be paid by any Project under any Project Contract (including, for the avoidance of doubt, the O&M Agreement, the Administrative Services Agreement, the Wild Horse Geothermal Steam Sales Agreement, the Calistoga Geothermal Steam Sales Agreement, and any guaranty reimbursement agreement entered into in accordance with this Agreement) or Financing Document (other than scheduled Debt Service or payments on any other Indebtedness specified in Sections 5.3(a)(ii), (v), (vii), and (xvi)) or to satisfy any Legal Requirement or obtain or maintain any Permit; (j) legal, accounting and consulting fees and other transaction costs and all other fees payable to the Secured Parties allocable to the Borrower (other than amounts constituting scheduled Debt Service or payments on any other Indebtedness specified in Sections 5.3(a)(ii), (v), (vii), and (xvi)); (k) all other fees and expenses necessary for the continued operation and maintenance of the Projects and the conduct of the business of the Projects; (l) Emergency Operating Costs (except for Emergency Operating Costs in connection with the repair or restoration of any casualty suffered by the Projects to the extent funded with insurance or similar proceeds applied pursuant to the Depositary Agreement or infusions of equity pursuant to the Financing Documents); (m) reasonable expenses to keep the Collateral free and clear of all Liens; (n) costs of purchasing any necessary emissions credits, allowances or rights in respect of the Projects (and any carbon, emissions or similar taxes in respect of Borrower's interest in the Projects); (o) net payments made under any Commodity Hedge Agreements; (p) any income taxes payable by the Borrower as a result of a change in the applicable federal, state or local income tax law after the **Initial** Closing Date, which change requires the Borrower or Holdings to be treated as other than an entity disregarded from its owner or a partnership (including, and without duplication, any such taxes the Borrower pays under any tax sharing agreement); provided, that such taxes shall be limited to those taxes properly allocable to the net income of the Obligors for the applicable federal, state or local income tax purposes; provided, further, that for avoidance of doubt, such taxes shall not include any income taxes arising due to the treatment of the Borrower as a partnership or an entity disregarded from its owner for federal, state or local income tax purposes; and (q) costs, fees and other liabilities required to be paid by Borrower under any Financing Document (other than scheduled Debt Service, mandatory prepayments pursuant to any First Lien Secured Debt Document from cash sweeps, ordinary course settlements under Permitted Commodity Hedge Agreements and Permitted Interest Rate Agreements or payments on any other Indebtedness specified in Sections 5.3(a)(ii), (v), (vii), and (xvi)), exclusive in all cases of non-cash charges, including depreciation or obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature, and also exclusive of all interest charges and charges for the payment or amortization of principal of Indebtedness of Borrower (other than such payments with respect to Indebtedness of the type referred to in Sections 5.3(a)(ii), (v), (vii), and (xvi)); provided, that to the extent any of the foregoing O&M Costs are paid by a Person other than any Obligor, the reimbursement by any Obligor of the same shall constitute "O&M Costs." O&M Costs shall not include (i) costs of Major Maintenance (as defined in the Depositary Agreement) to the extent paid with funds on deposit in a Major Maintenance Reserve Account, (ii) non-cash charges, including depreciation and amortization; (iii) payments for restoration or repair of the Projects from the Loss Proceeds Account (as defined in the Depositary Agreement) in accordance with the terms of the Depositary Agreement; (iv) Restricted Payments to any Affiliate of the Borrower (other than payments to Affiliates of the Borrower otherwise permitted pursuant to the Financing Documents); (v) any termination or liquidation payments under any Permitted Commodity Hedge Agreements and Permitted Interest Rate Agreements; or (vi) Capital Expenditures other than Emergency Operating Costs to the extent such are Capital Expenditures.

"**Obligors**" has the meaning given in the Intercreditor Agreement.

"**Omnibus Amendment**"means the Omnibus Amendment, dated as of November 9, 2021, by and among the Borrower, the lenders party thereto, the guarantors party thereto, the ~~Administrtive~~**Administrative** Agent, the First Lien Collateral Agent and the Depositary Agent.

"**Omnibus Amendment Date**" has the meaning given in the Omnibus Amendment.

"**Operating Cash Available for Debt Service**" means, for any period, (a) Project Revenues during such period (including, for the avoidance of doubt, all net payments paid to any Obligor under any Commodity Hedge Agreements during such period) *minus* (b) O&M Costs paid or to be paid during such period; provided, that O&M Costs relating to real property taxes and insurance premiums shall, for purposes of this definition, be accounted for by ratably allocating such amounts over the period to which they apply rather than accounting for them solely during the period in which they were paid; provided, further, that O&M Costs shall, for purposes of this definition, exclude (x) all fees and expenses payable in connection with entering into this Agreement or any other Financing Document and (y) Excluded O&M Costs (as defined in the Depositary Agreement); provided, further, that (a) Operating Cash Available for Debt Service, for the Calculation Period ending on September 30, 2020 shall be deemed to be the product of four times Operating Cash Available for Debt Service for the fiscal quarter ending on such date, (b) Operating Cash Available for Debt Service, for the Calculation Period ending on December 31, 2020 shall be deemed to be the product of two times the Operating Cash Available for Debt Service for the two fiscal quarters ending on such date, and (c) Operating Cash Available for Debt Service, for the Calculation Period ending on March 31, 2021 shall be deemed to be the product of four thirds Operating Cash Available for Debt Service for the three fiscal quarters ending on such date.

"**Peninsula PPA**" means, collectively, (a) the Master Power Purchase and Sale Agreement, by and between Geysers Power Company, LLC, a Delaware limited liability company, and Peninsula Clean Energy Authority, a California joint powers authority, dated as of August 26, 2021, (b) the Confirmation Letter (Energy), dated as of August 26, 2021 and (c) the Confirmation Letter, dated as of August 26, 2021.

"**Permit**" has the meaning given in the Intercreditor Agreement.

"**Permitted Asset Disposition**" means any of the following Asset Dispositions:

(a) any single transaction or series of transactions that involves the receipt of Net Proceeds of less than $250,000,000 in the aggregate prior to the Discharge of First Lien Obligations (so long as any such transaction or series of transactions was for Fair Market Value);

(b) a transfer of assets between or among the Obligors;

(c) the sale or lease of products or services in the ordinary course of business (including sales in the "spot" market or merchant sales of the electricity and related products);

(d) the sale or other disposition of any damaged, worn-out or obsolete assets (other than assets consisting of all or substantially all of a Project in existence on the **Initial** Closing Date, which shall be permitted to the extent provided in clause (a) of this definition) in the ordinary course of business;

(e) the sale, transfer or release, with or without consideration, of assets, real property or interests in real property related to the Projects (other than real property consisting of all or substantially all of the real property relating to a Project in existence on the **Initial** Closing Date, which shall be permitted to the extent provided in clause (a) of this definition) to the extent that such assets, real property or interests in real property is only incidental to, or no longer useful in connection with, the leasing, ownership or operation of the Projects;

(f) the granting of easements or other interests in real property related to the Projects to other Persons;

(g) in the case of any spare or surplus part, (i) such spare or surplus part is sold or transferred at Fair Market Value or net book value, (ii) such sold or transferred spare part (but not surplus part) is replaced by any Obligor on or before the date when such spare part is needed by any Obligor, (iii) such sale or transfer is consistent in all material respects with Prudent Industry Practices, and (iv) any Obligor can reasonably be expected to obtain any necessary replacement parts for such spare part (but not surplus part) on commercially reasonable terms, and any such replacement part received by such Obligor is free and clear of all Liens (other than Permitted Liens);

(h) the sale or other disposition of Cash or cash equivalents;

(i) (A) any transfer of any assets of an energy storage Project or carbon capture Project (other than (i) the Projects described in clauses (a) through (~~m~~**n**) of the definition thereof or (ii) any other Project without which the condition specified in clause (a) of the definition of Additional Ratio Indebtedness would not have been satisfied) to a Non-Recourse Subsidiary and (B) any transfer of assets contemplated by Section 5.7(a)(vii)(B);

(j) the disposition of the CoBank Service Share; or

(k) any Restricted Payment made in accordance with Section 5.1, Permitted Investment or Permitted Lien.

"**Permitted Businesses**" means (a) the operation, maintenance, expansion, development, construction, reconstruction, improvement and/or ownership of the Projects and/or any other geothermal power generation assets (including, for the avoidance of doubt, any research and development relating to such assets, such as closed loop heat exchange technology) and/or any ancillary services or assets, including energy storage and carbon sequestration located in or adjacent to the Geysers area of Northern California (Sonoma and Lake Counties) and/or similar, related, incidental, ancillary or complimentary businesses and/or such other lines of business as may be consented to by the Required First Lien Secured Debt Parties, and all activity reasonably necessary or undertaken in connection with the foregoing and any activities incidental or related to any of the foregoing and (b) the purchase of the CoBank Service Share.

"**Permitted Commodity Hedge Agreement**" has the meaning given in the Intercreditor Agreement.

"**Permitted Debt**" has the meaning given in Section 5.3.

"**Permitted Interest Rate Agreement**" means any Interest Rate Agreement entered into by any Obligor not for speculative purposes.

"**Permitted Investments**" means:

(a) (i) all Capital Expenditures reasonably necessary to permit the Borrower and its Subsidiaries to comply with applicable law (including any Environmental Laws), Project Contracts, or to operate the Projects in accordance with Prudent Industry Practice, (ii) Emergency Operating Costs to the extent such costs are Capital Expenditures, (iii) Capital Expenditures financed with proceeds of (A) voluntary equity contributions made to the Borrower or a Subsidiary of the Borrower or (B) Indebtedness incurred in compliance with Section 5.3, **including the Multi-Draw Facility Loans (as defined in the TLA Credit Agreement),** (iv) Capital Expenditures made using funds permitted to be distributed pursuant to Section 5.3 but are retained by the Borrower for the purposes of making Capital Expenditures, (v) Capital Expenditures in respect of the Projects made with funds in the Distribution Suspense Account, and (vi) any budgeted maintenance expense;

(b) Investments consisting of extensions of credit in the nature of deposits, prepayments, accounts receivable, notes receivable or other similar accounts arising from the grant of trade credit in the ordinary course of business;

(c) Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and other credits to suppliers in the ordinary course of business;

(d) Investments in the ordinary course of business consisting of UCC Article 3 endorsements for collection or deposit and UCC Article 4 customary trade arrangements with customers consistent with past practices;

(e) Investments in any Obligor;

(f) Permitted Interest Rate Agreements and Permitted Commodity Hedge Agreements;

(g) Investments in Permitted Businesses;

(h) direct obligations of the United States of America or any agency thereof or obligations guaranteed by the United States of America or any agency thereof, in each case with maturities not exceeding two years, including money market funds for which the Depositary Agent or its Affiliates provide investment advice or other management services, but excluding any fund with a floating net asset value;

(i) time deposit accounts, certificates of deposit and money market deposits maturing within ninety days of the date of acquisition thereof issued by a bank or trust company that is organized or existing under the laws of the United States of America or any state thereof having capital, surplus and undivided profits in excess of $1,000,000,000 and whose long-term debt, or whose parent holding company's long-term debt, is rated A (or such similar equivalent rating or higher) by at least one of Moody's, S&P and Fitch;

(j) repurchase obligations with a term of not more than ninety days for underlying securities of the types described in clause (g) above entered into with a bank meeting the qualifications described in clause (i) above;

(k) commercial paper, maturing not more than one year after the date of acquisition, issued by a corporation (other than an Affiliate of any Obligor) organized or existing under the laws of the United States of America or any foreign country recognized by the United States of America with a rating at the time as of which any investment therein is made of P-1 (or higher) according to Moody's or A-1 (or higher) according to S&P;

(l) money market funds that (i) comply with the criteria set forth in Rule 2a-7 under the Investment Company Act of 1940, (ii) if rated, are rated AA by S&P or Aa2 by Moody's, and (iii) have portfolio assets of at least $500,000,000, including money market funds for which the Depositary Agent or its Affiliates provide investment advice or other management services, but excluding any fund with a floating net asset value;

(m) time deposit accounts, certificates of deposit and money market deposits in an aggregate face amount not to exceed 0.50% of the total assets of the Borrower and its consolidated Subsidiaries (other than any Non-Recourse Subsidiary) as of the end of the Borrower's most recently completed fiscal year;

(n) time deposit accounts, certificates of deposit and money market deposits held with the Depositary Agent;

(o) shares of mutual funds whose investment guidelines restrict 95% of such funds' investments to those satisfying the provisions of clauses (g) through (n) above;

(p) other Investments that at the time acquired by any Obligor were formerly of the type described in clauses (g) through (o) above; provided, that such other Investment will cease to be a Permitted Investment at such time as the applicable Obligor has held such Investment for a period in excess of sixty days from which such Investment was no longer an Investment of the type described in clauses (g) through (o) above;

(q) with respect to any disposition, Casualty Event, or Event of Eminent Domain, the application of any related Net Proceeds to purchase any property useful in the business of any Obligor (or, in the case of a Casualty Event, used to replace damaged or destroyed assets, or to improve or expand the Projects) in accordance with the terms of this Agreement and the Depositary Agreement;

(r) the CoBank Service Share;

(s) Cash; and

(t) any other Investments so long as each of the Restricted Payments Conditions shall have been satisfied as of the Quarterly Date immediately preceding the date of such Investment and after giving pro forma effect to such Investment.

In the event that an Investment meets the criteria of more than one of the categories of Permitted Investments described in clauses (a) through (r) above, the Borrower will be permitted to classify such Investment on the date of making such Investment in any manner that complies with this definition.

"**Permitted Liens**" means:

(a) Liens in favor of the First Lien Collateral Agent for the benefit of First Lien Secured Parties granted pursuant to any First Lien Collateral Documents or, to the extent contemplated by this Agreement, for the benefit of First Lien Secured Parties granted pursuant to any other First Lien Collateral Documents, including, without limitation, Indebtedness incurred in compliance with Sections 5.3(a)(i), (iii), (v), and (vi); provided, that the representative of the holders of such Refinancing Indebtedness shall have acceded to this Agreement; provided, further that Liens granted in favor of one or more Permitted Commodity Hedge Counterparties pursuant to this clause (a) shall (i) be entered into by any Obligor with a Permitted Commodity Hedge Counterparty and (ii) be subject to the Cap Amount (with any remaining exposure to be granted a second lien on the Collateral); provided, however, that no Liens in favor of a Sponsor Counterparty with respect to a Permitted Commodity Hedge Agreement may be granted pursuant to this clause (a);

(b) Liens securing Second Lien Obligations (including, without limitation, Liens in favor of a Sponsor Counterparty with respect to a Permitted Commodity Hedge Agreement), so long as such Liens are junior to the First Lien Obligations pursuant to this Agreement;

(c) Liens on the property or assets of any Obligor in favor of any other Obligor;

(d) Liens on property (including Capital Stock) existing at the time of acquisition of the property (including Capital Stock) by any Obligor; provided, that such Liens were in existence prior to such acquisition and not incurred in contemplation of, such acquisition;

(e) Liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, government contracts, performance and return-of-money bonds and other similar obligations incurred in the ordinary course of business (exclusive of obligations in respect of the payment for borrowed money);

(f) Liens to secure the performance of bids, trading contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds, and other obligations of a like nature incurred in the ordinary course of business; provided, that, for the avoidance of doubt, Liens (including without limitation rights of set-off) on (i) deposits and (ii) revenues under trading contracts, in each case in favor of counterparties under such trading contracts and other obligations incurred in the ordinary course of business (including trading counterparties, brokerages, clearing houses, utilities, systems operators and similar entities) shall be permitted and shall be permitted to be first-priority Liens on such collateral;

(g) Liens for taxes, assessments or charges not yet due or delinquent or that are being contested in good faith and by appropriate proceedings if adequate reserves with respect thereto are maintained on the books of the Borrower or the affected Guarantor, as the case may be, in accordance with GAAP as in effect from time to time;

(h) Liens imposed by law, such as carriers', warehousemen's, mechanics', materialmen's, repairmen's, landlords' or other similar Liens arising in the ordinary course of business (i) for amounts not overdue for a period of more than thirty days or (ii) for amounts that are overdue and that are being diligently contested in good faith by appropriate proceedings, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts;

(i) survey exceptions, easements or reservations of, or rights of others for, license, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions, encroachments, mineral interests and leases, minor title defects and other similar encumbrances that were not incurred in connection with Indebtedness and that do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(j) any interest or title of a licensor, lessor, sublessor, sublicensor or grantor of an easement under any lease, sublease, license, sublicense or easement and to which any Obligor is a party (including any Liens on the interest of such licensor, lessor, sublessor, sublicensor or grantor);

(k) Liens arising in the ordinary course of business to secure liability (in an amount not in excess of the premium for such insurance) for premiums to insurance carriers;

(l) filing of UCC financing statements as a precautionary measure in connection with operating leases or finance leases;

(m) bankers' Liens and similar Liens (including rights of set-off) in respect of bank deposits;

(n) Liens on cash, Permitted Investments or other property arising in connection with the defeasance, discharge or redemption of Indebtedness;

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

(p) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into in the ordinary course of business;

(q) good faith deposits made in connection with (i) any acquisition (whether pursuant to an acquisition of Capital Stock, assets or otherwise) by any Obligor from any Person of all or substantially all of the assets of a Person or a line of business of a Person or (ii) any advance, loan, extension of credit (by way of guarantee or otherwise) or capital contribution, or purchase of any stock, bonds, notes, debentures or other securities of or any assets constituting a business unit of, or any other investment;

(r) Liens existing on any property or asset prior to the acquisition thereof (or the acquisition of, or merger or consolidation with, the Person owning such property or asset) by any Obligor, and any Lien securing obligations incurred to refinance, replace, refund, renew or extend the obligations secured by such Liens; provided, that in each case, (i) such Lien is not created in contemplation or in connection with such acquisition, (ii) such Lien does not apply to any other property or assets of the Borrower or any of the Guarantees (other than fixtures and improvements on any such real property), and (iii) the principal amount of any Indebtedness secured by such Liens shall not be increased (except by the amount of premiums, penalties, accrued and unpaid interest, fees and expenses associated with such refinancing, replacement, refunding, renewal or extension of such Indebtedness);

(s) utility and similar deposits made by any Obligor in the ordinary course of business;

(t) Liens securing (i) Finance Lease Obligations and (ii) other Indebtedness of any Obligor incurred to finance all or any part of the acquisition, lease, construction, installation or improvement of any assets, and any refinancing, replacement, refunding, renewal or extension of any such Indebtedness without any increase thereof, in an aggregate amount, together with all other Finance Lease Obligations and Indebtedness secured by Liens pursuant to this clause (t) not to exceed $10,000,000 at any one time outstanding, so long as (A) such Liens are initially created or arise prior to or within the ninety days after the completion of such acquisition, lease, construction, installation or improvement and (B) such Liens do not attach to assets of the Borrower or any Subsidiary (other than an Excluded Subsidiary) other than the relevant assets acquired, leased, constructed, installed or improved;

(u) Liens of sellers of goods, gas or oil to any Obligor arising under Article 2 of the UCC or under other state statutes in the ordinary course of business, covering only the goods, gas or oil sold and covering only the unpaid purchase price for such goods, gas or oil and related expenses;

(v) Liens encumbering (i) accounts receivable of any Obligor (and accounts into which the proceeds of such accounts receivable are deposited) in favor of a counterparty to any PPA or similar agreement in accordance with the terms of such agreement (but excluding any such accounts receivable, accounts or proceeds held by or pledged to such counterparty in excess of ninety days; provided, that such ninety-day period shall be extended for such longer period during which such accounts receivable, accounts or proceeds may be subject to any dispute), or (ii) margin, clearing or similar accounts with or on behalf of brokers, credit clearing organizations, the CAISO, independent system operators, regional transmission organizations or balancing authorities, pipelines, state agencies, federal agencies, futures contract brokers, exchanges related to the trading of energy (including the Intercontinental Exchange), customers, trading counterparties, or any other parties or issuers of surety bonds and any proceeds thereof, in the ordinary course of business, in an aggregate amount not to exceed the sum of (A) $30,000,000 (or such higher amount as is necessary or advisable in the ordinary course of business, as reasonably determined by a Responsible Officer of the Borrower which determination shall be conclusive), plus (B) voluntary equity contributions made to any Obligor for such purpose plus (C) funds in the Distribution Suspense Account that are used for such purpose in lieu of making Restricted Payments at any time under this clause (ii); provided, however, that the foregoing limitation in this clause (ii) on such aggregate amount shall not apply to (x) letters of credit provided for the benefit of such accounts in compliance with the other terms and conditions hereof or (y) any such arrangements with or on behalf of the CAISO, any other independent system operators, regional transmission organizations or balancing authorities;

(w) Title Exceptions;

(x) statutory Liens related to the CoBank Service Share; and

(y) Liens securing Indebtedness or other First Lien Obligations or Second Lien Obligations, as applicable, in an aggregate amount, together with all other Indebtedness and other First Lien Obligations or Second Lien Obligations, as applicable, secured by Liens pursuant to this clause (~~x~~y), not to exceed $100,000,000 at any one time outstanding.

"**Permitted Tax Distributions**" means, without duplication with O&M Costs, with respect to each taxable year (or a portion thereof) ending after the **Initial** Closing Date for which each of the Borrower and Holdings is treated as a partnership or disregarded entity for U.S. federal income tax purposes, the payment of distributions to the direct or indirect equity owners of Holdings to pay the U.S. federal, state and local income tax liabilities for such taxable period attributable to their ownership of Holdings during such taxable year (or a portion thereof) in an aggregate amount not to exceed the product of (a) the amount of net U.S. federal taxable income of Holdings and its Subsidiaries (in the case of a disregarded entity, computed as if such entity were a partnership) allocated to the direct or indirect equity owners of Holdings for such taxable year (or, in the case of a taxable year beginning on or before the **Initial** Closing Date, the portion thereof beginning after the **Initial** Closing Date), reduced by any taxable losses, deductions, credits and other attributes and any carryovers thereof allocated to such equity owners for any prior taxable year ending after the **Initial** Closing Date to the extent such cumulative taxable loss is reasonably expected to be deductible by such equity owners against such taxable income (assuming that such equity owners have no items of income, gain, loss, deduction or credit other than through Holdings and its Subsidiaries) and has not previously been taken into account in determining Permitted Tax Distributions and (b) the highest maximum combined marginal U.S. federal, state and local income tax rate applicable to an individual or corporation (whichever is higher, unless the equity of Holdings is owned entirely by a corporation or corporations, in which case, the highest combined U.S. federal, state or local tax rate applicable to any of such corporations) for such taxable year (taking into account the character of the taxable income in question (long-term capital gain, qualified dividend income, etc.), the deductibility of state and local income taxes for U.S. federal income tax purposes (and any applicable limitation thereon), it being understood that, under law in effect on the **Initial** Closing Date, an individual taxpayer subject to tax at the maximum marginal federal income tax rate would not be able to deduct state and local taxes from the income such taxpayer receives directly or indirectly from Holdings and its Subsidiaries), but, in each case, without regard to the possible applicability of any deduction permitted under Section 199A of the Code if a rate applicable to an individual is used (assuming the income and deductions attributed from the Borrower were allocated to a single unmarried individual) and any foreign tax credits; provided, that Permitted Tax Distributions shall include with respect to any such taxable year an amount necessary to allow such equity owners to pay estimated taxes during the course of the taxable year using reasonable estimates of the anticipated aggregate amount of distributions for such taxable year, with any excess of aggregate installments distributed with respect to any such taxable year over the actual amount of distributions permitted for such taxable year reducing the amount of Permitted Tax Distributions with respect to the immediately subsequent taxable year (and, to the extent such excess is not fully absorbed in the immediately subsequent taxable year, the following year(s)); provided, further, that in the event Holdings is required under applicable law to withhold or directly pay any U.S. federal, state or local income taxes applicable to any direct or indirect equity owner that is treated as a non-U.S. Person for U.S. federal income tax purposes for the purposes of such withholding or payment, Holdings may discharge such obligation as if the amount so required to be withheld is a Permitted Tax Distribution, and the amount of any Permitted Tax Distribution for such period will be reduced by any U.S. federal, state and local taxes paid directly or withheld by Holdings.

"**Person**" has the meaning given in the Intercreditor Agreement.

~~**"PG&E PPA" means the Power Purchase and Sale Agreement, dated as of September 30, 2009, between the Borrower and Pacific Gas & Electric Company.**~~

"**PPA**" means an agreement (including a tolling agreement, fuel conversion services agreement or other similar agreement) entered into by the Borrower or a Subsidiary of the Borrower for the sale of capacity, energy or green attributes (and services ancillary or related thereto) from one or more of the Projects.

"**Project Contracts**" means, without duplication, the Major Project Contracts and any other agreement relating to the development, construction, operation, maintenance or use of any Project to which any Obligor is a party.

"**Project Payments**" means the proceeds of any payment (or series of related payments) in connection with any liquidated damages (other than delay liquidated damages), buy-out payments, termination payments and other similar damages or payments received by any Obligor pursuant to, or in connection with, any Project Contract, net of applicable Collection Expenses.

"**Project Revenues**" has the meaning given in the Depositary Agreement.

"**Project Site**" means the land upon which each power plant, energy storage facility and/or carbon sequestration facility listed in the definition of "Projects" is located.

"**Projects**" has the meaning given in the Intercreditor Agreement.

"**Prudent Industry Practices**" means those practices, methods, equipment, specifications and standards of safety and performance, as the same may change from time to time, (a) as are commonly used by independent power producers in the United States as prudent engineering practices in connection with the design, construction, operation, maintenance, repair and use of electrical and other equipment, facilities and improvements of such generation stations, with commensurate standards of safety, performance, dependability, efficiency and economy or (b) which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Industry Practices does not necessarily mean one particular or the optimum practice, method, equipment specification or standard in all cases, but is instead intended to encompass a broad range of acceptable practices, methods, equipment specifications and standards.

"**PUHCA**" means the Public Utility Holding Company Act of 2005, and FERC's implementing regulations thereunder at 18 C.F.R. Part 366.

"**PURPA**" means the Public Utility Regulatory Policies Act of 1978, and FERC's implementing regulations thereunder at 18 C.F.R. Part 292.

"**Qualifying Facilities**" means cogeneration facilities or small power production facilities that meet the criteria for a "qualifying facility" under FERC's regulations implementing PURPA.

"**Quarterly Date**" means the last Business Day of each December, March, June, and September.

"**Refinancing Indebtedness**" means any Indebtedness incurred to refinance existing First Lien Secured Debt Obligations or any Indebtedness incurred for Required Modifications, whether or not constituting First Lien Secured Debt Obligations.

"**Replacement Major Project Contract**" means one or more contracts or agreements which:

(a) is entered into by any Obligor in substitution for any Major Project Contract that has been terminated in accordance with its terms or otherwise or replaced following an event of default thereunder;

(b) has economic and other terms which, taken as a whole, are not materially less favorable to such Obligor as the Major Project Contract being replaced; and

(c) only with respect to PPAs, is with one or more counterparties (or guarantors of such counterparties' obligations) having substantially similar or better creditworthiness (or is otherwise credit supported so that the credit risk of such counterparty is not materially less favorable to such Obligor, as applicable, than the existing counterparty) and substantially similar or better experience in the industry, in each case, as the counterparty to the Major Project Contract being replaced.

"**Required First Lien Secured Debt Parties**" means, as of any date, the holders of more than 50% of the sum of (without duplication):

(a) subject to any restrictions set forth in the TLA Credit Agreement with respect to the voting or approval rights of the Borrower, its Affiliates and defaulting lenders, the Outstanding Amounts under the TLA Credit Agreement on such date; and

(b) subject to any restrictions set forth in any First Lien Secured Other Permitted Debt Documents with respect to the voting or approval rights of the Borrower, its Affiliates and defaulting lenders, the aggregate Outstanding Amounts under any applicable First Lien Secured Other Permitted Debt Documents on such date; provided that First Lien Secured Bond Debt shall be excluded from this clause (b) if the Outstanding Amount under (i) the TLA Credit Agreement and (i) any other First Lien Secured Other Permitted Debt Documents constituting commercial bank or term loan A facilities is collectively equal to or greater than $300,000,000.

"**Required Modifications**" means modifications, additions, and improvements to the Projects that are, in each case, necessary to remain in compliance with Legal Requirements, as certified as such by the Borrower to the First Lien Collateral Agent and the TLA Administrative Agent.

"**Responsible Officer**" means the chief executive officer, president, any vice president or financial officer of the Borrower, but in any event, with respect to financial matters, a financial officer of the Borrower.

"**Restricted Payment**" means any (a) dividend or other distribution on account of any Equity Interests of any Obligor or any Excluded Subsidiary (including, without limitation, any payment in connection with any merger or consolidation involving any Obligor or any such Excluded Subsidiary) or to the direct or indirect holders of the Equity Interests of any Obligor or any such Excluded Subsidiary in their capacity as such (other than dividends or distributions payable in Equity Interests (other than Disqualified Capital Stock) of any Obligor or any Excluded Subsidiary and other than dividends or distributions payable to any Obligor or an Excluded Subsidiary); (b) any purchase, redemption or other acquisition or retirement for value (including, without limitation, in connection with any merger or consolidation involving any Obligor or any such Excluded Subsidiary) of any Equity Interests of the Borrower, any direct or indirect parent of any Obligor or any Excluded Subsidiary (other than purchases, redemptions or other acquisitions or retirements for value by (i) the Borrower, (ii) a Subsidiary of any Obligor or (iii) Holdings to the extent such Equity Interests are of its Subsidiaries); or (c) payment on or with respect to, or purchase, redemption, defeasance or other acquisition or retirement for value of any Indebtedness of any Obligor or any Excluded Subsidiary that is by its terms contractually subordinated to the First Lien Obligations or any Guarantee (excluding (i) intercompany Indebtedness between or among the Obligors and (ii) payment on or with respect to Permitted Debt in accordance with the Depositary Agreement); provided, that "Restricted Payment" shall not include any payment or distribution to or for the account of a direct or indirect holder, that is not an Affiliate of the Sponsor, of any Indebtedness or Equity Interests in an Excluded Subsidiary of the type described in clause (a) of the definition thereof.

"**Restricted Payment Conditions**" has the meaning given in Section 5.1(a)(vii).

"**Revolving Issuing Banks**" has the meaning given in the TLA Credit Agreement.

"Second Omnibus Amendment" means the Second Omnibus Amendment, dated as of May 31, 2022, by and among the Borrower, the lenders party thereto, the guarantors party thereto, the Administrative Agent, the First Lien Collateral Agent and the Depositary Agent.

"Second Omnibus Amendment Date" has the meaning given in the Second Omnibus Amendment.

"**Second Lien Collateral Agent**" has the meaning given in the Intercreditor Agreement.

"**Second Lien Obligations**" has the meaning given in the Intercreditor Agreement.

"SMUD PPA" means that certain Western Systems Power Pool Agreement Confirmation Letter (Energy), dated as of March 30, 2022 (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof) between the Borrower and Sacramento Municipal Utility District.

"**Sponsor**" has the meaning given in the Intercreditor Agreement.

"**Sponsor Counterparty**" means the Sponsor or one of its Affiliates.

"**Subsidiary**" has the meaning given in the Intercreditor Agreement.

"**Term Maturity Date**" has the meaning given in the TLA Credit Agreement.

"**Third Amended and Restated Power Purchase and Sale Agreement**" means the Third Amended and Restated Power Purchase and Sale Agreement, dated as of the **Initial** Closing Date, between Calpine Energy Services, L.P. and the Borrower.

"**Title Exceptions**" means those exceptions to coverage listed on a schedule of the Title Policy, other than the standard printed exceptions contained therein.

"**Title Insurer**" means Fidelity National Title Insurance Company.

"**Title Policy**" has the meaning given in Section 4.13(a)(ii).

"**TLA Administrative Agent**" has the meaning given in the Intercreditor Agreement.

"**TLA Credit Agreement**" means the Credit Agreement, to be dated the **Initial** Closing Date (as amended, amended and restated, supplemented or otherwise modified from time to time), among the Obligors, the TLA Lenders, Revolving Issuing Banks, TLA Administrative Agent, First Lien Collateral Agent, and the others party thereto from time to time.

"**TLA Lender**" or "**TLA Lenders**" means the financial institutions party to the TLA Credit Agreement.

"**U.S. Dollars**" and "**$**" means United States dollars or such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts in the United States of America.

"**U.S. Person**" means any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

"**UCC**" has the meaning given in the Intercreditor Agreement.

"**Wild Horse**" has the meaning given in the Recitals.

"**Wild Horse Geothermal Steam Sales Agreement**" means the amended and restated steam sales agreement between Wild Horse and Borrower, to be dated on or about the **Initial** Closing Date (as amended, amended and restated, supplemented or otherwise modified from time to time).

RULES OF INTERPRETATION

1. The singular includes the plural and the plural includes the singular.

2. "or" is not exclusive.

3. A reference to a Governmental Rule includes any amendment or modification to such Governmental Rule, and all regulations, rulings and other Governmental Rules promulgated under such Governmental Rule.

4. A reference to a Person includes its permitted successors, permitted replacements and permitted assigns.

5. Accounting terms have the meanings assigned to them by GAAP, as applied by the accounting entity to which they refer.

6. The words "include", "includes", and "including" are not limiting.

7. A reference in a document to an Article, Section, Exhibit, Schedule, Annex or Appendix is to the Article, Section, Exhibit, Schedule, Annex or Appendix of such document unless otherwise indicated. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed incorporated by reference in such document. In the event of any conflict between the provisions of this Agreement (exclusive of the Exhibits, Schedules, Annexes and Appendices thereto) and any Exhibit, Schedule, Annex or Appendix thereto, the provisions this Agreement shall control.

8. Unless otherwise expressly provided, references to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) means such document, instrument or agreement, or replacement or predecessor thereto, as amended, amended and restated, modified and supplemented from time to time and in effect at any given time.

9. The words "hereof", "herein", and "hereunder" and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.

10. References to "days" means calendar days, unless the term "Business Days" shall be used. References to a time of day means such time in New York, New York, unless otherwise specified.

11. The time periods specified in each of Sections 4.10, 4.12, and 4.13 shall be extended (a) automatically to account for any period during which any applicable Obligor is unable, after exercising commercially reasonable efforts, to perform its obligations under such Section due to any circumstances existing in connection with the COVID-19 pandemic, or (b) as may otherwise be agreed by the First Lien Collateral Agent (acting at the direction of the Directing Agent, acting reasonably).

12. If, at any time after the **Initial** Closing Date, Moody's or S&P shall change its respective system of classifications, then any Moody's or S&P "rating" referred to herein shall be considered to be at or above a specified level if it is at or above the new rating which most closely corresponds to the specified level under the old rating system.

13. The First Lien Documents are the result of negotiations between, and have been reviewed by the Obligors, each Affiliate of each Obligor, TLA Administrative Agent, each First Lien Secured Party and their respective counsel. Accordingly, the First Lien Documents shall be deemed to be the product of all parties thereto, and no ambiguity shall be construed in favor of or against the Obligors, any Affiliate of the Obligors, TLA Administrative Agent or any First Lien Secured Party solely as a result of any such party having drafted or proposed the ambiguous provision.

14. For all purposes under this Agreement, in connection with any Division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.



News Release

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FOR IMMEDIATE RELEASE

CONSTELLATION COMPLETES CALPINE TRANSACTION, POWERING AMERICA'S CLEAN ENERGY FUTURE

Combination brings together premier nuclear, natural gas and geothermal fleets with a leading commercial platform to deliver innovative customer solutions and strengthen U.S. energy leadership, national security and economic prosperity

BALTIMORE and HOUSTON (January 7, 2026) — Constellation (Nasdaq: CEG) today announced it has completed its acquisition of Calpine Corporation from Energy Capital Partners (ECP), creating the nation's largest producer of electricity. With millions of customers depending on the company every day, the combined organization will deliver reliable, clean power that keeps America moving forward. By uniting Constellation's zero-emission nuclear fleet with Calpine's industry-leading natural gas and geothermal generation, the company is building the foundation for America's next great era of innovation — powering the data centers, advanced manufacturing facilities and critical infrastructure that will define the AI age and secure the nation's economic leadership.

"This isn't just about two great companies coming together — it's about strengthening America's future," said Joe Dominguez, president and CEO of Constellation. "Constellation is stepping up to power America's growth when our nation's demand for energy is surging, and our global competitors are racing to capture AI leadership. By uniting Constellation and Calpine, we're providing the reliable, clean energy that keeps our communities strong, our businesses competitive and our nation secure."

Andrew Novotny, president and CEO of Calpine, said, "This is an exciting day for both our companies and for the customers and communities we serve. We have the assets that power America today and meet the needs of tomorrow. Our expanded capabilities will allow us to better serve customers and communities, enable investment in critical infrastructure and support national priorities for energy security, economic competitiveness and technological leadership. Our teams share a relentless commitment to safety, sustainability and operational excellence, and I'm excited about what we will accomplish together."

"As a decades-long investor in power generation, ECP aims to unlock value, drive long-term growth opportunities and strengthen asset reliability — often serving as a bridge between public and private markets," said Tyler Reeder, president and managing partner of ECP. "We are proud to have achieved those goals in partnership with Calpine's management team and believe this combination validates that vision, setting the company up for future success while meeting the evolving needs of its customers, communities and the U.S.'s electrical grid."

The combined company provides 2.5 million retail and business customers nationwide with access to the broadest array of clean and reliable energy solutions in the industry, offering customers greater choice, competitive prices and tailored clean energy products. The acquisition also strengthens Constellation's footprint in high-demand regions, including Texas and California, while maintaining significant operations in Illinois, Maryland, New York and Pennsylvania.

With 55 gigawatts of capacity, Constellation and Calpine together will be the platform where new clean technologies can scale — including advanced nuclear, geothermal, carbon capture and sequestration, and long-duration storage. Building on shared cultures of safety, operational excellence and community partnership, the combined company is positioned to drive innovation and sustained investment in clean and reliable energy.

The company will maintain headquarters in Baltimore and a significant presence in Houston, continuing its commitment to the communities where it operates. Constellation will also expand its community impact through workforce development and philanthropy, contributing more than $23 million each year in foundation, corporate and employee giving, along with thousands of volunteer hours.

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About Constellation

Constellation Energy Corporation (Nasdaq: CEG), a Fortune 200 company headquartered in Baltimore, is the largest private-sector power producer in the world and the nation's largest producer of clean and reliable energy. With 55 gigawatts of capacity from nuclear, natural gas, geothermal, hydro, wind and solar facilities, our fleet has the generating capacity to power the equivalent of 27 million homes, providing about 10% of the nation's clean energy and delivering the around-the-clock reliability needed to power America's growing economy. We are also the largest nuclear energy company in the U.S. and a leading competitive retail supplier, serving more than 2.5 million homes, businesses and public sector customers nationwide, including three-fourths of the Fortune 100. We are committed to investing in innovation and new technologies to drive the transition to a reliable, sustainable and secure energy future. Follow Constellation on LinkedIn and X.

Cautionary Statements Regarding Forward-Looking Information

This press release contains certain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 that are subject to risks and uncertainties. Words such as "could," "may," "expects," "anticipates," "will," "targets," "goals," "projects," "intends," "plans," "believes," "seeks," "estimates," "predicts," and variations on such words, and similar expressions that reflect Constellation's current views with respect to future events and operational, economic, and financial performance, are intended to identify such forward-looking statements. These forward-looking statements include, but are not limited to, statements regarding the combined company and its operations, strategies, plans, synergies, opportunities and anticipated future performance and capital structure. Information adjusted for the Calpine transaction should not be considered a forecast of future results. Although Constellation believes these forward-looking statements are reasonable, statements made regarding future results are not guarantees of future performance and are subject to numerous assumptions, uncertainties and risks that are difficult to predict. Forward-looking statements are based on current expectations, estimates and assumptions that involve a number of risks and uncertainties that could cause actual results to differ materially from those projected.

Actual outcomes and results may differ materially from the results stated or implied in the forward-looking statements included in this press release due to a number of factors, including, but not limited to the risk that problems may arise in successfully integrating the businesses of the companies, which may result in the combined company not operating as effectively and efficiently as expected, and the risk that the combined company may be unable to achieve synergies or other anticipated benefits of the Calpine transaction or it may take longer than expected to achieve those synergies or benefits. Other unpredictable or unknown factors not discussed in this press release could also have material adverse effects on forward-looking statements.

The factors that could cause actual results to differ materially from the forward-looking statements made by Constellation include those factors discussed herein, as well as the items discussed in (1) Constellation's 2024 Annual Report on Form 10-K in (a) Part I, ITEM 1A. Risk Factors, (b) Part II, ITEM 7. Management's Discussion and Analysis of Financial Condition and Results of Operations, and (c) Part II, ITEM 8. Financial Statements and Supplementary Data: Note 18, Commitments and Contingencies; (2) Constellation's Third Quarter 2025 Quarterly Report on Form 10-Q in (a) Part II, ITEM 1A. Risk Factors, (b) Part I, ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations, and (c) Part I, ITEM 1. Financial Statements: Note 14, Commitments and Contingencies; and (3) other factors discussed in filings with the SEC by Constellation.

Investors are cautioned not to place undue reliance on these forward-looking statements, whether written or oral, which apply only as of the date of this press release. Constellation does not undertake any obligation to publicly release any revision to its forward-looking statements to reflect events or circumstances after the date of this press release.