IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
ENTEGRA POWER GROUP LLC, *et al.*,	:	Case No. 14-11859 (PJW)
Debtors.	:	(Jointly Administered)

NOTICE OF FILING OF PLAN SUPPLEMENT PURSUANT TO DEBTORS' JOINT MODIFIED PREPACKAGED PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

PLEASE TAKE NOTICE that, on August 4, 2014, Entegra Power Group LLC and certain of its subsidiaries as debtors and debtors in possession in these cases (collectively, the "**Debtors**"),[1] filed the (i) *Debtors' Joint Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [D.I. 5] and (ii) *Disclosure Statement* dated July 3, 2014 [D.I. 7] (the "**Disclosure Statement**").

PLEASE TAKE FURTHER NOTICE that on September 4, 2014, the Debtors filed the *Debtors' Joint Modified Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the "**Plan**") [D.I. 118].[2]

PLEASE TAKE FURTHER NOTICE that the Plan and Disclosure Statement contemplate the submission of certain documents (or forms thereof), schedules, and exhibits (the

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are Entegra Power Group LLC (3825); Entegra TC LLC (2889); EPG LLC (8348); Basso TP-2 Inc. (1726); Union Power LLC (N/A); Union Power Partners, L.P. (5385); UPP Finance Co. LLC (7090); Trans-Union Pipeline LLC (N/A); Trans-Union Interstate Pipeline, L.P. (7870); Entegra Power Services LLC (3106); Union Power Employee Company LLC (0841); and Gila River Energy HoldCo LLC (3510). The address of the Debtors' corporate headquarters is: 100 S. Ashley Dr., Suite 1400, Tampa, FL 33602.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings used in the Plan.

"**Plan Supplement**") in advance of the combined hearing on approval of the Disclosure Statement and confirmation of the Plan (the "**Combined Hearing**").

PLEASE TAKE FURTHER NOTICE that the Debtors hereby file the following Plan Supplement documents, in substantially final form:

- **Exhibit A** Form of Amended and Restated Certificate of Formation of Entegra TC LLC
- **Exhibit B** Reorganized ETC LLC Agreement
- **Exhibit C** Amended Intercreditor Agreement
- **Exhibit D** New Second Lien Note Indenture
- **Exhibit E** New Third Lien Credit Agreement
- **Exhibit F** Officers of the Reorganized Debtors
- **Exhibit G** Disclosure of Insider Compensation
- **Exhibit H** Contracts to be Assumed Pursuant to Section 8.5 of the Plan

PLEASE TAKE FURTHER NOTICE that the forms of the documents contained in the Plan Supplement are integral to, and are considered part of, the Plan. If the Plan is approved, the documents contained in the Plan Supplement will be approved by the Bankruptcy Court pursuant to the order confirming the Plan.

PLEASE TAKE FURTHER NOTICE that the Debtors reserve the right to alter, amend, modify, or supplement any of the documents contained in the Plan Supplement in accordance with the terms of the Plan.

PLEASE TAKE FURTHER NOTICE that the Plan Supplement, Plan, and Disclosure Statement may be viewed for free at the website of the Debtors' claims and noticing agent, Prime Clerk LLC ("**Prime Clerk**") at http://cases.primeclerk.com/entegra/ or for a fee on the Bankruptcy Court's website at http://www.deb.uscourts.gov. To obtain hard copies of the Plan

Supplement, Plan, or Disclosure Statement, please contact Prime Clerk at (855) 934-8766 or by e-mail at entegraballots@primeclerk.com.

PLEASE TAKE FURTHER NOTICE that the Combined Hearing will be held before the Honorable Peter J. Walsh, United States Bankruptcy Judge, in Room #2 of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 6th Floor, Wilmington, Delaware 19801, on **September 19, 2014 at 2:00 p.m. (prevailing Eastern time)**. Please be advised that the Combined Hearing may be continued from time to time by the Bankruptcy Court without further notice.

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Dated: September 4, 2014
Wilmington, Delaware

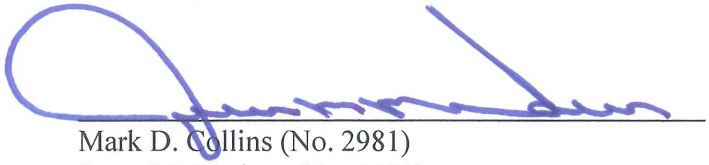

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Exhibit A

Form of Amended and Restated Certificate of Formation of Entegra TC LLC

AMENDED AND RESTATED

CERTIFICATE OF FORMATION

OF

ENTEGRA TC LLC

Pursuant to Section 18-208 of the

Delaware Limited Liability Company Act

ENTEGRA TC LLC, a Delaware limited liability company formed on March 22, 2007 under its current name, does hereby certify, pursuant to Section 18-208 of the Delaware Limited Liability Company Act, that its Certificate of Formation is hereby amended and restated to read in its entirety as follows:

FIRST: The name of the limited liability company is ENTEGRA TC LLC (the "Company").

SECOND: The address of the registered office of the Company in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: The Company shall have perpetual existence.

FOURTH: The Company shall not create or issue any non-voting equity securities to the extent prohibited by section 1123(a) of Title 11 of the United States Code as in effect as of the date hereof. This provision shall have no further force or effect beyond that required by said section 1123(a), and in all events may be amended from time to time or may be eliminated in accordance with applicable law.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned has duly executed this Amended and Restated Certificate of Formation of ENTEGRA TC LLC on this ___ day of _____, 2014.

By: _____
Name:
Title:

Exhibit B

Reorganized ETC LLC Agreement

SECOND AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT OF ENTEGRA TC LLC

This SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (as the same may be amended, modified and supplemented from time to time, this "Agreement") of ENTEGRA TC LLC (together with its successors and assigns, the "Company"), made and entered into as of this ____ day of ____, 2014, is by and among the undersigned members of the Company and each Person (as hereinafter defined) that is subsequently admitted as a member of the Company in accordance with the terms of this Agreement (each, a "Member" and, collectively, the "Members"); provided, however, that, no Person who would otherwise be admitted as a member of the Company in connection with the restructuring transactions contemplated in the Plan (as hereinafter defined) shall be deemed a Member or otherwise have any rights under this Agreement until such Person has executed and delivered a joinder to this Agreement in the form contemplated by the Plan; and provided, further, for the avoidance of doubt, that in the event of (i) any future admission of any Additional Member or Substitute Member (each as hereinafter defined) not in connection with the Plan or (ii) any further amendment to the terms of this Agreement adopted in accordance with Article XII, this Agreement and such amendment shall be binding upon a Member whether or not such Member executes this Agreement or a joinder hereto (provided, in the case of an amendment, that such amendment is approved by the requisite action contemplated in Article XII). Unless otherwise defined herein or the context clearly requires otherwise, capitalized terms shall have the meanings given to them in Article I.

RECITALS

WHEREAS, on March 22, 2007, the Company was formed in accordance with the provisions of the Delaware Limited Liability Company Act (together with any successor statute, and as amended from time to time, the "Act"), and, on April 19, 2007, the Company's sole member entered into a written agreement pursuant to the Act governing the affairs of the Company and the conduct of its business, which agreement was amended and restated in its entirety on August 4, 2014 (the "Current Agreement");

WHEREAS, in connection with certain restructuring transactions contemplated in the chapter 11 plans of reorganization of Entegra Power Group LLC, Entegra TC LLC, Basso TP-2 Inc., EPG LLC, Union Power LLC, Union Power Partners, L.P., UPP Finance Co. LLC, Trans-Union Pipeline LLC, Trans-Union Interstate Pipeline, L.P., Entegra Power Services LLC, Union Power Employee Company LLC, and Gila River Energy HoldCo LLC (collectively, the "Debtors"), as debtors and debtors in possession, as filed in the United States Bankruptcy Court for the District of Delaware on August 4, 2014, as the same may be amended, supplemented, restated, or modified from time to time, pursuant to section 1121(a) of title 11 of the United States Code (collectively, the "Plan"), the sole member of the Company has determined to amend and restate the Current Agreement to read in its entirety as set forth herein; and

WHEREAS, in accordance with the Plan and prior to the effectiveness of this Agreement, Entegra Power Group LLC transferred the (i) Senior Equity Units to the

holders of allowed claims arising under that certain Credit Agreement (Third Lien), dated as of April 19, 2007, by and among the Debtors, Wells Fargo Bank, National Association as administrative agent, and the lenders party thereto and (ii) Series B Units to the holders of allowed equity interests in Entegra Power Group LLC, subject to the execution and submission of a joinder to this Agreement in accordance the terms of the Plan.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members agree as follows:

ARTICLE I
DEFINITIONS

As used herein, the following terms have the meanings set forth below:

1.1 "Act" shall have the meaning set forth in the Recitals hereto.

1.2 "Additional Member" shall mean a Person who has acquired newly-issued Units directly from the Company after the effective date of this Agreement and has been admitted as a Member of the Company pursuant to Section 8.5.

1.3 "Adjusted Capital Account Deficit" shall mean, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(a) credit to such Capital Account any amounts which such Member is obligated to restore or is deemed to be obligated to restore pursuant to the penultimate sentence of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(b) debit to such Capital Account the items described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6).

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

1.4 "Adjustment Factor" shall have the meaning set forth in Section 6.4(b).

1.5 "Affiliate" shall mean, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person.

1.6 "Aggregate Senior Equity Unit Percentage" of a Member as of a specified date shall mean the percentage determined by dividing (A) the aggregate number of Senior Equity Units held by such Member as of such date by (B) the aggregate number of Senior Equity Units issued and outstanding as of such date.

1.7 "Aggregate Series B Unit Percentage" of a Member as of a specified date shall mean the percentage determined by dividing (A) the aggregate number of Series B Units held by such Member as of such date by (B) the aggregate number of Series B Units issued and outstanding as of such date.

1.8 "Agreement" shall have the meaning set forth in the Preamble hereto.

1.9 "Assignee" shall mean a transferee of Units who has not been admitted as a Substitute Member.

1.10 "Bankruptcy Code" shall mean title 11 of the United States Code, 11 U.S.C. Sections 101-1532, as now in effect or hereafter amended.

1.11 "Board" shall have the meaning set forth in Section 4.1(a).

1.12 "Business Day" shall mean any day on which banks located in the State of New York are not required or authorized by law to remain closed.

1.13 "Call Units" shall have the meaning set forth in Section 8.9(a).

1.14 "Capital Account" shall have the meaning set forth in Section 5.6(a).

1.15 "Capital Contribution" shall mean any contribution of cash or property to the Company made by or on behalf of a Member as set forth from time to time in the Company's books and records.

1.16 "Carryforward Losses" means, with respect to any Member and any calendar quarter, the aggregate amount (if any) by which (i) the cumulative items of the Company's taxable expense and loss allocated to such Member prior to such calendar quarter *exceeds* (ii) the cumulative items of the Company's taxable income and gain allocated to such Member prior to such calendar quarter.

1.17 "Certificate of Cancellation" shall mean the certificate required by the Act to be filed with the Secretary of State of the State of Delaware in connection with the dissolution of the Company.

1.18 "Certificate of Formation" shall have the meaning set forth in Section 2.1.

1.19 "Claims" shall have the meaning set forth in Section 11.2.

1.20 "Code" shall mean the Internal Revenue Code of 1986, as amended.

1.21 "Company" shall have the meaning set forth in the Preamble hereto.

1.22 "Company Minimum Gain" shall have the meaning ascribed to "partnership minimum gain" in Regulations Sections 1.704-2(b)(2) and 1.704-2(d).

1.23 "Company Subsidiary" shall mean any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by the Company and any entity of which the Company is the managing member or general partner.

1.24 "Compensatory Interests" shall mean any Units, restricted Units, Unit appreciation rights, phantom Units or options to purchase Units that are issued by the Company to its employees pursuant to an employee compensation plan that has been approved by the Board.

1.25 "Competing Enterprise Duty" shall have the meaning set forth in Section 4.7.

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

1.27 "Controlled Affiliate" shall mean, with respect to any Person, any Affiliate of such Person that is controlled by such Person.

1.28 "Covered Person" shall have the meaning set forth in Section 11.2.

1.29 "Current Agreement" shall have the meaning set forth in the Recitals hereto.

1.30 "Depreciation" shall mean, for each Fiscal Year, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such Fiscal Year for federal income tax purposes, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Board.

1.31 "Designated Affiliate" shall mean, with respect to any Member or Director, any Person that controls, is controlled by, or is under common control with such Member, it being agreed that, as a result, LS Power and its Affiliates (including private investment funds managed by LS Power and their Controlled Affiliates), will be deemed to be Designated Affiliates of Luminus.

1.32 "Director" shall have the meaning set forth in Section 4.1(a).

1.33 "Drag-Along Purchaser(s)" shall have the meaning set forth in Section 8.9(a).

1.34 "Emergency Funder" shall have the meaning set forth in Section 5.3(j).

1.35 "Emergency Units" shall have the meaning set forth in Section 5.3(j).

1.36 "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

1.37 "Event of Dissolution" shall have the meaning set forth in Section 9.1.

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

1.39 "Exempt Units" means (i) Compensatory Interests and any Units issued upon conversion of Compensatory Interests; (ii) Units issued in connection with any merger, consolidation or recapitalization of the Company or as consideration for any acquisition by the Company of the assets or capital stock of any third party; (iii) Units (and options, warrants or other rights to purchase Units and securities convertible into, or exchangeable for, Units) issued to any lender in connection with a debt financing of the Company or a Company Subsidiary or issued to any other party with whom the Company does business; and (iv) Units issued pursuant to any Unit split, distribution, combination, reclassification, reorganization or similar transaction, provided that there is no change in the relative percentage ownership or voting power of the holders of Units as a result of any such Unit split, distribution, combination, reclassification, reorganization or similar transaction.

1.40 "Fair Market Value" shall, as of any date, mean the fair market value of Units or other securities or assets of the Company as of such date, as determined in good faith by the Board using such methods or procedures as shall be established from time to time by the Board. Unless otherwise determined by the Board in good faith, the per share Fair Market Value of any securities listed on a national securities exchange shall be the average closing sales price per share of such security on the national securities exchange on which such securities are principally traded for the immediately preceding thirty (30) day period and the per share Fair Market Value of any securities traded on an over-the-counter market shall be the average closing bid and asked prices per share of such security in such over-the-counter market for the immediately preceding thirty (30) day period.

1.41 "FERC" shall mean the Federal Energy Regulatory Commission and any successor federal agency thereto.

1.42 "Fiscal Year" shall have the meaning set forth in Section 7.4.

1.43 "FPA" shall mean the Federal Power Act, 16 U.S.C. § 791a, *et seq*, as amended.

1.44 "Gila River Power Facility" shall mean the approximately 2,145 megawatt combined cycle natural gas fired generating facility known as the "Gila River Power Station" located in Maricopa County, Arizona.

1.45 "Governmental Authority" shall mean any federal, state, municipal or other governmental authority, department, commission, board, agency or other instrumentality.

1.46 "Gross Asset Value" shall mean, with respect to any asset, the adjusted basis of the asset for federal income tax purposes, except as follows:

(a) with the exception of contributions in the form of cash, the initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross Fair Market Value of such asset, as reasonably determined by the Board;

(b) the Gross Asset Value of all Company assets shall be adjusted to equal their respective gross Fair Market Values, as determined by the Board, immediately prior to the following times: (i) the acquisition of additional Units or other interests in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution; (ii) the distribution by the Company to a Member of more than a de minimis amount of Company property as consideration for Units or other interests in the Company; (iii) the grant of Units in the Company (other than a de minimis number of Units) as consideration for the provision of services to or for the benefit of the Company by an existing Member acting in a Member capacity, or by a new Member acting in a Member capacity or in anticipation of becoming a Member; and (iv) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); provided, however, that adjustments pursuant to subsections (i), (ii) and (iii) of this subclause (b) shall be made only if the Board reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interest of the Members in the Company;

(c) the Gross Asset Value of any Company asset distributed to any Member will be adjusted to equal the gross Fair Market Value of such asset on the date of distribution as reasonably determined by the Board; and

(d) the Gross Asset Values of the Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m) and subclause (c) of the definition of "Net Profits and Net Losses" or Section 6.2(h); provided, however, that such Gross Asset Values shall not be adjusted pursuant to this subclause (d) to the extent that the Board determines that an adjustment pursuant to subclause (b) above is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subclause (d).

1.47 "GRP" shall mean Gila River Power, LLC, a Delaware limited liability company.

1.48 "Independent Director" shall mean a Director who is neither (i) an employee, manager or general partner of, or a holder of a material equity ownership interest in, (a) the Company or any Company Subsidiary, (b) any Member or any Affiliate of a Member, or (c) any investment management firm or fund affiliated with any Member, nor (ii) a current consultant deriving significant income from (a) the Company or any Company Subsidiary, (b) any Member or any Affiliate of a Member, or (c) any investment management firm or fund affiliated with any Member.

1.49 "Legal Impediment" shall mean a legal impediment to the issuance or distribution to, or the holding by, any Member of all or a portion of the voting Units otherwise issuable to such Member, whether as a result of any legal requirement, condition, requirement to obtain any approvals, or otherwise; provided, however, that the applicable legal impediment to the acquisition of voting Units will be deemed to have been resolved to the reasonable satisfaction of the Company only upon (i) delivery of written notice by the applicable Member to the Company, which notice shall include a description of such resolution on which the Company shall be entitled to rely and (ii) a written response by the Company to the Member, confirming that such resolution is reasonably satisfactory to the Company.

1.50 "Luminus" shall mean Luminus Management, LLC and its Affiliates (excluding the Company and any Company Subsidiaries).

1.51 "Majority Interest" shall mean, at any time, the holders of a majority of the combined voting power exercisable by the Senior Equity Units and Series B Units then issued and outstanding and entitled to vote at such time, voting together as a single class.

1.52 "Member" shall have the meaning set forth in the preamble hereto.

1.53 "Member Nonrecourse Debt" shall have the meaning ascribed to "partner nonrecourse debt" in Regulations Section 1.704-2(b)(4).

1.54 "Member Nonrecourse Debt Minimum Gain" shall mean an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a nonrecourse liability, determined in accordance with Regulations Section 1.704-2(i)(3).

1.55 "Member Nonrecourse Deductions" shall have the meaning ascribed to "partner nonrecourse deductions" in Regulations Sections 1.704-2(i)(1) and 1.704-2(i)(2).

1.56 "Net Profits and Net Losses" shall mean, for each Fiscal Year or portion thereof, an amount equal to the Company's taxable income or loss for such period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss and deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Profits and Net Losses pursuant hereto

shall be taken into account in computing such taxable income or losses as if it were taxable income;

(b) any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Net Profits or Net Losses pursuant hereto shall be taken into account in computing such taxable income or losses as if they were deductible items;

(c) to the extent an adjustment to the adjusted tax basis of any asset pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution (other than in liquidation of a Member's interest in the Company), the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Net Profits or Net Losses;

(d) in the event the Gross Asset Value of any Company asset is adjusted pursuant to subclause (a) or (b) of the definition of Gross Asset Value above, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Profits and Net Losses;

(e) gain or loss resulting from the disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(f) in lieu of depreciation, amortization or other cost recovery deductions taken into account in computing taxable income or loss, there shall be taken into account Depreciation for such period; and

(g) the amount of items of Company income, gain, deduction and loss available to be specially allocated pursuant to Section 6.2 shall be determined by applying rules analogous to those in subclauses (a) through (f) above. Notwithstanding any other provision of this definition, Net Profits shall be decreased or Net Losses shall be increased by the amount of items of Company income and gain specially allocated under Section 6.2 and Net Profits shall be increased or Net Losses shall be decreased by the amount of items of Company loss and deduction specially allocated under Section 6.2.

1.57 "Net Taxable Income" means, with respect to any Member and any calendar quarter, the amount (if any) by which (i) the cumulative items of taxable income and gain allocated to such Member during such calendar quarter ***exceed*** (ii) the sum of the cumulative items of taxable expense and loss allocated to such Member during such calendar quarter ***plus*** the amount (if any) of such Member's Carryforward Losses to the extent not previously taken into account in determining Net Taxable Income.

1.58 "New Third Lien Agent" shall mean Wells Fargo Bank, National Association, as administrative agent under the New Third Lien Credit Agreement, or any successor administrative agent thereunder.

1.59 "New Third Lien Credit Agreement" shall mean that certain Third Lien Credit Agreement, dated as of _____, 2014, by and among the Reorganized Debtors, the New Third Lien Agent, and the lenders party thereto, as such credit agreement may be amended, supplemented, or modified from time to time in accordance with the terms thereof.

1.60 "New Third Lien Debt" shall mean the Reorganized Debtors' obligations under the New Third Lien Credit Agreement.

1.61 "New Third Lien Lenders" shall mean the lenders under the New Third Lien Credit Agreement.

1.62 "Nonrecourse Deductions" shall have the meaning set forth in Regulations Section 1.704 2(b)(1).

1.63 "Notice Recipient" shall have the meaning set forth in Section 8.8(a).

1.64 "Permitted Transfer" shall have the meaning set forth in Section 8.1(a).

1.65 "Person" shall mean any individual, firm, corporation, partnership, limited liability company or other entity, and shall include any successor (by merger or otherwise) of such entity.

1.66 "Plan" shall have the meaning set forth in the Recitals hereto.

1.67 "Preemptive Member" shall have the meaning set forth in Section 5.3(a).

1.68 "Preemptive Notice" shall have the meaning set forth in Section 5.3(b).

1.69 "Preemptive Percentage" shall have the meaning set forth in Section 5.3(a).

1.70 "Preemptive Response" shall have the meaning set forth in Section 5.3(d).

1.71 "Preemptive Response Deadline" shall have the meaning set forth in Section 5.3(d).

1.72 "Preemptive Units" shall mean (i) any Units issued after the date of this Agreement, (ii) any options, warrants or other rights to purchase or otherwise acquire any Units issued after the date of this Agreement, and (iii) and other securities convertible, exchangeable or exercisable for Units issued after the date of this Agreement; provided, however, that Preemptive Units shall not include any Exempt Units.

1.73 "Proposed Rules" has the meaning set forth in Section 7.5.

1.74 "PUHCA" shall mean the Public Utility Holding Company Act of 2005, enacted as part of the Energy Policy Act of 2006, Pub. L. No. 109-58, as codified at § 1261 *et. seq.,* and the regulations adopted thereunder, as amended, modified, supplemented or replaced from time to time.

1.75 "Purchase Notice" shall have the meaning set forth in Section 8.9(a).

1.76 "Purchase Notice FMV" shall have the meaning set forth in Section 8.9(b).

1.77 "Put Units" shall have the meaning set forth in Section 8.8(b).

1.78 "Regulation D" shall mean Regulation D promulgated under the Securities Act or any successor regulation.

1.79 "Regulations" shall mean the U.S. Treasury Regulations, as amended.

1.80 "Reorganized Debtors" shall mean, collectively, Entegra Power Group LLC, Entegra TC LLC, Basso TP-2 Inc., EPG LLC, Union Power LLC, Union Power Partners, L.P., UPP Finance Co. LLC, Trans-Union Pipeline LLC, Trans-Union Interstate Pipeline, L.P., Entegra Power Services LLC, Union Power Employee Company LLC, and Gila River Energy HoldCo LLC and any successors or assigns thereto, by merger, consolidation, or otherwise on or after the Effective Date as defined in the Plan.

1.81 "Rule 144" and "Rule 144A" shall mean Rule 144 and Rule 144A, respectively, promulgated under the Securities Act or any successor rule.

1.82 "Safe Harbor Election" shall have the meaning set forth in Section 7.5(a).

1.83 "Sale Notice" shall have the meaning set forth in Section 8.8(a).

1.84 "Sale Notice FMV" shall have the meaning set forth in Section 8.8(c).

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

1.86 "Senior Equity Unit Drag Equivalent Number" shall have the meaning set forth in Section 8.9(b).

1.87 "Senior Equity Unit Tag Equivalent Number" shall have the meaning set forth in Section 8.8(c).

1.88 "Senior Equity Units" means, collectively, the Series A Units, the Series C Units and any other class or series of Units issued pursuant to Section 5.1(a) which, by its terms, (i) is senior to, or pari passu with, the Series A Units and Series C Units, and (ii)

has been designated as a Senior Equity Unit when such class or series of Units is initially issued. For the avoidance of doubt, Series B Units are not Senior Equity Units.

1.89 "Series A Units" shall have the meaning set forth in Section 5.1(a)(i).

1.90 "Series B Distribution Threshold" shall mean the threshold at which the Company has made cumulative distributions to holders of Senior Equity Units (including, without limitation, amounts received by the holders of Senior Equity Units through: (i) any self-tender offer for the Senior Equity Units consummated by the Company or any of its Controlled Affiliates (regardless of the form of consideration paid); (ii) any open market repurchases of the Senior Equity Units consummated by the Company or any of its Controlled Affiliates (regardless of the form of consideration paid); (iii) the proceeds of any new incremental debt to the New Third Lien Debt to the extent the proceeds of such new incremental debt are distributed as cash payments to the holders of the Senior Equity Units and (iv) the Fair Market Value of any assets of the Company or any Company Subsidiaries that are transferred to the holders of the Senior Equity Units as a dividend or distribution in kind) in an amount equal to (x) $1,285,000,000 minus (y) any cash paid to the New Third Lien Lenders on account of the New Third Lien Debt, including any cash paid to the New Third Lien Lenders in connection with any refinancing of the New Third Lien Debt.

1.91 "Series B Units" shall have the meaning set forth in Section 5.1(a)(i).

1.92 "Series C Units" shall have the meaning set forth in Section 5.1(a)(i).

1.93 "Significant Member" shall mean, at any time, any Member that holds (including affiliated investment funds of such Member and funds under common control of the same asset management firm as such Member) an Aggregate Senior Equity Unit Percentage of more than four percent (4%) at such time.

1.94 "SPH Entities" shall mean Sundevil Power Holdings, LLC and SPH Holdco LLC.

1.95 "Substitute Member" shall mean an Assignee who has been admitted to all of the rights of membership pursuant to Section 8.6.

1.96 "Tag-Along Purchasers" shall have the meaning set forth in Section 8.8(a).

1.97 "Tax Distribution Amount" shall mean, with respect to any Member and any calendar quarter, the sum of (i) the product of the Tax Rate for such calendar quarter *multiplied by* the amount of such Member's Net Taxable Income for such calendar quarter, *plus* (ii) the amount (if any) by which the aggregate Tax Distribution Amount payable to such Member for prior calendar quarters in such Fiscal Year *exceeds* the aggregate amount distributed to such Member during prior calendar quarters in such Fiscal Year, *minus* (iii) the aggregate amount distributed to such Member during such calendar quarter (excluding any distributions made to such Member pursuant to Section 6.4(a) for a prior calendar quarter); *provided, however*, that in determining the product

referenced in clause (i) above attributable to any Series A Units or Series C Units, the applicable amount of the Member's Net Taxable Income taken into account shall not exceed the amount that would have been applicable had the Member owned such Units from the date hereof. For purposes of determining the Tax Distribution Amount for any Member, the Board may treat any distribution made within 45 days after the end of a calendar year as having been made in such calendar year.

1.98 "Tax Matters Member" shall have the meaning ascribed to the term "tax matters partner" in Code Section 6231.

1.99 "Tax Rate" shall mean, with respect to any calendar quarter, the highest combined, marginal U.S. federal, state and local tax rates for such calendar quarter on ordinary income, taking into account the deductibility of state and local taxes in computing U.S. federal income and state tax liability, for a corporation resident of New York, New York.

1.100"Transfer" shall mean any voluntary or involuntary attempt to, directly or indirectly, offer, sell, assign, transfer, grant a participation or beneficial interest in, pledge, mortgage, encumber or otherwise dispose of any Units, or the consummation of any such transactions.

1.101"Transferring Member(s)" shall have the meaning set forth in Section 8.8(a).

1.102"Union Power Facility" shall mean the approximately 2,160 megawatt (at ISO conditions) combined cycle generating facility known as the "Union Power Station" located in Union County, Arkansas and that certain interstate natural gas pipeline developed and owned by Trans-Union Interstate Pipeline, L.P. and transporting natural gas thereto.

1.103"Unit" shall mean any equity interest of the Company.

1.104"UPP" shall mean Union Power Partners, L.P, a Delaware limited partnership.

1.105"Wayzata" shall mean Wayzata Investment Partners LLC and its Affiliates (including private investment funds managed by Wayzata Investment Partners LLC).

ARTICLE II
THE LIMITED LIABILITY COMPANY

2.1 Formation. A Certificate of Formation for the Company (the "Certificate of Formation") has been filed in the Office of the Secretary of State of the State of Delaware in conformity with the Act. The Company and, if required, each of the Members shall execute or cause to be executed from time to time all other instruments, certificates, notices and documents and shall do or cause to be done all such acts and things (including keeping books and records and making publications or periodic filings)

as may now or hereafter be required for the formation, valid existence and, when appropriate, termination of the Company as a limited liability company under the laws of the State of Delaware and as may be necessary in order to protect the liability of the Members as members under the laws of the State of Delaware.

2.2 Name. The name of the Company shall be "ENTEGRA TC LLC", and its business shall be carried on in such name with such variations and changes as the Board shall determine or deem necessary to comply with requirements of the jurisdictions in which the Company's operations are conducted.

2.3 Business Purpose. The Company is formed for the purposes of engaging in any business or activity for which limited liability companies may be formed under the Act. The Company shall at all times operate in a manner so as (i) to be exempt from the provisions of the Investment Company Act of 1940, as amended, and (ii) to permit each of UPP and GRP to qualify as an "Exempt Wholesale Generator" as that term is defined in PUHCA.

2.4 Registered Office and Agent. The location of the registered office of the Company shall be 1209 Orange Street, Wilmington, Delaware 19801. The Company's registered agent at such address shall be The Corporation Trust Company.

2.5 Term. The term of the Company commenced on the date of filing of the Certificate of Formation in the Office of the Secretary of State of the State of Delaware and shall continue until the Company is dissolved pursuant to Article IX.

2.6 Company Powers. In furtherance of the business purpose specified in Section 2.3, but subject to the other provisions of this Agreement, the Company and the Board, acting on behalf of the Company, shall be empowered to do or cause to be done any and all acts, deemed by the Board to be necessary or advisable in furtherance of the business purpose of the Company, including, without limitation, the power and authority:

(a) to acquire, hold, manage, own, sell, transfer, convey, assign, exchange, pledge or otherwise dispose of the Company's interest in securities or any other investments made or other property held by the Company, including without limitation investments in capital stock, bonds, notes, debentures and other obligations, investment contracts, partnership interests, limited liability company interests, options, warrants, other securities, interests in technology, intellectual property rights and other proprietary processes, products or services;

(b) to borrow funds, in the name and on behalf of the Company, to enter into agreements and other instruments evidencing the Company's obligations in connection therewith and to pledge the Company's assets as collateral to secure the Company's obligations thereunder;

(c) to establish, have, maintain or close one or more offices within or without the State of Delaware and in connection therewith to rent or acquire office space and to engage personnel;

(d) to open, maintain and close bank and brokerage accounts, including the power to draw checks or other orders for the payment of moneys, and to invest such funds as are temporarily not otherwise required for Company purposes;

(e) to bring and defend actions and proceedings at law or in equity or before any Governmental Authority;

(f) to hire consultants, custodians, attorneys, accountants and such other agents, officers and employees of the Company as it may deem necessary or advisable, and to authorize each such agent and employee to act for and on behalf of the Company;

(g) to make all elections, investigations, evaluations and decisions, binding the Company thereby, that may, in the judgment of the Board, be necessary or appropriate for the accomplishment of the Company's business purposes;

(h) to enter into, perform and carry out contracts and agreements of every kind necessary or incidental to the accomplishment of the Company's business purpose, and to take or omit to take such other action in connection with the business of the Company as may be necessary or desirable to further the business purpose of the Company; and

(i) to carry on any other activities necessary to, in connection with, or incidental to any of the foregoing or the Company's business.

2.7 Affiliate Transactions. Notwithstanding Section 2.6 or any other provision of this Agreement, from and after the date hereof:

(a) No Director shall (i) enter into any transaction with the Company or any of its Controlled Affiliates unless the interest of such Director in the transaction has been disclosed to the Board and the transaction is approved by a majority of the Directors that have no interest in such transaction; or (ii) knowingly vote on any transaction between a Designated Affiliate of such Director and the Company or any of its Controlled Affiliates (and, if known to the Board, the Board shall limit and exclude a Director from participating in discussions of, or receiving information regarding, any possible transaction between a Designated Affiliate of such Director and the Company or any of its Controlled Affiliates).

(b) In the event of a purchase, sale or other disposition (regardless of the form of the transaction) of all or a portion of any power generating block(s) (including via a sale of all of the equity interests in the Company) located at the Gila River Power Facility or the Union Power Facility (or any other facility that is subsequently acquired by the Company) involving a Designated Affiliate of a Director or a Significant Member as a party to the purchase, sale or disposition, the Board shall form a special committee (whose membership shall not include such Director) to review the transaction on and consistent with the other terms herein, and any such transaction shall be subject to the approval of a majority of the Members unaffiliated with such Designated Affiliate, Director or Significant Member.

(c) Neither the Company nor any Company Subsidiary or other Controlled Affiliate of the Company will enter into any transaction with any Significant Member or any Designated Affiliate of such Significant Member unless:

(i) the transaction:

(1) is entered into pursuant to a general delegation of authority by the Board to the management of the Company;

(2) is entered into in the ordinary course of business (which, for the avoidance of doubt, shall include power trading, but shall exclude entering into any contract to provide energy management services or other management services in exchange for cash consideration);

(3) is on an arms-length basis; and

(4) management of the Company promptly discloses such transaction to the Board upon a determination by management that the transaction is with a Significant Member or a Designated Affiliate thereof; or

(ii) the interest in the transaction of such Significant Member or Designated Affiliate has been disclosed to the Board and the transaction is approved by a majority of the Independent Directors who are not employed by, or significant investors in, such Significant Member, and, if such transaction involves the Company's purchase or sale (regardless of the form of transaction) of a power generating block from or to a Significant Member or its Designated Affiliate, as the case may be, such transaction is approved by each of a majority of the Directors not affiliated with such Significant Member and a majority in voting power of the Members of the Company unaffiliated with such Significant Member or Designated Affiliate;

provided, however, that the foregoing restrictions of this Section 2.7(c) shall not apply to any transaction that is both (i) not the transfer of a power generating block and (ii) involves aggregate cash consideration of less than $100,000.

(d) Notwithstanding anything to the contrary in Section 2.7(c), for so long as no employee of Wayzata is on the Board and Wayzata and its Affiliates own less than 40% in voting power of the Senior Equity Units, then, with respect to any transactions relating to the Gila River Power Facility, neither of the SPH Entities shall be considered an Affiliate of any Significant Member for purposes of Section 2.7(c), except in connection with an SPH Entity's purchase of a power generating block at the Gila River Power Facility from a Controlled Affiliate of the Company from and after the date hereof.

(e) For the avoidance of doubt, this Section 2.7 imposes requirements on the Company and not on any Member. No duty is imposed on any Member to monitor or enforce the provisions of this Section 2.7.

2.8 Competition and Corporate Opportunities.

(a) Each Member acknowledges and affirms that each other Member may have, and may continue to, participate, directly or indirectly, in investments in the Company's industry which are, or will be, suitable for the Company or competitive with the Company's business.

(b) Each Member, individually and on behalf of the Company, expressly (i) waives any conflicts of interest or potential conflicts of interest that exist or arise as a result of any such investments and agrees that no other Member nor any other Member's representatives will have liability to any Member or any Affiliate thereof, or to the Company, with respect to such conflicts of interest or potential conflicts of interest, (ii) acknowledges and agrees that no other Member nor any other Member's representatives will have any duty to disclose to the Company or any other Member any such business opportunities, whether or not competitive with the Company's business and whether or not the Company might be interested in such business opportunity for itself (except to the extent that such representative learns of such opportunity strictly in his or her capacity as a Director or as an officer of the Company), (iii) agrees that the terms of this Section 2.8, to the extent that they modify or limit a duty or other obligation (including fiduciary duties), if any, that a Member may have to the Company or any other Member under the Act or any other applicable law, rule or regulation, are reasonable in form, scope and content, and (iv) waives to the fullest extent permitted by the Act any duty or other obligation, if any, that a Member may have to the Company or another Member, pursuant to the Act or any other applicable law, rule or regulation, to the extent necessary to give effect to the terms of this Section 2.8.

(c) Notwithstanding anything to the contrary contained herein, nothing contained in this Agreement shall limit or impair any right or remedy of a Member as an owner of any indebtedness issued by the Company or any Company Subsidiary or impose any liability or obligation upon any Member with respect to its ownership of such indebtedness. Without limiting the generality of the foregoing, no such Person, in exercising its rights as a lender, including making its decision on whether to foreclose on any collateral security or exercising any other contractual or statutory remedies, will have any duty to consider (i) its status as a direct or indirect equityholder of the Company and the Company Subsidiaries, (ii) the interests of the Company or any of its Affiliates or (iii) any duty it may have to any other direct or indirect equityholder of the Company or any Company Subsidiary, if any.

2.9 Business Transactions of a Member or Director with the Company. Subject to Sections 2.7 and 2.8, a Member or Director may transact business with the Company and shall have the same rights and obligations with respect to any such matter as a Person that is not a Member or Director.

2.10 Principal Place of Business. The principal place of business of the Company shall be at such location as the Board may, from time to time, select.

2.11 Title to Company Property. Legal title to all property of the Company shall be held and vested and conveyed in the name of the Company, and no real or other property of the Company shall be deemed to be owned by any Member individually. The Units of the Members in the Company shall constitute personal property.

ARTICLE III
THE MEMBERS

3.1 The Members. The name, address, number and class of Units, and Capital Contributions of each Member shall be set forth in the Company's books and records, as such books and records are amended from time to time to reflect any addition or change in Members, additional Capital Contributions, the acquisition of additional Units by Members and the transfer, cancellation, repurchase or redemption of Units, each as permitted or required by the terms of this Agreement.

3.2 Member Meetings.

(a) Actions by the Members; Meetings. The Members may vote, approve a matter or take any action by the vote of Members holding Units entitled to vote at a meeting, in person or by proxy, or without a meeting by the written consent of Members pursuant to Section 3.2(b). The Board or any Significant Member may call a meeting of Members by providing Members with not less than five (5) nor more than sixty (60) days' prior written notice of the time, place and purpose of such meeting, which notice shall be delivered to Members in the manner provided in Section 13.1. Notice of any meeting may be waived by any Member before or after any meeting. Meetings of the Members may be conducted in person or by conference telephone, videoconference or webcast facilities.

(b) Action by Written Consent. Any action may be taken by Members without a meeting if authorized by the written consent of Members holding Units sufficient to approve such action pursuant to the terms of this Agreement. In no instance where action is authorized by written consent will a meeting of Members be required to be called or notice be required to be given.

(c) Quorum; Voting. For any meeting of Members, the presence in person or by proxy of Members owning Units representing at least a Majority Interest shall constitute a quorum for the transaction of any business. Except as otherwise provided in this Agreement, the affirmative vote of Members owning Units representing at least a Majority Interest shall constitute approval of any action.

3.3 Liability of Members. All debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Member shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member.

3.4 Power to Bind the Company. No Member (acting in its capacity as such) shall have any authority to bind the Company to any third party with respect to any

matter except pursuant to a resolution expressly authorizing such action which resolution is duly adopted by the Board by the affirmative vote required for such matter pursuant to this Agreement or the Act.

3.5 PUHCA Covenant. No Member shall take any action that would result in, or refrain from taking any action relating to such Member necessary to prevent, the Company not being exempt from regulation pursuant to 18 C.F.R. §366.3(a).

3.6 Public Utility Status. Each Member acknowledges that each of UPP and GRP is a "public utility" as that term is defined in the FPA and that certain transactions by a Member or an affiliate of such Member, as the term "affiliate" is defined by FERC or under applicable state law, may require certain regulatory approvals, including the approval of FERC pursuant to the FPA and/or the approval of a state agency pursuant to applicable state law. Each Member agrees and acknowledges that it is the Member's and/or its affiliates' responsibility to timely request and obtain any and all such regulatory approvals, provided that the Board and the Company shall cause each of UPP and GRP to assist the Member in promptly requesting and obtaining any and all such regulatory approvals, including by causing each of UPP and GRP to (i) assist such Member in preparing and filing, at such Member's expense, any required regulatory application expeditiously which shall include causing UPP and/or GRP, as applicable, to be an applicant on such application, and (ii) provide information necessary in order to complete any such application.

3.7 Regulatory Approvals. Other than the regulatory approvals described in Section 3.6, the Company and the Company Subsidiaries are responsible for timely requesting and obtaining any and all regulatory approvals, including the approval of FERC pursuant to the FPA and/or the approval of a state agency under applicable state law, that may be necessary for any transactions entered into by the Company and/or such Company Subsidiaries after the date hereof, and no Member or Affiliate of such Member has any responsibility to request or obtain such approvals; provided, however, that any Member shall provide information reasonably requested by the Board to the extent such information may be necessary for the Company and/or such Company Subsidiary to obtain any such necessary approval.

3.8 Additional Regulatory Provisions. To the extent that Wayzata and its Affiliates retain ownership or control of the power generating blocks at the Gila River Power Facility known as "Gila Block 1" and "Gila Block 2", then, unless and until the closing of the sale of the power generating block at the Gila River Power Facility known as "Gila Block 3" to Tucson Electric Power Company and UNS Electric, Inc. (or one or more of their respective Affiliates) or other parties unaffiliated with Wayzata, Wayzata shall be prohibited from holding Series A Units, and shall hold Series C Units in lieu thereof, and shall be prohibited from receiving any non-public information concerning power sales, fuel purchases or trading strategy of GRP or the Gila River Power Facility. For the avoidance of doubt, the foregoing restrictions of this Section 3.8 shall not apply after the sale of the power generating block at the Gila River Power Facility known as "Gila Block 3".

ARTICLE IV
THE BOARD AND OFFICERS

4.1 Management by the Board of Directors.

(a) General. The business and affairs of the Company shall be managed by a board of directors (the "Board"), which shall be responsible for policy setting, approving the overall direction of the Company, and making all decisions affecting the business and affairs of the Company. It is the intent of the parties hereto that, subject to Section 4.2(h), each director ("Director") of the Company shall be deemed to be a "manager" of the Company (as defined in Section 18-101(10) of the Act) for all purposes under the Act. The Board shall consist of five (5) Directors, a majority of whom (except as otherwise provided in Section 4.1(b)(iii)) shall be Independent Directors and one of whom may be the Chief Executive Officer. Each Director shall serve until his or her resignation, removal, death or disability. Each Director will, as a condition of service on the Board, be required to sign a customary confidentiality agreement to ensure the confidentiality of the Company's non-public information.

(b) Appointment; Removal; Vacancies. (i) Except for Directors appointed, removed and replaced pursuant to Sections 4.1(b)(ii) and 4.1(b)(iii), Members holding a majority in voting power of the Senior Equity Units may (x) appoint or remove any Director at any time, with or without cause, and (y) fill any vacancy created on the Board, whether such vacancy results from the removal of such Director, from the death or resignation of such Director, or otherwise.

(ii) Any Member, or group of Members who are Affiliates of each other, that owns at least 35% in voting power of the Senior Equity Units shall be entitled to appoint one of the five Directors (and to remove such Director, with or without cause, at any time and fill any vacancy created on the Board resulting from the death, resignation or removal of such Director); provided, however, that such Member or group of Members who are Affiliates of each other may waive the right to appoint a Director; provided, further, however that such waiver shall not be irrevocable.

(iii) At any time that one or more Directors on the Board have been appointed by Members pursuant to Section 4.1(b)(ii), one (and, for the avoidance of doubt, not more than one even if more than one Director on the Board has been appointed by Members pursuant to Section 4.1(b)(ii)) of the five Directors shall be appointed (and may be removed, with or without cause, and any vacancy created on the Board resulting from the death, resignation or removal of such Director may be filled) by a vote of Members holding a majority in voting power of the Senior Equity Units outstanding (excluding any Senior Equity Units owned by Members that have appointed a Director pursuant to Section 4.1(b)(ii)).

4.2 Board Action.

(a) The Board shall meet at such times as may be necessary or appropriate for the Company's business on at least five (5) Business Days' prior written notice to all

Directors (which notice requirement can be waived or shortened upon unanimous agreement of all Directors), which may, for the avoidance of doubt, include notice by electronic mail, of the time and place of such meeting. Any waiver, consent or approval by any Director under this Section 4.2 may be made via electronic mail.

(b) Any Director shall have the right to call a meeting of the Board.

(c) The presence of a majority of the Directors then in office shall constitute a quorum at any meeting of the Board.

(d) Notice of any Board meeting that is required to be given to a Director may be waived by such Director before, during or after such meeting.

(e) All actions of the Board shall require the affirmative vote of a majority of the Directors then in office; provided, however, that if a Director has an interest in any action being voted on by the Board, then such action shall require the affirmative vote of a majority of the disinterested Directors.

(f) Meetings of the Board may be conducted in person or by conference telephone or videoconference facilities and each Director shall be entitled to participate in any meeting of the Board (whether or not conducted in person) by telephone.

(g) Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if such number of Directors sufficient to approve such action pursuant to the terms of this Agreement consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board; provided, however, that if such consent is not unanimous then it shall not take effect until five (5) Business Days' after notice of such consent, which may or may not include a copy of such consent, has been given to all Directors (unless such requirement is waived by the Directors who have not signed the consent). If a copy of such written consent is not included in the notice, any Director is entitled to receive such copy promptly upon request.

(h) No Director shall have any authority to bind the Company to any third party with respect to any matter except pursuant to a resolution expressly authorizing such action which resolution is duly adopted by the Board by the affirmative vote required for such matter pursuant to this Agreement.

(i) The Board, by action of a majority of the Directors upon at least five (5) Business Days' prior written notice to all Directors (which can be waived or shortened upon unanimous agreement of all Directors), shall have the authority to determine (and may amend, modify or supplement from time to time) additional procedures governing a variety of matters related to the conduct of the Board's proceedings and the exercise of its authority, including: (i) the appointment of officers; (ii) the appointment of committees; (iii) the power of officers and committees; (iv) the conduct of meetings of the Board and committees thereof, (v) the composition of committees; and (vi) such similar matters as the Board shall deem necessary, appropriate and advisable; provided, however, that such procedures shall not contain any provision contrary to the express provisions of this Agreement.

4.3 Officers and Related Persons. Subject to such additional procedures as may be determined by the Board:

(a) The Board shall have the authority to appoint and terminate officers of the Company and retain and terminate employees, agents and consultants of the Company and, by action of a majority of the Directors upon at least five (5) Business Days' prior written notice to all Directors (which can be waived or shortened upon unanimous agreement of all Directors), to delegate such duties to any such officers, employees, agents and consultants as the Board deems appropriate, including the power, acting individually or jointly, to represent and bind the Company in all matters, in accordance with the scope of their respective duties. Officers of the Company shall owe fiduciary duties to the Company and the Company Subsidiaries.

(b) Any number of offices may be held by the same person, unless otherwise prohibited by law. The officers of the Company need not be Members of the Company.

4.4 Committees. Subject to such additional procedures as may be determined by the Board:

(a) The Board may designate one or more committees, each committee to consist of two or more of the Directors (subject to Section 4.4(i)), by action of a majority of the Directors upon at least five (5) Business Days' prior written notice to all Directors (which can be waived or shortened upon unanimous agreement of all Directors). Any committee, to the extent permitted by law and provided in the resolution of the Board establishing such committee, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Company. Each committee shall keep regular minutes and report to the Board when required. Any waiver, consent or approval by any committee member under this Section 4.4 may be made via electronic mail.

(b) Subject to Section 4.4(i), committee appointments will be made by action of a majority of the Directors upon at least five (5) Business Days' prior written notice to all Directors (which can be waived or shortened upon unanimous agreement of all Directors).

(c) Members of a committee of the Board shall be given at least five (5) Business Days' prior written notice of any meeting of such committee at which approval of a matter or action will be deliberated (which notice requirement can be waived or shortened upon unanimous agreement of all members of such committee), which may, for the avoidance of doubt, include notice by electronic mail, of the time and place of such meeting. Notice of any committee meeting that is required to be made to any member of such committee may be waived by such member before, during or after such meeting.

(d) Any member of a Board committee shall have the right to call a meeting of such committee.

(e) The presence of a majority of the members of a committee of the Board shall constitute a quorum at any meeting of such committee.

(f) All actions of a committee of the Board shall require the affirmative vote of a majority of its members; provided, however, that if a member of a committee has an interest in any action being voted on by such committee, then such action shall require the affirmative vote of a majority of members that have no interest in such action.

(g) Meetings of a committee of the Board may be conducted in person or by conference telephone or videoconference facilities and each member of the committee shall be entitled to participate in any meeting of such committee (whether or not conducted in person) by telephone.

(h) Any action required or permitted to be taken at any meeting of a committee of the Board may be taken without a meeting if such number of committee members sufficient to approve such action pursuant to the terms of this Agreement consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board; provided, however, that if such consent is not unanimous then it shall not take effect until five (5) Business Days' after notice of such consent, which may or may not include a copy of such consent, has been given to all members of such committee (unless such requirement is waived by the committee members who have not executed the consent). If a copy of such written consent is not included in the notice, any committee member is entitled to receive such copy promptly upon request.

(i) Each Director shall be entitled (but is not obligated) to serve on any committee of the Board (unless such committee is considering matters in which such Director, or a Designated Affiliate of such Director, has an interest, in which case such interested Director must be recused from those considerations; provided, however, if the committee was formed specifically and only to consider a matter in which such Director, or a Designated Affiliate of such Director, has an interest, such Director shall not be permitted to serve on such committee).

4.5 Reliance by Third Parties. Persons dealing with the Company are entitled to rely conclusively upon the power and authority of the Board.

4.6 Insurance. The Company shall maintain directors' and officers' liability insurance that is customary for companies engaged in similar business activities.

4.7 Duties. Each Director will owe fiduciary duties to the Company and its Members identical to those of directors of a Delaware corporation; provided, however, that any Director who is employed by, or a significant investor in, a particular Member will not owe any duties at law or in equity (including fiduciary duties) to the Company or any other Member except for the implied contractual covenant of good faith and fair dealing and applicable confidentiality limitations. To the fullest extent permitted by law, no Member will owe any duties at law or in equity (including fiduciary duties) to the

Company or any other Member. Notwithstanding the foregoing, if a Director holds an interest in a competing enterprise, or a Designated Affiliate of such Director is (or holds a controlling interest in) a competing enterprise, and if such competing enterprise is competing with the Company with respect to any transaction, then such Director shall owe the Company a duty not to vote on such transaction and not to disclose confidential information relating to such transaction to such competing enterprise in a manner that would be detrimental to the interests of the Company in any material respect (collectively, the "Competing Enterprise Duty"). To the extent that a transaction or series of transactions gives rise to a Competing Enterprise Duty for a Director, then the Board shall form a special committee composed exclusively of Directors without such a Competing Enterprise Duty with respect to such transaction and such special committee shall have the full power and authority of the Board with respect to such transaction. For the avoidance of doubt, duties of Members to each other and to the Company shall be waived to the fullest extent allowed by law.

ARTICLE V
CAPITAL STRUCTURE AND CONTRIBUTIONS

5.1 Capital Structure.

(a) General.

(i) Subject to the terms of this Agreement, (A) the Company is authorized to issue equity interests in the Company designated as "Units," which shall constitute limited liability company interests under the Act and shall include initially Series A Units, Series B Units and Series C Units, and (B) the Board or a duly authorized committee thereof is expressly authorized, by resolution or resolutions, to create and to issue, out of authorized but unissued Units, different classes, groups or series of Units, including Compensatory Interests issuable by the Company as compensation for services to or for the benefit of the Company, and Units issuable by the Company pursuant to Section 5.1(a)(iv) below and, in any such case, to fix for each such class, group or series such voting powers, full or limited or, subject to Section 5.1(a)(iii) below, no voting powers, and such distinctive designations, preferences and relative participating, optional or other special rights and qualifications, limitations or restrictions as determined by the Board or a duly authorized committee thereof. Other than as set forth in this Agreement or in the instruments governing the terms of any Units issued pursuant to clause (B) above, each Unit shall be identical in all respects with each other Unit. The capital structure of the Company shall initially consist of the following three (3) classes of Units: (A) series A Units ("Series A Units"); (B) series B Units (the "Series B Units"); and (C) series C Units (the "Series C Units"). The Board, or a duly authorized committee thereof, shall have the authority to issue such number of Units of any class, series or tranche pursuant to clauses (A) and (B) of the first sentence of this Section 5.1(a)(i), and for such consideration (which may include cash, property or the provision of services) or no consideration, as the Board or such committee shall from time to time determine. The relative rights, powers, preferences, duties, liabilities and obligations of holders of the Series A Units, Series B Units and Series C Units are set forth herein.

(ii) Subject to Section 5.3, the Company is authorized to issue options or warrants to purchase any class, group or series of Units, restricted Units, Unit appreciation rights, phantom Units, and other securities convertible, exchangeable or exercisable for Units, on such terms as may be determined by the Board or a duly authorized committee thereof. The number of Units issued to Members shall be listed in the Company's books and records, which shall be amended from time to time as required to reflect issuances and Transfers of Units, acquisition of additional Units by Members, repurchase, forfeiture or exchange of Units and to reflect the cessation or withdrawal of Members. The number of Units held by each Member shall not be affected by any (i) issuance by the Company of Units to other Members or (ii) change in the Capital Account of such Member (other than such changes to reflect additional consideration received from such Member in exchange for new Units). Notwithstanding anything in this Section 5.1(a)(ii) to the contrary, the Company shall not be permitted to issue additional Series B Units without the consent of the holders of a majority of the then outstanding Series B Units.

(iii) Notwithstanding anything in this Agreement to the contrary, the Company shall not create or issue any class, group, series or tranche of non-voting Units, as and to the extent required by Section 1123 of the Bankruptcy Code.

(iv) If any holder or transferee of Series A Units or, other than Wayzata and its Designated Affiliates, Series C Units suffers from, or becomes subject to, a Legal Impediment, then such holder's or transferee's Series A Units or Series C Units shall convert into and become, upon the occurrence of such Legal Impediment or such transfer, a new class or series of Units having rights, designations and privileges that are identical in all respects to the Series A Units, except that such new class or series of Units shall be limited as to voting power in a manner substantially identical to the Series C Units, including reallocation of voting rights, but with such limitation tied to the subject matter of the specific Legal Impediment affecting such holder or transferee. To the extent that reallocation of voting rights would cause a Member that has a Legal Impediment and that does not hold such new class or series of Units to effectively exercise an impermissible percentage of the total outstanding voting rights in the Company on a matter, such Member shall only be entitled to exercise the highest permissible percentage of the total outstanding Member voting rights in the Company of such matter, and the voting power of such Member in excess of such highest permissible percentage of voting power shall be deemed voted in proportion to the votes cast by the holders of all other membership interests of the Company voting on such matter other than the Member holding such new class or series of Units.

(b) Senior Equity Units.

(i) Allocations and Distributions. The Senior Equity Units shall be capital interests in the Company and shall have such rights to allocations and distributions as are set forth under this Agreement.

(ii) Voting Rights. Each Member holding Senior Equity Units will be entitled to cast one vote, in person or by proxy, for each Senior Equity Unit held by such

Member on all matters upon which Members have the right to vote, with each such vote being of equal weight (regardless of whether such vote is cast by a member holding Series A Units or Series C Units); provided, however, that with respect to any matters directly involving the day-to-day management or operation of GRP and the Gila River Power Facility, including any voting with respect to power sales, hedging transactions and fuel purchases, all of the outstanding Series C Units will be entitled to exercise, in the aggregate, only 9.9% of the total outstanding Member voting rights in the Company with respect to such matters. On any such matters, any portion of the Series C Units that would otherwise entitle the holders thereof to exercise in excess of such 9.9% voting power shall be deemed voted in proportion to the votes cast by the holders of all other membership interests of the Company voting on such matter. To the extent that reallocation of voting rights in accordance with the provisions of the previous sentence would cause a Member holding Series A Units to effectively exercise 10% or more of the total outstanding voting rights in the Company on a matter, such Member shall, unless otherwise approved by FERC, only be entitled to exercise 9.9% of the total outstanding Member voting rights in the Company with respect to such matter, and the voting power of such Member in excess of such 9.9% voting power shall be deemed voted in proportion to the votes cast by holders of all other membership interests of the Company voting on such matter other than the Member holding Series C Units.

(iii) General. Except as expressly set forth in this Section 5.1(b), each Series C Unit shall be identical to (and shall have the same rights as) each Series A Unit. For the avoidance of doubt, except as expressly provided herein with respect to voting rights, each Series C Unit shall have, shall entitle the holder thereof to exercise, and shall subject the holder thereof to, rights and obligations that are identical to those of a Series A Units.

(iv) Series C Units. Each Series C Unit shall automatically convert into and become one Series A Unit as provided below:

(1) Any Series C Units sold to a third party that (x) is not a Designated Affiliate of Wayzata and (y) otherwise has no Legal Impediments shall automatically convert into and become an equal number of Series A Units. If the transferee of such Series C Unit is a Designated Affiliate of Wayzata, then the transferred Series C Units shall remain Series C Units until either such Series C Units are transferred to a third party that is not a Designated Affiliate of Wayzata and that has no Legal Impediment or there otherwise ceases to be any Legal Impediment with respect to the holder of such Series C Units. If the transferee of such Series C Unit is not a Designated Affiliate of Wayzata but has Legal Impediments, then Section 5.1(a)(iv) above shall apply.

(2) If at any time the remaining number of Series C Units held by Wayzata represents less than ten percent (10%) of the aggregate voting power of the Units then outstanding, then the remaining Series C Units held by Wayzata shall automatically convert into and become an equal number of Series A Units;

(3) Upon the closing of the sale of the power generating block at the Gila River Power Facility known as "Gila Block 3" to Tucson Electric Power Company

and UNS Electric, Inc. (or one or more of their respective Affiliates) or other parties that are not Affiliates of Wayzata, then the Series C Units shall automatically convert into and become an equal number of Series A Units;

(4) If (x) Wayzata and its Affiliates cease to beneficially own (directly or indirectly) any interest in the power generating blocks at the Gila River Power Facility known as "Gila Block 1" and "Gila Block 2", or (y) Wayzata and its Affiliates cease to beneficially own (directly or indirectly) ten percent (10%) or more in voting power of the outstanding equity interests of the SPH Entities, then the Series C Units shall automatically convert into and become an equal number of Series A Units; or

(5) If there otherwise ceases to be any Legal Impediment with respect to the holder of such Series C Units, then such Series C Units shall automatically convert into and become an equal number of Series A Units.

(c) Series B Units.

(i) Allocations and Distributions. The Series B Units shall have such rights to allocations and distributions as are set forth in this Agreement.

(ii) Voting Rights. In respect of any matter to be voted on by the Members, the holders of Series B Units shall be entitled to cast an aggregate number of votes in respect of such Series B Units equal to one percent (1%) of the total number of votes entitled to be cast by holders of Senior Equity Units in respect of such Senior Equity Units; provided, however, that from and after the achievement of the Series B Distribution Threshold, the holders of Series B Units shall be entitled to cast an aggregate number of votes in respect of such Series B Units equal to five percent (5%) of the total number of votes entitled to be cast by the holders of Senior Equity Units in respect of such Senior Equity Units. Notwithstanding the foregoing, until the achievement of the Series B Distribution Threshold, the Series B Units shall be automatically deemed to have been voted on any and all matters in the same proportion and in the same proportionate manner as the votes cast by the holders of the Senior Equity Units on such matters. Except as specifically provided in this Agreement (including, for the avoidance of doubt, as provided in the last sentence of Section 5.1(a)(ii)) or as otherwise required by law, the Senior Equity Units and Series B Units shall vote together as a single class. The percentages set forth above in this Section 5.1(c)(ii) shall be subject to adjustment in the manner set forth in Section 6.4(b), *mutatis mutandis*.

(iii) No Other Rights. The Series B Units shall not confer any rights except as expressly set forth in this Agreement.

(iv) Miscellaneous. No terms of the Series B Units shall cause the Company (or any of the Reorganized Debtors or any Member) to be treated as a publicly traded partnership for federal income tax purposes or to be required by the Securities Act or the Exchange Act, including sections 12(g) or 15(d) of the Exchange Act, or any other federal, state, or local securities laws, to register such new instruments with the Securities

and Exchange Commission or any other similar regulatory authority or to file periodic records under section 13 or section 15(d) of the Exchange Act.

(d) Certificates; Legend. In the sole discretion of the Board, the issued and outstanding Units may be represented by certificates. In addition to any other legend required with respect to a particular class, group or series of Units or pursuant to any other agreement among Members and the Company, each such certificate shall bear the following legend:

> "THE UNITS REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO, AND MAY NOT BE TRANSFERRED, SOLD, ASSIGNED, PLEDGED, ENCUMBERED, HYPOTHECATED OR OTHERWISE DISPOSED OF ("TRANSFERRED") WITHOUT COMPLYING WITH, THE PROVISIONS OF THE SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT BY AND AMONG THE MEMBERS OF ENTEGRA TC LLC (THE "COMPANY"), AS IT MAY BE AMENDED FROM TIME TO TIME, A COPY OF WHICH IS ON FILE WITH THE COMPANY. IN ADDITION TO THE RESTRICTIONS ON TRANSFER SET FORTH IN SUCH AGREEMENT, NO TRANSFER OF THE UNITS REPRESENTED BY THIS CERTIFICATE MAY BE MADE EXCEPT (A) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE RULES AND REGULATIONS IN EFFECT THEREUNDER (THE "ACT"), AND ALL APPLICABLE STATE SECURITIES LAWS OR (B) IF SUCH TRANSFER IS PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE ACT. THE HOLDER OF THIS CERTIFICATE, BY ACCEPTANCE OF THIS CERTIFICATE, AGREES TO BE BOUND BY ALL OF THE PROVISIONS OF THE AFORESAID AGREEMENT."

5.2 Capital Contributions.

(a) Each Member shall contribute or be deemed to have contributed, as its initial Capital Contribution to the Company, the amount in cash or the Gross Asset Value of other properties or assets contributed set forth opposite such Member's name in the Company's books and records. Subject to Section 5.3, the Company's books and records shall be amended from time to time to reflect any additional Capital Contributions made by a Member after the first date on which such Member made its initial Capital Contribution.

(b) In exchange for its initial Capital Contribution and, subject to Section 5.3, any additional Capital Contributions and for other good and valuable consideration, each Member shall receive the number of Units set forth from time to time opposite the name of such Member in the Company's books and records.

5.3 Preemptive Rights.

(a) Each Member holding Senior Equity Units (a "Preemptive Member") shall have the right to purchase, (i) with respect to the issuance by the Company of Preemptive Units that are Units, up to the number of such additional Units necessary for such Member to maintain its Aggregate Senior Equity Unit Percentage immediately prior to such issuance, and (ii) with respect to any Preemptive Units that are options, warrants or other rights to purchase or otherwise acquire any Units, or other securities convertible, exchangeable or exercisable for Units, a number of such options, warrants, rights or securities as is equal to the aggregate number of such options, warrants, rights or securities to be issued, multiplied by such Preemptive Member's Aggregate Senior Equity Unit Percentage immediately prior to such issuance. The percentage of the Preemptive Units which a Preemptive Member has the right to purchase under this Section 5.3(a) is hereinafter referred to as such Member's "Preemptive Percentage".

(b) Prior to issuing any Preemptive Units to any Person, the Company shall offer to sell such Preemptive Units to the Preemptive Members by giving them written notice (a "Preemptive Notice") of the proposed issuance of such Preemptive Units, which notice shall specify all of the material terms of such Preemptive Units.

(c) The Preemptive Members shall have the right to purchase any or all of the Preemptive Units on the terms set forth in the Preemptive Notice, and each Preemptive Member shall have the right to purchase up to its Preemptive Percentage of such Preemptive Units.

(d) A Preemptive Member's right to purchase Preemptive Units shall not be effective unless (i) such Preemptive Member gives the Company a written notice setting forth the number or amount of such Preemptive Units that such Preemptive Member is willing to purchase from the Company (a "Preemptive Response"), and (ii) the Company receives such Preemptive Response no later than ten (10) days after the Preemptive Notice for such Preemptive Units was sent to the Preemptive Members by overnight mail (the "Preemptive Response Deadline"). A Preemptive Response by a Preemptive Member shall constitute an irrevocable and unconditional commitment by such Preemptive Member to purchase the number or amount of the Preemptive Units specified in such Preemptive Response on the terms set forth in the Preemptive Notice for such Preemptive Units. If a Preemptive Response for any Preemptive Units is not received by the Company from a Preemptive Member by the Preemptive Response Deadline for such Preemptive Units, such Preemptive Member shall not be entitled to exercise any preemptive rights to purchase any such Preemptive Units.

(e) If any Preemptive Member elects to purchase less than its Preemptive Percentage of any Preemptive Units, the Company shall allocate the Preemptive Units not purchased by such Preemptive Member among the Preemptive Members that requested to purchase more than their Preemptive Percentage of the Preemptive Units on a *pro rata* basis in proportion to the number of the Preemptive Units they elected to purchase in their Preemptive Response (provided that the number of Preemptive Units allocated to any Preemptive Member shall not exceed the number of Preemptive Units

that such Preemptive Member elected to purchase in its Preemptive Response) until no other Preemptive Member is willing to purchase any remaining Preemptive Units or all Preemptive Units have been purchased.

(f) If the Preemptive Members elect to purchase all of the Preemptive Units referenced in any Preemptive Notice, then all of the Preemptive Units shall be sold to the Preemptive Members on the terms and conditions set forth in such Preemptive Notice. However, if the Preemptive Members elect to purchase some (but less than all) of the Preemptive Units pursuant to Section 5.3(d), (e) or (h), the Company may elect to (i) sell to the Preemptive Members the Preemptive Units that they elected to purchase and not issue any of the remaining Preemptive Units, or (ii) sell to the Preemptive Members the Preemptive Units that they elected to purchase and sell the remaining Preemptive Units to one or more third party purchasers. If the Preemptive Members elect not to purchase any of the Preemptive Units, the Company may sell any or all of the Preemptive Units to one or more third party purchasers.

(g) If the Company elects to sell any or all of the Preemptive Units referenced in any Preemptive Notice to one or more third party purchasers pursuant to Section 5.3(f), the Company shall have a period of 120 days after the Preemptive Response Deadline to sell such Preemptive Units to third party purchasers on terms and conditions that, taken as a whole, are no more favorable to the third party purchasers than those offered to the Preemptive Members.

(h) Each Preemptive Member and third party purchaser that agrees to purchase Preemptive Units from the Company shall be required to enter into a purchase agreement (and, if necessary or appropriate, other related agreements) that incorporates the terms set forth in the Preemptive Notice for such Preemptive Units that is otherwise in form and substance reasonably satisfactory to the Company and the purchaser(s) of the Preemptive Units; provided, however, that (i) the purchase agreement shall be on the same terms for each purchaser, and (ii) if any Preemptive Member is unwilling to enter into a purchase agreement (and, if necessary or appropriate, other related agreements) with respect to any Preemptive Units on the terms and conditions reasonably satisfactory to the Company, then such Preemptive Member shall be deemed to have elected not to purchase any such Preemptive Units and such Preemptive Units shall be offered pursuant to Section 5.3(e) to the Preemptive Members, if any, that have not been allocated all of the Preemptive Units that they elected to purchase in the Preemptive Response. All of the Preemptive Units referenced in any Preemptive Notice will be sold at the time specified or referenced in the purchase agreement for such Preemptive Units, which shall be at the same time and place for all of the Preemptive Members purchasing such Preemptive Units and third party purchasers unless otherwise agreed to by the Company and such Preemptive Members.

(i) If the Company changes the terms on which it proposes to issue the Preemptive Units in any material respect after such Preemptive Notice for such Preemptive Units has been sent to the Preemptive Members, the Company shall (i) send a new Preemptive Notice to the Preemptive Members that describes the material terms on which the Company proposes to issue the Preemptive Units, and (ii) comply with all of

the provisions of this Section 5.3 as if such proposed issuance of Preemptive Units was a new issuance of Preemptive Units.

(j) Notwithstanding the foregoing or anything to the contrary in this Section 5.3, if the Board determines that it is necessary for the Company to raise capital through the issuance of Units before the Company can comply with the procedures in this Section 5.3 because of an emergency or other situation that could have an adverse material effect on the Company if the Company does not raise capital on an expedited basis, then the Company may issue Units ("Emergency Units") to one or more Preemptive Members (each, an "Emergency Funder") without complying with the procedures in this Section 5.3; provided, however, that (i) within 10 days after the issuance of any Emergency Units pursuant to this Section 5.3(j), the Company shall offer each Preemptive Member (other than the Emergency Funders) the opportunity to purchase up to its Preemptive Percentage (immediately prior to the issuance of Preemptive Units to the Emergency Funders) of a number of Preemptive Units equal to (x) the total number of Preemptive Units issued to the Emergency Funders pursuant to this Section 5.3(j), *divided by* (y) the aggregate Preemptive Percentage of the Emergency Funders immediately prior to the issuance of such Preemptive Units to them, and (ii) the Preemptive Units issued to the Preemptive Members (other than the Emergency Funders) shall be on the same terms (including price and any related fees) as the terms on which Preemptive Units were issued to the Emergency Funders.

5.4 No Withdrawal of Capital Contributions. Except upon a dissolution and liquidation of the Company effected in accordance with Articles IX and X, no Member shall have the right to withdraw its Capital Contributions from the Company.

5.5 No Other Capital Contributions. Except as otherwise agreed to in writing by a Member in connection with the issuance of Units (or options, warrants or other securities or rights to purchase or otherwise acquire Units) to such Member (whether pursuant to the exercise of preemptive rights or otherwise) after the date of this Agreement, no Member shall have any obligation to make any Capital Contribution to the Company after the date of this Agreement.

5.6 Maintenance of Capital Accounts.

(a) The Company shall establish and maintain a capital account ("Capital Account") for each Member in accordance with the following provisions:

(i) to each Member's Capital Account there shall be credited (x) such Member's contributions of cash and the Gross Asset Value of other properties and assets contributed to the Company, (y) such Member's distributive Unit of Net Profits and other items of income or gain which are specifically allocated to such Member and other items of expense or loss which are specifically allocated to such Member and (z) the amount of any Company liabilities assumed by such Member or which are secured by any property distributed to such Member, in each case, with such Member's prior written consent; and

(ii) to each Member's Capital Account there shall be debited (x) the amount of money and the Gross Asset Value of any property distributed to such Member pursuant to any provision of this Agreement, (y) such Member's distributive Unit of Net Losses and (z) the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company.

(b) This Section 5.6 and other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. Notwithstanding that a particular adjustment is not set forth in this Section 5.6, the Capital Accounts of the Members shall be adjusted as required by, and in accordance with, the Capital Account maintenance rules of Regulations Section 1.704-1(b).

5.7 Information Rights.

(a) Each Member holding Senior Equity Units and/or Series B Units will be provided with:

(i) Quarterly, within 45 days after the end of each calendar quarter (excluding the last quarter of each year), an unaudited consolidated balance sheet of the Company as at the end of such quarter and the related unaudited statement of operations and cash flow for such quarter, together with a comparison of the figures in such financial statements with the corresponding quarter and portion of the previous fiscal year; and

(ii) Annually, within 120 days after the end of each calendar year, an audited consolidated balance sheet of the Company as at the end of such fiscal year and the related audited statement of operations and cash flow for such fiscal year.

(b) Each Member that holds (i) prior to the achievement of the Series B Distribution Threshold, greater than four percent (4%) of the Senior Equity Units, or (ii) after the achievement of the Series B Distribution Threshold, greater than four percent (4%) of the aggregate voting power exercisable by all holders of the Senior Equity Units and Series B Units, will be provided with:

(i) Quarterly, within 45 days after the end of each calendar quarter, a comparison to the budgeted results for the corresponding quarter and portion of the year;

(ii) Quarterly, within 45 days after the end of each calendar quarter, an operating and financial review of the unaudited financial statements, including a discussion of the consolidated financial condition and results of operations of the Company and any material changes between the current quarterly period and the corresponding period of the prior year and the budget;

(iii) Quarterly, within 45 days after the end of each calendar quarter, a conference call with management to discuss reported financial results; and

(iv) Annually, within 45 days after the end of each calendar year, a budget consistent in scope with the financial statements provided, setting forth the

principal assumptions upon which such budget is based;

provided, however, that prior to receiving any information pursuant to this Section 5.7(b), a Member shall execute a form of non-disclosure agreement in which such Member agrees to hold all confidential or proprietary information received from the Company in confidence and not use it in any manner that is detrimental to the Company in any material respect.

(c) In connection with any Permitted Transfer, the Company shall, if requested by the transferring Member, use reasonable efforts to provide or make publicly available such information relating to the Company as may be reasonably necessary for the transferring Member to meet the requirements of Regulation D, Rule 144, Rule 144A and/or other exemptions promulgated under the Securities Act or other laws in connection with such Permitted Transfer.

(d) In the event that the Board determines that any information that it would otherwise be required to provide or make publicly available pursuant to this Agreement is competitively sensitive, it may withhold such information in its reasonable discretion.

ARTICLE VI
ALLOCATIONS AND DISTRIBUTIONS

6.1 Allocations of Net Profits and Net Losses.

(a) Allocations to Capital Accounts. Except as provided in Section 6.1(b) or elsewhere in this Agreement, items of Net Profits and Net Losses shall be allocated among the Members in a manner such that the Capital Accounts of each Member, immediately after giving effect to such allocation, are, as nearly as possible, equal (proportionately) to the distributions that hypothetically would be made to such Member pursuant to Section 6.4, if the Company were dissolved and terminated, its affairs were wound up and each Company asset (including cash) was sold for cash equal to its Gross Asset Value (except that any Company asset that is realized in such Fiscal Year shall be treated as if sold for an amount of cash equal to the sum of the amount of any net cash proceeds and the Fair Market Value of any property actually received by the Company in connection with such disposition), all Company liabilities were satisfied (limited with respect to each nonrecourse liability to the Gross Asset Value of the assets securing such liability), and the net assets of the Company were distributed in accordance with Section 6.4 to the Members immediately after giving effect to such allocation, minus such Member's share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of the Company's assets.

(b) Construction. If the Board determines in good faith that it is necessary or appropriate to modify or amplify the manner in which the balances of the Capital Accounts are computed or the items of Net Profits and Net Losses are determined in order to comply with Regulations Section 1.704-1(b), the Board may make such modification or amplification.

(c) Tax Allocations. Except as provided in Section 6.2(i), all items of income, gain, loss, deduction and credit of the Company shall be allocated among the Members, for federal, state, and local income tax purposes, in the same manner as such items of income, gain, loss, deduction and credit shall be allocated among such Members pursuant to Section 6.1 and 6.2 except as may otherwise be provided herein or by the Code, or other applicable law. The Board shall have the power to make such allocations and to take any and all action necessary under the Code and the Treasury Regulations thereunder, or other applicable law, to effect such allocations.

(d) Loss Allocation Limitation. The Net Losses allocated pursuant to Section 6.1(a) shall not exceed the maximum amount of Net Losses that can be so allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Year.

(e) Distributions in Kind. Prior to distributing any asset of the Company in kind, the Capital Accounts of the Members shall be adjusted to reflect the Fair Market Value of such asset by allocating any unrealized gain or loss with respect to such asset to the Capital Accounts pursuant to this Section 6.1.

6.2 Special Allocations. The following special allocations shall be made in the following order prior to any allocations pursuant to Section 6.1:

(a) Minimum Gain Chargeback. Except as otherwise provided in Regulations Section 1.704-2(f) and notwithstanding any other provision of this Article VI, if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section 6.2(a) is intended to comply with the minimum gain chargeback requirement in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(b) Member Minimum Gain Chargeback. Except as otherwise provided in Regulations Section 1.704-2(i)(4) and notwithstanding any other provision of this Article VI, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Fiscal Year, each Member who has a Unit of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated

shall be determined in accordance with Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 6.2(b) is intended to comply with the minimum gain chargeback requirement in Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(c) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) or 1.704-1(b)(2)(ii)(d)(6), items of income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 6.2(c) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article VI have been tentatively made as if this Section 6.2(c) were not applicable.

(d) Gross Income Allocation. In the event any Member has a deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of (i) the amount such Member is obligated to restore pursuant to any provision of this Agreement and (ii) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), such Member shall be specially allocated items of income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 6.2(d) shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article VI have been made as if Section 6.2(c) and this Section 6.2(d) were not applicable.

(e) Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Year shall be allocated in accordance with each Member's share of Net Profits and Net Losses under Section 6.1(a).

(f) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(2).

(g) Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Regulation.

(h) Other Allocation Rules.

(i) Generally, all Net Profits and Net Losses shall be allocated among the Members as provided in this Article VI. If Members are admitted to the Company on different dates during any Fiscal Year, or the interests of the Members fluctuate during a Fiscal Year, the Net Profits or Net Losses shall be allocated among the Members for such Fiscal Year in accordance with Code Section 706, using any convention determined by the Board and permitted by law.

(ii) The Members are aware of the income tax consequences of the allocations made by this Article VI and hereby agree to be bound by the provisions of this Article VI in reporting their Units of income and loss for income tax purposes.

(i) Tax Allocations: Code Section 704(c). In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members in the manner determined by the Board so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value. Allocations pursuant to this Section 6.2(i) are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or Unit of Net Profits, Net Losses, other items, or distributions pursuant to any provision of this Agreement.

6.3 No Right to Distributions. No Member shall have the right to demand any distributions, and shall not receive distributions of any amount, except as expressly provided in this Article VI or in Article X.

6.4 Distributions

(a) General. Distributions shall be paid to the Members, when, as and if declared by the Board out of funds legally available for the purpose, and once declared by the Board shall be made to the owners, as of the date of the distribution, of the Units that are entitled to such distribution in accordance with the priorities set forth in this Section 6.4(a); provided, however, that if the Board elects to establish a record date for any distribution, then such distribution shall be made to the owners, as of such record date, of the Units that are entitled to such distribution in accordance with the priorities set forth in this Section 6.4(a). Subject to subsections (b), (c) and (d) of this Section 6.4, any distributions paid by the Company shall be paid to the Members in the order and priority set forth in clauses (i) and (ii) below and in a schedule to this Agreement that may be added after the date hereof to reflect the priorities set forth in any resolutions of the Board adopted from time to time authorizing new classes, series or tranches of Units in accordance with Section 5.1(a):

(i) As long as the Series B Distribution Threshold has not yet been met, 100% of the funds available for distribution (after making the distributions set forth in Section 6.4(d)) shall be made to the holders of the Senior

Equity Units in proportion to their respective Aggregate Senior Equity Unit Percentages; and

(ii) If the Company shall have distributed to holders of Senior Equity Units pursuant to Section 6.4(a)(i) and, without duplication, Section 6.4(d) an aggregate amount equal to the Series B Distribution Threshold, then thereafter the aggregate amount in excess of such Series B Distribution Threshold to be distributed shall be distributed (x) 95% to the holders of the Senior Equity Units in proportion to their respective Aggregate Senior Equity Unit Percentages and (y) 5% to the holders of Series B Units in proportion to their respective Aggregate Series B Unit Percentages.

The Board may, by resolution adopted from time to time creating additional classes or series of Units pursuant to Section 5.1(a), establish priority distribution percentages with respect to such newly created classes, series or tranches and adjust the provisions of clauses (i) and (ii) above as necessary to accommodate such additional priority distribution percentages, in which event such additional priority distribution percentages shall be set forth in a schedule to this Agreement.

(b) Adjustment. Each of the Members hereby acknowledges and agrees that the percentages set forth in this Section 6.4 regarding the amounts distributable by the Company to the holders of Senior Equity Units and Series B Units are based on the amounts of the Members' Capital Contributions as of the consummation of the Plan. Notwithstanding anything to the contrary contained herein, in the event that any of the Members shall make any additional Capital Contribution with respect to Senior Equity Units, or any additional Member shall make a Capital Contribution with respect to Senior Equity Units, then (i) the amount that would otherwise be distributed to the holders of Series B Units in accordance with the Section 6.4(a)(ii) shall in each case be adjusted by multiplying such amount by the Adjustment Factor, and (ii) the amount distributable to the holders of Senior Equity Units shall be equal to: (A) 100% of the amount to be distributed minus (B) the aggregate amount distributable to the holders of Series B Units in accordance with Section 6.4(a)(ii) after applying the Adjustment Factor. As used herein, the term "Adjustment Factor" shall mean a fraction, the numerator of which shall be equal to the aggregate number of Senior Equity Units outstanding immediately prior to such additional Capital Contribution and the denominator of which shall be equal to the aggregate number of Senior Equity Units outstanding immediately after such additional Capital Contribution and in the event of multiple additional Capital Contributions, successive cumulative adjustments shall be made. To the extent Units are issued of a class or series other than Senior Equity Units or Series B Units, then this provision shall be appropriately and equitably adjusted, subject to Article XII.

(c) Deemed Distributions. Any repurchase or redemption by the Company of Units held by a Member holding Senior Equity Units shall be treated as a distribution to such Member for purposes of determining whether the Series B Distribution Threshold has been satisfied. In addition, if the Company engages in any dividend recapitalization or similar distribution of funds, any funds distributed by the Company as a result of such

dividend recapitalization or similar transaction will be treated as a distribution for purposes of determining whether the Series B Distribution Threshold has been satisfied.

(d) Tax Distributions. In preference to any other distributions made to Members pursuant to this Agreement, but subject to applicable laws and any covenant or restriction contained in any loan or other agreement or obligation applicable to the Company or any Company Subsidiary (or any of their assets or properties) and subject to any reserves that the Board determines should be retained by the Company and the Company Subsidiaries, the Company shall distribute to each Member as soon as reasonably practicable following the end of each calendar quarter an amount equal to the Tax Distribution Amount (or, if insufficient funds are available to distribute the Tax Distribution Amount payable to all the Members, then the Company shall distribute the available funds to the Members on a *pro rata* basis in proportion to the Tax Distribution Amount payable to each of them for such calendar quarter); provided, however, that no such distributions shall be made with respect to the Series B Units for as long as the Series B Distribution Threshold has not been met. Any distribution to a Member pursuant to this Section 6.4(d) shall be treated as an advance distribution under Section 6.4(a) and shall be offset against subsequent distributions that such Member would otherwise be entitled to receive pursuant to Section 6.4(a).

6.5 Withholding. The Company is authorized and directed to withhold from any distribution made to a Member the amount of taxes required to be withheld or paid by the Company with respect to any allocations or distributions to such Member as levied by any federal, state, local or foreign taxing authority. Subject to the following sentence, any amount so withheld shall be treated as a distribution to such Member pursuant to Section 6.4(a) and shall reduce the amount otherwise distributable to such Member pursuant to this Agreement. In the event that distributions under Section 6.4(a) are insufficient to cover the amount of taxes required to be withheld or paid by the Company pursuant to this Section 6.5 (including any taxes attributable to non-compliance or delay with any request by the Company for information, as described in the last sentence of this Section 6.5), the Member to which such taxes relate shall be obligated to indemnify the Company for such taxes in excess of distributions. Notwithstanding the foregoing provisions of this Article VI, any tax withheld pursuant to sections 1471 through 1474 of the Code, or comparable provisions of state, local or foreign tax law, from any payment received by the Company or any of its Affiliates shall be treated as attributable to the Members whose non-compliance or delay with any request by the Company for information or forms for applicable tax purposes resulted in the imposition of such withholding, and the Company shall be entitled to reduce allocations and/or distributions under this Article VI to the greatest extent possible prior to the attribution of any portion of such withholding to any other Members.

6.6 Restrictions on Distributions. Notwithstanding anything to the contrary in this Agreement, no distribution (including any distribution pursuant to Section 6.4(d)) shall be made if, and for so long as, such distribution would violate any law, rule, regulation, order or directive of any Governmental Authority then applicable to the Company or any contractual covenant or agreement between the Company or any

Company Subsidiary and any third-party lender or other bona fide third-party source of financing.

6.7 Determinations by the Board. All matters concerning the computation of Capital Accounts, the allocation of items of Company income, gain, loss, deduction and expense for all purposes of this Agreement and the adoption of any accounting procedures not expressly provided for by the terms of this Agreement shall be determined by the Board reasonably and in good faith. Such determinations shall be final and conclusive as to all the Members absent manifest error. Without in any way limiting the scope of the foregoing, if and to the extent that, for income tax purposes, any item of income, gain, loss, deduction or expense of any Member or the Company is constructively attributed to, respectively, the Company or any Member, or any contribution to or distribution by the Company or any payment by any Member or the Company is recharacterized, the Board may, in its discretion and without limitation, specially allocate items of Company income, gain, loss, deduction and expense and/or make correlative adjustments to the Capital Accounts of the Members in a manner so that the net amount of income, gain, loss, deduction and expense realized by each relevant party (after taking into account such special allocations) and the net Capital Account balances of the Members (after taking into account such special allocations and adjustments) shall, as nearly as possible, be equal, respectively, to the amount of income, gain, loss, deduction and expense that would have been realized by each relevant party and the Capital Account balances of the Members that would have existed if such attribution and/or recharacterization and the application of this Section 6.7 had not occurred. Notwithstanding anything expressed or implied to the contrary in this Agreement, in the event the Board shall determine in good faith that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed in order to effectuate the intended economic sharing arrangement of the Members, the Board may make such modification.

ARTICLE VII
ACCOUNTS AND TAX MATTERS

7.1 Books. The Board shall cause to be maintained complete and accurate books of account of the Company's affairs at the Company's principal place of business. Such books shall be kept on such method of accounting as the Board shall select.

7.2 Reports. The books of account of the Company shall be closed after the close of each calendar year. The Company shall prepare, or cause to be prepared, and send to each Member the following information for income tax reporting purposes for each calendar year: (i) as soon as practicable and, in any event, within 90 days after the end of such year, an estimated statement on Form K-1 and (ii) as soon as practicable and, in any event, within 90 days after the preparation of the financial statements described in Section 5.7(a)(ii) for such year, a final statement on Form K-1.

7.3 Federal Tax Matters. Luminus Credit Opportunities II, LP shall be the Tax Matters Member, which shall be considered the tax matters partner for purposes of Code Section 6231. In addition to the specific duties and obligations of the tax matters

partner set forth in Code Sections 6221 through 6234, the Tax Matters Member shall cause to be prepared and shall sign all tax returns of the Company, which returns shall be reviewed in advance of filing by an independent certified public accountant, make any election which is available to the Company, and monitor any Governmental Authority in any audit that such Governmental Authority may conduct of the Company's books and records or other documents; provided, however, that the Tax Matters Member shall not elect to have the Company taxed other than as a partnership. The Board, at any time and for any reason, by a majority vote of its Directors, may replace the Tax Matters Member with another Member.

7.4 Fiscal Year The fiscal year of the Company (the "Fiscal Year") for financial statement and federal income tax purposes shall be determined by the Board from time to time pursuant to Code Section 706 and the Regulations thereunder.

7.5 Issuance of Compensatory Interests.

(a) The Tax Matters Member is hereby authorized and directed to cause the Company to make an election to value any Compensatory Interests at liquidation value (the "Safe Harbor Election"), as the same may be permitted pursuant to or in accordance with the finally promulgated successor rules to Proposed Treasury Regulations Section 1.83-3(1) and IRS Notice 2005-43 (collectively, the "Proposed Rules"). The Tax Matters Member shall cause the Company to make any allocations of items of income, gain, deduction, loss or credit (including forfeiture allocations and elections as to allocation periods) necessary or appropriate to effectuate and maintain the Safe Harbor Election.

(b) Any such Safe Harbor Election shall be binding on the Company and on all of its Members with respect to all transfers of Compensatory Interests thereafter made by the Company while a Safe Harbor Election is in effect. A Safe Harbor Election once made may be revoked by the Election Member as permitted by the Proposed Rules or any applicable rule.

(c) Each Member (including any person to whom a Compensatory Interest is transferred in connection with performance of services), by signing this Agreement or by accepting such transfer, hereby agrees to comply with all requirements of the Safe Harbor Election with respect to all Compensatory Interests transferred while the Safe Harbor Election remains effective.

(d) The Tax Matters Member shall file or cause the Company to file all returns, reports and other documentation as may be required to perfect and maintain the Safe Harbor Election with respect to transfers of Compensatory Interests covered by the Safe Harbor Election.

(e) The Board is hereby authorized and empowered, without further vote or action of the Members, to amend this Agreement as necessary to comply with the Proposed Rules (or any similar rule), in order to provide for a Safe Harbor Election and the ability to maintain or revoke the same, and shall have the authority to

execute any such amendment by and on behalf of each Member. Any undertakings by the Members necessary to enable or preserve a Safe Harbor Election may be reflected in such amendments and to the extent so reflected shall be binding on each Member, respectively.

(f) Each Member agrees to cooperate with the Tax Matters Member to perfect and maintain any Safe Harbor Election, and to timely execute and deliver any documentation with respect thereto reasonably requested by the Tax Matters Member.

ARTICLE VIII
TRANSFER OF UNITS IN THE COMPANY

8.1 Permitted Transfers.

(a) The Senior Equity Units and Series B Units will be freely Transferable, subject to compliance with Sections 8.8 and 8.9 below and the procedures and restrictions referenced in the final paragraph of Section 8.2 below, provided that the Board determines that such Transfer and the admission of the transferee as a Member of the Company satisfy the conditions set forth in Section 8.2 below. Each Transfer permitted under this Section 8.1(a) is hereinafter referred to as a "Permitted Transfer".

(b) In the case of any proposed Transfer by any Member, the Member proposing such Transfer shall deliver to the Board, at least ten (10) Business Days prior to such Transfer, or such longer time as may be required in accordance with the procedures and restrictions referenced in the penultimate paragraph of Section 8.2, a written notice stating its intention to Transfer the Units to be transferred, the name of the transferee, whether such transferee is an Affiliate of the Member, the number of Units to be transferred, the price and other material terms and conditions of the Transfer, and such other information as is reasonably requested by the Board in order to allow the Company to comply with financial and tax reporting requirements and to determine compliance with the conditions set forth in clauses (1) through (8) of Section 8.2(a) with respect to the Transfer; provided, however, that information regarding the price of the Transfer shall be kept confidential by the Company and the Board and shall not, except to the extent reasonably required in order to comply with the Company's financial and tax reporting requirements with respect to, or as a result of, the Transfer, be provided to any Member other than the Member proposing such Transfer or, if the Transfer is consummated, the Member that receives the Units in the Transfer.

(c) Any attempted Transfer of Units by any Member other than in strict accordance with this Article VIII shall be null and void and the purported transferee shall have no rights as a Member or Assignee hereunder.

(d) Notwithstanding anything to the contrary in this Agreement, Members may pledge, or grant security interests in or liens on, interests in Units as security for a loan or debt financing without satisfying any conditions in Section 8.2(a), obtaining the consent of the Board, or complying with any other restrictions on the Transfers of Units

in this Agreement (including restrictions in Section 8.3); provided, however, that any Transfer of Units resulting from an exercise of remedies pursuant to any such pledge, security interest or lien shall be subject to the procedures and restrictions of this Agreement (including a determination by the Board that the conditions in Section 8.2(a) have been satisfied with respect to such Transfer) unless otherwise determined by the Board.

8.2 Conditions to Transfers. (a) As a condition of any Transfer of Units, the Board must first determine in good faith that such Transfer and the admission of the Transferee as a Member satisfies each of the following conditions, unless waived by the Board in its discretion:

(1) such Transfer would not cause the Company to become a "publicly traded partnership," as such term is defined in Code Section 469(k)(2) or Code Section 7704(b);

(2) such Transfer does not require the registration or qualification of such Units pursuant to any applicable federal or state securities laws;

(3) such Transfer does not result in a violation of applicable laws, it being agreed that a Transfer shall be deemed to be in violation of applicable laws if (i) the Board determines that such Transfer may require the approval of FERC under Section 203 of the FPA or the approval of or notification to any state agency under the applicable laws and regulations of such state, and FERC and/or the relevant state agency shall have not have (x) issued an order approving such proposed Transfer or accepting any such required notification (or otherwise indicating that no further action will be taken with respect to any required notification), as applicable, or (y) determined that approval or notification is not required, (ii) the Board determines that such Transfer is likely to result in the loss of market-based rate authority, or a requirement by FERC to implement mitigation measures in order to retain such authority, by GRP or UPP under Section 205 of the FPA, or (iii) the Board determines that, immediately following such Transfer, the Company would not be exempt from regulation pursuant to 18 C.F.R. §366.3(a);

(4) such Transfer would not cause the Company to become, with respect to any employee benefit plan subject to Title I of ERISA, a "party-in-interest" (as defined in ERISA Section 3(14)) or a "disqualified person" (as defined in Code Section 4975(c));

(5) such Transfer would not, in the opinion of legal counsel to the Company, cause any portion of the assets of the Company to constitute assets of any employee benefit plan pursuant to Department of Labor Regulations Section 2510.2-101;

(6) such Transfer is not made to any Person who lacks the legal right, power or capacity to own Units;

(7) such Transfer does not cause the Company to become a reporting company under the Exchange Act;

(8) such Transfer does not subject the Company to regulation under the Investment Company Act of 1940, the Investment Advisors Act of 1940 or ERISA, each as amended; and

(9) the Board receives written instruments of transfer that are in a form reasonably satisfactory to the Board, as determined in its good faith reasonable judgment (including (i) copies of any instruments of Transfer (excluding economic terms), and (ii) the transferee's consent to be bound by this Agreement).

(b) Upon receipt of notice of a proposed Transfer of Units (excluding any Transfer permitted by Section 8.1(d)), the Company shall promptly review such notice and use commercially reasonable efforts to notify the transferring Member as soon as practicable (and, in any event, (i) with respect to the conditions set forth in clauses (2) through (9) of Section 8.2(a), within 10 Business Days after the Company's receipt of notice of a proposed Transfer and (ii) with respect to the condition set forth in clause (1) of Section 8.2(a), within 10 Business Days after the Company's receipt of notice of a proposed Transfer or such longer period as the Board reasonably and in good faith determines is required) whether the conditions have been satisfied and, if the conditions have not been satisfied, the Company will notify the reasons the conditions have not been satisfied and promptly respond to any further notices or inquiries from the transferring Member regarding the proposed Transfer of Units.

(c) The Company will adopt procedures and restrictions requiring that Units will be transferable only (i) to a Person (A) of which the Member effecting the Transfer beneficially owns, directly or indirectly, more than fifty percent (50%) of the outstanding equity securities or interests or (B) that beneficially owns, directly or indirectly, more than fifty percent (50%) of the outstanding equity securities or interests of the Member effecting the Transfer or (ii) once per quarter upon not less than thirty (30) days' advance written notice to the Company, and provided, in either case, that the Board determines that such Transfer and the admission of the transferee as a Member of the Company satisfy the other conditions set forth in clauses (2) through (9) of Section 8.2(a).

8.3 Additional Limitation on Transfers. Notwithstanding anything to the contrary contained herein, no transfer of Units shall be permitted to LS Power Equity Advisors, LLC if, after giving effect to such transfer LS Power Equity Advisors, LLC would own more than 49.9% of the Company (for the avoidance of doubt, the Units directly or indirectly held by Luminus shall not be included in determining the ownership interest of LS Power Equity Advisors, LLC); provided, however, that, notwithstanding the foregoing, LS Power Equity Advisors, LLC shall be permitted to acquire 100% of the Company's outstanding Units so long as such transaction is approved by a majority of the Company's disinterested Directors and the holders of a majority of the combined voting power of the Senior Equity Units and Series B Units, excluding any Units held by Luminus, LS Power Equity Advisors, LLC and their respective Affiliates.

8.4 Effect of Transfers. Upon any Transfer effected in compliance with the provisions of this Article VIII, the Assignee of the Transferred Units shall be entitled to receive the distributions and allocations of income, gain, loss, deduction, credit or similar

items to which the transferring Member would be entitled with respect to such Units, but shall not be entitled to exercise any of the other rights of a Member with respect to the transferring Member's Units, including, without limitation, the right to vote, unless and until the Board has determined that such Transfer has complied with all applicable requirements of this Article VIII, at which time such Assignee shall automatically be admitted to the Company as a Substitute Member pursuant to Section 8.6. To the extent that all of the conditions set forth herein are satisfied, and the Transfer otherwise complies with the terms of this Agreement, the Board shall be required to admit the Transferee as a Member.

8.5 Admission of Additional Members. A Person shall become an Additional Member pursuant to the terms of this Agreement only if and when each of the following conditions is satisfied:

(a) the Board, in its sole and absolute discretion, determines the nature and amount of the consideration to be paid by such Person in consideration for Units;

(b) the Company has received such Person's consideration as so determined; and

(c) the Board receives written instruments (including, without limitation, such Person's consent to be bound by this Agreement as a Member) that are in a form satisfactory to the Board, as determined in its sole and absolute discretion.

8.6 Admission of Assignees as Substitute Members. An Assignee of all or any portion of the Units of a Member shall become a Substitute Member of the Company only if and when the Board consents in writing to such admission, which consent may be given or withheld in the good faith reasonable judgment of the Board, unless the Transfer is a Permitted Transfer and the conditions set forth in Section 8.2 are satisfied with respect to such Transfer, in which case the Board shall be required to consent to such admission, if applicable.

8.7 Cessation of Membership.

(a) Any Member shall cease to be a Member of the Company upon the earliest to occur of any of the following events:

(i) the Transfer by such Member of all of its Units in one or more Permitted Transfers consummated in compliance with this Article VIII; or

(ii) as to any Member that is not an individual, the filing of a certificate of dissolution, or its equivalent, for such Member.

(b) Upon any Member ceasing to be a Member pursuant to subsection 8.7(a)(ii), such Member's successor in interest shall become an Assignee of its Units, entitled to receive the distributions and allocations of income, gain, loss, deduction, credit or similar items to which such Member would have been entitled as a Member with

respect to such Units but shall not be entitled to exercise any of the other rights of a Member in, or have any duties or other obligations of a Member with respect to, such Units unless and until such Assignee has been admitted as a Substitute Member in accordance with Section 8.6. No such Member shall have a right to a return of its Capital Contribution.

(c) The retirement, withdrawal, insolvency, liquidation, dissolution, insanity, resignation, expulsion, bankruptcy, death, incapacity or adjudication of incompetency of a Member, shall not cause the existence of the Company to terminate, including if the sole Member of the Company becomes bankrupt.

8.8 Tag-Along Rights.

(a) If one or more Members propose to directly or indirectly Transfer, or actually do Transfer, in one transaction or a series of related transactions, an aggregate of more than forty percent (40%) of the outstanding voting Units (either forty percent (40%) of the outstanding Senior Equity Units or, to the extent the Series B Distribution Threshold has been achieved or is achieved in such transaction, forty percent (40%) of the total voting power of the Senior Equity Units and the Series B Units, collectively) to a Person (or Persons acting as a group) other than to an Affiliate of such transferring Member (but excluding any Transfer of Call Units to a Drag-Along Purchaser pursuant to Section 8.9), then the Member(s) intending to make such Transfer(s) (the "Transferring Member(s)") shall provide the Company and each other Member that holds Senior Equity Units and, if the Series B Distribution Threshold has been reached, Series B Units (a "Notice Recipient") with not less than ten (10) days' prior written notice of such proposed Transfer, which notice shall specify the per Senior Equity Unit price to be paid and include all of the other material terms and conditions of such proposed Transfer and which shall identify such purchaser(s) (the "Tag-Along Purchaser(s)") of such Senior Equity Units (the "Sale Notice").

(b) Each Notice Recipient shall have the option, exercisable by written notice delivered to the Transferring Member(s) and the Company within ten (10) days after the receipt of the Sale Notice, to require the Transferring Member(s) to arrange for such Tag-Along Purchaser(s) to purchase from such Notice Recipient, together with, at the same time as, and, subject to Section 8.8(c), upon the same terms and conditions as, the proposed Transfer of the Senior Equity Units of the Transferring Member(s), that number of Senior Equity Units and, if applicable, Series B Units (which shall have been exchanged into Senior Equity Units) (collectively, the "Put Units"), equal to the product, rounded down to the nearest whole number, of (a) a fraction, the numerator of which is the number of Senior Equity Units proposed to be Transferred by the Transferring Member(s) and the denominator of which is the total number of Senior Equity Units then owned by the Transferring Member(s), multiplied by (b) the sum of the number of Senior Equity Units then owned by the Notice Recipient and the number of Senior Equity Units then issuable upon exchange of Series B Units then owned by the Notice Recipient, or any lesser number of Senior Equity Units and Series B Units (on an as-exchanged basis) as the Notice Recipient shall desire to sell.

(c) To the extent that any exchange of Series B Units for Senior Equity Units is required pursuant to Section 8.8(b), the holder of each Series B Unit that is being exchanged will receive in exchange therefor a number of Series A Units determined in accordance with the following procedure: (i) the Board, in its good faith judgment, will compute a Fair Market Value for the Company as a whole based on the value implied by the transaction contemplated in the Sale Notice, taking into account any transaction expenses and other costs to be borne by the Company (the "Sale Notice FMV"); (ii) applying the distribution entitlements of the relative classes, series and tranches of Units then outstanding, as set forth in Section 6.4, at the time of such calculation, as though the entire Sale Notice FMV were to be distributed to the holders of outstanding Units in accordance with such Section 6.4, the Board will determine the relative portion of the Sale Notice FMV that the holders of the Series B Units would be entitled to receive if the entire Sale Notice FMV were distributed to the holders of outstanding Units; (iii) the Board will then determine the equivalent number of Senior Equity Units which, if outstanding, would represent the same distribution entitlement as the Series B Units then outstanding (such number of Units, the "Senior Equity Unit Tag Equivalent Number"); and (iv) each Series B Unit will be exchanged for, and converted into, pursuant to Section 8.8(b), a number of Series A Units equal to (x) the Senior Equity Unit Tag Equivalent Number multiplied by (y) a fraction, the numerator of which is equal to one and the denominator of which is equal to the aggregate number of Series B Units then outstanding. The determinations of the Board pursuant to this Section 8.8(c) will be final, binding and conclusive on all parties.

(d) In furtherance of the foregoing, any Notice Recipient's notice electing to exercise its rights under this Section 8.8 shall include a detailed statement of the number of Senior Equity Units and Series B Units that such Notice Recipient wishes to sell to the Tag-Along Purchaser. The Company shall promptly thereafter notify the Notice Recipient and the Transferring Member(s) in writing whether the number of Put Units to be sold must be reduced in order to conform to Section 8.8(b).

(e) Unless the Transferring Member(s) determine not to proceed with the transaction for any reason, the Transferring Member(s) shall arrange for the Tag-Along Purchaser(s) to purchase the Put Units at the same time as and, subject to Section 8.8(c), upon the same terms and conditions at which the Transferring Member(s) sells their Senior Equity Units, provided that, if the Tag-Along Purchaser(s) shall elect to purchase only such aggregate number of Senior Equity Units as originally agreed with the Transferring Member(s), then the number of Senior Equity Units and Series B Units to be sold by the Transferring Member(s) and all Notice Recipients electing to participate in the proposed sale shall be reduced pro rata to such aggregate number, with any reduction of a Notice Recipient's Put Units resulting in a pro rata reduction among each holder of Units to be sold. If the Transferring Member(s) elect to proceed with the sale, then they will provide each such Notice Recipient and the Company with a written notification, no later than ten (10) days before the closing, indicating the number of Put Units to be included in the sale from each such Notice Recipient. Upon receipt of any such notice, the Company and such holder shall cause the exchange of Series B Units for Series A Units to occur prior to the expiration of such ten (10) day period and such holder shall cooperate with the Transferring Member(s) and otherwise take, or cause to be taken, all

actions and do, or cause to be done, all things necessary or appropriate to enter into, consummate and make effective the sale and purchase of the Put Units (including voting in favor of any merger or similar transaction requiring a vote of the Members and waiving any applicable appraisal or dissenter's rights with respect to such transaction). In the event that a Notice Recipient does not exercise its right to participate in such sale, the Transferring Member(s) shall have ninety (90) days from the date of such Sale Notice to consummate the transaction on terms no more favorable to the Transferring Member(s) than those set forth in the Sale Notice without being required to provide an additional Sale Notice to the Notice Recipients.

(f) Notwithstanding any provision hereof to the contrary, from and after the date on which the Transferring Member(s) consummate a transaction subject to this Section 8.8, (A) a former holder of Senior Equity Units or Series B Units shall cease to be a Member with respect to the Put Units Transferred in such transaction, and (B) such former holder of Senior Equity Units or Series B Units shall not seek, nor shall the Company have any obligation, to enforce any right as a Member thereafter with respect to such Put Units. If the Transferring Member(s) elect not to proceed with its sale to the Tag-Along Purchaser(s), then no Series B Units shall be exchanged under this Section 8.8. If any exchange contemplated in this Section 8.8 has occurred and for any reason the sale to the Tag-Along Purchaser of one or more Put Unit(s) exchanged from Series B Units pursuant to this Section 8.8 does not occur, such Put Unit(s) shall promptly be returned for Series B Unit(s) of the same class, tranche and number as those from which such Put Unit(s) had been exchanged pursuant to this Section 8.8.

(g) In furtherance and not in limitation of the foregoing, each Member exercising its right to sell Put Units pursuant to this Section 8.8 shall (i) make the same representations, warranties, covenants, indemnities and agreements as made by the Transferring Member(s) in connection with the Transferring Member(s)' Transfer of Senior Equity Units to the Tag-Along Purchaser(s) and (ii) agree to the same terms and conditions to the Transfer as those to which the Transferring Member(s) agree. Notwithstanding the foregoing, all such representations, warranties, covenants, indemnities and agreements shall be made by the Transferring Member(s) and each Member Transferring Put Units severally, and not jointly, any liability for breach of any such representations and warranties related to the Company (but, for the avoidance of doubt, not those representations relating to ownership of Units, the absence of liens on Units, the authority of the Member to enter into any transaction and the enforceability of such transaction as to such Member) shall be allocated among the Transferring Member(s) and each Member Transferring Put Units pro rata based on the relative amount of consideration to be received in the transaction and any liability for breach of any of such representations and warranties relating to ownership of Units, the absence of liens on Units, the authority of the Member to enter into any transaction and the enforceability of such transaction as to such Member shall be borne solely by the party in breach of such representation and warranty. In no event shall the liability under the preceding sentence of a Member Transferring Put Units be greater than the dollar amount of the net proceeds received by such Member upon the Transfer of the Put Units to the Tag-Along Purchaser(s).

8.9 Drag-Along Rights.

(a) If one or more Members proposes to directly or indirectly Transfer, or actually does Transfer, in one transaction or a series of related transactions, an aggregate of more than sixty percent (60%) of the outstanding voting Units (either sixty percent (60%) of the outstanding Senior Equity Units or, to the extent the Series B Distribution Threshold has been achieved or is achieved in such transaction, sixty percent (60%) of the total voting power of the Senior Equity Units and the Series B Units, collectively) to Persons other than to an Affiliate of such transferring Members then such Transferring Member(s) shall have the right, upon not less than ten (10) days' prior written notice of such proposed Transfer delivered to the Company and each other Member (the "Purchase Notice") which notice shall include the number of Senior Equity Units and/or Series B Units proposed to be Transferred, the proposed amount and form of consideration, including the cash price per Senior Equity Unit and per Series B Unit, and all other terms and conditions of such proposed Transfer and which shall identify the proposed purchaser(s) of such Units ("Drag-Along Purchaser(s)"), to require each holder of Senior Equity Units and Series B Units to sell a number of Senior Equity Units and Series B Units (which shall have been exchanged into Senior Equity Units) (collectively, the "Call Units"), in each case, equal to the product, rounded down to the nearest whole number, of (a) a fraction, the numerator of which is the number of Senior Equity Units and Series B Units (on an as-exchanged into Senior Equity Units basis) proposed to be Transferred by the Transferring Member(s) and the denominator of which is the total number of Senior Equity Units and Series B Units (on an as-exchanged into Senior Equity Units basis) then owned by the Transferring Member(s), multiplied by (b) the sum of the number of Senior Equity Units then owned by the Purchase Notice recipient and the number of Senior Equity Units then issuable upon exchange of Series B Units then owned by the Purchase Notice recipient, or any lesser number of Senior Equity Units and Series B Units (on an as-exchanged basis) as the Transferring Member(s) shall direct in the Purchase Notice, provided the number of Units of each class directed to be exchanged and sold is proportional.

(b) To the extent that any exchange of Series B Units for Senior Equity Units is required pursuant to Section 8.9(a), the holder of each Series B Unit that is being exchanged will receive in exchange therefor a number of Series A Units determined in accordance with the following procedure: (i) the Board, in its good faith judgment, will compute a Fair Market Value for the Company as a whole based on the value implied by the transaction contemplated in the Purchase Notice, taking into account any transaction expenses and other costs to be borne by the Company (the "Purchase Notice FMV"); (ii) applying the distribution entitlements of the relative classes, series and tranches of Units then outstanding, as set forth in Section 6.4, at the time of such calculation, as though the entire Purchase Notice FMV were to be distributed to the holders of outstanding Units in accordance with such Section 6.4, the Board will determine the relative portion of the Purchase Notice FMV that the holders of the Series B Units would be entitled to receive if the entire Purchase Notice FMV were distributed to the holders of outstanding Units; (iii) the Board will then determine the equivalent number of Senior Equity Units which, if outstanding, would represent the same distribution entitlement as the Series B Units then outstanding (such number of Units, the "Senior Equity Unit Drag Equivalent Number");

and (iv) each Series B Unit will be exchanged for, and converted into, pursuant to Section 8.9(a), a number of Series A Units equal to (x) the Senior Equity Unit Drag Equivalent Number multiplied by (y) a fraction, the numerator of which is equal to one and the denominator of which is equal to the aggregate number of Series B Units then outstanding. The determinations of the Board pursuant to this Section 8.9(b) will be final, binding and conclusive on all parties.

(c) The Transferring Member(s) shall have the option to either (i) arrange for such Drag-Along Purchaser(s) to purchase the Call Units at the same time as and, subject to Section 8.9(b), upon the same terms and conditions at which the Transferring Member(s) sell their Units, including receipt of their pro rata portion (based on their Aggregate Senior Equity Unit Percentage (including Series B Units on an as-exchanged basis)) of any Non-Cash Consideration, (ii) not effect the proposed sale to such Drag-Along Purchaser(s), or (iii) subject to Section 8.8, effect the proposed sale to such Drag-Along Purchaser(s) but without including any of the Units specified in the Purchase Notice(s). If the Transferring Member(s) elect option (i), they shall provide the Company and each Purchase Notice recipient with a written notification no later than ten (10) days before the closing indicating that they are proceeding with the sale to the Drag-Along Purchaser(s). Upon receipt of any such notice, the Company and such holder shall cause the exchange of Series B Units for Series A Units to occur prior to the expiration of such ten (10) day period and such holder shall cooperate with the Transferring Member(s) and otherwise take, or cause to be taken, all actions and do, or cause to be done, all things necessary or appropriate to enter into, consummate and make effective the sale and purchase of the Call Units (including voting in favor of any merger or similar transaction requiring a vote of the Members and waiving any applicable appraisal or dissenter's rights with respect to such transaction). If the Transferring Members elect option (iii), then (X) the provisions of this Section 8.9 shall no longer apply to such Transfer and (Y) the Transferring Member(s) shall comply with the terms set forth in Section 8.8 prior to consummating any such Transfer.

(d) Notwithstanding any provision hereof to the contrary, from and after the date on which the Transferring Member(s) consummate a transaction subject to this Section 8.9, (A) a former holder of Senior Equity Units or Series B Units shall cease to be a Member with respect to any Call Units Transferred in such transaction, and (B) such former holder of Senior Equity Units or Series B Units shall not seek, nor shall the Company have any obligation, to enforce any right as a Member thereafter with respect to such Call Units. If the Transferring Member(s) elect not to proceed with its sale to the Drag-Along Purchaser(s) or elect not to include the Units specified in the Purchase Notice(s) in such sales, then no Series B Units shall be exchanged under this Section 8.9. If any exchange contemplated in this Section 8.9 has occurred and for any reason the sale to the Drag-Along Purchaser of one or more Call Unit(s) exchanged from Series B Units pursuant to this Section 8.9 does not occur, such Call Unit(s) shall promptly be returned for Series B Unit(s) of the same class, tranche and number as those from which such Call Unit(s) had been exchanged pursuant to this Section 8.9.

(e) In furtherance and not in limitation of the foregoing, each Member required to sell Call Units pursuant to this Section 8.9 shall (1) make the same

representations, warranties, covenants, indemnities and agreements as made by the Transferring Member(s) in connection with the Transferring Member(s)' Transfer of Units to the Drag-Along Purchaser(s) and (2) agree to the same terms and conditions to the Transfer as those to which the Transferring Member(s) agree. Notwithstanding the foregoing, (i) all such representations, warranties, covenants, indemnities and agreements shall be made by the Transferring Member(s) and each Member Transferring Call Units severally and not jointly, (ii) any liability for breach of any such representations and warranties related to the Company (but, for the avoidance of doubt, not those representations described in clause (iii) below) shall be allocated, on a several but not joint basis, among the Transferring Member(s) and each Member Transferring Call Units pro rata based on the relative number of Senior Equity Units (including Series B Units on an as-exchanged basis) transferred by each of them, (iii) any liability for breach of any of such representations and warranties relating to ownership of Units, the absence of liens on Units, the authority of the party to enter into any transaction and the enforceability of such transaction as to such party shall be borne solely by the party in breach of such representation and warranty, (iv) absent fraud or wilful misconduct, in no event shall the liability under the preceding clauses (i), (ii) and (iii) of a Member Transferring Call Units be greater than the dollar amount of the net proceeds received by such Member upon the Transfer of the Call Units to the Drag-Along Purchaser, and (v) no Member required to sell Units in a transaction pursuant to this Section 8.9 shall be required to enter into any non-competition or similar covenant or agreement in connection with such transaction.

8.10 Effect of Notices. Notwithstanding any provision hereof to the contrary, the giving to the holders of Units of any Sale Notice or any Purchase Notice shall not obligate the Member giving such notice to consummate or effect any transaction referred to therein.

ARTICLE IX
EVENTS OF DISSOLUTION

9.1 Events of Dissolution. The Company shall be dissolved upon the occurrence of any of the following events (each, an "Event of Dissolution"):

(a) The Board recommends the Company be dissolved and Members holding a Majority Interest vote for dissolution;

(b) The sale or other disposition of all of the Company's assets;

(c) Any event that makes it unlawful for the Company's business to be continued; or

(d) A judicial dissolution of the Company under Section 18-802 of the Act.

9.2 Termination of the Company. No other event, including the retirement, withdrawal, insolvency, liquidation, dissolution, insanity, resignation, expulsion, bankruptcy, death, incapacity or adjudication of incompetency of a Member, shall cause the existence of the Company to terminate, including if the sole Member of the Company becomes bankrupt.

ARTICLE X
TERMINATION

10.1 Liquidation. If an Event of Dissolution occurs, then the Company shall be liquidated and its affairs shall be wound up. The Board (or any Person appointed by the Board) may act as liquidating trustee of the Company unless otherwise provided by law; provided, however, that any Person appointed by the Board to serve as liquidating trustee may be removed and replaced, with or without cause, by the Board at any time. The liquidating trustee shall liquidate the Company as promptly as shall be practicable, but in any event within the time required by Treasury Regulations Section 1.704-1(b)(2)(ii).

(b) Upon the occurrence of an Event of Dissolution, a liquidating trustee may, in the name of, and for and on behalf of, the Company, prosecute and defend suits, whether civil, criminal or administrative, settle and close the Company's business, dispose of and convey the Company's property, discharge or make reasonable provision for the Company's liabilities, and distribute to the Members in accordance with Section 10.2. Until final distribution of the Company's assets, the liquidating trustee shall continue to operate the Company properties with all of the power and authority of the Board and the Members. The costs of winding up the Company shall be an expense of the Company.

(c) Within 45 days after the end of each calendar quarter during the liquidation of the Company, the liquidating trustee shall provide Members with quarterly reports (including financial statements) regarding the liquidation until all of the assets of the Company have been paid to creditors or distributed to Members, after which the liquidating trustee shall give a final report regarding the liquidation to Members.

10.2 Distribution of Assets. (a) Upon the dissolution of the Company, except as otherwise required by law, the assets of the Company shall be paid or distributed as follows:

(i) *First*, to the payment of expenses of the liquidation;

(ii) *Second*, to the payment of the liabilities of the Company in order of priority as provided by law and applicable contracts, including liabilities to Members who are creditors to the extent permitted by law;

(iii) *Third*, to set up any reserves that are reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company; and

(iv) *Fourth*, to the Members in accordance with Section 6.4(a).

(b) In the event the Board determines in connection with the liquidation of the Company that a portion of the Company's assets are best distributed in kind to the Members, then such assets shall be so distributed in kind to the Members in undivided interests therein as tenants in common.

10.3 Final Accounting. In the event of the dissolution of the Company, prior to any liquidation, a proper accounting shall be made to the Members from the date of the last previous accounting to the date of dissolution.

10.4 Distribution in Kind. In the event the Board determines in connection with the liquidation of the Company that a portion of the Company's assets are best distributed in kind to the Members, then such assets shall be so distributed in kind to the Members in undivided interests therein as tenants in common in the manner specified in Section 6.1.

10.5 Cancellation of Certificate. Upon the completion of the winding up of the Company's affairs and distribution of the Company's assets, the Company shall be terminated and the Members shall cause the Company to execute and file a Certificate of Cancellation in accordance with the Act.

ARTICLE XI
EXCULPATION AND INDEMNIFICATION

11.1 Exculpation. Notwithstanding any other provisions of this Agreement, whether express or implied, or obligation or duty at law or in equity, except (x) for any action taken by a Director that constitutes bad faith, (y) with respect to a Director as to whom fiduciary duties apply, a violation of the duty of loyalty and (z) with respect to a Director as to whom only the implied covenant of good faith and fair dealing applies (as opposed to fiduciary duties), for liabilities arising from a breach of such Director's Competing Enterprise Duty, no Director or Member will be personally liable to the Company or to any other Member or Director for any breach of duties.

11.2 Indemnification. To the fullest extent permitted by the General Corporation Law of the State of Delaware, the Company shall indemnify and hold harmless each Director and officer of the Company or any Company Subsidiary, the Tax Matters Member and any liquidating trustee for the Company (individually, a "Covered Person" and, collectively, the "Covered Persons") and each former Covered Person from and against any and all losses, claims, demands, liabilities, expenses, judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative ("Claims"), in which the Covered Person may be involved, or threatened to be involved, as a party or otherwise, by reason of its service on the Board or in such office or capacity. A Covered Person or former Covered Person shall not be entitled to indemnification under this Section 11.2 with respect to (i) such Covered Person's fraud, willful misconduct or breach of the Competing Enterprise Duty or (ii) any Claim initiated by such Covered Person unless such Claim (or part thereof) (A) was brought to enforce such Covered Person's rights to indemnification hereunder or (B) was authorized or consented to by the Board. Expenses incurred by a Covered Person in defending any Claim shall be paid by the Company in advance of the final disposition of such Claim upon receipt by the Company of an undertaking by or on behalf of such Covered Person to repay such amount if it shall be ultimately determined that such Covered Person is not entitled to be indemnified by the Company as authorized by this Section 11.2.

11.3 Amendments. Any repeal or modification of this Article XI shall not adversely affect any rights of such Covered Person pursuant to this Article XI, including the right to indemnification and to the advancement of expenses of a Covered Person existing at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

ARTICLE XII
AMENDMENT TO AGREEMENT

12.1 Approval. (a) Amendments or modifications to, and any waiver of the provisions of, this Agreement shall be approved in writing by the affirmative vote of:

(1) (x) Members holding not less than $66^{2}/_{3}\%$ in voting power of the Senior Equity Units and (y) the lesser of (A) a majority in number of the Significant Members or (B) three (3) Significant Members; provided that any amendment, modification or waiver of the provisions of Sections 2.3, 2.7, 2.8, 4.1, 4.7, 5.3, 8.8 or 8.9 or Article XI shall require approval of the holders of at least 80% of the Series A Units; or

(2) Members holding not less than 80% in voting power of the Senior Equity Units;

In no event shall any amendment, modification or waiver eliminate a Member's voting rights or rights to ratable distributions without the consent of such Member. In addition, any amendment, modification or waiver that would materially and adversely affect any holder in a manner disproportionate to the other holders of the same class or series of Units (without regard to any effect resulting from the individual circumstance of any such holder) shall require the consent of such holder; provided that such Member shall not unreasonably condition, withhold or delay its consent to obtain disproportionate or materially better treatment than other Members.

(b) Notwithstanding the foregoing, the Board may amend or modify (and restate) this Agreement without the approval of any Members (i) to create any class or series of Units as permitted in Section 5.1(a) and to fix for each such class or series such voting powers, distinctive designations, preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof, as shall be stated and expressed in such amendment or modification; (ii) to add, amend and modify a schedule to this Agreement as contemplated in Section 6.4 in connection with any class or series of Units authorized after the date hereof in accordance with Section 5.1(a); (iii) to amend Section 5.1(a)(iii); (iv) to implement the admission of Substitute Members or Additional Members; (v) to change the name of the Company; (vi) to cure any ambiguity or correct or supplement any provision of this Agreement that may be incomplete or inconsistent with any other provision contained in this Agreement; and (vii) to amend the Company's books and records to reflect and transfers, issuances or other transactions that have been conducted in accordance with this Agreement; provided, however, that no such amendment or modification shall materially and adversely affect any holder in a manner disproportionate to the other holders of the same class or series of Units.

12.2 Effectiveness. An amendment or modification of this Agreement shall become effective as of the date specified in the Members' approval of such amendment or modification or, if none is specified, as of the date on which a sufficient number of Members have approved such amendment or modification or as otherwise provided in the Act.

ARTICLE XIII
GENERAL PROVISIONS

13.1 Notice. (a) Unless otherwise specifically provided in this Agreement, all notices and other communications required or permitted to be given hereunder shall be in writing and shall be (i) delivered by hand, (ii) delivered by a nationally recognized commercial overnight delivery service, (iii) mailed postage prepaid by first-class mail in any such case directed or addressed to the respective addresses set forth in this Section 13.1 or in the Company's books and records, (iv) delivered by electronic mail to the email, or (v) transmitted by facsimile transmitted to:

If to the Company, to:

Entegra TC LLC
100 S. Ashley Dr.
Suite 1400
Tampa, Florida 33602
Attention: Jerry Coffey
Email: JCoffey@entegrapower.com
Fax: (813) 301-4999

If to any Member or Director, to the address of such Member or Director specified in the Company's books and records.

(b) Notices sent to the Company, a Member or a Director shall be effective: (a) in the case of hand deliveries, when received; (b) in the case of an overnight delivery service, on the next Business Day after being placed in the possession of such delivery service, with delivery charges prepaid; (c) in the case of mail, five (5) days after deposit in the postal system, first-class mail, postage prepaid; (d) in the case of email, when receipt of such email has been confirmed by the recipient; and (e) in the case of facsimile notices, when electronic indication of receipt is received. Any party may change its address and telecopy number by written notice to the other parties given in accordance with this Section 13.1.

(c) Notwithstanding the foregoing or anything to the contrary in this Agreement, notices that are permitted to be given, delivered or otherwise sent to a Director by email pursuant to Article IV shall be deemed to have been delivered and received when sent to the email address for such Director on file with the Company, whether or not receipt of such email is confirmed.

13.2 Entire Agreement. This Agreement constitutes the entire agreement between the Members relating to the subject matter hereof and supersedes all prior contracts, agreements, discussions and understandings between them. No course of prior

dealings between Members shall be relevant to supplement or explain any term used in this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or the acquiescing party has knowledge of the nature of the performance and an opportunity for objection. No provisions of this Agreement may be waived, amended or modified orally, but only by an instrument in writing executed by a duly authorized officer. No waiver of any terms or conditions of this Agreement in one instance shall operate as a waiver of any other term or condition or as a waiver in any other instance.

13.3 Construction Principles. (a) When a reference is made in this Agreement to an Article or Section, such reference shall be to an Article or Section of this Agreement unless otherwise indicated. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." 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.

(b) All terms defined in this Agreement shall have the defined meanings when used in any document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to in this Agreement or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein.

(c) Except as is otherwise specifically provided in this Agreement, whenever pursuant to this Agreement any Member exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to such Member, the decision of such Member to approve or disapprove or to decide whether arrangements or term are satisfactory or not satisfactory shall be in the sole discretion of such Member and shall be final and conclusive.

(d) The Members have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the Members and no presumption or burden of proof shall arise favoring or disfavoring any Member by virtue of the authorship of any provision of this Agreement.

13.4 Counterparts. This Agreement may be executed in two or more counterparts by the parties hereto, each of which when so executed will be an original, but all of which together will constitute one and the same instrument.

13.5 Severability. If any provision of this Agreement is held to be invalid or unenforceable for any reason, such provision shall be ineffective to the extent of such invalidity or unenforceability; provided, however, that the remaining provisions will continue in full force without being impaired or invalidated in any way unless such invalid or unenforceable provision or clause shall be so significant as to materially affect the Members' expectations regarding this Agreement. Otherwise, the Members agree to replace any invalid or unenforceable provision with a valid provision which most closely approximates the intent and economic effect of the invalid or unenforceable provision.

13.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to the principles of conflicts of laws thereof.

13.7 Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the Members.

13.8 No Third-Party Beneficiary. This Agreement is made solely for the benefit of the Members and Covered Persons and no other person shall have any rights, interest, or claims hereunder or otherwise be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

13.9 Limited Liability Company. The Members agree to form a limited liability company and do not intend to form a partnership under the laws of the State of Delaware or any other laws; provided, however, that, to the extent permitted by U.S. law, the Company will be treated as a partnership for U.S. Federal, state and local income tax purposes. The Members agree not to take any action inconsistent with the Company's classification as a partnership for U.S. Federal income tax purposes.

13.7 Jurisdiction; Service of Process. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, or relating in any manner to, this Agreement must be brought against any of the parties in the Court of Chancery of the State of Delaware in and for New Castle County or, if the Court of Chancery lacks subject matter jurisdiction, in another court of the State of Delaware, County of New Castle, or in the United States District Court for the District of Delaware, and each of the parties consent to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

13.8 Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

13.9 Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, the Members and their successors and permitted assigns.

13.10 Fees and Expenses. (a) Each Member shall be responsible for all fees, costs and expenses (including reasonable legal fees and costs) incurred by such Member in connection with its investment in the Company.

(b) The Company shall promptly reimburse Directors, the Tax Matters Member and the liquidating trustee for all reasonable out-of-pocket fees, expenses and costs incurred by them in the performance of their obligations under this Agreement.

13.11 No Brokers. Each Member represents and warrants to the other Members that there are no brokerage commissions or finders' fees (or any basis therefor) resulting from any action taken by such Member or any Person acting or purporting to act on behalf of such Member. Each Member agrees to indemnify the Company and the other Members for all costs, damages or other expenses arising out of any breach by it of this Section 13.11.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned Members have each duly executed this Agreement as of the day and year first above written.

ENTEGRA POWER GROUP LLC

By:_____
Name:
Title:

Exhibit C

Amended Intercreditor Agreement

AMENDED AND RESTATED COLLATERAL AGENCY
AND INTERCREDITOR AGREEMENT

This AMENDED AND RESTATED COLLATERAL AGENCY AND INTERCREDITOR AGREEMENT, is dated as of [●], 2014, and entered into by and among ENTEGRA TC LLC (the "***Company***"), the Subsidiary Guarantors (as defined below), U.S. BANK, NATIONAL ASSOCIATION ("***U.S. Bank***"), in its capacity as collateral agent for the Second Lien Secured Parties (as defined below), including its successors and assigns from time to time (the "***Second Lien Collateral Agent***"), WELLS FARGO BANK, NATIONAL ASSOCIATION ("***Wells Fargo***"), in its capacity as collateral agent for the Third Lien Secured Parties (as defined below), including its successors and assigns from time to time (the "***Third Lien Collateral Agent***"), U.S. Bank, as Second Lien Indenture Trustee (as defined below), Wells Fargo, as Third Lien Administrative Agent (as defined below), and each of the other Persons (as defined below) party hereto from time to time in accordance with the terms hereof. Capitalized terms used in this Agreement have the meanings assigned to them in Section 1 below.

RECITALS

(1) On August 4, 2014 (the "***Petition Date***"), Entegra Power Group LLC (formerly known as Entegra Holdings LLC) ("***Holdings***"), the Company and the Subsidiary Guarantors party hereto as of the Effective Date (collectively, the "***Debtors***") filed voluntary petitions for relief under Chapter 11 of Title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "***Bankruptcy Court***") and continued in possession of their property and in the management of their businesses pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

(2) On [●], 2014, the Bankruptcy Court entered an order confirming the Debtors' Joint Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated July 3, 2014 (as in effect on the "Effective Date" thereof (as defined therein) pursuant to the Confirmation Order and as thereafter may be amended in accordance with the Restructuring Support Agreement, the "***Plan of Reorganization***");

(3) In connection with the confirmation and implementation of the Plan of Reorganization, and pursuant to the terms thereof, in exchange for full and complete settlement, release, and discharge of the obligations of the Debtors under the Prepetition Second Lien Credit Agreement, the holders of the Existing Second Lien Loans shall receive from the Company and the Corporate Co-Issuer, as co-issuers (the "***Issuers***") the Series A Notes and certain holders of Prepetition Third Lien Claims shall purchase Series B Notes, in each case, pursuant to the Plan of Reorganization and that certain Indenture, dated as of the date hereof (as Amended and Refinanced, the "***Second Lien Indenture***"), among the Issuers, the Subsidiary Guarantors from time to time parties thereto, U.S. Bank, as indenture trustee, including its successors and assigns from time to time (the "***Second Lien Indenture Trustee***"), and the Second Lien Collateral Agent, which provides, among other things, for (a) the issuance of the Series A Notes and (b) the aggregate principal amount of Series A Notes originally issued on the Effective Date to be reduced by the aggregate principal amount of Series B Notes, if any, deemed to be issued on the

Effective Date and all Series B Notes issued on the Effective Date to be deemed to immediately convert into Series A Notes of an equivalent principal amount.

(4) In connection with the confirmation and implementation of the Plan of Reorganization, and the full and complete settlement, release and discharge of the obligations of the "Debtor Subsidiaries" (as such term is defined in the Plan of Reorganization) under the Prepetition Third Lien Credit Agreement, the holders of the Existing Third Lien Loans have agreed to become parties to that certain Credit Agreement (Third Lien), dated as of the date hereof (as Amended and Refinanced, the "***Third Lien Credit Agreement***"), among the Company, as borrower thereunder, the Subsidiary Guarantors from time to time parties thereto, the lenders party thereto from time to time (the "***Third Lien Lenders***"), and Wells Fargo, as administrative agent, including its successors and assigns from time to time (the "***Third Lien Administrative Agent***"), which provides, among other things, for the conversion of the Existing Third Lien Loans into the Third Lien Loans thereunder, in an original aggregate principal amount equal to $550,000,000.

(5) Pursuant to (a) the Second Lien Indenture, the Subsidiary Guarantors have agreed to guaranty the Issuers' obligations under the Second Lien Note Documents (the "***Second Lien Indenture Guaranty***") and (b) the Third Lien Credit Agreement, the Subsidiary Guarantors have agreed to guaranty the Company's obligations under the Third Lien Loan Documents (the "***Third Lien Guaranty***").

(6) The obligations of the Company and the Corporate Co-Issuer under the Second Lien Indenture and in respect of the Second Lien Notes, and the obligations of the Subsidiary Guarantors under the Second Lien Indenture Guaranty are and will be secured on a second priority basis by Liens on the Collateral pursuant to the terms of the Second Lien Collateral Documents.

(7) The obligations of the Company under the Third Lien Credit Agreement and the obligations of the Subsidiary Guarantors under the Third Lien Guaranty are and will be secured on a third priority basis by Liens on the Collateral pursuant to the terms of the Third Lien Collateral Documents. In addition, such obligations are secured by Liens on the Exclusive Third Lien Collateral pursuant to the term of the Third Lien Collateral Documents.

(8) The Company and the Subsidiary Guarantors may from time to time after the date hereof enter into certain Second Lien Secured Hedge Agreements, to the extent permitted under the terms of all of the Financing Documents.

(9) The obligations of the Company and the Subsidiary Guarantors in respect of Second Lien Secured Hedge Agreements entered into after the date hereof may be secured on a second priority basis by Liens on the Collateral pursuant to the terms of the Second Lien Collateral Documents, to the extent permitted under all of the Financing Documents (and subject to the effects of the Second Lien Secured Hedge Amount).

(10) The Second Lien Documents and the Third Lien Documents provide, among other things, that the parties thereto shall set forth in this Agreement their respective rights and remedies with respect to the Collateral and certain other matters.

(11) The Company, Holdings, the Subsidiary Guarantors party thereto, U.S. Bank, as successor to Barclays Bank PLC ("***Barclays***"), as the Second Lien Collateral Agent, Wells Fargo, as successor to Credit Suisse AG, Cayman Islands Branch ("***CS***"), as the Third Lien Collateral Agent, U.S. Bank, as successor to Barclays, as the Second Lien Administrative Agent (as defined therein), Wells Fargo, as successor to CS, as the Third Lien Administrative Agent, and each of the other Persons party thereto from time to time in accordance with the terms thereof, are parties to that certain Collateral Agency and Intercreditor Agreement, dated as of April 19, 2007 (as amended, amended and restated, or otherwise modified or supplemented prior to the date hereof, the "***Original Subordinated Lien Intercreditor Agreement***").

(12) As contemplated by the Plan of Reorganization, all Capital Stock in Holdings and Basso TP-2 Inc. has, on or prior to the date hereof, been cancelled, extinguished, and discharged and each of Holdings and Basso TP-2 Inc. (each of which was a guarantor under, and party to, the Original Subordinated Lien Intercreditor Agreement) has been dissolved (or has or is substantially contemporaneously with this execution and delivery hereof by the parties hereto instituted proceedings under applicable state law to dissolve); accordingly, neither Holdings nor Basso TP-2 Inc. is a party hereto.

(13) From and after the date hereof, the Corporate Co-Issuer shall be a party hereto, and its execution and delivery of this Agreement shall be as effective as the execution and delivery of an Accession Agreement in accordance with the provisions hereof.

(14) As contemplated by the Plan of Reorganization, the Second Lien Documents and the Third Lien Documents, and in order to induce the Second Lien Secured Parties and the Third Lien Secured Parties to enter into (or continue, as applicable) the transactions contemplated by the Second Lien Documents and the Third Lien Documents, respectively, the Company, the Subsidiary Guarantors in existence as of the date hereof, the Second Lien Collateral Agent, the Second Lien Indenture Trustee, the Third Lien Collateral Agent and the Third Lien Administrative Agent, and the other parties from time to time party hereto desire to amend and restate the Original Subordinated Lien Intercreditor Agreement as set forth in this Agreement.

AGREEMENT

In consideration of the foregoing, the mutual covenants and obligations herein set forth and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

SECTION 1. Definitions.

1.1 Defined Terms. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and the plural forms of the term defined):

"***Accession Agreement***" means an Accession Agreement substantially in the form attached hereto as Exhibit A.

"***Affected Property***" means, with respect to any Casualty Event, any Property (in whole or in part) of the Company or any of the Subsidiary Guarantors lost, destroyed, damaged, condemned or otherwise taken as a result of the occurrence of such Casualty Event.

"***Affiliate***" of any Person means any other Person which, directly or indirectly, Controls, is Controlled by or is under common Control with such Person. Notwithstanding the foregoing, no Person (or Affiliate of such Person (other than an Obligor)) that is a Second Lien Noteholder or Third Lien Lender on the date hereof shall be an "Affiliate" of an Obligor for purposes of this Agreement and the other Collateral Documents.

"***Agent***" means the Second Lien Collateral Agent, any New Second Lien Collateral Agent, the Second Lien Indenture Trustee, the Third Lien Collateral Agent, or the Third Lien Administrative Agent, as the context may require.

"***Agreement***" means this Amended and Restated Collateral Agency and Intercreditor Agreement, as amended.

"***Applicable Collateral Agent***" means (a) prior to the Discharge of Second Lien Obligations, the Second Lien Collateral Agent, and (b) after the Discharge of Second Lien Obligations, the Third Lien Collateral Agent.

"***as Amended and Refinanced***" means and includes, in respect of any Debt, or the agreement or contract pursuant to which such Debt is incurred, (a) such Debt (or any portion thereof) or related agreement or contract as extended, renewed, defeased, amended, amended and restated, supplemented, modified, restructured, refinanced, replaced, refunded or repaid, and (b) any other Debt issued or incurred in exchange or replacement for or to refinance such Debt, in whole or in part, whether with the same or different lenders, arrangers and/or agents and whether with a larger or smaller aggregate principal amount and/or a longer or shorter maturity, in each case to the extent permitted to be issued or incurred under the terms of all of the Financing Documents then in effect.

"***Asset Sale***" means a sale, lease (as lessor), sale and leaseback, assignment, conveyance, exclusive license (as licensor), transfer or other disposition to, or any exchange of Property with, any Person, in one transaction or a series of transactions, of all or part of the Company's or any of its Subsidiaries' Properties, whether now owned or hereafter acquired, leased or licensed, to the extent such sale, lease, sale and leaseback, assignment, conveyance, license, transfer or other disposition is permitted under the terms of all of the Financing Documents.

"***Available Amount***" of any letter of credit means, at any time, the maximum amount (whether or not such maximum amount is then in effect under such letter of credit if such maximum amount increases periodically pursuant to the terms of such letter of credit) available

to be drawn under such letter of credit at such time (assuming compliance at such time with all conditions to drawing).

"***Bankruptcy Code***" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as now or hereafter in effect, or any successor thereto.

"***Bankruptcy Court***" has the meaning specified in the recitals hereto.

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

"***Barclays***" has the meaning specified in the recitals hereto.

"***Business Day***" means any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close.

"***Business Interruption Insurance Proceeds***" means any and all proceeds of any insurance, indemnity, warranty or guaranty payable from time to time to the Company or any of the Subsidiary Guarantors with respect to the partial or complete interruption of the operation of the business of the Company or such Subsidiary Guarantor.

"***Capital Securities***" or "***Capital Stock***" means, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated, whether voting or non-voting) of such Person's capital, whether now outstanding or issued after the Effective Date.

"***Capitalized Lease Liabilities***" means, with respect to any Person, all monetary obligations of such Person under any leasing or similar arrangement which have been (or, in accordance with GAAP, should be) classified as capitalized leases and, for purposes hereof, the amount of such obligations at any time shall be the capitalized amount thereof as determined in accordance with GAAP.

"***Cash***" means money, currency or a credit balance in any demand account or Deposit Account.

"***Casualty Event***" means the damage, destruction or condemnation, as the case may be, of any property of any Obligor, but in any event shall exclude any losses due to business interruption.

"***Casualty Proceeds***" means with respect to any Casualty Event, all amounts and proceeds (including instruments and title insurance proceeds) received by the Company or any of the Subsidiary Guarantors in connection with such Casualty Event, including all amounts and proceeds (including instruments) in respect of the proceeds of any casualty, business interruption or delay in start-up insurance policy required to be maintained by the Company or any Subsidiary under any of the Financing Documents.

"***CERCLA***" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

"***Collateral***" means all Property (including Capital Stock) of the Obligors, now owned or hereafter acquired, other than the Exclusive Third Lien Collateral.

"***Collateral Agent***" means the Second Lien Collateral Agent and/or the Third Lien Collateral Agent, as the context may require.

"***Collateral Documents***" means the Second Lien Collateral Documents and/or the Third Lien Collateral Documents, as the context may require.

"***Commitments***" means the commitment of any Second Lien Noteholder or Third Lien Lender to extend credit or make loans under the Second Lien Note Documents or the Third Lien Loan Documents.

"***Commodity Hedge Agreements***" means any agreement (including each confirmation entered into pursuant to any Master Agreement) providing for swaps, caps, collars, puts, calls, floors, futures, options, spots, forwards, power purchase, tolling or sale agreements (including Power Purchase Agreements), fuel purchase or sale agreements, emissions credit purchase or sales agreements, power transmission agreements, fuel transportation agreements, fuel storage agreements, netting agreements, 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, but excluding all such agreements which are daily sales, spot market, or other short-term (not to exceed three months) arrangements.

"***Commodity Institution***" means any Person that is a commercial bank, investment bank, insurance company or other similar financial institution, or any Affiliate thereof, which is engaged in the business of entering into Commodity Hedge Agreements or Power Purchase Agreements.

"***Company***" has the meaning specified in the preamble hereto.

"***Comparable Third Lien Collateral Document***" means, in relation to any Collateral subject to any Lien created under any Second Lien Collateral Document, the Third Lien Collateral Document which creates a Lien on the same Collateral, granted by the same Obligor.

"***Confirmation Order***" has the meaning set forth in the Plan of Reorganization.

"***Contingent Liability***" means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon (by

direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss) the Indebtedness of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the Capital Securities of any other Person. The amount of any Person's obligation under any Contingent Liability shall be deemed to be the outstanding principal amount of the debt, obligation or other liability guaranteed thereby (reduced to the extent that such Person's obligation thereunder is reduced by applicable law or valid contractual agreement).

"***Contractual Obligations***" means, as applied to any Person, any provision of any Capital Stock issued by such Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which such Person is a party or by which it or any of its Properties is bound.

"***Control***" of a Person means the power, directly or indirectly, (a) to vote (under ordinary circumstances) 10% or more of the Capital Securities (on a fully diluted basis) of such Person for the election of directors, managing members or general partners (as applicable) or (b) to direct or cause the direction of the management and policies of such Person (whether by contract or otherwise). "***Controlled***" shall have a correlative meaning.

"***Corporate Co-Issuer***" means [●]. The Corporate Co-Issuer is a direct obligor, as co-issuer, in respect of the Second Lien Notes and is a Subsidiary Guarantor with respect to the Third Lien Credit Agreement. References herein to "Subsidiary Guarantors" shall include the Corporate Co-Issuer in its capacity as a co-issuer in respect of the Second Lien Notes and as a Subsidiary Guarantor in respect of the Third Lien Credit Agreement.

"***CS***" has the meaning specified in the recitals hereto.

"***Debt***" or "***Indebtedness***" of any Person means without duplication: (a) all obligations of such Person for borrowed money or advances and all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments; (b) the principal component of all obligations, contingent or otherwise, relative to the face amount of all letters of credit, whether or not drawn, and banker's acceptances issued for the account of such Person; (c) all Capitalized Lease Liabilities; (d) all obligations of such Person in respect of Specified Commodity Hedge Agreements which are secured as permitted by the Primary Debt Agreements; (e) whether or not so included as liabilities in accordance with GAAP, all obligations of another Person secured by any Lien on any property or assets owned or held by that Person regardless of whether the obligations secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person; *provided* that, the amount of any Debt of others that constitutes Debt of such Person solely by reason of this clause (e) shall, in the event that such Debt is limited recourse to such property (without recourse to such Person), for purposes of this Agreement, be equal to the lesser of the amount of such obligation and the fair market value of the property or assets to which the Lien attaches, determined in good faith by such Person; (f) whether or not so included as liabilities in accordance with GAAP, all obligations of such Person to pay the deferred purchase price of property or services (excluding trade accounts payable in the ordinary course of business which are not overdue for a period of

more than 90 days or, if overdue for more than 90 days, as to which a dispute exists and adequate reserves in conformity with GAAP have been established on the books of such Person); (g) obligations arising under Synthetic Leases; (h) Redeemable Capital Securities; and (i) all Contingent Liabilities of such Person in respect of any of the foregoing. The Debt of any Person shall include the Debt of any other Person (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 Person, except to the extent the terms of such Debt provide that such Person is not liable therefor.

"***Debtors***" has the meaning specified in the recitals hereto.

"***Deposit Account***" means a demand, time, savings, checking, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

"***Discharge of Second Lien Obligations***" means, except to the extent otherwise expressly provided in Section 5.5 and Section 6.5:

(a) payment in full in cash of (i) the outstanding principal amount of the Second Lien Notes and (ii) interest (including interest accruing (or which would, absent the commencement of an Insolvency or Liquidation Proceeding, accrue) on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not such interest would be allowed in such Insolvency or Liquidation Proceeding), on all Debt outstanding under the Second Lien Note Documents;

(b) the termination or expiration of all (i) Commitments, if any, to extend credit that would constitute Second Lien Obligations and (ii) Second Lien Secured Hedge Agreements; and

(c) payment in full in cash of all other Second Lien Obligations that are then due and payable or otherwise accrued.

"***Discharge of Third Lien Obligations***" means:

(a) payment in full in cash of the outstanding principal amount of Third Lien Loans, and interest (including interest accruing (or which would, absent the commencement of an Insolvency or Liquidation Proceeding, accrue) on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not such interest would be allowed in such Insolvency or Liquidation Proceeding) on, all Debt outstanding under the Third Lien Loan Documents;

(b) the termination or expiration of all Commitments, if any, to extend credit that would constitute Third Lien Obligations; and

(c) payment in full in cash of all other Third Lien Obligations that are then due and payable or otherwise accrued.

"***Early Termination Event***" means, with respect to any Second Lien Secured Hedge Agreement, the occurrence of any "*Early Termination Event*" or the designation of an "*Early Termination Date*" (each as defined in such Second Lien Secured Hedge Agreement) or any event of default (howsoever defined) under any Second Lien Secured Hedge Agreement which results in the termination of such Second Lien Secured Hedge Agreement.

"***Effective Date***" means [●], 2014.

"***Eligible Hedge Voting Amount***" means, as of any date of determination, with respect to any Second Lien Secured Hedge Agreement:

(i) prior to the occurrence of an Early Termination Event in respect of such Second Lien Secured Hedge Agreement, the greater of (A) the Floor Amount (if any) applicable to such Second Lien Secured Hedge Agreement and (B) an amount equal to (1) the Second Lien Secured Hedge Amount applicable to such Second Lien Secured Hedge Agreement at such time *less* (2) (so long as no Other Credit Support Exception has occurred) the aggregate amount of Other Credit Support Amounts under any Other Credit Support supporting the obligations of the Company and/or the Subsidiary Guarantors under such Second Lien Secured Hedge Agreement; and

(ii) from and after the occurrence of an Early Termination Event in respect of such Second Lien Secured Hedge Agreement, an amount equal to (A) the Second Lien Secured Hedge Amount due and owing under such Second Lien Secured Hedge Agreement *less* (B) (so long as no Other Credit Support Exception has occurred) the aggregate amount of Other Credit Support Amounts under any Other Credit Support supporting the obligations of the Company and/or the Subsidiary Guarantors under such Second Lien Secured Hedge Agreement.

"***Environmental Action***" means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (a) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (b) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (c) in connection with any actual or alleged damage, injury, threat or harm to human health or safety (to the extent related to exposure to Hazardous Materials) or the environment (including natural resources).

"***Environmental Law***" means any and all current or future foreign, federal or state (or any subdivision of either of them), statutes, ordinances, orders, rules, regulations, judgments, governmental authorizations, or any other legally enforceable requirements of Governmental Authorities relating to (a) environmental matters, including those relating to any Hazardous Materials Activity or (b) occupational safety and health (to the extent related to exposure to Hazardous Materials) or the protection of human, plant or animal health or welfare, in any manner applicable to the Company, any of its Subsidiaries or any of their respective Properties.

"***Event of Default***" means a Second Lien Event of Default or Third Lien Event of Default, as the context may require.

"***Exclusive Third Lien Collateral***" means the TEP Proceeds and the other Exclusive Third Lien Collateral (as defined in the Third Lien Security Agreement, as in effect on the date hereof, without giving effect to any amendments or modifications thereto that have not been approved by the Required Second Lien Secured Parties).

"***Existing Second Lien Loans***" means the "Loans" (as defined in the Prepetition Second Lien Credit Agreement immediately prior to the Effective Date) owing to each applicable Second Lien Noteholder that is a "Lender" under the Prepetition Second Lien Credit Agreement, in its respective capacity as such.

"***Existing Third Lien Loans***" means the "Loans" (as defined in the Prepetition Third Lien Credit Agreement immediately prior to the Effective Date) owing to each Third Lien Lender in its respective capacity as a "Lender" under the Prepetition Third Lien Credit Agreement.

"***Financing Documents***" means the Second Lien Documents and the Third Lien Documents.

"***First Lien Intercreditor Agreement***" has the meaning assigned to that term in the Second Lien Indenture and the Third Lien Credit Agreement.

"***Floor Amount***" means with respect to any Second Lien Secured Hedge Agreement entered into after the date hereof, the amount identified as the "*Floor Amount*" for such Second Lien Secured Hedge Agreement in the Accession Agreement pursuant to which the Second Lien Commodity Hedge Counterparty party thereto shall become a party hereto; *provided* that, the "*Floor Amount*" for all Second Lien Secured Hedge Agreements shall not exceed, in the aggregate, the Second Lien Secured Hedge Cap.

"***GAAP***" means generally accepted accounting principles in the United States consistent with those applied in the preparation of the financial statements referred to in the Primary Debt Agreements.

"***Gas Marketer***" means any Person whose business includes the sale, marketing or distribution of gas.

"***Gila River Energy***" means Gila River Energy LLC, a Delaware limited liability company.

"***Gila River Power***" means Gila River Power LLC, a Delaware limited liability company (f/k/a Gila River Power, L.P., a Delaware limited partnership).

"***Governmental Authority***" means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity, officer or examiner exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any

government or any court, in each case whether associated with a state of the United States, the United States, or, to the extent applicable and legally binding, a foreign entity or government.

"***GRE 2014***" means GRE 2014 LLC, a Delaware limited liability company.

"***Hazardous Materials***" means (a) any petrochemical or petroleum products, oil, waste oil, asbestos in any form that is or could become friable, urea formaldehyde foam insulations, toxic mold, lead-based paint and polychlorinated biphenyls; (b) any products, mixtures, compounds, materials or wastes, air emissions, toxic substances, wastewater discharges and any chemical, material or substance that may give rise to liability pursuant to, or is listed or regulated under, or the human exposure to which or the Release of which is controlled or limited by applicable Environmental Laws; and (c) any materials or substances defined in Environmental Laws as "*hazardous*", "*toxic*", "*pollutant*", or "*contaminant*", or words of similar meaning or regulatory effect.

"***Hazardous Materials Activity***" " means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the generation, use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

"***Holdings***" has the meaning specified in the recitals hereto.

"***Insolvency or Liquidation Proceeding***" means:

(a) any voluntary or involuntary case or proceeding under any Bankruptcy Law with respect to any Obligor;

(b) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding with respect to any Obligor or with respect to a material portion of their respective assets;

(c) any liquidation, dissolution reorganization or winding up of any Obligor whether voluntary or involuntary and whether or not involving insolvency or bankruptcy; or

(d) any assignment for the benefit of creditors or any other marshaling of assets and liabilities of any Obligor.

"***Interest Expense***" means, for any period, all interest, commitment fees, if any, participation fees, if any, and LIBOR breakage costs, if any, in respect of outstanding Second Lien Obligations or Third Lien Obligations, as applicable, accrued, capitalized or payable during such period (whether or not actually paid during such period).

"***Issuers***" has the meaning specified in the recitals hereto.

"***Joint Venture***" means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form; *provided* that, in no event shall any corporate Subsidiary of any Person be considered to be a Joint Venture to which such Person is a party.

"***Lien***" means (a) any lien, mortgage, pledge, collateral assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease or license in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing and (b) in the case of Capital Securities, any purchase option, call or similar right of a third party with respect to such Securities. For the avoidance of doubt, "*Lien*" shall not include any netting or set-off arrangements under any Contractual Obligation (other than any Contractual Obligation constituting debt for borrowed money or having the effect of debt for borrowed money) otherwise permitted under the terms of this Agreement.

"***Limited Hedge Collateral***" means, with respect to any Limited Collateral Second Lien Secured Hedge Agreement, those Properties of the Obligors constituting the portion (but not all) of the Collateral required under the terms of such Limited Collateral Second Lien Secured Hedge Agreement, to be pledged in favor of the Second Lien Commodity Hedge Counterparty party thereto.

"***Limited Collateral Second Lien Secured Hedge Agreement***" means any Second Lien Secured Hedge Agreement that by its terms provides that it is to be secured by specific Properties of the Company and its Subsidiaries but is not required to be secured by all of the Collateral.

"***Loan***" means (i) the Debt evidenced by a Second Lien Note or (ii) a Third Lien Loan, as the context may require.

"***Loss Proceeds Account***" means Account No. #104009 owned by the Company, with Citibank, N.A., at its Corporate Trust Office at 388 Greenwich Street, 14th Floor, New York, New York 10013.

"***Master Agreement***" means any Master Agreement published by the International Swap and Derivatives Association, Inc., WSPP, Inc. or the Edison Electric Institute or the North American Energy Standards Board.

"***Moody's***" means Moody's Investors Service, Inc.

"***New Second Lien Collateral Agent***" has the meaning specified in Section 5.5.

"***New Second Lien Debt Notice***" has the meaning set forth in Section 5.5.

"***Notice of Event of Default***" has the meaning set forth in Section 7.4.

"***Obligation***" means all obligations of every nature of each Obligor from time to time owed to any Secured Party under any Financing Document, whether for principal, interest

(including interest which, but for the filing of a petition in bankruptcy with respect to such Obligor, would have accrued on any Obligation, whether or not a claim is allowed against such Obligor for such interest in the related bankruptcy proceeding), reimbursement of amounts drawn under letters of credit, Ordinary Course Settlement Payments or Termination Payments under Second Lien Secured Hedge Agreements, fees, expenses, indemnification or otherwise.

"***Obligor***" means, as the context may require, the Company, the Corporate Co-Issuer and each other Subsidiary Guarantor.

"***Ordinary Course Settlement Payments***" means all regularly scheduled payments due under any Second Lien Secured Hedge Agreement from time to time, calculated in accordance with the terms of such Second Lien Secured Hedge Agreement, including any "*Settlement Amounts*" under any Second Lien Secured Hedge Agreement and any liquidated damages payments under any Second Lien Secured Hedge Agreement which settle physically and including any Interest Expense due and payable by any of the Obligors in connection with any such regularly scheduled or liquidated damage payments, but excluding, for the avoidance of doubt any "*Termination Payments*" due and payable under such Second Lien Secured Hedge Agreement.

"***Original Subordinated Lien Intercreditor Agreement***" has the meaning set forth in the recitals hereto.

"***Other Credit Support***" means, with respect to any Second Lien Secured Hedge Agreement, any (a) letter of credit, (b) guaranty or (c) cash collateral issued or pledged, as applicable, in favor of any Second Lien Commodity Hedge Counterparty to support the obligations of the Company or any other Subsidiary Guarantor under such Second Lien Secured Hedge Agreement (other than any such guaranty issued by an Obligor) which in any case satisfies the requirements of such Second Lien Secured Hedge Agreement with respect to letters of credit, guaranties or cash, as applicable.

"***Other Credit Support Amount***" means, at any time, with respect to any Second Lien Secured Hedge Agreement, the sum of (a) the Available Amount of any letter of credit issued in favor of the relevant Second Lien Commodity Hedge Counterparty to support the Obligations of the Obligors under such Second Lien Secured Hedge Agreement *plus* (b) the undrawn amount of any guaranty issued in favor of the relevant Second Lien Commodity Hedge Counterparty to support the Obligations of the Obligors under such Second Lien Secured Hedge Agreement (other than any such guaranty issued by an Obligor, including each Second Lien Commodity Hedge Guaranty) *plus* (c) the amount of any cash collateral pledged to the benefit of the relevant Second Lien Commodity Hedge Counterparty to support the Obligations of the Obligors under such Second Lien Secured Hedge Agreement, and which, in each case, satisfies the requirements of such Second Lien Secured Hedge Agreement with respect to letters of credit, guaranties or cash, as applicable.

"***Other Credit Support Exception***" means (a) with respect to any Other Credit Support constituting a guaranty, the guarantor thereunder fails to make payment after receipt of a demand for payment thereunder made in accordance with the terms of such guaranty, within

three Business Days of its receipt of such demand and (b) with respect to any Other Credit Support constituting a letter of credit, the occurrence and continuance of any of the following: (i) a restraint or injunction shall be threatened or pending against the issuer of such letter of credit or the Second Lien Commodity Hedge Counterparty that is the beneficiary thereof that restrains or limits or seek to restrain or limit a draw upon, or the application of proceeds from, such letter of credit prior to, concurrent with, or following such draw or application, (ii) the issuing bank of such letter of credit shall be subject to a bankruptcy, or (iii) the issuing bank shall have disavowed, repudiated or dishonored its obligations under such letter of credit after, if applicable, delivery to such issuing bank of a conforming draw request thereunder.

"***Outstanding Amount***" means, with respect to any Financing Document, at any time, an amount equal to the sum of (a) the aggregate principal amount of the Loans outstanding under such Financing Document at such time *plus* (b) the aggregate amount of all outstanding commitments to extend credit that which, when funded, would constitute Loans.

"***Person***" means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

"***Petition Date***" has the meaning specified in the recitals hereto.

"***Plan of Reorganization***" has the meaning specified in the recitals hereto.

"***Plan Support Party***" means any Person, other than the Debtors, that is party to the Restructuring Support Agreement.

"***Pledged Collateral***" means, as the context may require, (a) any Collateral, to the extent that possession or control thereof is necessary to perfect a Lien thereon under the UCC, including any deposit account or securities account (as such terms are defined in the UCC), (b) any rights to receive payments under any insurance policy that constitute Collateral and with respect to which a secured party is required to be named as an additional insured or a loss payee in order to perfect a Lien thereon and/or (c) any other Collateral with respect to which a secured party must be listed on a certificate of title in order to perfect a Lien thereon.

"***Power Distributor***" means, with respect to any power purchase agreement, any Person that is a public utility or one of whose primary businesses includes the sale or distribution of electric energy.

"***Power Purchase Agreements***" means power purchase and/or tolling agreements pursuant to which the Company or any of its Subsidiaries (other than Gila River Energy, GRE 2014 or Gila River Power) sells power and energy to third parties, but excluding all such agreements which are daily sales, spot market or other short-term (not to exceed three months) arrangements; *provided* that, such Power Purchase Agreement is with (a) a Commodity Institution with the Required Rating or (b) a Power Distributor (i) with the Required Rating or

(ii) whose obligations under such power purchase agreement are supported by cash or a letter of credit issued by a commercial bank with the Required Rating in an amount sufficient to cover the expected exposure of the Power Distributor thereunder, as reasonably determined by the Company in a manner consistent with the principles described in the Risk Management Policy.

"***Prepetition Second Lien Credit Agreement***" means the Credit Agreement (Second Lien), dated as of March 27, 2014, among the Company, as borrower, Holdings, as a guarantor, the Subsidiary Guarantors party thereto, the financial institutions from time to time parties thereto as lenders and U.S. Bank, as administrative agent, as amended, supplemented, amended and restated or otherwise modified or replaced from time to time.

"***Prepetition Third Lien Claims***" has the meaning set forth in the Plan of Reorganization.

"***Prepetition Third Lien Credit Agreement***" means the Credit Agreement (Third Lien), dated as of April 19, 2007, among Holdings, the Company, as a guarantor, the Subsidiary Guarantors party thereto, the financial institutions from time to time parties thereto as lenders, Wells Fargo, as administrative agent, and the other agents and arrangers from time to time party thereto, as amended, supplemented, amended and restated or otherwise modified or replaced from time to time.

"***Primary Debt Agreements***" means the Second Lien Indenture and the Third Lien Credit Agreement, in each case as Amended and Refinanced.

"***Property***" means any right or interest in or to any asset or property of any kind whatsoever (including Capital Stock), whether real, personal or mixed and whether tangible or intangible.

"***Purchasing Third Lien Lenders***" has the meaning specified in Section 5.6.

"***Redeemable Capital Securities***" means, with respect to any Person, Capital Securities of such Person that, either by their terms, by the terms of any security into which they are convertible or exchangeable or otherwise, (a) are, or upon the happening of an event or passage of time would be, required to be redeemed in whole or in part (except for consideration comprised of Capital Securities of such Person which are not Redeemable Capital Securities) on or prior to the date which is six (6) months after the Maturity Date under the Third Lien Credit Agreement (and as defined therein), (b) are redeemable in whole or in part at the option of the holder thereof (except for consideration comprised of Capital Securities of such Person which are not Redeemable Capital Securities) at any time prior to such date or (c) are convertible into or exchangeable (in whole or in part) for Indebtedness of such Person or any of its Subsidiaries at any time prior to such date.

"***Refinance***" means, in respect of any Debt, (a) such Debt (in whole or in part) as extended, renewed, defeased, refinanced, replaced, refunded or repaid and (b) any other Debt issued in exchange or replacement for or to refinance such Debt, in whole or in part, whether with the same or different lenders, arrangers and/or agents and whether with a larger or smaller

aggregate principal amount and/or a longer or shorter maturity, in each case to the extent permitted under the terms of all of the Financing Documents. "***Refinanced***" and "***Refinancing***" shall have correlative meanings.

"***Release***" means a "release," as such term is defined in CERCLA.

"***Remedy Event***" has the meaning set forth in Section 4.2.

"***Required Rating***" means, with respect to (a) any Commodity Institution, that either (i) the unsecured senior debt obligations of such Person are rated at least A3 by Moody's and at least A- by S&P at the time of the execution of the applicable Power Purchase Agreement, or (ii) such Commodity Institution's obligations under the applicable Power Purchase Agreement are guaranteed by a Person that is rated at least A3 by Moody's and at least A- by S&P at the time of the execution of the applicable Power Purchase Agreement, (b) any Power Distributor or Gas Marketer, that either (i) the unsecured senior debt obligations of such Person are rated at least Baa3 by Moody's and at least BBB- by S&P at the time of the execution of the applicable Power Purchase Agreement, or (ii) such Power Distributor's or Gas Marketer's obligations under any Power Purchase Agreement are guaranteed by a Person that is rated at least Baa3 by Moody's and at least BBB- by S&P, at the time of the execution of the applicable Power Purchase Agreement or (c) any commercial bank issuing a letter of credit in support of a Power Distributor's or Gas Marketer's obligations, that the unsecured senior debt obligations of such Person are rated at least A3 by Moody's and at least A- by S&P at the time of the issuance of such letter of credit.

"***Required Second Lien Holders***" means, at any time, Second Lien Secured Parties owed or holding more than 50% of the Outstanding Amount under the Second Lien Indenture, as Amended and Refinanced, at such time.

"***Required Second Lien Secured Parties***" means, at any time, Second Lien Secured Parties owed or holding more than 50% of the sum of (without duplication):

(a) the Outstanding Amount under the Second Lien Indenture, as Amended and Refinanced, at such time; and

(b) in the case of each Second Lien Secured Hedge Agreement, the Eligible Hedge Voting Amount thereunder at such time;

provided that, in each instance where this term is used with respect to a direction or instruction to the Second Lien Collateral Agent in connection with the exercise of remedies against the Collateral (and the calculation of Required Second Lien Secured Parties in accordance with the preceding clauses (a) and (b) does not result in more than 50% of the Second Lien Secured Parties described in clauses (a) and (b) issuing a direction or instruction to exercise such remedies), the Required Second Lien Secured Parties shall mean Second Lien Secured Parties owed or holding more than 50% of the Outstanding Amount under the Second Lien Indenture, as Amended and Refinanced, at such time.

"***Required Third Lien Lenders***" means, at any time, Third Lien Lenders owed or holding at least a majority in interest of the Outstanding Amount under the Third Lien Credit Agreement at such time.

"***Responsible Officer***" means, as to any Person, any individual holding the position of chairman of the board (if an officer), president, chief executive officer or one of its vice presidents and such Person's treasurer or chief financial officer.

"***Restructuring Support Agreement***" means that certain Restructuring Support Agreement, dated as of June 27, 2014, by and among the Debtors and the Plan Support Parties, including all exhibits thereto.

"***Risk Management Policy***" means the Entegra Power Risk Management Policy (Union Assets), as approved by the Company's board of directors from time to time.

"***S&P***" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"***Second Lien***" means a second priority Lien granted pursuant to the Second Lien Collateral Documents to the Second Lien Collateral Agent (for the benefit of the Second Lien Secured Parties) on the Second Lien Collateral to secure the Second Lien Obligations.

"***Second Lien Cap Amount***" means, as of any date of determination, (i) $[●], plus (ii) interest on the Second Lien Notes paid in kind by capitalization to principal, less (iii) the amount of any principal redeemed, repaid or prepaid under the Second Lien Indenture.

"***Second Lien Collateral***" means all of the Property of any Obligor now owned or hereafter acquired with respect to which a Lien by an Obligor is granted by an Obligor as security for any of the Second Lien Obligations. For the avoidance of doubt, "Second Lien Collateral" does not include the Exclusive Third Lien Collateral.

"***Second Lien Collateral Agent***" has the meaning specified in the preamble hereto.

"***Second Lien Collateral Documents***" means the Second Lien Security Agreement (and any agreement entered into, or required to be delivered, by any Obligor pursuant to the terms of the Second Lien Security Agreement in order to perfect the Second Lien created on any Property pursuant thereto), the Second Lien Mortgages and each other agreement that creates or purports to create a Lien in favor of the Second Lien Collateral Agent for the benefit of the Second Lien Secured Parties, in each case as amended.

"***Second Lien Commodity Hedge Counterparty***" means any Person (other than an Obligor or any Affiliate thereof) that is a party to a Second Lien Secured Hedge Agreement.

"***Second Lien Commodity Hedge Guaranty***" means the guaranty by any Subsidiary Guarantor of the Company's obligations under any Second Lien Secured Hedge Agreement.

"***Second Lien DIP Financing***" has the meaning specified in Section 6.1(a).

"***Second Lien Documents***" means, collectively (without duplication), each Second Lien Note Document, each Second Lien Secured Hedge Agreement, each Second Lien Guaranty, and any other agreement, document or instrument providing for or evidencing any Second Lien Obligations, in each case as each may be amended or, in the case of the Second Lien Indenture and any Second Lien Note Document, as Amended and Refinanced;.

"***Second Lien Event of Default***" means an "*Event of Default*" as defined in the Second Lien Indenture, or any Early Termination Event under any Second Lien Secured Hedge Agreement.

"***Second Lien Guaranty***" means the Second Lien Indenture Guaranty and each Second Lien Commodity Hedge Guaranty, as applicable.

"***Second Lien Indemnified Costs***" has the meaning set forth in Section 7.9(a).

"***Second Lien Indenture***" has the meaning specified in the recitals hereto, as Amended and Refinanced. The Second Lien Indenture Amends and Refinances the Prepetition Second Lien Credit Agreement, which was the Second Lien Credit Agreement under and as defined in the Original Subordinated Lien Intercreditor Agreement.

"***Second Lien Indenture Guaranty***" has the meaning specified in the recitals hereto.

"***Second Lien Indenture Trustee***" has the meaning specified in the recitals hereto.

"***Second Lien Mortgages***" means a collective reference to each mortgage, deed of trust and other document or instrument under which any Lien on real property owned or leased by any Obligor is granted by an Obligor to secure any Second Lien Obligations or under which rights or remedies with respect to any such Liens are governed, as amended.

"***Second Lien Note Documents***" means, collectively (but without duplication), the Second Lien Indenture, each of the other Note Documents (as defined in the Second Lien Indenture) (including this Agreement and the Second Lien Collateral Documents) and any other agreement, document or instrument providing for or evidencing the obligations of the Obligors under the Second Lien Indenture or the other Note Documents (as defined in the Second Lien Indenture) and any other document or instrument executed or delivered at any time in connection with any of the obligations under the Second Lien Indenture or the other Note Documents (as defined in the Second Lien Indenture), including any intercreditor or joinder agreement among holders of the Second Lien Obligations, to the extent such are effective at the relevant time, in each case, as each may be amended or as Amended and Refinanced.

"***Second Lien Noteholders***" means each Holder (as defined in the Second Lien Indenture).

"***Second Lien Notes***" means the notes issued pursuant to and in accordance with the Second Lien Indenture.

"***Second Lien Obligations***" means all obligations of every nature outstanding under the Second Lien Note Documents, each Second Lien Secured Hedge Agreement and each related Second Lien Guaranty; *provided* that, the aggregate outstanding of Second Lien Obligations under all Second Lien Secured Hedge Agreements and related Second Lien Guaranties that shall be secured as Second Lien Obligations is limited to Second Lien Secured Hedge Amounts. "*Second Lien Obligations*" shall include all interest accrued or accruing (or which would, absent the commencement of any Insolvency or Liquidation Proceeding, accrue) after commencement of any Insolvency or Liquidation Proceeding in accordance with the rate specified in the relevant Second Lien Document, whether or not the claim for such interest is allowed as a claim in such Insolvency or Liquidation Proceeding.

"***Second Lien Recovery***" has the meaning set forth in Section 6.5.

"***Second Lien Secured Debt Representative***" means the Second Lien Indenture Trustee and each Second Lien Commodity Hedge Counterparty.

"***Second Lien Secured Hedge Agreement***" means any Specified Right-Way Hedge Agreement entered into by the Company or any Subsidiary Guarantor after the date hereof which requires that the obligations of the Company or the Subsidiary Guarantor party thereto be secured by a Second Lien, but solely to the extent such Specified Right-Way Hedge Agreement is (a) permitted to be entered into by the Company or such Subsidiary Guarantor and (b) secured by a Second Lien, in each case, under the terms of all of the Financing Documents; *provided* that, the Second Lien Commodity Hedge Counterparty party thereto shall either be a party hereto or shall have executed and delivered to each of the Collateral Agents an Accession Agreement pursuant to which such Second Lien Commodity Hedge Counterparty has become a party to this Agreement and has agreed to be bound by the obligations of a Second Lien Secured Party under the terms hereof.

"***Second Lien Secured Hedge Amount***" means, with respect to any Second Lien Secured Hedge Agreement as of any date of determination, the full amount of all obligations of every nature outstanding and owed to the Second Lien Commodity Hedge Counterparty under such Second Lien Secured Hedge Agreement as of such date of determination (including any outstanding Ordinary Course Settlement Payments and Termination Payments); *provided* that:

(a) the amount of any such Termination Payment shall be calculated in accordance with the provisions of Section 4.4(c);

(b) for purposes of calculating the "Eligible Hedge Voting Amount" in respect of any Second Lien Secured Hedge Agreement, the Second Lien Secured Hedge Amount shall be calculated as the amount that would be payable by the relevant Obligor under such Second Lien Secured Hedge Agreement if such Second Lien Secured Hedge Agreement were terminated as the result of an event of default with respect to such Obligor under such Second Lien Secured

Hedge Agreement or, if such Second Lien Secured Hedge Agreement was previously terminated, the Termination Payment which remains unpaid as of the applicable date of determination; and

(c) In no event shall the aggregate Second Lien Secured Hedge Amounts for all Second Lien Secured Hedge Agreements, after taking into account any required application of any Other Credit Support Amounts under any Other Credit Support supporting the obligations of the Company or the Subsidiary Guarantors under Second Lien Secured Hedge Agreements in accordance with Section 4.5, exceed the Second Lien Secured Hedge Cap and to the extent the aggregate Second Lien Secured Hedge Amounts would exceed the Second Lien Secured Hedge Cap (after taking into account such application, if applicable) but for this proviso (c), the Second Lien Secured Hedge Amount with respect to each Second Lien Secured Hedge Agreement shall be reduced *pro rata* based on outstanding amount thereunder.

"***Second Lien Secured Hedge Cap***" means $175,000,000.

"***Second Lien Secured Parties***" means, at any time, the holders of Second Lien Obligations at such time, including, the Second Lien Indenture Trustee, the Second Lien Collateral Agent, the Second Lien Noteholders and, subject to the application of the Second Lien Secured Hedge Amount, the Second Lien Commodity Hedge Counterparties; *provided* that, in the case of any Second Lien Commodity Hedge Counterparty that is not a party hereto as of the date hereof, such Second Lien Commodity Hedge Counterparty shall have executed and delivered to each of the Collateral Agents an Accession Agreement pursuant to which it has become a party to this Agreement and has agreed to be bound by the obligations of a Second Lien Secured Party under the terms hereof.

"***Second Lien Security Agreement***" means that certain Amended and Restated Pledge and Security Agreement (Second Lien), dated as of the date hereof, by and among the Obligors and the Second Lien Collateral Agent, on behalf of and for the benefit of the Second Lien Secured Parties, as amended.

"***Secured Debt Representative***" means (a) with respect to the Second Lien Noteholders, the Second Lien Indenture Trustee, (b) with respect to the Third Lien Lenders, the Third Lien Administrative Agent, and (c) with respect to any Second Lien Secured Hedge Agreement, the Second Lien Commodity Hedge Counterparty party thereto.

"***Secured Obligations***" means, collectively, the Second Lien Obligations and the Third Lien Obligations.

"***Secured Parties***" means the Second Lien Secured Parties and the Third Lien Secured Parties, as the context may require.

"***Specified Commodity Hedge Agreements***" means (i) Commodity Hedge Agreements, Power Purchase Agreements and fuel supply agreements, each of which may not exceed 36 months in maturity, (ii) Commodity Hedge Agreements or Power Purchase Agreements involving the purchase or sale of up to 510 MW of power or an equivalent amount of fuel, in any case, for a tenor not greater than six years and (iii) Commodity Hedge Agreements

or Power Purchase Agreements so long as at the time such Commodity Hedge Agreement or Power Purchase Agreement is entered into, it is structured such that the Commodity Institutions' or other applicable hedge counterparties' credit exposure and actual or projected mark-to-market exposure to the applicable Obligor thereunder is positively correlated with the price of the relevant commodity (the agreements described in this clause (iii), the "***Specified Right-Way Hedge Agreements***").

"***Specified Right-Way Hedge Agreements***" is defined in the definition of "Specified Commodity Hedge Agreements."

"***Standstill Period***" shall have the meaning set forth in Section 3.1(a)(i).

"***Subsidiary***" means, with respect to any Person, any corporation, partnership, limited liability company, association, Joint Venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof 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; *provided* that, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a "*qualifying share*" of the former Person shall be deemed to be outstanding.

"***Subsidiary Guarantor***" means each of the Persons identified on the signature pages hereto as a "*Subsidiary Guarantor*" and each other Subsidiary of the Company which is required to guarantee the Secured Obligations from time to time pursuant to the terms of the Financing Documents.

"***Supplemental Collateral Agent***" shall have the meaning set forth in Section 7.2(b).

"***Synthetic Lease***" means, as applied to any Person, any lease (including leases that may be terminated by the lessee at any time) of any property (whether real, personal or mixed) (a) that is not a capital lease in accordance with GAAP and (b) in respect of which the lessee retains or obtains ownership of the property so leased for Federal income tax purposes, other than any such lease under which that Person is the lessor.

"***TEP Proceeds***" means the Net Disposition Proceeds (as defined in the Second Lien Indenture and the Third Lien Credit Agreement) from the disposition of a 2-on-1 combined-cycle generating block of the Gila River Facility (as defined in the Second Lien Indenture and the Third Lien Credit Agreement) and certain other assets, indirectly owned by Gila River Holdco (as defined in the Second Lien Indenture and the Third Lien Credit Agreement), to Tucson Electric Power Company and UNS Electric, Inc. pursuant to that certain Asset Purchase and Sale Agreement, dated as of December 13, 2013 (as amended or modified from time to time).

"***Termination Payment***" means any amount payable to or by the Company or any of its Subsidiaries in connection with a termination (whether as a result of the occurrence of an event of default or other termination event) of any Second Lien Secured Hedge Agreement, including any "*Settlement Amount*" or "*Termination Payment*", together with any Interest Expense due and payable by any of the Obligors in connection with such amounts; *provided* that, for the avoidance of doubt, "***Termination Payments***" shall not include any Ordinary Course Settlement Payments due under any such Second Lien Secured Hedge Agreement that have been paid prior to such date of determination; *provided further* that, the Termination Payment in respect of any Second Lien Secured Hedge Agreement shall be calculated in accordance with Section 4.4(c).

"***Third Lien***" means a third priority Lien granted pursuant to the Third Lien Collateral Documents to the Third Lien Collateral Agent (for the benefit of the holders of the Third Lien Secured Parties) upon the Third Lien Collateral to secure the Third Lien Obligations.

"***Third Lien Administrative Agent***" has the meaning specified in the recitals hereto.

"***Third Lien Collateral***" means all of the Property of any Obligor now owned or hereafter acquired with respect to which a Lien is granted by an Obligor as security for any Third Lien Obligations. For the avoidance of doubt, "Third Lien Collateral" does not include the Exclusive Third Lien Collateral.

"***Third Lien Collateral Agent***" has the meaning specified in the preamble hereto.

"***Third Lien Collateral Documents***" means the Third Lien Security Agreement (and any agreement entered into, or required to be delivered, by any Obligor pursuant to the terms of the Third Lien Security Agreement in order to perfect the Third Lien created on any Property pursuant thereto), the Third Lien Mortgages, and each other agreement that creates or purports to create a Lien in favor of the Third Lien Collateral Agent for the benefit of the Third Lien Secured Parties, in each case as amended.

"***Third Lien Credit Agreement***" has the meaning specified in the recitals hereto. as Amended and Refinanced. The Third Lien Credit Agreement Amends and Refinances the Prepetition Third Lien Credit Agreement, which was the Third Lien Credit Agreement under and as defined in the Original Subordinated Lien Intercreditor Agreement.

"***Third Lien DIP Financing***" has the meaning specified in Section 6.1(b).

"***Third Lien Documents***" means, collectively (without duplication), each Third Lien Loan Document, the Third Lien Collateral Documents and any other agreement, document or instrument providing for or evidencing the Third Lien Obligations, in each case as such may be amended or, in the case of the Third Lien Credit Agreement, as Amended and Refinanced.

"***Third Lien Event of Default***" means an "*Event of Default*" under and as defined in the Third Lien Credit Agreement.

"***Third Lien Guaranty***" has the meaning specified in the recitals hereto.

"***Third Lien Indemnified Costs***" has the meaning set forth in Section 7.9(b).

"***Third Lien Lenders***" has the meaning specified in the recitals hereto.

"***Third Lien Loan Documents***" means, collectively (but without duplication), the Third Lien Credit Agreement, each of the other Loan Documents (as defined in the Third Lien Credit Agreement) (including, this Agreement and the Third Lien Collateral Documents) and any other agreement, document or instrument providing for or evidencing the obligations of the Obligors under the Third Lien Credit Agreement or the other Loan Documents (as defined in the Third Lien Credit Agreement) and any other document or instrument executed or delivered at any time in connection with any Third Lien Obligations, including any intercreditor or joinder agreement among holders of Third Lien Obligations, to the extent such are effective at the relevant time, in each case, as each may be amended from time to time or, in the case of the Third Lien Credit Agreement, as Amended and Refinanced.

"***Third Lien Loan***" means any "Loan" under and as defined in the Third Lien Credit Agreement.

"***Third Lien Mortgages***" means a collective reference to each mortgage, deed of trust and other document or instrument under which any Lien on real property owned or leased by any Obligor is granted by an Obligor to secure any Third Lien Obligations or under which rights or remedies with respect to any such Liens are governed, as amended.

"***Third Lien Obligations***" means all obligations outstanding under the Third Lien Loan Documents. "*Third Lien Obligation*" shall include all interest accrued or accruing (or which would, absent commencement of an Insolvency or Liquidation Proceeding, accrue) after commencement of an Insolvency or Liquidation Proceeding in accordance with the rate specified in the relevant Third Lien Document whether or not the claim for such interest is allowed as a claim in such Insolvency or Liquidation Proceeding.

"***Third Lien Secured Debt Representative***" means the Third Lien Administrative Agent.

"***Third Lien Secured Parties***" means, at any time, the holders of Third Lien Obligations at such time, including, the Third Lien Administrative Agent, the Third Lien Collateral Agent and the Third Lien Lenders.

"***Third Lien Security Agreement***" means that certain Amended and Restated Pledge and Security Agreement (Third Lien), dated as of the date hereof, by and among the Obligors and the Third Lien Collateral Agent, on behalf of and for the benefit of the Third Lien Secured Parties, as amended.

"***Transaction***" means the transactions contemplated by the Financing Documents.

"***UCC***" means the Uniform Commercial Code as in effect from time to time in the State of New York or, when the context implies, the Uniform Commercial Code as in effect from time to time in any other applicable jurisdiction.

"***Union Power Facility***" means the 2,152 MW natural gas-fired combined-cycle power generation facility located in the MISO South region in Union County, Arkansas.

"***U.S. Bank***" has the meaning specified in the preamble hereto.

"***Wells Fargo***" has the meaning specified in the preamble hereto.

1.2 Computation of Time Periods; Other Definitional Provisions. In this Agreement and the other Collateral Documents in the computation of periods of time from a specified date to a later specified date, the word "*from*" means "*from and including*" and the words "*to*" and "*until*" each mean "*to but excluding.*" In the Collateral Documents, the word "*including*" shall be deemed to be mean "*including without limitation*". References in the Collateral Documents to any agreement or contract "*as amended*" shall mean and be a reference to such agreement or contract as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with its terms and the terms of all of the other Financing Documents.

1.3 Certifications, Etc. All certifications, notices, declarations, representations, warrants and statements made by any officer, director or employee or an Obligor pursuant to or in connection with the Agreement shall be made in such person's capacity as officer, director or employee on behalf of the Obligor and not in such Person's individual capacity.

SECTION 2. Lien Priorities.

2.1 Relative Priorities. (a) Notwithstanding any provision contained herein, each of the parties hereto hereby acknowledges and agrees that:

(i) the grant of the Liens by the Collateral Documents constitute two separate and distinct Liens over the Collateral: the Second Lien securing the payment and performance of the Second Lien Obligations and the Third Lien securing the payment and performance of the Third Lien Obligations;

(ii) the Liens securing the Third Lien Obligations are subject and subordinate on the terms contained in this Agreement to the Liens securing the Second Lien Obligations (it being understood and agreed that the Liens on the Exclusive Third Lien Collateral are not subject to this Agreement and are not subject or subordinate to the Liens securing the Liens securing the Second Lien Obligations as a result of this Agreement); and

(iii) because of, among other things, their differing rights in the Collateral, the Third Lien Obligations are fundamentally different from the Second Lien

Obligations and, in each case, must be separately classified in any plan of reorganization or plan of liquidation proposed or adopted in an Insolvency or Liquidation Proceeding.

To further effectuate the intent of the parties as provided in the immediately preceding clauses (i), (ii), and (iii), if a court in any Insolvency or Liquidation Proceeding or otherwise holds that the claims of more than one class of Secured Parties in respect of the Collateral constitute only one secured claim (rather than two separate classes of secured claims), then each of the parties hereto hereby acknowledges and agrees that, subject to this Section 2.1 and Section 4.1, all distributions in such Insolvency or Liquidation Proceeding or otherwise shall be made as if there were two separate classes of secured claims against the Obligors in respect of the Collateral (with the effect being that, to the extent the aggregate value of the Collateral is sufficient (for this purpose ignoring all claims held by the Third Lien Secured Parties), the Second Lien Secured Parties shall be entitled to receive on a *pro rata* basis all amounts owing (including principal, pre-petition interest, all amounts owing in respect of post-petition interest and/or additional interest payable pursuant to the Second Lien Documents (subject, in the case of any Second Lien Secured Hedge Agreement, to the effects of the Second Lien Secured Hedge Cap) arising from or relating to a default, which is disallowed as a claim in any Insolvency or Liquidation Proceeding and any other claims constituting Second Lien Obligations (subject, in the case of any Second Lien Secured Hedge Agreement, to the effects of the Second Lien Secured Hedge Cap)) to such Second Lien Secured Parties under the Second Lien Documents before any distribution is made in respect of the claims arising from the Third Lien Obligations held by the Third Lien Secured Parties, with the Third Lien Collateral Agent (on behalf of itself and the Third Lien Secured Parties), the Third Lien Administrative Agent (for itself and on behalf of each Third Lien Lender), and each other Third Lien Secured Party hereby acknowledging and agreeing to turn over to the Second Lien Collateral Agent (who in turn will turn over to the Second Lien Indenture Trustee (for itself and on behalf of the Second Lien Noteholders) and, subject to the effects of the Second Lien Secured Hedge Cap, the Second Lien Commodity Hedge Counterparties) amounts otherwise received or receivable by them to the extent necessary to effectuate the intent of this sentence, even if such turnover has the effect of reducing the claim or recovery of the Third Lien Secured Parties.

(b) Notwithstanding (i) the date, time, method, manner or order of grant, attachment or perfection of (A) any Liens securing the Third Lien Obligations granted on the Collateral or (B) any Liens securing the Second Lien Obligations granted on the Collateral, (ii) anything contained in any filing or agreement to which any Agent or other Secured Party (either individually or collectively) or in the case of any Agent, for its own behalf or on behalf of any of the Secured Parties, now or hereafter may be a party, (iii) the perfection of or avoidability of such Liens or claims securing the Second Lien Obligations or the Third Lien Obligations, as the case may be, (iv) any provision of the UCC, (v) any other applicable law or any provision set forth in the Third Lien Documents, (vi) any defect or deficiencies in, or failure to perfect, the Liens securing the Second Lien Obligations or the Third Lien Obligations or (vii) any other circumstances whatsoever, in each case, each of the Third Lien Collateral Agent (on behalf of itself and each other Third Lien Secured Party), the Third Lien Administrative Agent (on behalf of itself and each Third Lien Lender), and each other Third Lien Secured Party hereby agrees that:

(1) any Lien on the Collateral securing any Second Lien Obligations now or hereafter held by or on behalf of the Second Lien Collateral Agent or any of the Second Lien Secured Parties or any agent or trustee therefor, regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be senior in all respects and prior to any Lien on the Collateral securing any Third Lien Obligations; and

(2) any Lien on the Collateral securing any Third Lien Obligations now or hereafter held by or on behalf of, or created for the benefit of the Third Lien Collateral Agent or any of the Third Lien Secured Parties or any agent or trustee therefor, regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be junior and subordinate in all respects to all Liens on the Collateral securing any Second Lien Obligations. All Liens on the Collateral securing any Second Lien Obligations shall be and remain senior in all respects and prior to all Liens on the Collateral securing any Third Lien Obligations for all purposes, whether or not such Liens securing any Second Lien Obligations are subordinated to any Lien securing any other obligation of the Company, any other Obligor or any other Person.

For the avoidance of doubt, the Collateral does not include the Exclusive Third Lien Collateral and the provisions of this Section 2.1 do not in any way affect or apply to (i) the Exclusive Third Lien Collateral, it being understood and agreed that the Exclusive Third Lien Collateral is not subject to this Agreement and (ii) the payment of any amounts owed to the Third Lien Collateral Agent or Third Lien Administrative Agent.

2.2 Prohibition on Contesting Liens. Each of the Second Lien Collateral Agent (on behalf of itself and each other Second Lien Secured Party), the Second Lien Indenture Trustee (on behalf of itself and each Second Lien Noteholder), each other Second Lien Secured Party, the Third Lien Collateral Agent (on behalf of itself and each other Third Lien Secured Party), the Third Lien Administrative Agent (on behalf of itself and each Third Lien Lender) and each other Third Lien Secured Party agrees that it will not (and hereby waives any right to) contest or support any other Person in contesting, in any proceeding (including any Insolvency or Liquidation Proceeding), the priority, validity, perfection or enforceability of a Lien held by or on behalf of any of the Second Lien Secured Parties in the Second Lien Collateral or, by or on behalf of any of the Third Lien Secured Parties in the Third Lien Collateral, as the case may be, or the provisions of this Agreement; *provided* that, nothing in this Agreement shall be construed to prevent or impair the rights of the Second Lien Collateral Agent, the Second Lien Indenture Trustee or any other Second Lien Secured Party, to enforce this Agreement, including the provisions of this Agreement relating to the priority of the Liens securing the Second Lien Obligations and the Third Lien Obligations as provided in Sections 2.1 and 3.1. For the avoidance of doubt, the Collateral does not include the Exclusive Third Lien Collateral, the provisions of this Section 2.2 do not in any way affect or apply to the Exclusive Third Lien Collateral, it being understood and agreed that the Exclusive Third Lien Collateral is not subject to this Agreement.

2.3 No New Liens. So long as the Discharge of Second Lien Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Obligor, the parties hereto agree that no Obligor shall:

(i) grant or permit any additional Liens on any Property to secure any Third Lien Obligations unless it has granted or concurrently grants a Lien on such Property to secure the Second Lien Obligations; or

(ii) grant or permit any additional Liens on any Property to secure any of the Second Lien Obligations unless it has granted or concurrently grants a Lien on such Property to secure the Third Lien Obligations.

To the extent that the foregoing provisions are not complied with for any reason, without limiting any other rights and remedies available to the Second Lien Collateral Agent and/or the Second Lien Secured Parties, each of the Third Lien Collateral Agent (on behalf of itself and the Third Lien Secured Parties), the Third Lien Administrative Agent (on behalf of itself and the Third Lien Lenders) and each other Third Lien Secured Party agrees that any amounts received by or distributed to any of them pursuant to or as a result of Liens granted in contravention of this Section 2.3 shall be subject to Section 4.3.

For the avoidance of doubt, the provisions of this Section 2.3 apply only to Liens on the Collateral and shall not, in any way, affect the Liens of the Third Lien Secured Parties on the Exclusive Third Lien Collateral.

2.4 Similar Liens and Agreements. Other than as expressly contemplated in any Limited Collateral Second Lien Secured Hedge Agreement, the parties hereto agree that it is their intention that the Second Lien Collateral and the Third Lien Collateral be identical (it being understood and agreed that the Third Lien Obligations, in addition to being secured by Liens on the Third Lien Collateral, may also be secured by Liens on the Exclusive Third Lien Collateral and that the Second Lien Collateral does not include any Exclusive Third Lien Collateral). In furtherance of the foregoing and of Section 9.11, the parties hereto agree, subject to the other provisions of this Agreement:

(a) upon request by the Second Lien Collateral Agent, the Second Lien Indenture Trustee, any Second Lien Commodity Hedge Counterparty, the Third Lien Collateral Agent, the Third Lien Administrative Agent, or any other Third Lien Secured Party, to cooperate in good faith (and to direct their counsel to cooperate in good faith) from time to time in order to determine the specific items included in the Second Lien Collateral and the Third Lien Collateral and the steps taken to perfect their respective Liens thereon and the identity of the respective parties obligated under the Second Lien Documents and the Third Lien Documents; and

(b) that the documents, agreements and instruments creating or evidencing the Second Lien Collateral and the Third Lien Collateral and the Second Lien Guaranties and the Third Lien Guaranties shall be in all material respects the same forms of documents other than (i) with respect to the second lien or third lien nature of the Obligations

thereunder and (ii) in respect of the Third Lien Collateral Documents, such differences as are necessary to reflect the Exclusive Third Lien Collateral as additional collateral thereunder.

SECTION 3. Enforcement.

3.1 Exercise of Remedies. (a) Until the Discharge of Second Lien Obligations has occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Obligor, none of the Third Lien Collateral Agent (on behalf of itself or the Third Lien Secured Parties), the Third Lien Administrative Agent (on behalf of itself or the Third Lien Lenders), nor any other Third Lien Secured Party:

(i) will exercise or seek to exercise any rights or remedies with respect to any Collateral (including the exercise of any right of setoff (but subject to Section 5.9(a)) or any right under any lockbox agreement, account control agreement, landlord waiver or bailee's letter or similar agreement or arrangement (in each case, in respect of Collateral and not, for the avoidance of doubt, in respect of Exclusive Third Lien Collateral) to which the Third Lien Collateral Agent, the Third Lien Administrative Agent or any other Third Lien Secured Party is a party or which runs for the benefit of the Third Lien Collateral Agent (on behalf of the Third Lien Secured Parties) or any other Third Lien Secured Party) or institute any action or proceeding with respect to such rights or remedies (including any action of foreclosure); *provided* that, the Third Lien Collateral Agent (on behalf of the Third Lien Secured Parties and at the direction of the Required Third Lien Lenders) may exercise any or all such rights or remedies after the passage of a period of at least 180 days has elapsed since the later of: (A) the date on which the Third Lien Administrative Agent declared the existence of any Third Lien Event of Default and demanded the repayment of all the principal amount of any Third Lien Obligations; and (B) the date on which the Second Lien Collateral Agent and each Second Lien Secured Debt Representative received notice from the Third Lien Administrative Agent of such declaration of a Third Lien Event of Default and demand (the "***Standstill Period***"); *provided further* that, notwithstanding anything herein to the contrary, in no event shall the Third Lien Collateral Agent (on behalf of itself or the Third Lien Secured Parties), the Third Lien Administrative Agent (on behalf of itself or the Third Lien Lenders) or any of the other Third Lien Secured Parties exercise any rights or remedies with respect to the Collateral if, notwithstanding the expiration of the Standstill Period, the Second Lien Collateral Agent or any other Second Lien Secured Party shall have commenced and be diligently pursuing the exercise of their rights or remedies with respect to all or any material portion of the Collateral (prompt notice of such exercise to be given to each Third Lien Secured Debt Representative);

(ii) will contest, protest or object to any foreclosure proceeding or action brought by the Second Lien Collateral Agent or any other Second Lien Secured Party or any other exercise by the Second Lien Collateral Agent or any other Second Lien Secured Party of any rights and remedies relating to the Collateral under the Second Lien Documents or otherwise;

(iii) subject to their rights under the proviso to clause (a)(i) above, will object to (and waives any and all claims with respect to) the forbearance by the Second Lien Collateral Agent, the Second Lien Indenture Trustee or any other Second Lien Secured Party from bringing or pursuing any foreclosure proceeding or action or any other exercise of any rights or remedies relating to the Collateral;

(iv) will oppose or otherwise contest any claim by the Second Lien Collateral Agent (on behalf of the Second Lien Secured Parties), the Second Lien Indenture Trustee (on behalf of itself or any Second Lien Noteholder) or any other Second Lien Secured Party; and

(v) will challenge the validity, enforceability, perfection or priority of the Liens held by the Second Lien Collateral Agent or any other Second Lien Secured Party;

provided that, in the case of clauses (i) through (v) above, the Liens granted to secure the Third Lien Obligations shall attach to any proceeds resulting from actions taken by the Second Lien Collateral Agent or any other Second Lien Secured Party in accordance with this Agreement after application of such proceeds to the extent necessary to meet the requirements of a Discharge of Second Lien Obligations.

(b) Until the Discharge of Second Lien Obligations has occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Obligor, subject to Section 3.1(a)(i), Section 5.6 and Section 6.2 , the Second Lien Collateral Agent, at the direction of the Required Second Lien Secured Parties, shall have the exclusive right to enforce rights, exercise remedies (including setoff (but subject to Section 5.9(a)) and the right to credit bid the Second Lien Obligations) and make determinations regarding the release, sale, disposition or restrictions with respect to the Collateral without any consultation with or the consent of the Third Lien Collateral Agent or any other Third Lien Secured Party (or any Third Lien Secured Debt Representative in respect thereof); *provided* that, the Lien securing the Third Lien Obligations shall remain on the proceeds of such Collateral released or disposed of subject to the relative priorities described in Section 2.1). In exercising rights and remedies with respect to the Collateral, the Second Lien Collateral Agent, at the direction of the Required Second Lien Secured Parties, may enforce the provisions of the Second Lien Collateral Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion. Such exercise and enforcement shall include the rights of the Second Lien Collateral Agent (or any other agent appointed by the Required Second Lien Secured Parties) to sell or otherwise dispose of Collateral upon foreclosure, to incur expenses in connection with such sale or disposition, and to exercise all the rights and remedies of a secured creditor under the UCC and the Second Lien Collateral Documents and of a secured creditor under the Bankruptcy Laws of any applicable jurisdiction.

(c) The Third Lien Collateral Agent (on behalf of itself and the Third Lien Secured Parties), the Third Lien Administrative Agent (on behalf of itself and the Third Lien Lenders) and each other Third Lien Secured Party agrees that it will not take or receive any

Collateral or any proceeds of Collateral in connection with the exercise of any right or remedy (including setoff (but subject to Section 5.9(a))) with respect to any Collateral in its capacity as a creditor in violation of this Agreement. Without limiting the generality of the foregoing, unless and until the Discharge of Second Lien Obligations has occurred, as confirmed in writing by each Second Lien Secured Debt Representative, except as expressly provided in Sections 3.1(a)(i), 3.1(g) and 6.3(b), the sole right of the Third Lien Collateral Agent, the Third Lien Administrative Agent and any other Third Lien Secured Party with respect to the Collateral is to hold a Lien on the Collateral pursuant to the Third Lien Collateral Documents for the period and to the extent granted therein and to receive a share of the proceeds thereof, if any, after the Discharge of Second Lien Obligations has occurred.

(d) Subject to Sections 3.1(a), 3.1(g) and 6.3(b):

(i) the Third Lien Collateral Agent (on behalf of itself and the Third Lien Secured Parties), the Third Lien Administrative Agent (on behalf of itself and the Third Lien Lenders), and each other Third Lien Secured Party agrees not to take any action that would hinder any exercise of remedies under the Second Lien Documents or is otherwise prohibited hereunder, including any sale, lease, exchange, transfer or other disposition of the Collateral, whether by foreclosure or otherwise;

(ii) the Third Lien Collateral Agent (on behalf of itself and the Third Lien Secured Parties), the Third Lien Administrative Agent (on behalf of itself and the Third Lien Lenders) and each other Third Lien Secured Party hereby waives any and all rights it may have as a junior lien creditor or otherwise to object to the manner in which the Second Lien Collateral Agent, the Second Lien Indenture Trustee or the other Second Lien Secured Parties seek to enforce or collect the Second Lien Obligations or the Liens securing the Second Lien Obligations granted in any of the Second Lien Collateral undertaken in accordance with this Agreement, regardless of whether any action or failure to act by or on behalf of the Second Lien Collateral Agent, the Second Lien Indenture Trustee or the other Second Lien Secured Parties is adverse to the interest of the Third Lien Secured Parties; and

(iii) the Third Lien Collateral Agent (on behalf of itself and the Third Lien Secured Parties), the Third Lien Administrative Agent (on behalf of itself and the Third Lien Lenders) and each other Third Lien Secured Party hereby acknowledges and agrees that no covenant, agreement or restriction contained in the Third Lien Documents (other than this Agreement) shall be deemed to restrict in any way the rights and remedies of the Second Lien Collateral Agent, the Second Lien Indenture Trustee or any other Second Lien Secured Party with respect to the Collateral as set forth in this Agreement or any Second Lien Document.

(e) Notwithstanding anything to the contrary contained herein, including Sections 3.1(a) and 3.1(d), the Third Lien Collateral Agent, the Third Lien Administrative Agent and the Third Lien Secured Parties may exercise rights and remedies as unsecured creditors against the Company or any other Obligor that has guaranteed or granted Liens to secure the Third Lien Obligations in accordance with the terms of the Third Lien Documents and applicable

law; *provided* that, in the event that any Third Lien Secured Party becomes a judgment Lien creditor in respect of Collateral as a result of its enforcement of its rights as an unsecured creditor with respect to the Third Lien Obligations, such judgment Lien shall be subject to the terms of this Agreement for all purposes (including in relation to the Second Lien Obligations) as the other Liens securing the Third Lien Obligations are subject to this Agreement.

(f) Nothing in this Agreement shall prohibit the receipt by the Third Lien Administrative Agent nor any other Third Lien Secured Party of the required payments of interest, principal and other amounts owed in respect of the Third Lien Obligations so long as such receipt is not the direct or indirect result of the exercise by the Third Lien Collateral Agent, the Third Lien Administrative Agent or any other Third Lien Secured Party of rights or remedies as a secured creditor (including setoff (but subject to Section 5.9(a))) or enforcement in contravention of this Agreement of any Lien held by any of them, except, in each case, as a secured creditor in respect of the Exclusive Third Lien Collateral. Nothing in this Agreement impairs or otherwise adversely affects any rights or remedies the Second Lien Collateral Agent (on behalf of the Second Lien Secured Parties) or any other Second Lien Secured Party may have with respect to the Collateral. Nothing in this Agreement impairs or otherwise adversely affects any rights or remedies he Third Lien Collateral Agent (on behalf of the Third Lien Secured Parties) or any Third Lien Secured Party may have with respect to the Exclusive Third Lien Collateral.

(g) Notwithstanding the foregoing, the Third Lien Collateral Agent and each other Third Lien Secured Party may:

(i) file a claim or statement of interest with respect to the Third Lien Obligations; *provided* that, an Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Obligor;

(ii) take any action (not adverse to the priority status of the Liens on the Collateral securing the Second Lien Obligations, or the rights of the Second Lien Collateral Agent or the Second Lien Secured Parties to exercise remedies in respect thereof) in order to create, perfect, preserve or protect its Lien on the Collateral;

(iii) file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims of the Third Lien Secured Parties, including any claims secured by the Collateral, if any, in each case in accordance with the terms of this Agreement;

(iv) file any pleadings, objections, motions or agreements which assert rights or interests available to unsecured creditors of the Obligors arising under any Insolvency or Liquidation Proceeding or applicable non-bankruptcy law, in each case not inconsistent with the terms of this Agreement;

(v) vote on any plan of reorganization, file any proof of claim, make other filings and make any arguments and motions that are, in each case, in accordance

with the terms of this Agreement, with respect to the Third Lien Obligations and the Collateral;

(vi) exercise any of its rights or remedies with respect to the Collateral after the termination of the Standstill Period to the extent permitted by Section 3.1(a)(i); and

(vii) exercise any of its rights or remedies with respect to the Exclusive Third Lien Collateral at any time in accordance with the Third Lien Documents and applicable law.

(h) With regards to the Collateral, after the Discharge of Second Lien Obligations has occurred, at all times prior to the Discharge of Third Lien Obligations, the Third Lien Collateral Agent shall have the sole right to exercise any rights and remedies available at law or in equity, in each case, at the direction of the Required Third Lien Lenders.

3.2 Enforcement of Liens. (a) At all times prior to the Discharge of Second Lien Obligations, the Required Second Lien Secured Parties will have, subject to the terms of this Agreement, the right to authorize and direct the Second Lien Collateral Agent with respect to the Second Lien Collateral Documents and the Collateral, including the exclusive right to authorize or direct the Second Lien Collateral Agent to enforce, collect or realize on any Collateral or exercise any other right or remedy available at law or in equity with respect to the Collateral.

(b) Until the Discharge of Second Lien Obligations, none of the Second Lien Collateral Agent, any Second Lien Secured Debt Representative or any other Second Lien Secured Party will:

(i) except to the extent directed or consented to by the Required Second Lien Secured Parties, request judicial relief, in any Insolvency or Liquidation Proceeding or in any other court, that would hinder, delay, limit or prohibit the lawful exercise or enforcement of any right or remedy otherwise available to the Second Lien Secured Parties in respect of the Liens granted to the Second Lien Collateral Agent, for the benefit of the Second Lien Secured Parties;

(ii) except to the extent directed or consented to by the Required Second Lien Secured Parties, oppose or otherwise contest any motion for relief from the automatic stay or for any injunction against foreclosure or enforcement of Liens granted to the Second Lien Collateral Agent, for the benefit of the Second Lien Secured Parties, made by the Second Lien Collateral Agent, acting at the direction of, or as consented to by, the Required Second Lien Secured Parties, in any Insolvency or Liquidation Proceeding;

(iii) oppose or otherwise contest any lawful exercise by the Second Lien Collateral Agent, acting at the direction of, or as consented to by, the Required Second Lien Secured Parties, of the right to credit bid the Second Lien Obligations at any

sale, whether in foreclosure of the Liens granted to the Second Lien Collateral Agent or otherwise, for the benefit of the Second Lien Secured Parties; or

(iv) oppose or otherwise contest any other request for judicial relief made in any court by the Second Lien Collateral Agent, acting at the direction of, or as consented to by, the Required Second Lien Secured Parties, relating to the lawful enforcement of any Second Lien;

provided that, the Second Lien Collateral Agent may take such actions as it deems desirable to create, prove, preserve or protect the Liens upon any Collateral. Notwithstanding the foregoing, both before and during an Insolvency or Liquidation Proceeding, any Second Lien Secured Party and any Second Lien Secured Debt Representative may take any actions and exercise any and all rights that they would have as an unsecured creditor, including the commencement of an Insolvency or Liquidation Proceeding against any Obligor in accordance with applicable law and the termination of any Financing Document in accordance with the terms thereof; *provided* that, the Second Lien Secured Parties and the Second Lien Secured Debt Representatives may not take any of the actions prohibited by clauses (i) through (iv) above or oppose or contest any other claim that it has agreed not to oppose or contest under Section 6.

(c) Prior to the Discharge of Second Lien Obligations, in exercising rights and remedies with respect to the Collateral after the occurrence and during the continuance of any Event of Default, the Second Lien Secured Debt Representatives may, at the direction of the Required Second Lien Secured Parties, instruct the Second Lien Collateral Agent to enforce (or to refrain from enforcing) the provisions of the Second Lien Collateral Documents in respect of the Second Lien Obligations and exercise (or refrain from exercising) remedies thereunder or any such rights and remedies, all in such order and in such manner as the Second Lien Collateral Agent may determine, unless otherwise directed by the Required Second Lien Secured Parties, including:

(i) the exercise or forbearance from exercise of all rights and remedies in respect of the Second Lien Collateral and/or the Second Lien Obligations;

(ii) the enforcement or forbearance from enforcement of any Lien in respect of the Second Lien Collateral;

(iii) the exercise or forbearance from exercise of rights and powers of a holder of Capital Stock or any other form of Securities included in the Collateral to the extent provided in the Second Lien Collateral Documents;

(iv) the acceptance of the Second Lien Collateral in full or partial satisfaction of the Second Lien Obligations; and

(v) the exercise or forbearance from exercise of all rights and remedies of a secured lender under the UCC or any similar law of any applicable jurisdiction or in equity.

(d) Without in any way limiting the generality of clause (c) above (but subject to (A) the rights of the Company and the other Obligors under the Second Lien Documents and (B) the provisions of Section 5.4(a), which imposes limitations on the rights contemplated by this clause (d)), the Second Lien Collateral Agent, the Second Lien Indenture Trustee, each Second Lien Commodity Hedge Counterparty and each other Second Lien Secured Party and any of them may, at any time and from time to time in accordance with the Second Lien Documents and/or applicable law, without the consent of or notice to any other Secured Party, without incurring responsibility to any other Secured Party and without impairing or releasing the Lien priorities and other benefits provided in this Agreement (even if any right of subrogation or other right or remedy of any other Secured Party is affected, impaired or extinguished thereby), do one or more of the following:

(i) change the manner, place or terms of payment or change or extend the time of payment of, or amend, renew, exchange, increase or alter, the terms of any of the Second Lien Obligations or any Lien on any Second Lien Collateral or guaranty thereof or any liability of the Company or any other Obligor, or any liability incurred directly or indirectly in respect thereof (including any increase in or extension of the Second Lien Obligations, without any restriction as to the tenor or terms of any such increase or extension) or otherwise amend, renew, exchange, extend, modify or supplement in any manner any Liens held by the Second Lien Collateral Agent or any of the Second Lien Secured Parties, the Second Lien Obligations or any of the Second Lien Documents; *provided* that, any such increase in the Second Lien Obligations shall not increase the sum of the Debt under the Second Lien Note Documents to an amount in excess of the Second Lien Cap Amount;

(ii) sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner and in any order any part of the Second Lien Collateral or any liability of the Company or any other Obligor to the Second Lien Secured Parties or the Second Lien Collateral, or any liability incurred directly or indirectly in respect thereof;

(iii) settle or compromise any Second Lien Obligation or any other liability of the Company or any other Obligor or any security therefor or any liability incurred directly or indirectly in respect thereof and apply any sums by whomsoever paid and however realized to any liability (including the Second Lien Obligations) in any manner or order; and

(iv) exercise or delay in or refrain from exercising any right or remedy against the Company or any security or any other Obligor or any other Person, elect any remedy and otherwise deal freely with the Company, any other Obligor or any Second Lien Collateral and any security and any guarantor or any liability of the Company or any other Obligor to the Second Lien Secured Parties or any liability incurred directly or indirectly in respect thereof.

(e) Subject to Section 4.7, following notice of any Event of Default received pursuant to Section 5.8, any Second Lien Secured Debt Representative may request in writing

that the Second Lien Collateral Agent pursue any lawful action in respect of the Second Lien Collateral in accordance with the terms of the Second Lien Collateral Documents. Upon any such written request, the Second Lien Collateral Agent shall seek the consent of the Required Second Lien Secured Parties to pursue such action (it being understood that the Second Lien Collateral Agent shall not be required to advise the Required Second Lien Secured Parties to pursue any such action). Following receipt of any notice that an Event of Default has occurred, the Second Lien Collateral Agent may await direction from the Required Second Lien Secured Parties and will act, or decline to act, as directed by the Required Second Lien Secured Parties, in the exercise and enforcement of the Second Lien Collateral Agent's interests, rights, powers and remedies in respect of the Second Lien Collateral or under the Second Lien Collateral Documents or applicable law and, following the initiation of such exercise of remedies, the Second Lien Collateral Agent will act, or decline to act, with respect to the manner of such exercise of remedies as directed by the Required Second Lien Secured Parties. Subsequent to the Second Lien Collateral Agent receiving written notice that any Second Lien Event of Default has occurred entitling the Second Lien Collateral Agent to foreclose upon, collect or otherwise enforce the Second Liens then, unless it has been directed to the contrary by the Required Second Lien Secured Parties, the Second Lien Collateral Agent in any event may (but will not be obligated to) take all lawful and commercially reasonable actions permitted under the Second Lien Collateral Documents that it may deem necessary or advisable in its reasonable judgment to protect or preserve its interest in the Second Lien Collateral and the interests, rights, powers and remedies granted or available to the Second Lien Collateral Agent under, pursuant to or in connection with the Second Lien Collateral Documents.

SECTION 4. Payments.

4.1 Application of Proceeds. Regardless of any Insolvency or Liquidation Proceeding which has been commenced by or against the Company or any other Obligor, Collateral (which, for the avoidance of doubt, excludes the Exclusive Third Lien Collateral, the proceeds of which shall be applied in accordance with the Third Lien Documents and not in accordance with this Section 4.1) or any proceeds thereof received in connection with the sale or other disposition of, or collection on, such Collateral upon the exercise of remedies by (x) until the Discharge of Second Lien Obligations, the Second Lien Collateral Agent and (y) after the Discharge of Second Lien Obligations but until the Discharge of Third Lien Obligations, the Third Lien Collateral Agent, shall be applied in the following order (it being agreed that the Second Lien Collateral Agent or the Third Lien Collateral Agent, as applicable, shall apply such amounts in the following order as promptly as is reasonably practicable after the receipt thereof; *provided* that, such amounts shall not be so applied until such time as the amount of the Second Lien Obligations and the Third Lien Obligations has been determined in accordance with the terms hereof and under the terms of the relevant Financing Document, including and subject to Sections 4.4 and 4.5 below):

first, on a *pro rata* basis, to the payment of expense reimbursements and all other amounts due to the Agents in their capacities as such;

second, on a *pro rata* basis, to any Secured Party which has theretofore advanced or paid any fees to any Agent, other than any amounts covered by priority *first*,

an amount equal to the amount thereof so advanced or paid by such Secured Party and for which such Secured Party has not been previously reimbursed;

third, on a *pro rata* basis, to the payment of (a) any Interest Expense then due and payable under the Second Lien Note Documents, (b) any Ordinary Course Settlement Payments owed under the Second Lien Secured Hedge Agreements (subject to the limitations of Second Lien Secured Hedge Amounts, including the Second Lien Secured Hedge Cap) and (c) to the extent such expenses are reimbursable in accordance with the terms of the relevant Financing Documents, all out-of-pocket expenses (including reasonable legal fees) incurred by any Second Lien Secured Party in connection with the enforcement and protection of its rights under the Second Lien Documents to which such Second Lien Secured Party is a party or otherwise by reason of the occurrence of a Second Lien Event of Default thereunder, in each case, with interest at the rates specified in the applicable First Lien Loan Documents (as defined in the Depositary Agreement) in respect of overdue payments;

fourth, on a *pro rata* basis, to the payment of, without duplication, (a) all principal and other amounts then due and payable in respect of the Second Lien Obligations, and (b) the payment of all Termination Payments and other amounts then due and payable under the Second Lien Secured Hedge Agreements (subject to the limitations of Second Lien Secured Hedge Amounts, including the Second Lien Secured Hedge Cap, and any prior application thereof above);

fifth, on a *pro rata* basis, to the payment of any Interest Expense then due and payable under the Third Lien Loan Documents with interest at the rates specified in the applicable Third Lien Document in respect of overdue payments;

sixth, on a *pro rata* basis, to the payment of, without duplication all principal and other amounts then due and payable in respect of the Third Lien Obligations under any Third Lien Loan Document; and

last, the balance, if any, after all of the Second Lien Obligations and Third Lien Obligations have been paid in full in cash, to the Obligors or as otherwise required by applicable law.

Upon the Discharge of Second Lien Obligations, the Second Lien Collateral Agent shall deliver to the Third Lien Collateral Agent any Collateral and proceeds of Collateral held by it in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct, to be applied by the Third Lien Collateral Agent to the Third Lien Obligations in accordance with the terms of the Third Lien Collateral Documents.

4.2 Limitations on Payment Post Default. After (a) the commencement of any Insolvency or Liquidation Proceeding in respect of any Obligor or (b) (i) any of the Secured Obligations outstanding under any of the Financing Documents has become due and payable in full (whether at maturity, upon acceleration or otherwise) or any Secured Obligations outstanding under any of the Financing Documents has not been paid when due and (ii) (A) prior

to the Discharge of Second Lien Obligations, the Required Second Lien Secured Parties have instructed the Second Lien Collateral Agent or (B) after the Discharge of Second Lien Obligations but prior to the Discharge of Third Lien Obligations, the Required Third Lien Lenders have instructed the Third Lien Collateral Agent, to enforce, collect or realize on any Collateral or exercise any other right or remedy with respect to the Collateral (in the case of either clause (a) or clause (b), a "***Remedy Event***"), no payment of Cash (or the equivalent of Cash) shall be made from the proceeds of Collateral by any Obligor to any Collateral Agent for the benefit of any Secured Party, except as provided for in Section 4.1.

4.3 Payments Over. So long as the Discharge of Second Lien Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Obligor, any Collateral or proceeds thereof (including assets or proceeds subject to Liens referred to in the penultimate sentence of Section 2.3, but not including any Exclusive Third Lien Collateral or proceeds thereof) received by the Third Lien Collateral Agent, the Third Lien Administrative Agent or any other Third Lien Secured Party in connection with the exercise of any right or remedy (including setoff (but subject to Section 5.9(a))) relating to the Collateral in contravention of this Agreement shall be segregated and held in trust and forthwith paid over to the Second Lien Collateral Agent for the benefit of the Second Lien Secured Parties in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. The Second Lien Collateral Agent is hereby authorized to make any such endorsements as agent for the Third Lien Collateral Agent, the Third Lien Administrative Agent or any other Third Lien Secured Party. This authorization is coupled with an interest and is irrevocable until the Discharge of Second Lien Obligations.

4.4 Debt Balances. (a) Upon the written request of any Collateral Agent, each Secured Debt Representative shall promptly (and, in any event, within five Business Days) give such Collateral Agent written notice of the aggregate amount of the Secured Obligations then outstanding and owed by the Company or any other Obligor to the Secured Parties represented by such Secured Debt Representative under the applicable Financing Documents and any other information that such Collateral Agent may reasonably request.

(b) Without limiting the foregoing, upon receipt of any of the monies referred to in Section 4.1 above, the Collateral Agent receiving such monies shall promptly provide notice to each Secured Debt Representative of the receipt of such monies. Within ten (10) Business Days of the receipt of such notice, each Secured Debt Representative shall give such Collateral Agent written certification by an authorized officer or representative thereof of the aggregate amount of the Secured Obligations then outstanding owed by the Company or any other Obligor to the Secured Parties represented by such Secured Debt Representative under the applicable Financing Documents to be certified to as presently due and owing after giving effect to the application of any Other Credit Support in respect of such Obligations as contemplated by Section 4.5 (and, promptly upon receipt thereof, such Collateral Agent shall provide a copy of each such certification to each other Secured Debt Representative). Unless otherwise directed by a court of competent jurisdiction or each Secured Debt Representative, the applicable Collateral Agent shall use the information provided for in such notices as the basis for applying such monies in accordance with Section 4.1 above. Notwithstanding anything herein to the contrary, the proceeds of any Collateral shall not be applied to the Secured Obligations until each Second

Lien Commodity Hedge Counterparty shall have applied any Other Credit Support to the Secured Obligations owing to such Second Lien Commodity Hedge Counterparty as contemplated by Section 4.5.

(c) In calculating the amount of Secured Obligations owed to any Second Lien Commodity Hedge Counterparty, the applicable Termination Payment or Second Lien Secured Hedge Amount owed under any Second Lien Secured Hedge Agreement shall be determined by the relevant Second Lien Commodity Hedge Counterparty in accordance with the terms of the relevant Second Lien Secured Hedge Agreement; *provided* that, notwithstanding anything herein or in any Second Lien Secured Hedge Agreement to the contrary, such amount shall be determined in accordance with the following provisions (to the extent applicable):

first, except as otherwise specified in clauses *second* and *third* below the relevant Second Lien Commodity Hedge Counterparty shall determine the amount of the Termination Payment that is either then due and payable or would be due and payable under such Second Lien Secured Hedge Agreement if an Early Termination Event had occurred at such time and, subject to clauses *second* and *third*, below, such amount shall to the extent owed to such Second Lien Commodity Hedge Counterparty constitute the Termination Payment for purposes of calculating the Second Lien Secured Hedge Amount of such Second Lien Commodity Hedge Counterparty at such time;

second, in the event that such Second Lien Secured Hedge Agreement has more than one confirmation or trade or in the event that the relevant Second Lien Commodity Hedge Counterparty party to such Second Lien Secured Hedge Agreement is a party to any other Second Lien Secured Hedge Agreement, such Second Lien Commodity Hedge Counterparty shall setoff and net all Termination Payments owing to such Second Lien Commodity Hedge Counterparty or owed by such Second Lien Commodity Hedge Counterparty under each such confirmation or trade or additional Second Lien Secured Hedge Agreement, calculated in accordance with clause *first* above and, subject to clause *third* below, such amount shall to the extent owed to such Second Lien Commodity Hedge Counterparty constitute the total Termination Payment for purposes of calculating the Second Lien Secured Hedge Amount of such Second Lien Commodity Hedge Counterparty at such time;

third, in the event that such Second Lien Secured Hedge Agreement includes a confirmed transaction that constitutes a Limited Collateral Second Lien Secured Hedge Agreement, the relevant Second Lien Commodity Hedge Counterparty shall determine the amount of the Termination Payment that is either then due and payable or would be due and payable under such Limited Collateral Second Lien Secured Hedge Agreement, and shall only setoff and net all Termination Payments that are entitled to the relevant Limited Hedge Collateral, and such Termination Payments shall be distinct from any other Termination Payment owed to the relevant Second Lien Commodity Hedge Counterparty under (i) any Second Lien Secured Hedge Agreement that does not constitute a Limited Collateral Second Lien Secured Hedge Agreement or (ii) a Limited Collateral Second Lien Secured Hedge Agreement that is secured by different Limited Hedge Collateral.

4.5 Application of Other Credit Support to Termination Payments. If following the occurrence of an Early Termination Event under any Second Lien Secured Hedge Agreement, any Obligor shall fail to pay any of the Secured Obligations owing under such Second Lien Secured Hedge Agreement as and when required thereunder, then each applicable Second Lien Commodity Hedge Counterparty agrees that, subject to the occurrence of any Other Credit Support Exception, it shall, to the extent permitted under such Second Lien Secured Hedge Agreement and the terms of the applicable Other Credit Support, promptly (i) make a demand for payment under any Other Credit Support consisting of a letter of credit, cash collateral or a guarantee issued in favor of such Second Lien Commodity Hedge Counterparty to support the Obligations of the Obligors under such Second Lien Secured Hedge Agreement and (ii) apply the proceeds received under any Other Credit Support consisting of a letter of credit, cash collateral or guarantee and any Cash consisting of Other Credit Support pledged in favor of such Second Lien Commodity Hedge Counterparty to reduce the outstanding amount of such Secured Obligations (it being acknowledged and agreed that the Eligible Hedge Voting Amount of a Second Lien Secured Hedge Agreement shall not be diminished or affected by any Other Credit Support Exception) or enforcement action in connection therewith.

4.6 Limitations on Secured Obligations under Second Lien Secured Hedge Agreements. Notwithstanding anything herein to the contrary in connection with any exercise of remedies, each Second Lien Commodity Hedge Counterparty that is party to any Limited Collateral Second Lien Secured Hedge Agreement shall only be entitled to amounts in respect of its Second Lien Obligations arising thereunder to the extent that proceeds from Collateral being applied pursuant to Section 4.1 constitute the proceeds of Limited Hedge Collateral in respect of such Limited Collateral Second Lien Secured Hedge Agreement.

4.7 Application of Prepayments. Except with respect to mandatory prepayments made with any TEP Proceeds in accordance with Section 3.1.1(c) of the Third Lien Credit Agreement (which such payments shall be applied 100% to a mandatory prepayment of the Third Lien Loans in accordance with such Section 3.1.1(c)), all prepayments or redemptions of the Second Lien Notes and the Third Lien Loans shall be applied as follows: (a) first, to the pro rata prepayment or redemption of the Second Lien Notes and (b) thereafter, to the extent of any remaining amounts available for prepayment or redemption after the Second Lien Notes have been prepaid or redeemed in full, to a pro rata prepayment of the Third Lien Loans.

SECTION 5. Other Agreements.

5.1 Releases.

(a) (i) Upon the request of any Obligor in connection with any Asset Sale (other than in connection with the exercise of any Collateral Agent's rights and remedies in respect of the Collateral provided for in Sections 3.1 and 3.2) by any Obligor, to the extent permitted by the terms of all of the Financing Documents, each Collateral Agent will, at the Company's expense, execute and deliver to such Obligor such documents (including UCC termination statements, reconveyances, customary pay-off letters, and return of Collateral) as such Obligor may reasonably request to evidence and effectuate the irrevocable and concurrent release of (A) with respect to any Asset Sale, any Lien granted under any of the Collateral

Documents in any Collateral being disposed of in connection with such Asset Sale and (B) with respect to any Asset Sale in respect of all of the Capital Stock in, or assets of, such Obligor, such Obligor from its Obligations under the Financing Documents; *provided* that, in each case, such Obligor shall have delivered to each Collateral Agent and each Secured Debt Representative, at least three Business Days or such lesser period of time as such Collateral Agent or Secured Debt Representative may agree prior to the date of the proposed release, a written request for release identifying (generally) the relevant Collateral and, to the extent applicable, the Obligor to be released from the Liens under the Collateral Documents and, to the extent applicable, Obligations under the Financing Documents, together with a certification by the Company (upon which each Collateral Agent shall be entitled to conclusively rely) stating that such Asset Sale is in compliance with the terms of all of the Financing Documents and that the proceeds of such Asset Sale will be applied in accordance with the terms of the Financing Documents.

(ii) Upon the Discharge of Second Lien Obligations and the Discharge of Third Lien Obligations, all rights to the Collateral shall revert to the applicable Obligor, and, upon the written request of the Company, each Collateral Agent will, at the Company's expense, (x) promptly cause to be transferred and delivered, without any recourse, warranty or representation whatsoever, any Collateral and any proceeds received in respect thereof, (y) execute and deliver to the Company and the other Obligors such UCC termination statements and other documentation as the Company or any other Obligor may reasonably request to effect the termination and release of the Liens on the Collateral and (z) execute and deliver to the Company and the other Obligors such other documentation as the Company or any other Obligor may reasonably request to affect the termination of such Obligor's obligations under the Financing Documents to which it is a party (other than any such obligation which is intended by its terms to survive the Discharge of Second Lien Obligations and the Discharge of Third Lien Obligations).

(b) (i) Until the Discharge of Second Lien Obligations occurs, the Second Lien Collateral Agent, on behalf of the Second Lien Secured Parties, will have the exclusive right (at the direction of the Required Second Lien Secured Parties) to make determinations regarding the release or disposition of any Collateral in connection with the exercise of the Second Lien Collateral Agent's rights and remedies in respect of the Collateral provided for in Sections 3.1 and 3.2, without any consultation with, consent of, or notice to the Third Lien Collateral Agent, the Third Lien Administrative Agent or any other Third Lien Secured Party. If, in connection with the exercise of the Second Lien Collateral Agent's rights and remedies in respect of the Collateral provided for in Sections 3.1 and 3.2, the Second Lien Collateral Agent, for itself or on behalf of any of the Second Lien Secured Parties, releases any of its Liens on any part of the Collateral or releases any Obligor from its obligations under any Second Lien Guaranty in connection with the sale of the Capital Stock, or substantially all of the Property, of such Obligor, then the Third Liens, if any, of the Third Lien Collateral Agent, for itself or the benefit of the Third Lien Secured Parties, on such Collateral, and the obligations of such Obligor under any Third Lien Guaranty, shall be automatically, unconditionally and simultaneously released. The Third Lien Collateral Agent (for itself and on behalf of the Third Lien Secured Parties), the Third Lien Administrative Agent (for itself and on behalf of the Third Lien Lenders)

and each other Third Lien Secured Party shall, upon receipt of a certification from the Second Lien Collateral Agent certifying the release of the applicable Collateral or the relevant Obligor, promptly execute and deliver to the Second Lien Collateral Agent or the relevant Obligor such termination statements, releases and other documents as the Second Lien Collateral Agent or such Obligor may request to effectively confirm such release.

(ii) Notwithstanding anything herein to the contrary, the Second Lien Collateral Agent, on behalf of the Second Lien Secured Parties, will have the exclusive right (but subject to the provisions of the Second Lien Documents and acting at the direction of the Required Second Lien Secured Parties) to make determinations regarding the release or disposition of any of the Second Lien Collateral, without any consultation with, consent of, or notice to, with respect to any of the Second Lien Collateral that does not constitute Limited Hedge Collateral under any applicable Limited Collateral Second Lien Secured Hedge Agreement, the Second Lien Commodity Hedge Counterparty party thereto.

(iii) Subject to the rights of the Second Lien Secured Parties hereunder, the Third Lien Collateral Agent, on behalf of the Third Lien Secured Parties, will have the exclusive right (but subject to the provisions of the Second Lien Documents) to make determinations regarding the release or disposition of any of the Third Lien Collateral.

(c) Until the Discharge of Second Lien Obligations occurs, the Third Lien Collateral Agent (on behalf of itself and the Third Lien Secured Parties), the Third Lien Administrative Agent (on behalf of itself and the Third Lien Lenders) and each other Third Lien Secured Party hereby irrevocably constitutes and appoints the Second Lien Collateral Agent and any officer or agent of the Second Lien Collateral Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Third Lien Collateral Agent, the Third Lien Administrative Agent or such other Third Lien Secured Party, as the case may be, or in the Second Lien Collateral Agent's own name, from time to time in the Second Lien Collateral Agent's discretion for the purpose of carrying out the terms of this Section 5.1, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary to accomplish the purposes of this Section 5.1, including any endorsements or other instruments of transfer or release.

(d) Until the Discharge of Second Lien Obligations occurs, to the extent that the Second Lien Collateral Agent (on behalf of the Second Lien Secured Parties) or the Second Lien Secured Parties (i) have released any Lien on Collateral or any Obligor from its obligation under any Second Lien Guaranty and any such Liens or Second Lien Guaranty are later reinstated or (ii) obtain any new Liens or additional guarantees from any Obligor, then the Third Lien Collateral Agent, for the benefit of the Third Lien Secured Parties, shall be granted a Lien on any such Collateral, subject to the lien subordination provisions of this Agreement, and an additional guaranty, as the case may be.

(e) Each of the Second Lien Commodity Hedge Counterparties party to a Limited Collateral Second Lien Secured Hedge Agreement agrees that it shall promptly, upon the written request of the Company, at the Company's expense, execute and deliver to the

Company and other Obligors such documentation as the Company may request from time to time to release any Lien for their benefit in such capacity on any of the Collateral that does not constitute Limited Hedge Collateral under the terms of the Limited Collateral Second Lien Secured Hedge Agreement.

(f) Subject to any requirements of the Financing Documents, without further written consent or authorization from any Secured Party, each Collateral Agent shall execute any documents or instruments necessary to release any Collateral to the extent the relevant Secured Parties have consented to such release in accordance with the terms of the Financing Documents.

5.2 Casualty Proceeds. Not more than 30 days after the occurrence of any Casualty Event, the Company shall give written notice thereof to each Collateral Agent and Secured Debt Representative and follow the procedures indicated below as applicable:

(a) The Company shall cause any Casualty Proceeds to be deposited in, or credited to, the Loss Proceeds Account and applied in accordance with this Section 5.2.

(b) Unless an Event of Default shall have occurred and be continuing, and except as otherwise provided in this Section 5.2, (i) if the total Casualty Proceeds with respect to any Casualty Event (other than Business Interruption Insurance Proceeds) are less than $20,000,000, the Company may apply such Casualty Proceeds to the repair or restoration of the Union Power Facility or to other general corporate purposes at the sole discretion of the Company, and (ii) if the total Casualty Proceeds with respect to any Casualty Event are equal to or greater than $20,000,000 (other than Business Interruption Insurance Proceeds), the Required Second Lien Holders (or, after the Discharge of Second Lien Obligations, the Required Third Lien Lenders) may elect to require the Company to (or consent to the Company's request to) repair or restore the Union Power Facility.

(c) If an Event of Default shall have occurred and be continuing, Casualty Proceeds with respect to any Casualty Event shall be maintained in the Loss Proceeds Account pending a decision by the Required Second Lien Holders (or, after the Discharge of Second Lien Obligations, the Required Third Lien Lenders) whether to use such Casualty Proceeds to repair or restore the Union Power Facility. If (i) in accordance with clause (b)(i) or (ii) above, the Company and the Required Second Lien Holders (or, as applicable, the Required Third Lien Lenders) elect not to apply the Casualty Proceeds to the repair or restoration of the Union Power Facility within 180 days of the receipt thereof, or (ii) in accordance with the immediately preceding sentence, the Required Second Lien Holders (or, as applicable, the Required Third Lien Lenders) elect not to use such Casualty Proceeds to repair or restore the Union Power Facility, such Casualty Proceeds shall be applied in to redeem or prepay the Second Lien Notes and the Third Lien Loans in the manner and priority set forth in Section 4.7.

(d) All prepayments of the Loans pursuant to this Section 5.2 shall be made by the Company together with accrued and unpaid interest to the date of such prepayment on the principal amount prepaid.

(e) Upon the occurrence and during the continuance of an Event of Default under any Primary Debt Agreement, the Applicable Collateral Agent (until instructed to the contrary by the Required Second Lien Secured Parties or Required Third Lien Lenders, as applicable, in connection with an exercise of rights or remedies in respect of the Collateral in accordance with the terms of this Agreement) shall cause amounts on deposit in, or credited to, the Loss Proceeds Account to be applied as directed by the Company to the extent necessary to repair the Affected Property. Notwithstanding the foregoing, upon the occurrence and during the continuance of an Event of Default under any Primary Debt Agreement, (i) prior to the Discharge of Second Lien Obligations, the Second Lien Collateral Agent, if directed by the Required Second Lien Secured Parties and (ii) after the Discharge of Second Lien Obligations, if directed by the Required Third Lien Lenders, shall cause amounts on deposit in, or credited to, the Loss Proceeds Account to be applied in accordance with Section 4.1.

5.3 Amendments to Third Lien Collateral Documents.

(a) Until the Discharge of Second Lien Obligations has occurred, without the prior written consent of the Second Lien Collateral Agent, acting at the direction of the Required Second Lien Secured Parties, no Third Lien Collateral Document (other than any Third Lien Collateral Document that relates solely to Exclusive Third Lien Collateral) may be amended, supplemented or otherwise modified or entered into to the extent such amendment, supplement or modification, or the terms of any new Third Lien Collateral Document, would contravene the provisions of this Agreement. The Company and each Obligor agrees that each Third Lien Collateral Document, other than any Third Lien Collateral Document that relates solely to Exclusive Third Lien Collateral, shall include the following language (or language to similar effect approved by the Second Lien Collateral Agent):

> "*Notwithstanding anything herein to the contrary, the lien and security interest granted to the Third Lien Collateral Agent pursuant to this Agreement and the exercise of any right or remedy by the Third Lien Collateral Agent hereunder (other than in respect of any Exclusive Third Lien Collateral) are subject to the provisions of the Amended and Restated Collateral Agency and Intercreditor Agreement, dated as of [●], 2014 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Intercreditor Agreement"), among Entegra TC LLC, U.S. Bank, National Association, as Second Lien Collateral Agent, Wells Fargo Bank, National Association, as Third Lien Collateral Agent and each other Person that is party or that may become party thereto from time to time. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern and control.*"

In addition, the Company and each Obligor agrees that each Third Lien Mortgage covering any Collateral shall contain such other language as the Second Lien Collateral Agent may reasonably

request to reflect the junior priority of such Third Lien Mortgage to the Second Lien Collateral Documents covering such Collateral.

(b) In the event the Second Lien Collateral Agent, the Second Lien Indenture Trustee or the Second Lien Secured Parties and any relevant Obligor enter into any amendment, waiver or consent in respect of any of the Second Lien Collateral Documents for the purpose of adding to, or deleting from, or waiving or consenting to any departures from any provisions of, any Second Lien Collateral Document or changing in any manner the rights of the Second Lien Collateral Agent, the Second Lien Indenture Trustee, the Second Lien Secured Parties, the Company or any other Obligor thereunder, then such amendment, waiver or consent shall apply automatically to any comparable provision of the Comparable Third Lien Collateral Document without the consent of the Third Lien Collateral Agent, the Third Lien Administrative Agent or the Third Lien Secured Parties and without any action by the Third Lien Collateral Agent, the Third Lien Administrative Agent any other Third Lien Secured Party, the Company or any other Obligor; *provided* that:

(i) no such amendment, waiver or consent shall have the effect of:

(A) removing or releasing Property subject to the Lien of the Third Lien Collateral Documents, except to the extent that a release of such Lien is permitted or required by Section 5.1 or, for the avoidance of doubt, in connection with an exercise of remedies under Sections 3.1 and 3.2, the proceeds of which are applied to the Secured Obligations in accordance with Section 4.1, in each case, *provided* that, there is a corresponding release of such Lien securing the Second Lien Obligations;

(B) imposing duties on, or altering the rights, benefits or protections of, the Third Lien Collateral Agent or the Third Lien Administrative Agent without its consent;

(C) permitting other Liens on the Collateral not permitted under the terms of the Third Lien Documents or Section 6;

(D) altering in any respect the rights of the Third Lien Secured Parties in respect of the Exclusive Third Lien Collateral; or

(E) being prejudicial to the interests of the Third Lien Secured Parties to a greater extent than the Second Lien Secured Parties; and

(ii) notice of such amendment, waiver or consent shall have been given to the Third Lien Collateral Agent, the Third Lien Administrative Agent and each other Third Lien Secured Party.

5.4 Amendments to Financing Documents; Class Voting.

(a) The Second Lien Documents may be amended, supplemented or otherwise modified in accordance with their terms and the Second Lien Indenture may be Refinanced, in each case, without notice to, or the consent of any Secured Party that is not a party to such Second Lien Document without affecting the lien subordination or other provisions of this Agreement; *provided* that, (1) the holders of such Refinancing Debt, if any, (or any agent or trustee for such holders) execute and deliver an Accession Agreement to each of the Collateral Agents pursuant to which they agree to be bound by the terms of this Agreement and have the obligations of a Second Lien Secured Party hereunder, and (2) any such amendment, supplement, modification or Refinancing shall not, without the prior written consent of the Third Lien Collateral Agent and the Required Third Lien Lenders:

(i) cause the sum of (without duplication): (A) the then outstanding aggregate principal amount of the Second Lien Notes and (B) the aggregate amount of unused commitments under the Second Lien Indenture (as Refinanced) and (C) any other amount in respect of principal under the Second Lien Indenture, to exceed the Second Lien Cap Amount; *provided* that, for the avoidance of doubt, any amounts redeemed, repaid or prepaid under the Second Lien Indenture may not be reborrowed and any such redemption, repayment or prepayment shall permanently reduce the Second Lien Cap Amount;

(ii) change (to earlier dates) any dates upon which payments of principal or interest are due thereon;

(iii) change the prepayment provisions thereof;

(iv) (A) increase the amount or rate of interest payable in respect of the Second Lien Notes or (B) have the effect of increasing the amount or rate of interest payable in respect thereof (including, for this purpose, the payment of any fees or similar amounts thereunder), in each case, to an amount or rate in excess of the rate of interest applicable to the Second Lien Notes as of the Effective Date (disregarding for this purposes any fluctuations in "LIBOR");

(v) extend the scheduled maturity of the Second Lien Indenture or any Refinancing thereof beyond the "Maturity Date" under the Third Lien Credit Agreement (and as defined therein); or

(vi) contravene the provisions of this Agreement.

(b) Without the prior written consent of the Second Lien Collateral Agent (acting at the direction of the Required Second Lien Holders), no Third Lien Document may be Refinanced, and without the prior written consent of the Second Lien Collateral Agent (acting at the direction of the Required Second Lien Holders), no Third Lien Document may be amended, supplemented or otherwise modified or entered into to the extent such amendment, supplement or modification, or the terms of any new Third Lien Document, would:

(i) cause the then outstanding aggregate principal amount of the Third Lien Loans to exceed the amount of Debt permitted to be secured by a Third Lien under the terms of the Second Lien Documents (*provided* that, the Second Lien Documents may not be amended to reduce the amount of Debt permitted to be secured thereunder without the consent of the Third Lien Administrative Agent (acting at the direction of the Required Third Lien Lenders));

(ii) change (to earlier dates) any dates upon which payments of principal or interest are due thereon;

(iii) change the prepayment provisions thereof;

(iv) contravene the provisions of this Agreement.

(c) Notwithstanding anything herein to the contrary (including the Second Lien Cap Amount), during the continuance of any Second Lien Event of Default, to the extent permitted by the applicable Second Lien Documents, any Second Lien Secured Party shall be entitled in its reasonable discretion to make payments or advances to the Second Lien Collateral Agent, any Obligor or any third party for the purpose of protecting, preserving or defending the value of the Collateral; *provided* that, such Second Lien Secured Party notifies the Third Lien Collateral Agent promptly after making such payment or advance, and any such payment or advance shall be deemed to constitute part of the Second Lien Obligations hereunder.

(d) Notwithstanding anything to the contrary in the Second Lien Documents but subject to the Second Lien Indenture and Section 5.4(e) below, if the Required Second Lien Holders consent to any amendment, modification, termination or waiver of any provision of the Second Lien Documents (other than any Second Lien Secured Hedge Agreement), or consent to any departure by any Obligor therefrom, then such amendment, modification, termination, waiver or consent shall apply automatically to the comparable (if any) provision in any other Second Lien Document (other than any Second Lien Secured Hedge Agreement) without the consent of any other Second Lien Secured Party.

(e) Notwithstanding anything to the contrary in this Agreement or in any of the Collateral Documents, without the written consent of each Second Lien Commodity Hedge Counterparty that would be affected thereby, no amendment, modification, termination or consent in respect of this Agreement or the Collateral Documents shall be effective if the effect thereof would: (i) amend the definition of "*Commodity Hedge Agreement*," "*Early Termination Event*," "*Eligible Hedge Voting Amount*," "*Floor Amount*," "*Limited Collateral Second Lien Secured Hedge Agreement*," "*Limited Hedge Collateral*," "*Ordinary Course Settlement Payments*," "*Other Credit Support*," "*Other Credit Support Amount*," "*Other Credit Support Exception*," "*Required Second Lien Secured Parties*," "*Second Lien Obligations*," "*Second Lien Secured Hedge Agreement*," "*Second Lien Secured Hedge Amount*," "*Second Lien Secured Hedge Cap*," "*Second Lien Secured Parties*," "*Specified Commodity Hedge Agreements*," "*Specified Right-Way Hedge Agreements*," " or "*Termination Payment*;" (ii) change the order of application of proceeds of Collateral and other payments set forth in Section 4.1, Section 5.2 or any other provision setting forth a priority of payment in respect of the Secured Obligations (to

the extent such provisions relate to a Second Lien Secured Hedge Agreement); (iii) subject to Section 5.1, cause the Obligations under any Second Lien Secured Hedge Agreement entitled by its terms to the benefit of a Second Lien on the Capital Stock of the Company and the Subsidiary Guarantors, to cease to benefit from a Second Lien on all Capital Stock of the Company and the Subsidiary Guarantors, (iv) cause the Second Lien Obligations owed under any Second Lien Secured Hedge Agreement to cease to be secured on a Second Lien *pari passu* basis with all other Second Lien Obligations with respect to Second Lien Collateral or (v) release all or substantially all of the Collateral or all of the Subsidiary Guarantors from their Second Lien Guaranties, unless such release is permitted by or not prohibited by all of the Financing Documents (including Section 5.1). Notwithstanding anything to the contrary in this Agreement or in any of the Collateral Documents, without the written consent of each Second Lien Commodity Hedge Counterparty that would be affected thereby, no amendment, modification, termination or consent in respect of this Agreement shall be effective unless (A) after giving effect thereto, the rights and obligations applicable to the Second Lien Commodity Hedge Counterparties apply equally to all Second Lien Commodity Hedge Counterparties, and (B) except to the extent the relevant Second Lien Secured Hedge Agreement constitutes a Limited Collateral Second Lien Secured Hedge Agreement, the scope of Collateral pledged for the benefit of such Second Lien Commodity Hedge Counterparty shall be the same as the Collateral pledged for the benefit of the Second Lien Noteholders.

5.5 When Discharge of Second Lien Obligations Deemed to Not Have Occurred. If concurrently with the Discharge of Second Lien Obligations, the Company thereafter enters into a Refinancing of any Second Lien Note Document, which Refinancing is permitted by the Third Lien Documents, then such Discharge of Second Lien Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement (other than with respect to any actions taken as a result of the occurrence of such Discharge of Second Lien Obligations) and, from and after the date on which the New Second Lien Debt Notice (as defined below) is delivered to the Third Lien Collateral Agent, and each Third Lien Secured Debt Representative in accordance with the next sentence, the obligations under such Refinancing of the relevant Second Lien Document shall automatically be treated as Second Lien Obligations for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth therein, and the Second Lien Collateral Agent under the Second Lien Documents shall be the Second Lien Collateral Agent for all purposes of this Agreement. Upon receipt of a notice (the "***New Second Lien Debt Notice***") stating that the Company has entered into a new Second Lien Document (which notice shall include the identity of the new second lien collateral agent, such agent, the "***New Second Lien Collateral Agent***"), the Third Lien Collateral Agent, the Third Lien Administrative Agent and each other Third Lien Secured Party shall promptly (a) enter into such documents and agreements (including amendments or supplements to this Agreement) as the Company or such New Second Lien Collateral Agent shall reasonably request in order to provide to the New Second Lien Collateral Agent the rights contemplated hereby, in each case consistent in all material respects with the terms of this Agreement, and (b) deliver to the New Second Lien Collateral Agent any Pledged Collateral held by it together with any necessary endorsements (or otherwise allow the New Second Lien Collateral Agent to obtain control of such Pledged Collateral). The New Second Lien Collateral Agent shall execute and deliver an Accession Agreement to the Third Lien Collateral Agent. If the new Second Lien

Obligations under the new Second Lien Documents are secured by Property of the Obligors constituting Collateral that do not also secure the Third Lien Obligations, then the Third Lien Obligations shall be secured at such time by a third priority Lien on such Property to the same extent provided in the Third Lien Collateral Documents and this Agreement.

5.6 Purchase Right. If there shall exist any Event of Default under the Second Lien Documents, then, prior to any foreclosure on the Collateral at the direction of the Required Second Lien Secured Parties, the Second Lien Secured Parties will offer the Third Lien Lenders the option to purchase the entire aggregate amount of (but not less than the entire amount of) outstanding Second Lien Obligations at par (including unfunded Commitments, amounts owing in respect of any Second Lien Secured Hedge Agreements and any accrued and unpaid Interest Expense) plus, whether or not due, any prepayment penalty or premiums which would have become due if the Second Lien Obligations had been accelerated, without warranty or representation or recourse. If the offer is accepted by any or all of the Third Lien Lenders, such acceptance shall be irrevocable and (i) the Second Lien Secured Debt Representatives and the Third Lien Lenders electing to purchase the Second Lien Obligations pursuant to this Section 5.6 (the "***Purchasing Third Lien Lenders***") shall use their reasonable commercial efforts to close promptly thereafter (and, in any event, shall close within 30 Business Days of the acceptance thereof unless otherwise agreed to by each Second Lien Secured Debt Representative); and (ii) shall be exercised pursuant to mutually acceptable documentation (with the purchase price being paid by the Purchasing Third Lien Lenders *pro rata* based on each Purchasing Third Lien Lender's percentage of the aggregate principal amount of outstanding Third Lien Loans held by all Purchasing Third Lien Lenders). If none of the Third Lien Lenders accepts such offer by the date that is 15 Business Days after receiving notice of the commencement of foreclosure proceedings by the Second Lien Collateral Agent (or if the applicable parties fail to close within 30 Business Days of the acceptance by the Purchasing Third Lien Lenders of such offer), the Second Lien Secured Parties shall have no further obligations pursuant to this Section 5.6 and may take any further actions in their sole discretion in accordance with the Second Lien Documents and this Agreement.

5.7 Injunctive Relief. Should any Third Lien Secured Party, contrary to this Agreement, in any way take, attempt to take or threaten to take any action with respect to the Collateral (including any attempt to realize upon or enforce any remedy with respect to this Agreement), or fail to take any action required by this Agreement, the Second Lien Collateral Agent or any other Second Lien Secured Party (in its or their own name or in the name of the Company) or the Company may obtain relief against such Third Lien Secured Party by injunction, specific performance and/or other appropriate equitable relief, it being understood and agreed by the Third Lien Collateral Agent on behalf of the Third Lien Secured Parties that (i) the Second Lien Secured Parties' damages from the actions of the Third Lien Secured Parties may at that time be difficult to ascertain and may be irreparable, and (ii) each Third Lien Secured Party waives any defense that the Company and/or the Second Lien Secured Parties cannot demonstrate damage and/or be made whole by the awarding of damages.

5.8 Certain Actions. So long as any Secured Obligations remain outstanding in respect of more than one class of Secured Parties, the following provisions shall apply:

(a) Each Secured Debt Representative hereby agrees to give, pursuant to the terms set forth in the Second Lien Documents or the Third Lien Documents, as the case may be, each of the Collateral Agents and each other Secured Debt Representative prompt written notice of the occurrence of (i) any Event of Default under such Person's Financing Documents, as applicable, of which such Person has written notice, and (ii) acceleration of the maturity of any Secured Obligations under any of the Financing Documents for which it acts as a Secured Debt Representative wherein such Secured Obligations have been declared to be or have automatically become due and payable earlier than the scheduled maturity thereof or termination date thereunder (or similar remedial actions including demands for cash collateral, have been taken) and setting forth the aggregate amount of Secured Obligations that have been so accelerated under such Financing Documents, in each case, as soon as practicable after the occurrence thereof (and, in any event, within five Business Days after the occurrence thereof); *provided* that, the failure to provide such notice shall not limit or impair the rights of the Secured Parties, or the obligations of the Company or any other Obligor, hereunder or under the other Financing Documents. No Agent shall be deemed to have knowledge or notice of the occurrence of an Event of Default under the Financing Documents to which it is a party until such Agent has received a written notice of such Event of Default from any other Agent, the Company, the other Obligors or any other Secured Party for whom such Agent is acting as agent or trustee.

(b) Each Collateral Agent hereby agrees to give each Secured Debt Representative written notice of the occurrence of an Event of Default following receipt thereof of written notice to it and provide a copy of all other information provided to it by the Company, any other Obligor under the Collateral Documents upon request.

(c) Each Obligor hereby agrees that, at any time and from time to time, at its sole cost and expense, it shall promptly execute and deliver all further agreements, instruments, documents and certificates and take all further action that may be necessary in order to fully effect the purposes of this Agreement and the Collateral Documents (including, to the extent required by any Collateral Document, the delivery of possession of any Collateral represented by certificated securities that hereafter comes into existence or is acquired in the future to the Applicable Collateral Agent as pledgee for the benefit of the Secured Parties) and to enable the Collateral Agents to exercise and enforce its rights and remedies under the Collateral Documents with respect to the Collateral or any part thereof.

(d) Each of the Second Lien Secured Parties hereby agrees that if, at any time and from time to time, any or all of the Second Lien Indenture is Refinanced in whole or in part and, in connection therewith it is necessary (as reasonably determined by the Company) for the parties to enter into one or more new agreement(s) setting forth the agreements of the parties with respect to certain intercreditor arrangements, guarantees or new collateral or security documents, then it shall execute such agreements and documents as the Company may reasonably request in respect thereof to the extent that such agreements and documents are otherwise in accordance with the terms of the Second Lien Documents to which it is a party (it being acknowledged and agreed that any intercreditor arrangements, guarantees or new collateral or security documents which contain materially the same provisions as the then existing comparable agreements shall be deemed to be acceptable to such Second Lien Secured Party); *provided* that, no Second Lien Commodity Hedge Counterparty shall have the right in

connection with any such new agreement to require that any such new agreement contain a provision in respect of amendments or Refinancings of the Primary Debt Agreements similar to the provisions set forth in Sections 5.3(b), 5.4(a), 5.4(b), 5.4(c) or 5.4(d); and, *provided* that, notwithstanding any provision in this clause to the contrary, no Second Lien Commodity Hedge Counterparty shall be obligated to execute any intercreditor, collateral, security, guarantee or other document unless each of the following conditions is satisfied: (i) any provisions applicable to any Second Lien Commodity Hedge Counterparty apply equally to all Second Lien Commodity Hedge Counterparties; (ii) such Second Lien Commodity Hedge Counterparty has reasonably determined that the resulting provisions do not materially and adversely affect its rights (subject to the terms of the applicable Second Lien Secured Hedge Agreement, including all provisions thereunder with respect to voting rights, restrictions on amendments to collateral documents, lien priorities and priority of payments) with respect to voting rights, restrictions on amendments to collateral documents, lien priority and priority of payments; (iii) except to the extent the relevant Second Lien Secured Hedge Agreement constitutes a Limited Collateral Second Lien Secured Hedge Agreement, the scope of Collateral pledged for the benefit of such Second Lien Commodity Hedge Counterparty shall be (x) the same as the Collateral pledged for the benefit of the Second Lien Noteholders and (y) in compliance with the requirement of the relevant Second Lien Secured Hedge Agreement with respect to the scope of collateral (after giving effect to the Obligors' rights to sell, lease or otherwise dispose of Property thereunder); and (iv) any applicable Collateral Documents (A) are the same agreements or instruments executed in favor of the Second Lien Secured Parties (or no less favorable as reasonably determined by the Second Lien Commodity Hedge Counterparty) and (B) secure the Obligors' obligations to such Second Lien on a second lien *pari passu* basis with the other Second Lien Obligations as contemplated by this Agreement as in effect on the date hereof.

5.9 Rights of Second Lien Commodity Hedge Counterparties; Acknowledgment of Security Interest. (a) Subject to the terms of this Section 5.9(a), nothing contained in this Agreement shall be construed (i) to impair the rights of any Second Lien Commodity Hedge Counterparty to exercise its rights and remedies with respect to any cash collateral pledged for its sole benefit or as a beneficiary under and pursuant to any Other Credit Support issued or pledged in its favor, (ii) to impair the rights of any Second Lien Commodity Hedge Counterparty to exercise any of its rights and remedies as an unsecured creditor under any or all Second Lien Secured Hedge Agreements to which it is a party or (iii) to impair the rights of any Second Lien Commodity Hedge Counterparty to exercise its rights to setoff and net amounts under and among any Second Lien Secured Hedge Agreement to which it is a party; *provided* that, each Second Lien Commodity Hedge Counterparty agrees that it shall only exercise such rights of setoff and netting among amounts owing by or to such Second Lien Commodity Hedge Counterparty under the Second Lien Secured Hedge Agreements to which is a party.

(b) [Reserved].

(c) Each of the Second Lien Commodity Hedge Counterparties hereby acknowledges and consents to the applicable Obligor's collateral assignment for the benefit of the Secured Parties of such Obligor's rights, title and interest, in, to and under each of the Second Lien Secured Hedge Agreements to which it is a party.

5.10 Additional Secured Obligations. Subject to the limitations set forth herein and in the Financing Documents, each Obligor and each Secured Party acknowledges and agrees that the Collateral may secure additional Obligations of the Company and the other Obligors (a) in respect of the Refinancing of the Second Lien Indenture and (b) additional Second Lien Secured Hedge Agreements. Subject to such limitations, upon execution and delivery to the Collateral Agents of an Accession Agreement by the Persons to whom the obligations referred to in the immediately precedent sentence are owed, such Persons shall become "***Second Lien Secured Parties***" hereunder, and the Obligors' Obligations to such Persons shall become "***Second Lien Obligations***." Each Obligor and each Secured Party agrees that this Agreement and the applicable Collateral Documents may be amended by the Obligors and the Collateral Agents without the consent of any Secured Party to the extent necessary or desirable to (i) effectuate the intent of this Section 5.10, (ii) cause the Liens granted thereby to be in favor of such Persons (to the extent Liens in favor of such Persons are expressly permitted by the terms of all of the Financing Documents) and (iii) cause such Persons to be treated in the same manner as the other Second Lien Secured Parties under this Agreement and the other Collateral Documents.

5.11 Bailee for Perfection; Representative; Relationship. (a) The Second Lien Collateral Agent agrees to hold the Pledged Collateral that is in its possession or control (or in the possession or control of its agents or bailees) as collateral agent for the Second Lien Secured Parties and as bailee for the Third Lien Collateral Agent (such bailment being intended, among other things, to satisfy the requirements of Sections 8-301(a)(2) and 9-313(c) of the UCC) and any assignee solely for the purpose of perfecting the security interest granted under the Second Lien Collateral Documents and the Third Lien Collateral Documents, respectively, subject to the terms and conditions of this Section 5.11.

(b) Subject to the terms of this Agreement, until the Discharge of Second Lien Obligations has occurred, the Second Lien Collateral Agent shall be entitled to deal with the Pledged Collateral or Collateral within its "*control*" in accordance with the terms of this Agreement and the other Second Lien Documents as if the Liens of the Third Lien Collateral Agent, the Third Lien Secured Parties did not exist. The rights of the Third Lien Collateral Agent and the Third Lien Secured Parties with respect to the Collateral shall at all times be subject to the terms of this Agreement.

(c) The Second Lien Collateral Agent shall have no obligations whatsoever to the Second Lien Secured Parties, the Third Lien Collateral Agent, the Third Lien Administrative Agent or any other Third Lien Secured Party to ensure that the Pledged Collateral is genuine or owned by any Obligor or to preserve the rights or benefits of any Person except as expressly set forth in this Section 5.11. The duties or responsibilities of the Second Lien Collateral Agent to the Third Lien Secured Parties under this Section 5.11 shall be limited solely to holding the Pledged Collateral as bailee in accordance with this Section 5.11 and delivering the Pledged Collateral upon a Discharge of Second Lien Obligations as provided in clause (e) below.

(d) (i) The Second Lien Collateral Agent acting pursuant to this Section 5.11 shall not have by reason of the Second Lien Collateral Documents, the Third Lien Collateral Documents, this Agreement or any other document a fiduciary relationship in respect of the

Second Lien Indenture Trustee, the Second Lien Secured Parties, the Third Lien Collateral Agent, the Third Lien Administrative Agent or any other Third Lien Secured Party.

(ii) The Third Lien Collateral Agent acting pursuant to this Section 5.11 shall not have by reason of the Third Lien Documents, this Agreement or any other document a fiduciary relationship in respect of the Second Lien Secured Parties, the Second Lien Collateral Agent, the Third Lien Administrative Agent or the Third Lien Secured Parties. Upon the Discharge of Second Lien Obligations, the Second Lien Collateral Agent shall deliver the remaining Pledged Collateral (if any) together with any necessary endorsements, *first*, if the Discharge of Third Lien Obligations has not occurred, to the Third Lien Collateral Agent and *second*, if the Discharge of Third Lien Obligations has occurred, to the Company (in each case, so as to allow such Person to obtain possession or control of such Pledged Collateral). The Second Lien Collateral Agent further agrees to take all other action reasonably requested by the Third Lien Collateral Agent in connection with the Third Lien Collateral Agent obtaining a second-priority interest in the Collateral or as a court of competent jurisdiction may otherwise direct.

5.12 Prepayments Held in Trust. In the event that, (a) prior to the payment in full in cash of the Second Lien Notes, the Third Lien Administrative Agent or any Third Lien Lender shall receive any prepayment, whether voluntary or mandatory, of the Third Lien Loans under the Third Lien Credit Agreement in contravention of the allocation provisions of Section 4.7, the amounts so received by the Third Lien Administrative Agent or such Third Lien Lender, as the case may be, shall be segregated and held in trust and forthwith paid over to the Second Lien Indenture Trustee for the benefit of the Second Lien Noteholders in the same form as received and (b) the Second Lien Indenture Trustee or any Second Lien Noteholder shall receive any prepayment or redemption of the Second Lien Notes under the Second Lien Indenture in contravention of the allocation provisions of Section 4.7, the amounts so received by the Second Lien Indenture Trustee or such Second Lien Noteholder, as the case may be, shall be segregated and held in trust and forthwith paid over to the Third Lien Administrative Agent for the benefit of the Third Lien Lenders in the same form as received.

SECTION 6. Insolvency or Liquidation Proceedings.

6.1 Finance and Sale Issues.

(a) Until the Discharge of Second Lien Obligations has occurred, if the Company or any other Obligor shall be subject to any Insolvency or Liquidation Proceeding and the Second Lien Collateral Agent (acting at the direction of the Required Second Lien Holders) shall desire to permit the use of "*Cash Collateral*" (as such term is defined in Section 363(a) of the Bankruptcy Code), on which the Second Lien Collateral Agent or any other creditor has a Lien or to permit the Company or any other Obligor to obtain financing, whether from the Second Lien Secured Parties or any other Person under Section 364 of the Bankruptcy Code or any similar Bankruptcy Law ("***Second Lien DIP Financing***"), then each of the other Collateral Agents, the Second Lien Indenture Trustee (on behalf of itself and the Second Lien Noteholders), each Second Lien Commodity Hedge Counterparty, the Third Lien Administrative Agent (on

behalf of itself and the Third Lien Lenders), and each other Secured Party agrees that it will raise no objection to such Cash Collateral use or Second Lien DIP Financing; *provided* that, (a) notwithstanding the foregoing, each Secured Debt Representative and each Secured Party that is not repaid in full with the proceeds of the Second Lien DIP Financing retains the right to object to any ancillary agreements or ancillary arrangements regarding the Cash Collateral use or the Second Lien DIP Financing that are materially prejudicial to their interests; (b) the Second Lien DIP Financing does not result in the voiding of any Lien on the Collateral securing the Third Lien Obligations except by repayment in full; (c) all Liens on Collateral securing such Second Lien DIP Financing shall be senior to or *pari passu* with the Liens on the Collateral securing the Second Lien Obligations; (d) the aggregate amount of the Second Lien DIP Financing, shall not exceed $10 million (unless such Second Lien DIP Financing repays in full the Second Lien Obligations, in which case the amount of the Second Lien DIP Financing may increase by a like amount); (e) the Second Lien DIP Financing does not compel or purport to compel the Company or any Obligor to seek confirmation of a specific plan of reorganization for which all or substantially all of the material terms are set forth in the Second Lien DIP Financing documentation or a related document and (f) the Second Lien DIP Financing document or Cash Collateral order does not expressly require the liquidation of the Collateral prior to a default under the Second Lien DIP Financing documentation or Cash Collateral order. To the extent the Liens securing the Second Lien Obligations are subordinated to or *pari passu* with such Second Lien DIP Financing which meets the requirements of clause (a) and (b) above, the Third Lien Collateral Agent will subordinate its Liens in the Collateral to the Liens securing such Second Lien DIP Financing (and all Obligations relating thereto) and (unless the Second Lien Secured Parties have provided the Second Lien DIP Financing) will not request adequate protection or any other relief in connection therewith (except as expressly agreed by the Second Lien Collateral Agent or to the extent permitted by Section 6.3).

(b) If the Company or any other Obligor shall be subject to any Insolvency or Liquidation Proceeding and, prior to the Discharge of Second Lien Obligations, the Second Lien Collateral Agent (acting at the direction of the Required Second Lien Holders) elects not to provide Second Lien DIP Financing, and the Required Third Lien Lenders shall desire to provide to provide the Company or any other Obligor with financing under Section 364 of the Bankruptcy Code or any similar Bankruptcy Law ("***Third Lien DIP Financing***"), then Second Lien Collateral Agent (on behalf of itself and the Second Lien Secured Parties), the Second Lien Indenture Trustee (on behalf of itself and the Second Lien Noteholders), each Second Lien Commodity Hedge Counterparty and each other Second Lien Secured Party agrees that it will raise no objection to such Third Lien DIP Financing; *provided* that (a) notwithstanding the foregoing, each Secured Debt Representative and each Secured Party that is not repaid by the Third Lien DIP Financing retains the right to object to any ancillary agreements or ancillary arrangements regarding the Third Lien DIP Financing that are materially prejudicial to their interests; (b) the Third Lien DIP Financing does not result in the voiding of any Lien on the Collateral securing the Second Lien Obligations; (c) all Liens on Collateral securing such Third Lien DIP Financing shall be subordinate to the Liens on the Collateral securing the Second Lien Obligations on the same terms as established herein; (d) the aggregate amount of the Third Lien DIP Financing, shall not exceed $10 million (unless such Third Lien DIP Financing repays in full the Second Lien Obligations or Third Lien Obligations, in which case the amount of the

Third Lien DIP Financing may increase by a like amount); (e) the Third Lien DIP Financing does not compel the Company or any other Obligor to seek confirmation of a specific plan of reorganization for which all or substantially all of the material terms are set forth in the Third Lien DIP Financing documentation or a related document and (f) the Third Lien DIP Financing document does not expressly require the liquidation of the Collateral prior to a default under the Third Lien DIP Financing documentation. For the avoidance of doubt, nothing in this Agreement shall prohibit or restrict the Required Third Lien Lenders from providing financing under Section 364 of the Bankruptcy Code or any similar Bankruptcy Law to the Company, any other Obligor or any other Person who is not an Obligor to the extent that the obligations under such financing are secured solely by Liens on Exclusive Third Lien Collateral, which Liens may be first in priority.

6.2 Relief from the Automatic Stay. Until the Discharge of Second Lien Obligations has occurred, the Third Lien Collateral Agent (on behalf of itself and each other Third Lien Secured Party), the Third Lien Administrative Agent (on behalf of itself and each Third Lien Lender) and each other Third Lien Secured Party agree that none of them shall seek (or support any other Person seeking) relief from the automatic stay or any other stay in any Insolvency or Liquidation Proceeding in respect of the Collateral, without the prior written consent of the Second Lien Collateral Agent, unless a motion for adequate protection permitted under Section 6.3 has been denied by the Bankruptcy Court.

6.3 Adequate Protection. (a) The Third Lien Collateral Agent (on behalf of itself and the Third Lien Secured Parties), the Third Lien Administrative Agent (on behalf of itself and each Third Lien Lender) and each other Third Lien Secured Party agree that none of them shall contest (or support any other Person contesting):

(i) any request by the Second Lien Collateral Agent or the Second Lien Secured Parties for adequate protection; or

(ii) any objection by the Second Lien Collateral Agent or the Second Lien Secured Parties to any motion, relief, action or proceeding based on the Second Lien Collateral Agent or the Second Lien Secured Parties claiming a lack of adequate protection.

(b) Notwithstanding the foregoing provision in this Section 6.3, in any Insolvency or Liquidation Proceeding:

(i) if the Second Lien Secured Parties (or any subset thereof) are granted adequate protection in the form of additional collateral in connection with any use of Cash Collateral or Second Lien DIP Financing, then the Third Lien Collateral Agent (on behalf of itself or any of the Third Lien Secured Parties) may seek or request adequate protection in the form of a Lien on such additional collateral, which Lien will be subordinated to the Liens securing the Second Lien Obligations and such Cash Collateral use or Second Lien DIP Financing (and all Obligations relating thereto) on the same basis as the other Liens securing the Third Lien Obligations are so subordinated to the Second Lien Obligations under this Agreement; and

(ii) in the event the Third Lien Collateral Agent (on behalf of itself or any of the Third Lien Secured Parties) seeks or requests adequate protection in respect of the Third Lien Obligations and such adequate protection is granted in the form of additional collateral (excluding, for the avoidance of doubt, any Exclusive Third Lien Collateral), then the Third Lien Collateral Agent (on behalf of itself or any of the Third Lien Secured Parties) agrees that the Second Lien Collateral Agent shall also be granted a second priority Lien on such additional collateral (excluding, for the avoidance of doubt, any Exclusive Third Lien Collateral) as security for the Second Lien Obligations and for any Cash Collateral use or Second Lien DIP Financing provided by the Second Lien Secured Parties and that any Lien on such additional collateral securing the Third Lien Obligations shall be subordinated to the Lien on such collateral securing the Second Lien Obligations and any such Second Lien DIP Financing provided by the Second Lien Secured Parties (and all Obligations relating thereto) and to any other Liens granted to the Second Lien Secured Parties as adequate protection on the same basis as the other Liens securing the Third Lien Obligations are so subordinated to such Second Lien Obligations under this Agreement. Except as otherwise expressly set forth in Section 6.1 or in connection with the exercise of remedies with respect to the Collateral, nothing herein shall limit the rights of the Third Lien Collateral Agent or the Third Lien Secured Parties from seeking adequate protection with respect to their rights in the Collateral in any Insolvency or Liquidation Proceeding (including adequate protection in the form of a cash payment, periodic cash payments, cash payments of interest or otherwise).

6.4 No Waiver. Subject to Sections 3.1(a), 3.1(d) and 3.2, nothing contained herein shall prohibit or in any way limit the Second Lien Collateral Agent or any other Second Lien Secured Party from objecting in any Insolvency or Liquidation Proceeding or otherwise to any action taken by the Third Lien Collateral Agent, any of the Third Lien Secured Parties, including the seeking by the Third Lien Collateral Agent or the Third Lien Secured Parties of adequate protection or the asserting by the Third Lien Collateral Agent or any other Third Lien Secured Party of any of its rights and remedies under the Third Lien Documents or otherwise.

6.5 Avoidance Issues. If any Second Lien Secured Party is required in any Insolvency or Liquidation Proceeding or otherwise to turn over or otherwise pay to the estate of the Company or any other Obligor any amount paid in respect of the Second Lien Obligations (a "***Second Lien Recovery***"), then such Second Lien Secured Party shall be entitled to a reinstatement of Second Lien Obligations with respect to all such recovered amounts. In such event (a) the Discharge of Second Lien Obligations shall be deemed not to have occurred and (b) if this Agreement shall have been terminated prior to such Second Lien Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto from such date of reinstatement. To the extent that such recovered amount had previously reduced the "*Eligible Hedge Voting Amount*" of any Second Lien Commodity Hedge Counterparty, then upon reinstatement pursuant to this Section 6.5, such amount shall be added back to such Second Lien Secured Party's Eligible Hedge Voting Amount.

6.6 Reorganization Securities. If, in any Insolvency or Liquidation Proceeding, debt obligations of the reorganized debtor secured by Liens upon any Property of the reorganized

debtor are distributed pursuant to a plan of reorganization or similar dispositive restructuring plan, on account of the Second Lien Obligations and/or the Third Lien Obligations, then, to the extent the debt obligations distributed on account of the Second Lien Obligations and Third Lien Obligations are secured by Liens upon the same property, the provisions of this Agreement will survive the distribution of such debt obligations pursuant to such plan and will apply with like effect to the Liens securing such debt obligations; *provided* that, notwithstanding the foregoing, this provision shall not apply to the Liens on Exclusive Third Lien Collateral securing such debt obligations.

6.7 Post-Petition Interest. (a) None of the Third Lien Collateral Agent, the Third Lien Administrative Agent or any other Third Lien Secured Party shall oppose or seek to challenge any claim by the Second Lien Collateral Agent, the Second Lien Indenture Trustee or any other Second Lien Secured Party, for allowance in any Insolvency or Liquidation Proceeding of Second Lien Obligations consisting of post-petition interest, fees or expenses to the extent of the value of the Second Lien without regard to the existence of the Third Lien on the Collateral.

(b) None of the Second Lien Collateral Agent, the Second Lien Indenture Trustee or any other Second Lien Secured Party shall oppose or seek to challenge any claim by the Third Lien Collateral Agent, the Third Lien Administrative Agent or any other Third Lien Secured Party for allowance in any Insolvency or Liquidation Proceeding of Third Lien Obligations consisting of post-petition interest, fees or expenses to the extent of the value of the Third Lien on the Collateral (after taking into account the Second Lien Collateral).

6.8 Waiver. Each of the Third Lien Collateral Agent (on behalf of itself and the other Third Lien Secured Parties), the Third Lien Administrative Agent (on behalf of itself and each Third Lien Lender) and each other Third Lien Secured Party waives any claim it may hereafter have against any Second Lien Secured Party, arising out of the election of any Second Lien Secured Party of the application of Section 1111(b)(2) of the Bankruptcy Code, and/or out of any cash collateral or financing arrangement or out of any grant of a security interest in connection with the Collateral in any Insolvency or Liquidation Proceeding.

SECTION 7. Collateral Agents.

7.1 Appointment. (a) U.S. Bank hereby continues to be appointed as the Second Lien Collateral Agent hereunder and under the other Second Lien Documents, and each of the Second Lien Indenture Trustee (for itself and on behalf of each Second Lien Noteholder) and each Second Lien Commodity Hedge Counterparty hereby makes and confirms such appointment, and authorizes U.S. Bank to act as Second Lien Collateral Agent in accordance with the terms hereof and the other Second Lien Documents. The Second Lien Collateral Agent hereby agrees to act in its capacity as such upon the express conditions contained herein and the other Second Lien Documents, as applicable. In performing its functions and duties hereunder, the Second Lien Collateral Agent shall act solely as an agent of the Second Lien Secured Parties and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for any Obligor or any of its Subsidiaries. Each of the Second Lien Indenture Trustee (for itself and on behalf of each Second Lien Noteholder) and each Second Lien Commodity Hedge Counterparty irrevocably authorizes the Second Lien Collateral Agent

to take such action on their behalf and to exercise such powers, rights and remedies hereunder and under the other Second Lien Documents as are specifically delegated or granted to the Second Lien Collateral Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. The Second Lien Collateral Agent shall have only those duties and responsibilities that are expressly specified herein and the other Second Lien Documents to which it is a party. The Second Lien Collateral Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees and such agents or employees shall have each and every power, right and remedy expressed or intended by this Agreement or any of the other Second Lien Documents to be exercised by or vested in or conveyed to the Second Lien Collateral Agent. The Second Lien Collateral Agent shall not have, by reason hereof or any of the other Financing Documents, a fiduciary relationship in respect of any Secured Party, and nothing herein or any of the other Financing Documents, expressed or implied, is intended to or shall be so construed as to impose upon the Second Lien Collateral Agent any obligations in respect hereof or any of the other Financing Documents except as expressly set forth herein or therein. In the event that any action taken under the First Lien Intercreditor Agreement, if any, requires the vote of any Second Lien Commodity Hedge Counterparty, the calculation of the voting interests of any such Second Lien Commodity Hedge Counterparty shall be calculated in the same manner as set forth in Section 9.4 hereof.

(b) Wells Fargo hereby continues to be appointed as the Third Lien Collateral Agent hereunder and under the other Third Lien Documents and each of the Third Lien Administrative Agent (for itself and on behalf of each Third Lien Lender) and each other Third Lien Secured Party hereby makes and confirms such appointment, and authorizes Wells Fargo to act as Third Lien Collateral Agent in accordance with the terms hereof and the other Third Lien Documents. The Third Lien Collateral Agent hereby agrees to act in its capacity as such upon the express conditions contained herein and the other Third Lien Documents, as applicable. In performing its functions and duties hereunder, the Third Lien Collateral Agent shall act solely as an agent of the Third Lien Secured Parties and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for any Obligor or any of its Subsidiaries. Each of the Third Lien Administrative Agent (for itself and on behalf of each Third Lien Lender) and each other Third Lien Secured Party irrevocably authorizes the Third Lien Collateral Agent to take such action on their behalf and to exercise such powers, rights and remedies hereunder and under the other Third Lien Documents as are specifically delegated or granted to the Third Lien Collateral Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. The Third Lien Collateral Agent shall have only those duties and responsibilities that are expressly specified herein and the other Third Lien Documents to which it is a party. The Third Lien Collateral Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. The Third Lien Collateral Agent shall not have, by reason hereof or any of the other Financing Documents, a fiduciary relationship in respect of any Secured Party, and nothing herein or any of the other Financing Documents, expressed or implied, is intended to or shall be so construed as to impose upon the Third Lien Collateral Agent any obligations in respect hereof or any of the other Financing Documents except as expressly set forth herein or therein.

(c) The provisions of this Section 7 are solely for the benefit of the Second Lien Collateral Agent, the Third Lien Collateral Agent, the Second Lien Secured Parties and the Third Lien Secured Parties and no Obligor shall have any rights as a third party beneficiary of any of the provisions hereof.

7.2 Delegation of Duties. (a) Each Collateral Agent may execute any of its duties under this Agreement and the Second Lien Documents and the Third Lien Documents, as applicable (including for purposes of holding or enforcing any Lien on the Collateral or any portion thereof granted under the Collateral Documents or of exercising any rights or remedies thereunder), by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts of its choice concerning all matters pertaining to such duties. No Collateral Agent shall be responsible for the negligence or misconduct of any agent, employee or attorney-in-fact selected by it with reasonable care.

(b) Each Collateral Agent may also from time to time, when such Collateral Agent deems it to be necessary or desirable, appoint one or more trustees, co-trustees, collateral co-agents, collateral subagents or attorneys-in-fact (each, a "***Supplemental Collateral Agent***") with respect to all or any part of the Collateral; *provided* that, no such Supplemental Collateral Agent shall be authorized to take any action with respect to any Collateral unless and except to the extent expressly authorized in writing by such Collateral Agent. Should any instrument in writing from the Company or any other Obligor be required by any Supplemental Collateral Agent so appointed by any Collateral Agent to more fully or certainly vest in and confirm to such Supplemental Collateral Agent such rights, powers, privileges and duties, the Company shall, or shall cause such Obligor to, execute, acknowledge and deliver any and all such instruments promptly upon request by such Collateral Agent. If any Supplemental Collateral Agent, or successor thereto, shall die, become incapable of acting, resign or be removed, all rights, powers, privileges and duties of such Supplemental Collateral Agent, to the extent permitted by law, shall automatically vest in and be exercised by the Applicable Collateral Agent until the appointment of a new Supplemental Collateral Agent. No Agent shall be responsible for the negligence or misconduct of any Supplemental Collateral Agent that it selects in accordance with the foregoing provisions of this Section 7.2(b).

(c) Any notice, request or other writing given to any Collateral Agent shall be deemed to have been given to each Supplemental Collateral Agent. Every instrument appointing any Supplemental Collateral Agent shall refer to this Agreement and the conditions of this Section 7.2.

(d) Any Supplemental Collateral Agent may at any time appoint any Collateral Agent as its agent or attorney-in-fact with full power and authority, to the extent not prohibited by law, to do any lawful act under or in respect of this Agreement on its behalf or in its name.

7.3 Exculpatory Provisions. (a) Neither any Collateral Agent nor any of its officers, partners, directors, employees or agents shall be liable for any action taken or omitted by any Collateral Agent under or in connection with any of the Financing Documents except to the extent caused by such Collateral Agent's gross negligence or willful misconduct as is found by a

final and nonappealable decision of a court of competent jurisdiction. Each Collateral Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Financing Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until such Collateral Agent shall have received indemnity satisfactory to it (in the case of the Second Lien Collateral Agent, from the Second Lien Secured Parties, and, in the case of the Third Lien Collateral Agent, from the Third Lien Secured Parties) and instructions in respect thereof from, prior to the Discharge of the Second Lien Obligations, the Required Second Lien Secured Parties, and, after the Discharge of the Second Lien Obligations but prior to the Discharge of the Third Lien Obligations, the Required Third Lien Lenders and, upon receipt of such instructions from the Required Second Lien Secured Parties or the Required Third Lien Lenders, as applicable, such Collateral Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions. Without prejudice to the generality of the foregoing, (i) each Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for an Obligor and its Subsidiaries), accountants, experts and other professional advisors selected by it; and (ii) no Secured Party, Obligor or any other Person shall have any right of action whatsoever against any Collateral Agent as a result of such Collateral Agent acting or (where so instructed) refraining from acting hereunder or any of the other Financing Documents in accordance with the instructions of the Required Second Lien Secured Parties. Required Second Lien Holders or the Required Third Lien Lenders, as applicable. Each of the parties hereto acknowledges and agrees that (A) each Collateral Agent is acting as collateral agent for a separate Lien class and, as provided for herein, may be required to take actions on behalf of that Lien class only and is not acting as agent for any other Secured Party and (B) no Collateral Agent shall have any liability to any Person (including any Secured Party) as a result of or arising from an action which it takes hereunder which benefits one class of Lien-holders but not all Secured Parties, unless (and without limiting any other right or protection of the Collateral Agent hereunder) such action violates the terms of this Agreement and is found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Collateral Agent.

(b) Beyond the exercise of reasonable care in the custody thereof and as otherwise specifically set forth herein, no Collateral Agent shall have any duty as to any of the Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto and no Collateral Agent shall be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any security interest in the Collateral. No Collateral Agent shall be liable or responsible for any loss or diminution in the value of any of the Collateral, by reason of the act or omission of any carrier, forwarding agency or other agent or bailee selected by such Collateral Agent in good faith.

(c) No Collateral Agent shall be responsible for the existence, genuineness or value of any of the Collateral or for the validity or sufficiency of the Collateral or any agreement or assignment contained therein, for the validity of the title of any Obligor to the Collateral, for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral.

(d) In the event that any Collateral Agent is required to acquire title to any Property for any reason, or take any managerial action of any kind in regard thereto, in order to carry out any obligation for the benefit of another, which in such Collateral Agent's sole discretion may cause such Collateral Agent to be considered an "*owner or operator*" under the provisions of CERCLA, or otherwise cause the Collateral Agent to incur liability under CERCLA or any other federal, state or local law, such Collateral Agent reserves the right, instead of taking such action, to either resign as Collateral Agent or arrange for the transfer of the title or control of the asset to a court-appointed receiver. No Collateral Agent shall be liable to the Secured Parties, the Obligors or any other Person for any Environmental Actions under any federal, state or local law, rule or regulation by reason of such Collateral Agent's actions and conduct as authorized, empowered and directed hereunder or relating to the discharge, release or threatened release of Hazardous Materials into the environment. If at any time it is necessary or advisable for any part of the Properties of the Obligors to be possessed, owned, operated or managed by any Person (including any Collateral Agent) other than an Obligor or the Secured Parties, (i) prior to the Discharge of Second Lien Obligations, the Required Second Lien Secured Parties shall direct the Second Lien Collateral Agent to appoint an appropriately qualified Person (excluding any Collateral Agent) who they shall designate to possess, own, operate or manage, as the case may be, such part of the applicable business and (ii) after the Discharge of Second Lien Obligations, the Required Third Lien Lenders shall direct the Third Lien Collateral Agent to appoint an appropriately qualified Person (excluding any Collateral Agent) who they shall designate to possess, own, operate or manage, as the case may be, such part of the applicable business.

(e) Each Collateral Agent may at any time solicit written confirmatory instructions from the applicable Secured Parties (in the case of the Second Lien Collateral Agent, the Required Second Lien Secured Parties or Required Second Lien Holders, as applicable, and, in the case of the Third Lien Collateral Agent, the Required Third Lien Lenders), one or more officers' certificates from the Company and the Subsidiary Guarantors or an order of a court of competent jurisdiction, as to any action that it may be requested or required to take, or that it may propose to take, in the performance of any of its obligations under this Agreement or the other Financing Documents.

(f) No written direction given to any Collateral Agent by the applicable Secured Parties hereunder or under any other Financing Document that in the sole judgment of such Collateral Agent imposes, purports to impose or might reasonably be expected to impose upon such Collateral Agent any obligation or liability not set forth in, arising under or incidental to the obligations and liabilities set forth in this Agreement and the other Financing Documents will be binding upon such Collateral Agent unless such Collateral Agent elects, at its sole option, to accept such direction; *provided* that, absent such circumstances, but subject to the requirement that such Collateral Agent has received indemnity satisfactory to it and such written direction is

given by the applicable Secured Parties in accordance with the Second Lien Documents and Third Lien Documents, as applicable, the Second Lien Collateral Agent shall take all action it is directed to take hereunder by the Required Second Lien Secured Parties (or, if expressly provided herein, such other percentage of the Second Lien Secured Parties, as applicable), and the Third Lien Collateral Agent shall take all action it is directed to take hereunder by the Required Third Lien Lender (or, if expressly provided herein, such other percentage of the Third Lien Secured Parties, as applicable).

(g) In no event shall any Collateral Agent be liable, directly or indirectly, for any special, indirect or consequential damages, even if such Collateral Agent has been advised of the possibility of such damages and regardless of the form of action. Neither Collateral Agent shall be responsible for delays or failures in performance resulting from acts beyond its control. Such acts shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, computer viruses, power failures, earthquakes, terrorist attacks or other disasters.

(h) If at any time a Collateral Agent is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Collateral (including orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of the Collateral), such Collateral Agent (a) shall furnish to the Obligor prompt written notice thereof and (b) is authorized to comply therewith in any manner as it or its legal counsel of its own choosing deems appropriate; and if such Collateral Agent complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, such Collateral Agent shall not be liable to any of the parties hereto or to any other person or entity even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

(i) Nothing herein shall be deemed to impose liability (i) on the Second Lien Collateral Agent for the acts or omissions of the Third Lien Collateral Agent or (ii) on the Third Lien Collateral Agent for the acts or omissions of the Second Lien Collateral Agent.

7.4 Notice of Event of Default. No Collateral Agent shall be deemed to have actual knowledge or notice of the occurrence of any Event of Default unless such Collateral Agent has received written notice from an authorized officer of a Secured Party or an Obligor referring to this Agreement and the applicable document or documents governing such Event of Default, describing such Event of Default and stating that such notice is a "***Notice of Event of Default***." In the event that such Collateral Agent receives such a written notice, such Collateral Agent shall give notice thereof to the other Secured Parties.

7.5 Non-Reliance on Collateral Agents and Other Secured Parties. (a) Each of the Second Lien Indenture Trustee (on behalf of each Second Lien Noteholder), each Second Lien Commodity Hedge Counterparty, the Third Lien Administrative Agent (on behalf of each Third Lien Lender) and each other Third Lien Secured Party: (i) expressly acknowledges that no Collateral Agent or any of its officers, directors, employees, agents, attorneys-in-fact or affiliates have made any representations or warranties to it and that no act by any Collateral Agent

hereinafter taken, including any review of the affairs of the Company or any of its Affiliates, shall be deemed to constitute any representation or warranty by such Collateral Agent to any such Person; (ii) represents and warrants to each Collateral Agent that it has made its own independent investigation of the financial condition and affairs of each Obligor and its Subsidiaries in connection with its decision to extend credit to the Company and that it has made and shall continue to make its own appraisal of the creditworthiness of each Obligor and its Subsidiaries.

(b) No Collateral Agent shall be responsible to any Secured Party for the execution, effectiveness, genuineness, validity, enforceability, collectibility or sufficiency hereof or any other Financing Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by any Collateral Agent to Secured Parties or by or on behalf of any Obligor, to any Secured Party or any Collateral Agent in connection with the Financing Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Obligor or any other Person liable for the payment of any Obligations, nor shall any Collateral Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Financing Documents or as to the use of the proceeds of the Loans or as to the existence or possible existence of any Event of Default or to make any disclosures with respect to the foregoing.

(c) Each Collateral Agent will be entitled to require that all agreements, certificates, opinions, instruments and other documents at any time submitted to it, including those expressly provided for in this Agreement, be delivered to it in a form and with substantive provisions reasonably satisfactory to it.

7.6 Collateral Agents in Individual Capacity. The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, any Collateral Agent in its individual capacity as a Secured Party hereunder. With respect to Obligations made or renewed by it or any of its Affiliates, the Second Lien Collateral Agent, the Third Lien Collateral Agent and their respective Affiliates shall have the same rights and powers under this Agreement and the other Second Lien Documents and Third Lien Documents as any Second Lien Secured Party or Third Lien Secured Party, as applicable, and may exercise the same as though the Second Lien Collateral Agent or Third Lien Collateral Agent, as applicable, were not a Collateral Agent, and the terms "*Secured Party*," "*Second Lien Secured Party*," or "*Third Lien Secured Party*" shall (to the extent applicable), unless the context clearly otherwise indicates, include the Second Lien Collateral Agent and the Third Lien Collateral Agent in their respective individual capacity.

7.7 Successor Collateral Agents. U.S. Bank and Wells Fargo (or, in each case, its successor pursuant to the terms of this Section 7.7) may resign as a Second Lien or Third Lien Collateral Agent, as the case may be, upon 30 days' notice to each other Secured Party party hereto and the Company. If U.S. Bank (or its successor) should resign as Second Lien Collateral Agent, the Second Lien Collateral Agent shall appoint a successor agent at the direction of the Required Second Lien Secured Parties in consultation with the Company, whereupon such

successor agent shall succeed to the rights, powers and duties of the Second Lien Collateral Agent, and the term "*Second Lien Collateral Agent*" shall mean such successor agent effective upon such appointment and approval, and U.S. Bank's (or its successor's) rights, powers and duties as Second Lien Collateral Agent shall be terminated, without any other or further act or deed on the part of any of the parties to this Agreement or any Secured Party. If Wells Fargo (or its successor) should resign as Third Lien Collateral Agent, the Third Lien Collateral Agent shall appoint a successor agent at the direction of the Required Third Lien Lenders in consultation with the Company, whereupon such successor agent shall succeed to the rights, powers and duties of the Third Lien Collateral Agent, and the term "*Third Lien Collateral Agent*" shall mean such successor agent effective upon such appointment and (except in the case of any resignation by the Third Lien Collateral Agent pursuant to the terms of the Third Lien Credit Agreement) approval and Wells Fargo's (or its successor's) rights, powers and duties as Third Lien Collateral Agent shall be terminated without any other or further act or deed on the part of Wells Fargo or any of the parties to this Agreement or any Secured Party. If no successor agent has accepted appointment as Second Lien Collateral Agent or Third Lien Collateral Agent, as applicable, by the date that is 30 days following U.S. Bank's or Wells Fargo's (or in each case, its successor's), as applicable, notice of resignation, U.S. Bank's or Wells Fargo's (or in each case, its successor's), as applicable, resignation shall nevertheless thereupon become effective and (i) in the case of its resignation as Second Lien Collateral Agent, the Second Lien Secured Parties shall assume and perform all of the duties of the Second Lien Collateral Agent hereunder until such time, if any, as the Required Second Lien Secured Parties appoint a successor agent as contemplated above and (ii) in the case of its resignation as Third Lien Collateral Agent, the Third Lien Secured Parties shall assume and perform all of the duties of the Third Lien Collateral Agent hereunder until such time, if any, as the Required Third Lien Lenders appoint a successor agent as contemplated above. After any Person's resignation as a Collateral Agent, the provisions of this Section 7 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was a Collateral Agent under this Agreement and the other Financing Documents.

7.8 Security Documents. (a) Each of the Second Lien Indenture Trustee (for itself and on behalf of each Second Lien Noteholder) and each Second Lien Commodity Hedge Counterparty hereby further authorizes the Second Lien Collateral Agent on behalf of and for the benefit of the Second Lien Secured Parties, to be the agent for and representative of the Second Lien Secured Parties with respect to the Second Lien Guaranties, the Second Lien Collateral and the Second Lien Collateral Documents. Subject to Section 5.1, prior to the Discharge of the Second Lien Obligations, without further written consent or authorization from the Second Lien Secured Parties, the Second Lien Collateral Agent may execute any documents or instruments necessary to (i) in connection with a sale or disposition of assets permitted by the Second Lien Documents, release any Lien encumbering any item of Second Lien Collateral that is the subject of such sale or other disposition of assets or to which the Required Second Lien Secured Parties have otherwise consented or (ii) release any Person from a Second Lien Guaranty or with respect to which the Required Second Lien Secured Parties (or, if different, the applicable percentage of Second Lien Noteholders required under the Second Lien Indenture) have otherwise consented. Each of the Third Lien Administrative Agent (for itself and on behalf of each Third Lien Lender) and each other Third Lien Secured Party hereby further authorizes the Third Lien Collateral Agent on behalf of and for the benefit of the Third Lien Secured Parties, to be the agent for and

representative of the Third Lien Secured Parties with respect to the Third Lien Guaranties, the Third Lien Collateral and the Third Lien Collateral Documents. Subject to Section 5.1, after the Discharge of the Second Lien Obligations but prior to the Discharge of the Third Lien Obligations, without further written consent or authorization from the Third Lien Secured Parties, the Third Lien Collateral Agent may execute any documents or instruments necessary to (A) in connection with a sale or disposition of assets permitted by the Third Lien Documents, release any Lien encumbering any item of Third Lien Collateral that is the subject of such sale or other disposition of assets or to which the Required Third Lien Lenders have otherwise consented or (B) release any Person from a Third Lien Guaranty or with respect to which the Required Third Lien Lenders (or, if different, the applicable percentage of Third Lien Lenders required under the Third Lien Credit Agreement) have otherwise consented.

(b) Right to Realize on Collateral and Enforce Guaranty. Anything contained in any of the Financing Documents to the contrary notwithstanding, the Company, each Collateral Agent and each Secured Party hereby agrees that (i) no Secured Party (other than the Collateral Agents) shall have any right individually to realize upon any of the Collateral or to enforce any Second Lien Guaranty or Third Lien Guaranty, it being understood and agreed that (A) all powers, rights and remedies under the Second Lien Collateral Documents may be exercised solely by the Second Lien Collateral Agent and (B) all powers, rights and remedies under the Third Lien Collateral Documents may be exercised solely by the Third Lien Collateral Agent, and (ii) in the event of a foreclosure by a Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition, any Collateral Agent or any Secured Party may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and the Second Lien Collateral Agent, as agent for and representative of the Second Lien Secured Parties (but not any Second Lien Secured Party or Second Lien Secured Parties in its or their respective individual capacities unless Required Second Lien Secured Parties shall otherwise agree in writing) and the Third Lien Collateral Agent, as agent for and representative of the Third Lien Secured Parties (but not any Third Lien Secured Party or Third Lien Secured Parties in its or their respective individual capacities unless Required Third Lien Lenders shall otherwise agree in writing), as applicable, 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 Obligations as a credit on account of the purchase price for any collateral payable by the Collateral Agent at such sale or other disposition.

7.9 Indemnification. (a) Each Second Lien Noteholder (through the Second Lien Indenture Trustee) and each Second Lien Commodity Hedge Counterparty severally agrees to indemnify the Second Lien Collateral Agent (to the extent not promptly reimbursed by any Obligor) for and against such Second Lien Secured Party's ratable share of the Second Lien Obligations (calculated in the case of any Second Lien Commodity Hedge Counterparty on the basis of its then applicable Second Lien Secured Hedge Amount) of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements and including the costs incurred by the Second Lien Collateral Agent in a successful defense of any claims brought by a party hereto or a Second Lien Secured Party) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against such Second Lien Collateral Agent in exercising its powers, rights or

remedies or performing its duties hereunder or under any of the Second Lien Documents or otherwise in its capacity as Second Lien Collateral Agent in any way relating to or arising out of the Second Lien Documents (collectively, the "***Second Lien Indemnified Costs***"); *provided* that, no Second Lien Secured Party shall be liable to the Second Lien Collateral Agent for any portion of any such Second Lien Indemnified Costs resulting from the Second Lien Collateral Agent's gross negligence or willful misconduct as is found by a final and nonappealable judgment of a court of competent jurisdiction. If any indemnity furnished to the Second Lien Collateral Agent for any purpose shall, in the opinion of the Second Lien Collateral Agent, be insufficient or become impaired, the Second Lien Collateral Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; *provided* that, in no event shall this sentence require any Second Lien Secured Party to indemnify the Second Lien Collateral Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Second Lien Secured Party's pro rata share thereof; and *provided further* that, this sentence shall not be deemed to require any Second Lien Secured Party to indemnify the Second Lien Collateral Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence. No Collateral Agent will be required to advance or expend any funds or otherwise incur any financial liability in the performance of its duties or the exercise of its powers or rights hereunder or under any other Financing Document unless it has been provided with security or indemnity reasonably satisfactory to it against any and all liability or expense which may be incurred by it by reason of taking or continuing to take such action.

(b) Each Third Lien Lender (through the Third Lien Administrative Agent) and each other Third Lien Secured Party (other than the Third Lien Administrative Agent and Third Lien Collateral Agent in their capacities as such) severally agrees to indemnify the Third Lien Collateral Agent (to the extent not promptly reimbursed by any Obligor) from and against such Third Lien Secured Party's ratable share (calculated without inclusion of the Third Lien Administrative Agent and Third Lien Collateral Agent in their capacities as such) of the Third Lien Obligations of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements and including the costs incurred by the Third Lien Collateral Agent in a successful defense of any claims brought by a party hereto or a Third Lien Lender) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the Third Lien Collateral Agent in exercising its powers, rights or remedies or performing its duties hereunder or under any of the Third Lien Documents or otherwise in its capacity as such Third Lien Collateral Agent in any way relating to or arising out of the Third Lien Documents (collectively, the "***Third Lien Indemnified Costs***"); *provided* that, no Third Lien Secured Party shall be liable to the Third Lien Collateral Agent for any portion of any such Third Lien Indemnified Costs resulting from the Third Lien Collateral Agent's gross negligence or willful misconduct as is found by a final and nonappealable judgment of a court of competent jurisdiction. If any indemnity furnished to the Third Lien Collateral Agent for any purpose shall, in the opinion of the Third Lien Collateral Agent, be insufficient or become impaired, the Third Lien Collateral Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; *provided* that, in no event shall this sentence require any Third

Lien Secured Party to indemnify the Third Lien Collateral Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Third Lien Secured Party's pro rata share thereof; and *provided further* that, this sentence shall not be deemed to require any Third Lien Secured Party to indemnify the Third Lien Collateral Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence.

(c) The agreements in this Section 7.9 shall survive termination of this Agreement and the resignation or removal of any Collateral Agent.

7.10 No Risk of Funds. None of the provisions of this Agreement or the other Financing Documents shall be construed to require any Collateral Agent in its individual capacity to expend or risk its own funds or otherwise to incur any personal financial liability in the performance of any of its duties hereunder or thereunder.

SECTION 8. Reliance; Waivers; Etc.

8.1 Reliance. Other than any reliance on the terms of this Agreement, the Second Lien Collateral Agent, the Second Lien Indenture Trustee (on behalf of itself and each Second Lien Noteholder) and each other Second Lien Secured Party acknowledges that it has, independently and without reliance on the Third Lien Collateral Agent, the Third Lien Administrative Agent or any other Third Lien Secured Party and based on documents and information deemed by it appropriate, made its own credit analysis and decision to enter into such Second Lien Documents and be bound by the terms of this Agreement and it will continue to make its own credit decision in taking or not taking any action under the Second Lien Document or this Agreement. The Third Lien Administrative Agent (on behalf of itself and each Third Lien Lender), the Third Lien Collateral Agent (on behalf of itself and the other Third Lien Secured Parties) and each other Third Lien Secured Party acknowledges that it and each other Third Lien Secured Party has independently and without reliance on the Second Lien Collateral Agent, the Second Lien Indenture Trustee or any other Second Lien Secured Party, and based on documents and information deemed by it appropriate, made its own credit analysis and decision to enter into each of the Third Lien Documents and be bound by the terms of this Agreement and it will continue to make its own credit decision in taking or not taking any action under the Third Lien Documents or this Agreement.

8.2 No Warranties or Liability. (a) The Second Lien Collateral Agent, the Second Lien Indenture Trustee (on behalf of itself and each Second Lien Noteholder), and each other Second Lien Secured Party acknowledges and agrees that none of the Third Lien Collateral Agent, the Third Lien Administrative Agent or any other Third Lien Secured Party has made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectibility or enforceability of any of the Third Lien Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon. Except as otherwise expressly provided herein, the Second Lien Secured Parties will be entitled to manage and supervise their respective extensions of credit under the Second Lien Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate.

(b) Except as otherwise provided herein, the Third Lien Collateral Agent (on behalf of the Third Lien Secured Parties), the Third Lien Administrative Agent (on behalf of itself and each Third Lien Lender) and each other Third Lien Secured Party acknowledges and agrees that none of the Second Lien Collateral Agent, the Second Lien Indenture Trustee, nor any other Second Lien Secured Party has made express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectibility or enforceability of any of the Second Lien Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon. Except as otherwise expressly provided herein, the Third Lien Secured Parties will be entitled to manage and supervise their respective loans and extensions of credit under the Third Lien Documents in accordance with law and as it may otherwise, in its sole discretion, deem appropriate.

(c) None of the Third Lien Collateral Agent, the Third Lien Administrative Agent or any other Third Lien Secured Party shall have any duty to the Second Lien Collateral Agent, the Second Lien Indenture Trustee or any other Second Lien Secured Party, and none of the Second Lien Collateral Agent, the Second Lien Indenture Trustee or any other Second Lien Secured Party shall have any duty to the Third Lien Collateral Agent, Third Lien Administrative Agent or any other Third Lien Secured Party, to act or refrain from acting in a manner which allows, or results in, the occurrence or continuance of an event of default or default under any agreements with the Company or any other Obligor (including the Second Lien Documents and the Third Lien Documents), regardless of any knowledge thereof which they may have or be charged with.

8.3 No Waiver of Lien Priorities. (a) No right of the Second Lien Secured Parties, the Second Lien Collateral Agent or any of them to enforce any provision of this Agreement or any Second Lien Document shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or any other Obligor or by any act or failure to act by any Second Lien Secured Party or the Second Lien Collateral Agent, or by any noncompliance by any Person with the terms, provisions and covenants of this Agreement, any Second Lien Document or any Third Lien Document, regardless of any knowledge thereof which the Second Lien Collateral Agent or any other Second Lien Secured Party, or any of them, may have or be otherwise charged with.

(b) Notwithstanding anything to the contrary in any of the Collateral Documents but subject to Section 5.3(b), none of the Collateral Documents shall be amended, modified or supplemented in any manner adverse to any of the Secured Parties (except as expressly contemplated hereby) or in any manner inconsistent with any of the provisions of this Agreement without the prior written consent of each Secured Debt Representative.

(c) Except as otherwise provided herein, each of the Third Lien Collateral Agent (on behalf of itself and the Third Lien Secured Parties), the Third Lien Administrative Agent (on behalf of itself and each Third Lien Lender) and each other Third Lien Secured Party agrees that none of the Second Lien Secured Parties shall have any liability to the Third Lien Collateral Agent, the Third Lien Administrative Agent or any other Third Lien Secured Party, and the Third Lien Collateral Agent (on behalf of itself and the other Third Lien Secured Parties), the Third Lien Administrative Agent (on behalf of itself and the Third Lien Lenders)

and each other Third Lien Secured Party hereby waives any claim against any Second Lien Secured Party, arising out of any and all actions which the Second Lien Secured Parties may take or permit or omit to take with respect to:

(i) the Second Lien Documents (other than this Agreement);

(ii) the collection of the Second Lien Obligations; or

(iii) the foreclosure upon, or sale, liquidation or other disposition sale of, or the failure to foreclose upon, or sell, liquidate or otherwise dispose of, the Second Lien Collateral.

The Third Lien Collateral Agent (on behalf of the Third Lien Secured Parties), the Third Lien Administrative Agent (on behalf of itself and the Third Lien Lenders), and each other Third Lien Secured Party agrees that, except as set forth in Section 5.11, none of the Second Lien Secured Parties have any duty to them in respect of the maintenance or preservation of the Collateral, the Second Lien Obligations or otherwise.

(d) Until the Discharge of Second Lien Obligations, the Third Lien Collateral Agent (on behalf of the Third Lien Secured Parties), the Third Lien Administrative Agent (on behalf of itself and the Third Lien Lenders) and each other Third Lien Secured Party agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert, or otherwise claim the benefit of, any marshalling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to the Collateral or any other similar rights a junior secured creditor may have under applicable law.

8.4 Obligations Unconditional. All rights, interests, agreements and obligations of each of the Second Lien Collateral Agent, the Second Lien Indenture Trustee, the other Second Lien Secured Parties, the Third Lien Collateral Agent, the Third Lien Administrative Agent and the other Third Lien Secured Parties, respectively, hereunder shall remain in full force and effect irrespective of:

(a) any lack of validity or enforceability of any Second Lien Documents or any Third Lien Documents;

(b) except as otherwise expressly set forth in this Agreement, any change in the time, manner or place of payment of, or in any other terms of, all or any of the Second Lien Obligations or Third Lien Obligations or any amendment or waiver or other modification, including any increase in the amount thereof, whether by course of conduct or otherwise, of the terms of any Second Lien Document or any Third Lien Document;

(c) except as otherwise expressly set forth in this Agreement, any exchange of any security interest in any Collateral or any other collateral, or any amendment, waiver or other modification, whether in writing or by course of conduct or otherwise, of all or any of the Second Lien Obligations or Third Lien Obligations or any guarantee thereof;

(d) the commencement of any Insolvency or Liquidation Proceeding in respect of the Company or any other Obligor; or

(e) any other circumstances which otherwise might constitute a defense available to, or a discharge of, the Company or any other Obligor in respect of the Second Lien Collateral Agent, the Second Lien Obligations, any Second Lien Secured Party, the Third Lien Collateral Agent, the Third Lien Obligations or any Third Lien Secured Party.

SECTION 9. Miscellaneous.

9.1 Conflicts. In the event of any conflict between the provisions of this Agreement and the provisions of any other Financing Document, the provisions of this Agreement shall govern and control. In the event there is any bona fide, good faith disagreement between the other parties to this Agreement or any of the other Financing Documents resulting in adverse claims being made in connection with Collateral held by any Collateral Agent and the terms of this Agreement or any of the other Financing Documents do not unambiguously mandate the action such Collateral Agent is to take or not to take in connection therewith under the circumstances then existing, or such Collateral Agent is in doubt as to what action it is required to take or not to take hereunder or under the other Financing Documents, it will be entitled to refrain from taking any action (and will incur no liability for doing so) until directed otherwise in writing by a request signed jointly by the parties hereto entitled to give such direction or by order of a court of competent jurisdiction.

9.2 Amendment and Restatement; Effectiveness; Continuing Nature of this Agreement; Severability. (a) The Original Subordinated Lien Intercreditor Agreement is hereby superseded in its entirety by this Agreement, which has been executed in renewal, amendment, restatement and modification of, but not in extinguishment of, the Original Subordinated Lien Intercreditor Agreement. From and after the date hereof, upon execution and delivery of this Agreement by the parties hereto, whenever referred to in any Financing Document, the term "***Original Subordinated Lien Intercreditor Agreement***" shall mean this Agreement. This is a continuing agreement of lien subordination and, subject to the other terms of this Agreement and the terms of any other Financing Document, the Second Lien Secured Parties may continue, at any time and without notice to any other Secured Party, to extend credit and other financial accommodations and lend monies to or for the benefit of the Company constituting Second Lien Obligations in reliance hereon.

(b) The Second Lien Collateral Agent, the Second Lien Indenture Trustee (on behalf of itself and each Second Lien Noteholder), and each other Second Lien Secured Party hereby waives any rights it may have under applicable law to revoke this Agreement or any of the provisions of this Agreement. The terms of this Agreement shall survive, and shall continue in full force and effect, in any Insolvency or Liquidation Proceeding.

(c) The Third Lien Collateral Agent (on behalf of the Third Lien Secured Parties), the Third Lien Administrative Agent (on behalf of itself and each Third Lien Lender), and each other Third Lien Secured Party hereby waives any rights it may have under applicable law to revoke this Agreement or any of the provisions of this Agreement. The terms of this

Agreement shall survive, and shall continue in full force and effect, in any Insolvency or Liquidation Proceeding.

(d) 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.

(e) This Agreement shall terminate and be of no further force and effect on (i) with respect to any rights and obligations of the Second Lien Secured Parties, the date of Discharge of the Second Lien Obligations, and (ii) otherwise, the date of Discharge of the Third Lien Obligations.

9.3 Amendments; Waivers. (a) Subject to Sections 5.10, 9.3(b) and 9.3(c), no amendment, modification or waiver of any of the provisions of this Agreement by any Agent or Secured Debt Representative shall be deemed to be made unless the same shall be in writing signed on behalf of each party hereto or its authorized agent 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) Notwithstanding Section 9.3(a), (i) neither the Company nor any other Obligor shall have any right to consent to or approve any amendment, modification or waiver of any provision of this Agreement except to the extent its rights are directly affected (which includes, but is not limited to any amendment to the Company's ability to cause additional obligations to constitute Second Lien Obligations or Third Lien Obligations as the Company may designate or any amendment, modification or waiver of Section 4.5, 5.1, 5.2, 5.3, 5.4, 5.8, 5.10, 6.1, 6.3, 9.1, 9.2, 9.3, 9.4, 9.8, 9.9, 9.19 or 9.20) or such amendment, modification or waiver, if adopted, would cause any Obligor to be in default under any of the Financing Documents and (ii) no Second Lien Commodity Hedge Counterparty shall have any right to consent to or approve any amendment, modification or waiver of Sections 5.2, 5.3(b), 5.4(a), 5.4(b), 5.4(c), or 5.4(d) and no failure to comply with such Sections shall constitute a default under or in respect of any Second Lien Secured Hedge Agreement; *provided* that, notwithstanding the foregoing, the consent of each affected Second Lien Commodity Hedge Counterparty shall be required to approve any amendment or modification of this Agreement which is materially adverse to its interests hereunder to the extent such amendment or modification would reasonably be expected to result in a breach of the terms of the applicable Second Lien Secured Hedge Agreement or which is materially adverse to its rights and interests under its applicable Second Lien Guaranty.

(c) Notwithstanding the other provisions of this Section 9.3, the Company, the Subsidiary Guarantors and the Collateral Agents may (but shall have no obligation to) amend or supplement this Agreement or the Collateral Documents without the consent of any other Secured Party: (i) to cure any ambiguity, defect or inconsistency; (ii) to make any change that

would provide any additional rights or benefits to the Secured Parties; or (iii) to make, complete or confirm any grant of Collateral permitted or required by this Agreement or any of the Collateral Documents or any release of any Collateral that is otherwise permitted under the terms of this Agreement and the Financing Documents. In executing any amendment without the consent of any other Secured Party, the Collateral Agents shall be entitled to rely upon a certification from the Company that such amendment is permitted under, and is being entered into in compliance with, this Section 9.3(c).

9.4 Voting. (a) Without limiting anything contained herein (including Sections 5.10, 9.3(b) and 9.3(c)) and other than ministerial and administrative acts contemplated by the Collateral Documents to which it is a party, the Second Lien Collateral Agent shall not take any other action (including the exercise of remedies, the amendment of Collateral Documents and the granting of waivers under such Collateral Documents), or grant its consent under any Collateral Documents, unless and to the extent directed to do so by the Required Second Lien Secured Parties. If the Second Lien Collateral Agent determines that discretion is needed in the taking of any action, it may refrain from taking such action until it has received satisfactory indemnity and such directions or instructions are received in accordance with the Second Lien Documents and shall have no liability to the Secured Parties for so refraining; *provided* that, the Second Lien Collateral Agent shall promptly notify the Second Lien Secured Parties in the event it requires such directions or instructions.

(b) Without limiting anything contained herein (including Sections 5.10, 9.3(b) and 9.3(c)) and other than ministerial and administrative acts contemplated by the Collateral Documents to which it is a party, the Third Lien Collateral Agent shall not take any other action (including the exercise of remedies, the amendment of Collateral Documents and the granting of waivers under such Collateral Documents), or grant its consent under any Collateral Documents, unless and to the extent directed to do so by the Required Third Lien Lenders. If the Third Lien Collateral Agent determines that discretion is needed in the taking of any action, it may refrain from taking such action until it has received satisfactory indemnity and such directions or instructions are received and shall have no liability to the Secured Parties for so refraining; *provided* that, the Third Lien Collateral Agent shall promptly notify the Third Lien Secured Parties in the event it requires such directions or instructions..

(c) In connection with any act or decision by the Required Second Lien Secured Parties, Required Second Lien Holders or Required Third Lien Lenders under this Agreement or any of the Collateral Documents, (i) the vote of each Second Lien Noteholder shall be calculated based on the amount of the Outstanding Amount owed to such Second Lien Noteholder at the time the applicable matter is presented for a vote, (ii) to the extent applicable, the vote of each Second Lien Commodity Hedge Counterparty shall be calculated based on the amount of the Eligible Hedge Voting Amount under the relevant Second Lien Secured Hedge Agreement at the time the applicable matter is presented for a vote and (iii) the vote of each Third Lien Lender at such time shall be calculated based on the amount of the Outstanding Amount owed to each Third Lien Lender at the time the applicable matter is presented for a vote. The votes of (a) the Second Lien Noteholders shall be aggregated and cast as a single block by the Second Lien Indenture Trustee and (b) the Third Lien Lenders shall be aggregated and cast as a single block by the Third Lien Administrative Agent.

9.5 Information Concerning Financial Condition of the Company and its Subsidiaries. The Second Lien Collateral Agent, the Second Lien Indenture Trustee, the other Second Lien Secured Parties, the Third Lien Collateral Agent, the Third Lien Administrative Agent, and the other Third Lien Secured Parties shall each be responsible for keeping themselves informed of (i) the financial condition of the Company and its Subsidiaries and all endorsers and/or guarantors of the Second Lien Obligations or the Third Lien Obligations and (ii) all other circumstances bearing upon the risk of nonpayment of the Second Lien Obligations or the Third Lien Obligations. No Agent or Secured Party shall have any duty to advise any other Agent or Secured Party of information known to it or them regarding such condition or any such circumstances or otherwise. In the event that any Agent or Secured Party, in its or their sole discretion, undertakes at any time or from time to time to provide any such information to any other Agent or Secured Party, it or they shall be under no obligation:

(a) to make, and the Agents and the Secured Parties shall not make, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so provided;

(b) to provide any additional information or to provide any such information on any subsequent occasion;

(c) to undertake any investigation; or

(d) to disclose any information, which pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

9.6 Subrogation. With respect to the value of any payments or distributions in cash, property or other assets that the Third Lien Collateral Agent (on behalf of the Third Lien Secured Parties) or any other Third Lien Secured Parties pay over to the Second Lien Collateral Agent (on behalf of the Second Lien Secured Parties) or any other Second Lien Secured Parties under the terms of this Agreement, the Third Lien Collateral Agent (on behalf of the Third Lien Secured Parties) and the other Third Lien Secured Parties shall be subrogated to the rights of the Second Lien Collateral Agent (on behalf of the Second Lien Secured Parties) and the other Second Lien Secured Parties; *provided* that, the Third Lien Collateral Agent (on behalf of the Third Lien Secured Parties), the Third Lien Administrative Agent (on behalf of each Third Lien Lender) and each other Third Lien Secured Party hereby agrees not to assert or enforce all such rights of subrogation they may acquire as a result of any payment hereunder until the Discharge of Second Lien Obligations has occurred. The Company acknowledges and agrees that the value of any payments or distributions in cash, property or other assets received by the Third Lien Collateral Agent (on behalf of the Third Lien Secured Parties) or the Third Lien Secured Parties that are paid over to the Second Lien Collateral Agent (on behalf of the Second Lien Secured Parties) or the other Second Lien Secured Parties pursuant to this Agreement shall not reduce any of the Third Lien Obligations.

9.7 Application of Payments. Subject to Section 4.1, all payments received by the Second Lien Collateral Agent (on behalf of the Second Lien Secured Parties) or any other

Second Lien Secured Party may be applied, reversed and reapplied, in whole or in part, to such part of the Second Lien Obligations as provided for in the Second Lien Documents. Subject to Section 5.4(a), the Third Lien Collateral Agent (on behalf of each of the Third Lien Secured Parties), the Third Lien Administrative Agent (on behalf of itself and each Third Lien Lender) and each other Third Lien Secured Party assents to any extension or postponement of the time of payment of the Second Lien Obligations or any part thereof and to any other indulgence with respect thereto, to any substitution, exchange or release of any security which may at any time secure any part of the Second Lien Obligations and to the addition or release of any other person primarily or secondarily liable therefor. After the Discharge of Second Lien Obligations, all payments received by the Third Lien Collateral Agent (on behalf of the Third Lien Secured Parties) or any other Third Lien Secured Party may be applied, reversed and reapplied, in whole or in part, to such part of the Third Lien Obligations as provided for in the Third Lien Documents.

9.8 CONSENT TO JURISDICTION. **ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING HERETO SHALL BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY AND CITY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (A) ACCEPTS GENERALLY AND UNCONDITIONALLY THE NONEXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS; (B) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (C) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 9.10; (D) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (C) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (E) AGREES THAT EACH PARTY RETAINS THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY OTHER PARTY IN THE COURTS OF ANY OTHER JURISDICTION.**

9.9 WAIVER OF JURY TRIAL. **EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER HEREOF, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER**

IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 9.9 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

9.10 Notices. All notices to the Third Lien Secured Parties and the Second Lien Secured Parties permitted or required under this Agreement shall also be sent to the Third Lien Collateral Agent and the Second Lien Collateral Agent, respectively. Unless otherwise specifically provided herein, any notice hereunder shall be in writing and may be personally served, or sent by email, telefacsimile, 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 telefacsimile or email, 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 hereto, or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties. Notwithstanding the above, any notice or direction to either Collateral Agent shall be deemed given when actually received by such Collateral Agent.

9.11 Further Assurances. The Second Lien Collateral Agent, on behalf of the Second Lien Secured Parties, the Third Lien Collateral Agent, on behalf of the Third Lien Secured Parties, and the Company 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 Second Lien Collateral Agent or the Third Lien Collateral Agent may reasonably request to effectuate the terms of and the Lien priorities contemplated by this Agreement.

9.12 APPLICABLE LAW. **THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED UNDER, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CONFLICTS OF LAWS.**

9.13 Binding on Successors and Assigns. This Agreement shall be binding upon the Second Lien Collateral Agent, the other Second Lien Secured Parties, the other Third Lien Collateral Agent, the Third Lien Secured Parties and their respective successors and assigns. Any corporation or other company into which a Collateral Agent may be merged or converted or with which it may be consolidated, or any corporation or other company resulting from any merger, conversion or consolidation to which a Collateral Agent shall be a party, or any corporation or other company succeeding to the business of a Collateral Agent shall be the successor of such Collateral Agent hereunder without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto, except where an

instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

9.14 Specific Performance. Each of the Second Lien Collateral Agent and the Third Lien Collateral Agent may demand specific performance of this Agreement. The Second Lien Collateral Agent, on behalf of the Second Lien Secured Parties, and the Third Lien Collateral Agent, on behalf of the Third Lien Secured Parties, hereby irrevocably waive any defense based on the adequacy of a remedy at law and any other defense which might be asserted to bar the remedy of specific performance in any action which may be brought by the Second Lien Collateral Agent or the other Second Lien Secured Parties, the Third Lien Collateral Agent or the other Third Lien Secured Parties, as the case may be.

9.15 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.

9.16 Counterparts. 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. Delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith by telecopy or .pdf shall be effective as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable.

9.17 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.

9.18 No 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 Second Lien Secured Parties and the Third Lien Secured Parties, but to no other Person.

9.19 Provisions Solely to Define Relative Rights. The provisions of this Agreement are and are intended for the purpose of defining the relative rights of the Second Lien Collateral Agent and the other Second Lien Secured Parties and the Third Lien Collateral Agent and the other Third Lien Secured Parties, respectively. None of the Company, any other Obligor or any other creditor thereof shall have any rights hereunder and neither the Company nor any other Obligor may rely on the terms hereof, other than, in each case, the provisions of Sections 4.1, 4.4(c), 5.1, 5.2, 5.3, 5.4, 5.8, 5.10, 6.1, 9.3, 9.4, and 9.17 (and the related definitions) hereof. Nothing in this Agreement is intended to or shall impair the obligations of the Company or any other Obligor, which are absolute and unconditional, to pay the Second Lien Obligations and the Third Lien Obligations as and when the same shall become due and payable in accordance with their terms.

9.20 Additional Guarantors. The Company and each Subsidiary Guarantor shall cause each direct or indirect Subsidiary of the Company that becomes a Subsidiary Guarantor or is

required by the terms of any Financing Document to become a Subsidiary Guarantor to become a party to this Agreement by causing such Subsidiary to execute and deliver to the parties hereto an Accession Agreement, whereupon such Subsidiary shall be bound by the terms hereof to the same extent as if it had executed and delivered this Agreement as of the date hereof. The Company and each Subsidiary Guarantor shall promptly provide the Collateral Agent and each Secured Debt Representative with a copy of each Accession Agreement executed and delivered pursuant to this Section 9.20.

9.21 Relationship to First Lien Intercreditor Agreement. (a) Each of the Second Lien Collateral Agent, the Second Lien Indenture Trustee (on behalf of itself and each Second Lien Noteholder), each other Second Lien Secured Party, the Third Lien Collateral Agent, the Third Lien Administrative Agent (on behalf of itself and each Third Lien Lender) and each other Third Lien Secured Party hereby acknowledges and agrees that this Agreement and each of the rights and obligations of the parties set forth herein shall be subject in all respects to the terms and provisions of the First Lien Intercreditor Agreement, if any, and, in the event of any conflict between the express terms and provisions of this Agreement and of the First Lien Intercreditor Agreement, if any, the terms and provisions of the First Lien Intercreditor Agreement shall control (except for the rights, obligations, protections and indemnities of the Collateral Agents, which shall be determined by this Agreement).

(b) Notwithstanding the foregoing and notwithstanding any provision of the First Lien Intercreditor Agreement, if any, the Third Lien Collateral Agent, the Third Lien Administrative Agent (on behalf of itself and each Third Lien Lender), and each other Third Lien Secured Party hereby authorize the Second Lien Collateral Agent to exercise any and all rights of the Third Lien Collateral Agent, the Third Lien Administrative Agent, any Third Lien Lender or any other Third Lien Secured Party under the First Lien Intercreditor Agreement, if any (*provided* that, if such rights are to be exercised by a vote of a requisite number of Third Lien Lenders, the Second Lien Collateral Agent shall exercise such rights based on the vote of the Required Second Lien Holders) and the Third Lien Collateral Agent, the Third Lien Administrative Agent (on behalf of itself and each Third Lien Lender) and each other Third Lien Secured Party agrees to be bound by such exercise, except to the extent that (i) the exercise of such right is prejudicial to the interests of the Third Lien Secured Parties to a greater extent than the Second Lien Secured Parties or (ii) the Third Lien Collateral Agent, Third Lien Administrative Agent or other Third Lien Secured Party would be entitled to exercise such rights under this Agreement.

9.22 Second Lien Indenture Trustee. To the extent the Second Lien Indenture Trustee takes any action under this Agreement, it shall be entitled to the rights, benefits, protections, indemnifications and immunities afforded to it under the Second Lien Indenture.

9.23 Third Lien Administrative Agent. To the extent the Third Lien Administrative Agent takes any action under this Agreement, it shall be entitled to the rights, benefits, protections, indemnifications and immunities afforded to it under the Third Lien Credit Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have cause this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

ENTEGRA TC LLC,
as the Company

By:_____
Name:
Title:

EPG LLC,
as a Subsidiary Guarantor

By:_____
Name:
Title:

UNION POWER PARTNERS, L.P.,
as a Subsidiary Guarantor

By: Union Power LLC,
its General Partner

By:_____
Name:
Title:

TRANS-UNION INTERSTATE PIPELINE, L.P.,
as a Subsidiary Guarantor

By: Trans-Union Pipeline LLC,
its General Partner

By:_____
Name:
Title:

UPP FINANCE CO, LLC,
as a Subsidiary Guarantor

By:_____
Name:
Title:

UNION POWER LLC,
as a Subsidiary Guarantor

By:_____
Name:
Title:

TRANS-UNION PIPELINE LLC,
as a Subsidiary Guarantor

By:_____
Name:
Title:

ENTEGRA POWER SERVICES LLC,
as a Subsidiary Guarantor

By:_____
Name:
Title:

[CORPORATE CO-ISSUER],
as a Subsidiary Guarantor

By:_____
Name:
Title:

GILA RIVER ENERGY HOLDCO LLC,
as a Subsidiary Guarantor

By:_____
Name:
Title:

U.S. BANK, NATIONAL ASSOCIATION,
as Second Lien Collateral Agent

By:_____
Name:
Title:

U.S. BANK, NATIONAL ASSOCIATION,
as Second Lien Indenture Trustee

By:_____
Name:
Title:

WELLS FARGO BANK NATIONAL ASSOCIATION,
as Third Lien Collateral Agent

By:_____
Name:
Title:

WELLS FARGO BANK NATIONAL ASSOCIATION,
as Third Lien Administrative Agent

By:_____
Name:
Title:

EXHIBIT A

FORM OF
ACCESSION AGREEMENT

THIS ACCESSION AGREEMENT (this "***Agreement***"), dated as of_____, 20__, is entered into by _____, a _____ (the "***Joining Party***"), and acknowledged by ENTEGRA TC LLC, a Delaware limited liability company (the "***Company***"), U.S. BANK, NATIONAL ASSOCIATION ("***U.S. Bank***"), in its capacity as Second Lien Collateral Agent, and WELLS FARGO BANK, NATIONAL ASSOCIATION ("***Wells Fargo***"), in its capacity as Third Lien Collateral Agent under the Intercreditor Agreement (as defined below).

Reference is made to that certain Amended and Restated Collateral Agency and Intercreditor Agreement, dated as of [●], 2014 (as amended, modified, restated or supplemented from time to time, the "***Intercreditor Agreement***"), by and among the Company, the Subsidiary Guarantors party thereto from time to time, the Second Lien Collateral Agent, the Third Lien Collateral Agent, U.S. Bank, as Second Lien Indenture Trustee, and Wells Fargo, as Third Lien Administrative Agent. Capitalized terms used herein without definition shall have the meaning assigned thereto in the Intercreditor Agreement.

OPTION #1:[1]

[ADD DESCRIPTION OF [AGREEMENT EVIDENCING REFINANCING OF SECOND LIEN INDENTURE] [SECOND LIEN SECURED HEDGE AGREEMENT] [AGREEMENT EVIDENCING REFINANCING OF THIRD LIEN CREDIT AGREEMENT] TO WHICH JOINING PARTY IS A PARTY AND WHICH REPRESENTS THE SECURED OBLIGATIONS OWED TO SUCH JOINING PARTY].

The Joining Party hereby becomes a [SECOND] [THIRD] LIEN SECURED PARTY and [SECOND LIEN INDENTURE TRUSTEE] [SECOND LIEN COMMODITY HEDGE COUNTERPARTY] [THIRD LIEN ADMINISTRATIVE AGENT].

The Joining Party hereby agrees for the benefit of the Secured Parties as follows:

(1) The Joining Party hereby acknowledges, agrees and confirms that, by its execution of this Agreement, the Joining Party will be deemed to be a party to the Intercreditor Agreement, and, from and after the date hereof, shall have all of the obligations of a [SECOND] [THIRD] LIEN SECURED PARTY and [SECOND LIEN INDENTURE TRUSTEE] [SECOND LIEN COMMODITY HEDGE COUNTERPARTY] [THIRD LIEN ADMINISTRATIVE AGENT] thereunder as if it had executed the Intercreditor Agreement. The Joining Party hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and

[1] Use Option #1 if party acceding to the Intercreditor Agreement is a Secured Party.

conditions applicable to a [SECOND] [THIRD] LIEN SECURED PARTY and a [SECOND LIEN INDENTURE TRUSTEE] [SECOND LIEN COMMODITY HEDGE COUNTERPARTY] [THIRD LIEN ADMINISTRATIVE AGENT] contained in the Intercreditor Agreement.

(2) To the extent the Joining Party is an agent or trustee for one or more Secured Parties, the Joining Party acknowledges that it has the authority to bind such Secured Parties to the Intercreditor Agreement and such Secured Parties are hereby bound by the terms and conditions of the Intercreditor Agreement. The Joining Party hereby agrees (on behalf of itself and any Secured Party claiming through it) to comply with the terms of the Intercreditor Agreement.

(3) **[**As of the date hereof, Schedule I hereto sets forth the "*Floor Amount*" of the Joining Party.**]**[2]

OPTION #2:[3]

[The Joining Party hereby becomes a SUBSIDIARY GUARANTOR and an Obligor.

The Joining Party hereby agrees for the benefit of the Secured Parties as follows:

1. The Joining Party hereby acknowledges, agrees and confirms that, by its execution of this Agreement, the Joining Party will be deemed to be a party to the Intercreditor Agreement and, from and after the date hereof, shall have all of the obligations of a Subsidiary Guarantor and an Obligor thereunder as it had executed the Intercreditor Agreement. The Joining Party hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions applicable to the Subsidiary Guarantors and the Obligors contained in the Intercreditor Agreement.**]**

2. The address of the Joining Party for purposes of all notices and other communications is _____, _____, Attention of _____ (Facsimile No. _____, electronic mail address: _____).

3. This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which when taken together shall constitute one contract.

4. **THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED UNDER, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CONFLICTS OF LAWS.**

---

[2] Include this provision as applicable with respect to any Second Lien Secured Hedge Agreement.

[3] Use Option #2 if party acceding to the Intercreditor Agreement is a Subsidiary Guarantor.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Joining Party has caused this Accession Agreement to be duly executed by its authorized representative, and each of the Company, the Second Lien Collateral Agent and the Third Lien Collateral Agent have caused the same to be accepted by its authorized representative, as of the day and year first above written.

[JOINING PARTY]

By: _____
Name:
Title:

Acknowledged:

ENTEGRA TC LLC

By:_____
Name:
Title:

Acknowledged and accepted:

U.S. BANK, NATIONAL ASSOCIATION,
as Second Lien Collateral Agent

By: _____
Name:
Title:

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Third Lien Collateral Agent

By: _____
Name:
Title:

[SCHEDULE I][4]

Floor Amount under Additional Second Lien Secured Hedge Agreement

[4] Include if Joining Party is party to an additional Second Lien Secured Hedge Agreement.

AMENDED AND RESTATED COLLATERAL AGENCY AND INTERCREDITOR AGREEMENT

Dated as of [●], 2014

Among

ENTEGRA TC LLC,

CERTAIN SUBSIDIARIES OF ENTEGRA TC LLC,

U.S. BANK, NATIONAL ASSOCIATION,
as Second Lien Indenture Trustee
and Second Lien Collateral Agent

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Third Lien Administrative Agent
and Third Lien Collateral Agent

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Exhibit D

New Second Lien Note Indenture

ENTEGRA TC LLC,
as Company,

[FINCO],
as Co-Issuer,

THE SUBSIDIARY GUARANTORS NAMED HEREIN,
as Subsidiary Guarantors,

and

U.S. BANK NATIONAL ASSOCIATION,
as Trustee and Collateral Agent

INDENTURE

Dated as of [●], 2014

Senior Secured Second Lien Series A Notes due 2017

and

Senior Secured Second Lien Series B Notes due 2017

Reconciliation and tie between Trust Indenture Act of 1939 and Indenture, dated as of [●], 2014[*]

Trust Indenture Act Section		Indenture Section
§ 310	(a)(1)	608
	(a)(2)	608
	(a)(5)	608
	(b)	605, 609
§ 311		101, 605
§ 312		702
	(a)	701
	(b)	112, 702
	(c)	112
§ 313	(a)	703
	(b)	1201
	(c)	602, 703
§ 314	(d)	1201, 1202
§ 315		512
	(a)	603
	(b)	603
	(c)	603
	(d)	603
	(e)	609
§ 316	(a)	205
	(c)	104
§ 318		205

[*] This reconciliation and tie shall not, for any purpose, be deemed to be a part of this Indenture.

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EXHIBITS

SCHEDULES

INDENTURE, dated as of [●], 2014 (this "Indenture"), among ENTEGRA TC LLC, a Delaware limited liability company (the "Company"), having its principal office at 100 South Ashley Drive, Tampa, Florida, 33602, [FINCO], a Delaware corporation (the "Co-Issuer," and, together with the Company, the "Issuers"), having its principal office at 100 South Ashley Drive, Tampa, Florida, 33602, the Subsidiary Guarantors (as defined herein) and U.S. BANK NATIONAL ASSOCIATION, a national banking association, as trustee (in such capacity, the "Trustee") and as collateral agent (in such capacity, the "Collateral Agent").

RECITALS OF THE ISSUERS

On August 4, 2014 (the "Petition Date"), Entegra Power Group LLC, the Company and the Subsidiary Guarantors party hereto as of the Effective Date (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of Title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") and continued in possession of their property and in the management of their businesses pursuant to Sections 1107 and 1108 of the Bankruptcy Code. On [●], 2014, the Bankruptcy Court entered an order confirming the Debtors' Joint Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated July 3, 2014 (as in effect on the "Effective Date" thereof (as defined therein) pursuant to the Confirmation Order and as thereafter may be amended in accordance with the Restructuring Support Agreement, the "Plan of Reorganization").

In connection with the confirmation and implementation of the Plan of Reorganization, and pursuant to the terms thereof, in full and complete settlement, release, and discharge of the obligations of the "Debtors" (as such term has the meaning specified in the Plan of Reorganization) under the Prepetition Second Lien Credit Agreement, the holders of the Existing Second Lien Loans shall be issued Series A Notes pursuant to this Indenture in exchange for the Existing Second Lien Loans in an original aggregate principal amount equal to $[●]. Each holder of a Prepetition Third Lien Claim (as defined in the Plan of Reorganization) that makes a valid and timely New Second Lien Debt Participation Election (as defined in the Plan of Reorganization) shall be issued its Pro Rata Share (as defined in the Plan of Reorganization) of the Series B Notes.

Each of the Issuers has duly authorized the creation of an issue of Senior Secured Second Lien Series A Notes due 2017 issued on the date hereof (the "Series A Notes") and the Senior Secured Second Lien Series B Notes due 2017 issued on the date hereof (the "Series B Notes" and, together with the Series A Notes, the "Initial Notes"), of substantially the tenor and amount hereinafter set forth, and to provide therefor each of the Issuers has duly authorized the execution and delivery of this Indenture. The aggregate principal amount of Series A Notes originally issued on the Effective Date shall be reduced by the aggregate principal amount of Series B Notes, if any, deemed to be issued on the Effective Date and all Series B Notes issued on the Effective Date shall be deemed to immediately convert into Series A Notes of an equivalent principal amount. As used herein and unless the context otherwise requires, "Notes" shall include the Series A Notes, the Series B Notes, if any, any Additional Notes and the PIK Notes that are issued pursuant to this Indenture. The Initial Notes issued on the Effective Date,

the PIK Notes and any Additional Notes shall be treated as a single class for all purposes under this Indenture.

Each Subsidiary Guarantor has duly authorized its Guarantee of the Notes and to provide therefor each Subsidiary Guarantor has duly authorized the execution and delivery of this Indenture. Upon the issuance of the Notes, this Indenture shall be subject to the provisions of the Trust Indenture Act of 1939, as amended, that are required to be part of this Indenture and shall, to the extent applicable, be governed by such provisions.

All things necessary have been done to make the Notes, when executed by the Issuers and authenticated and delivered hereunder and duly issued by the Issuers, the valid and legally binding obligations of the Issuers and to make this Indenture a valid and legally binding agreement of the Issuers, in accordance with their and its terms.

All things necessary have been done to make the Subsidiary Guarantees, upon execution and delivery of this Indenture, the valid obligations of each Subsidiary Guarantor and to make this Indenture a valid and legally binding agreement of each Subsidiary Guarantor, in accordance with their and its terms.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Notes by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders, as follows:

ARTICLE ONE

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

SECTION 101. Definitions.

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms defined in this Article One have the meanings assigned to them in this Article, and include the plural as well as the singular;

(b) all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein, and the terms "cash transaction" and "self-liquidating paper," as used in TIA Section 311, shall have the meanings assigned to them in the rules of the Commission adopted under the Trust Indenture Act;

(c) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP (as herein defined);

(d) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision;

(e) "or" is not exclusive;

(f) "including" means including without limitation;

(g) unsecured Indebtedness shall not be deemed to be subordinate or junior to secured Indebtedness merely by virtue of its nature as unsecured Indebtedness;

(h) secured Indebtedness shall not be deemed to be subordinate or junior to any other secured Indebtedness merely because it has a junior priority with respect to the same collateral; and

(i) Indebtedness that is not guaranteed shall not be deemed to be subordinate or junior to Indebtedness that is guaranteed merely because of such guarantee.

"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 Depository 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.

"Act," when used with respect to any Holder, has the meaning specified in Section 104 of this Indenture.

"Act 9 Bond Documents" means, collectively, the Act 9 Lease, the Act 9 Indenture, the Act 9 Borrower Guaranty, the Act 9 Mortgage, the Act 9 Bonds, the Home Office Payment Agreement and each document, financing statement, certificate or instrument executed and delivered in connection with any of the foregoing.

"Act 9 Bonds" means those certain Union County, Arkansas Industrial Development Revenue Bonds (Union Power Partners, L.P. Project), Series 2001 (including effective when issued or deemed issued, those certain Industrial Development Revenue Bonds (Union Power Partners, L.P. Project), Series 2001 (restated 2005)), issued pursuant to the Act 9 Indenture.

"Act 9 Borrower Guaranty" means that certain Guaranty Agreement dated as of May 1, 2001 between Union Power and Act 9 Trustee.

"Act 9 Indenture" means the Trust Indenture, dated as of May 1, 2001 (as amended by that certain First Amendment to Trust Indenture, dated as of June 1, 2005), by the County to Act 9 Trustee for the benefit of the holders of the Act 9 Bonds.

"Act 9 Lease" means the Lease Agreement, dated as of May 1, 2001 (as amended by that certain First Amendment to Lease Agreement, dated as of June 1, 2005), between Union Power and the County.

"Act 9 Trustee" means Regions Bank, Little Rock, Arkansas, in its capacity as Trustee under the Act 9 Indenture.

"Additional Notes" means additional Notes (other than the Initial Notes and the PIK Notes issued as a result of a PIK Payment) issued from time to time under this Indenture in accordance with Article Three, which are secured equally and ratably with the Initial Notes by the Collateral.

"Affiliate" of any Person means any other Person which, directly or indirectly, Controls, is Controlled by or is under common Control with such Person. Notwithstanding the foregoing, other than for purposes of Section 913, no Person (or Affiliate of such Person (other than an Obligor)) that is a Holder on the Effective Date shall be an "Affiliate" of an Obligor for purposes of this Indenture and the other Note Documents.

"Agency Agreement" means the Agency Agreement, dated March 23, 2000, between UCWCB and Union Power.

"Agent" means any Note Registrar, the Calculation Agent, co-registrar, Paying Agent or additional paying agent.

"Aggregate Payments" has the meaning specified in Section 1108.

"Agreement Value" means, for each Hedge Agreement or Power Purchase Agreement, on any date of determination, an amount determined by the applicable counterparty to such Hedge Agreement or Power Purchase Agreement equal to:

(a) in the case of Hedge Agreements or Power Purchase Agreements documented pursuant to a Master Agreement, the net amount, if any, that would be payable by the applicable Obligor to its counterparty under all of such Hedge Agreements and/or Power Purchase Agreements documented pursuant to such Master Agreement with such counterparty, as if:

(1) all of such Hedge Agreements and/or Power Purchase Agreements 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";

(2) the Obligor party thereto were the sole "Affected Party"; and

(3) the applicable counterparty to such Hedge Agreements and/or Power Purchase Agreements were the sole party determining such payment amount (with the applicable counterparty to such Hedge Agreements and/or Power Purchase Agreements making such determination reasonably in accordance with the provisions of the applicable 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 counterparty to such Hedge Agreement or Power Purchase Agreement 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 or Power Purchase Agreement, which will be the unrealized loss on such Hedge Agreement or Power Purchase Agreement to the Obligor party to such Hedge Agreement or Power Purchase Agreement reasonably determined by the applicable counterparty to such Hedge Agreement or Power Purchase Agreement 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 or Power Purchase Agreement.

Capitalized terms used in this definition and not otherwise defined in this definition or this Indenture shall have the respective meanings set forth in the applicable Master Agreement.

"Applicable Margin" means 9.00% per annum.

"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 Depository that apply to such transfer or exchange.

"Authenticating Agent" has the meaning specified in Section 612 of this Indenture.

"Authorized Financial Officer" means, relative to any Obligor, an Authorized Officer that is the Chief Executive Officer, Chief Financial Officer, Chief Accounting Officer, Controller, President or Treasurer, as the case may be, of such Obligor.

"Authorized Officer" means, relative to any Obligor, those of its officers, general partners or managing members (as applicable) who are authorized to execute the Note Documents.

"Bankruptcy Code" means Title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as now or hereafter in effect, or any successor thereto.

"Bankruptcy Court" has the meaning specified in the recitals.

"Bankruptcy Law" means the Bankruptcy Code, as amended, or any similar United States federal or state law for the relief of debtors.

"Board of Directors" means, with respect to any Person, either the board of directors or managing members, as applicable, of such Person (or, if such Person is a partnership, the board of directors or other governing body of the general partner of such Person) or any duly authorized committee of such board.

"Board Resolution" means, with respect to any Person, a copy of a resolution certified by the Secretary or an Assistant Secretary of such Person to have been duly adopted by

the Board of Directors and to be in full force and effect on the date of such certification, and, if required by this Indenture or requested by the Trustee, such Board Resolution shall be delivered to the Trustee.

"Bond Pledge Agreement" means the Amended and Restated Bond Pledge Agreement, dated June 1, 2005, by Finance Co. in favor of the collateral agent named therein for the benefit of the Banks (as defined therein).

"Budget" has the meaning specified in Section 908.

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City or the city in which the Trustee's designated corporate trust office is located are authorized or required by law to remain closed; provided that, when used in connection with the LIBO Rate or the determination thereof, the term "Business Day" shall also exclude any day on which banks are not open for dealings in Dollar deposits in the London interbank market.

"Calculation Agent" means U.S. Bank National Association, in its capacity as "Calculation Agent" under this Indenture, and any successor thereto in such capacity.

"Capital Expenditures" means, for any period, the sum of (a) the aggregate amount of all expenditures of the Company and its Subsidiaries on a consolidated basis payable during such period which, in accordance with GAAP, would be classified as capital expenditures, and (b) the aggregate amount of the principal component of all Capitalized Lease Liabilities payable during such period by the Company and its Subsidiaries on a consolidated basis in connection with any such Capital Expenditures; provided that Capital Expenditures shall not include (i) Major Maintenance Expenses paid from amounts on deposit in the Major Maintenance Reserve Account, (ii) any such expenditures or principal component funded with (A) any Net Casualty Proceeds, as permitted under Section 1001 hereof and Section 3.1.1(f) of the Third Lien Credit Agreement (as in effect on the date hereof), (B) any Net Disposition Proceeds, as permitted under Section 1001 hereof and Sections 3.1.1(c) and 3.1.1(g) of the Third Lien Credit Agreement (as in effect on the date hereof), (C) the net proceeds received from any Disposition of used, worn out, surplus or obsolete equipment permitted under Section 926 or (D) the proceeds of capital contributions made substantially concurrently with such expenditures or payments of principal or (iii) expenses under long-term service agreements, turbine maintenance agreements or spare parts agreements and any Operation and Maintenance Expenses.

"Capital Securities" or "Capital Stock" means, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated, whether voting or non-voting) of such Person's capital, whether now outstanding or issued after the Effective Date.

"Capitalized Lease Liabilities" means, all monetary obligations of the Company under any leasing or similar arrangement which have been (or, in accordance with GAAP, should be) classified as capitalized leases and, for purposes hereof, the amount of such obligations at any time shall be the capitalized amount thereof as determined in accordance with GAAP.

"Cash Equivalent Investment" means at any time:

(a) any direct obligation of (or unconditionally guaranteed by) the United States (or any agency or political subdivision thereof, to the extent such obligations are supported by the full faith and credit of the United States) maturing not more than two years from the date of acquisition thereof;

(b) commercial paper maturing not more than 365 days from the date of acquisition and rated A-1 or higher by S&P or P1 or higher by Moody's;

(c) any certificate of deposit, time deposit, or bankers acceptance, maturing not more than one year after its date of acquisition, or any demand deposit accounts which, in any case, is issued by or established at any bank or trust company organized under the laws of the United States (or any state thereof) and which has (A) a long-term debt credit rating of A2 or higher from Moody's or A or higher from S&P and (B) a combined capital and surplus greater than $250,000,000;

(d) any repurchase agreement having a term of 180 days or less entered into with any Third Lien Lender or any commercial banking institution satisfying the criteria set forth in clause (c) which (i) is secured by a fully perfected security interest in any obligation of the type described in clause (a), and (ii) has a market value at the time such repurchase agreement is entered into of not less than 100% of the repurchase obligation of such commercial banking institution thereunder;

(e) money market funds that (i) comply with the criteria set forth in Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated A or higher by S&P and A2 or higher by Moody's and (iii) have portfolio assets of at least $5,000,000,000;

(f) taxable and tax-exempt auction rate securities rated AAA by S&P and Aaa by Moody's and with a reset of less than 90 days; or

(g) shares of investment companies that are registered under the Investment Company Act of 1940, as amended, and that have investment guidelines restricting 95% of such funds' investments to one or more of the types of securities described in clauses (a) through (f) above.

"Casualty Event" means the damage, destruction or condemnation, as the case may be, of any property of any Obligor, but in any event shall exclude any losses due to business interruption.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

"Change in Control" means, at any time after the Effective Date, (a) any Person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) other than the Permitted Holders shall have acquired beneficial ownership of 50% or more on a fully diluted basis of the voting and/or economic interest in the equity interests of the Company or (b) the direct or indirect sale, lease, transfer, conveyance or other disposition, in one or a series of related transactions, of all or substantially all of the properties or assets of the Company or the Subsidiary Guarantors, taken as a whole (including, in each case, through a sale of Capital Stock

in the Subsidiaries of the Company), to any Person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act).

"Code" means the Internal Revenue Code of 1986, and the regulations thereunder, in each case as amended, reformed or otherwise modified from time to time.

"Co-Issuer" means [FINCO].

"Collateral" means all property which is subject or is intended to become subject to the security interests or liens granted by any of the Security Documents.

"Collateral Agent" means U.S. Bank National Association, in its capacity as collateral agent under this Indenture and "Second Lien Collateral Agent" (as defined in the Subordinated Lien Intercreditor Agreement) under the Security Documents and any successor thereto in such capacity.

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

"Commodity Hedge Agreements" means any agreement (including each confirmation entered into pursuant to any Master Agreement) providing for swaps, caps, collars, puts, calls, floors, futures, options, spots, forwards, power purchase, tolling or sale agreements (including Power Purchase Agreements), fuel purchase or sale agreements, emissions credit purchase or sales agreements, power transmission agreements, fuel transportation agreements, fuel storage agreements, netting agreements, 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, but excluding all such agreements which are daily sales, spot market, or other short-term (not to exceed three months) arrangements.

"Commodity Institution" means any Person that is a commercial bank, investment bank, insurance company or other similar financial institution, or any Affiliate thereof, which is engaged in the business of entering into Commodity Hedge Agreements or Power Purchase Agreements.

"Company" means the Person named as the "Company" in the first paragraph of this Indenture, until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Company" shall mean such successor Person.

"Compliance Certificate" means a certificate duly completed and executed by an Authorized Financial Officer of the Company, and delivered pursuant to Section 102.

"Confirmation Order" has the meaning set forth in the Plan of Reorganization.

"consolidated" or "Consolidated" means, with respect to any Person, such Person consolidated with its Subsidiaries in accordance with GAAP.

"Contingent Liability" means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss) the Indebtedness of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the Capital Securities of any other Person. The amount of any Person's obligation under any Contingent Liability shall be deemed to be the outstanding principal amount of the debt, obligation or other liability guaranteed thereby (reduced to the extent that such Person's obligation thereunder is reduced by applicable law or valid contractual agreement).

"Contributing Guarantor" has the meaning specified in Section 1108.

"Control" of a Person means the power, directly or indirectly, (a) to vote (under ordinary circumstances) 10% or more of the Capital Securities (on a fully diluted basis) of such Person for the election of directors, managing members or general partners (as applicable) or (b) to direct or cause the direction of the management and policies of such Person (whether by contract or otherwise). "Controlled" and "Controlling" shall have correlative meanings.

"Controlled Group" means, with respect to any entity, all members of a controlled group of corporations and all members of a controlled group of trades or businesses (whether or not incorporated) under common control which, together with such entity, are treated as a single employer under Section 414(b) or 414(c) of the Code or Section 4001 of ERISA.

"Corporate Trust Office" means the principal corporate trust office of the Trustee, at which at any particular time its corporate trust business shall be administered, which office at the date of execution of this Indenture is located at U.S. Bank National Association, 225 Asylum Street, 23rd Floor, Hartford, CT 06103, Attn: Arthur Blakeslee, Tel: (860) 241-6859, Fax: (866) 350-2126, except that with respect to presentation of the Notes for payment or for registration of transfer or exchange, such term shall mean the office or agency of the Trustee at which, at any particular time, its corporate agency business shall be conducted.

"corporation" includes corporations, associations, companies and business trusts.

"County" means Union County, Arkansas, a political subdivision of the State of Arkansas.

"Credit Agreements" means any First Lien Credit Agreement and the Third Lien Credit Agreement.

"Current Assets" means, at any time, the consolidated current assets (other than cash and Cash Equivalent Investments) of the Company and its Subsidiaries.

"Current Liabilities" means, at any time, the consolidated current liabilities of the Company and its Subsidiaries at such time, but excluding, without duplication, the current portion of any Indebtedness.

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

"Debtors" has the meaning specified in the recitals.

"Debt Payment" has the meaning specified in Section 909.

"Default" means any Event of Default or any condition, occurrence or event which, after notice or lapse of time or both, would constitute an Event of Default.

"Defaulted Interest" has the meaning specified in Section 307.

"Definitive Note" means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 311, 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 Agreement" means that certain Eighth Amended and Restated Depositary Agreement, dated as of [•], 2014, among the Company, the "Grantors" (as defined therein), the Collateral Agent, the Third Lien Administrative Agent, the Third Lien Collateral Agent and the "Depositary Agent" (as defined therein), as amended, supplemented, amended and restated or otherwise modified or replaced from time to time in accordance with the terms hereof and thereof.

"Depository" means The Depository Trust Company ("DTC"), its nominees and respective successors.

"Disclosure Schedule" means the Disclosure Schedule attached hereto as Schedule I, as it may be amended, supplemented, amended and restated or otherwise modified from time to time by the Company with the written consent of the Required Noteholders.

"Disposition" (or similar words such as "Dispose") means, with respect to any Obligor, any sale, transfer, lease, contribution or other conveyance (including by way of merger) of, or the granting of options, warrants or other rights to, any of such Obligor's or its Subsidiaries' assets (including accounts receivable and Capital Securities of Subsidiaries) to any other Person in a single transaction or series of related transactions, other than with respect to assets for aggregate consideration of less than $100,000 in any Fiscal Year.

"Disposition Cash Collateral" has the meaning specified in the definition of Net Disposition Proceeds."

"Dollar" and the sign "$" mean lawful money of the United States.

"DTC" has the meaning specified in the definition of "Depository."

"EBITDA" means, for any Measurement Period, (a) the sum, without duplication, of the amounts for such Measurement Period of (i) Net Income of the Company and its Subsidiaries for such Measurement Period and (ii) solely to the extent deducted in arriving at such Net Income:

(A) Interest Expense;

(B) total depreciation expense;

(C) total amortization expense, including the amortization of deferred financing fees;

(D) any non-cash loss attributable to the mark-to-market movement in the valuation of Hedge Agreements and Power Purchase Agreements (to the extent the cash impact resulting from such loss has not been realized) or other derivative instruments pursuant to Financial Accounting Standards Board Statement No. 133, "Accounting for Derivative Instruments and Hedging Activities";

(E) any reasonable and customary expenses or charges incurred in connection with any issuance of debt or equity securities, any refinancing transaction or any amendment or other modification of any debt instrument to the extent consummated in accordance with the terms of the Note Documents;

(F) any reasonable fees (including legal and investment banking fees), transfer or mortgage recording taxes and other out-of-pocket costs and expenses of any Obligor (including expenses of third parties paid or reimbursed by any Obligor) incurred as a result of the transactions contemplated hereby;

(G) any impairment charge or asset write-off pursuant to Financial Accounting Standards Board Statement No. 142, "Goodwill and Other Intangible Assets" or Financial Accounting Standards Board Statement No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" and the amortization of intangibles arising pursuant to Financial Accounting Standards Board Statement No. 141, "Business Combinations";

(H) any losses from the early extinguishment of Indebtedness (including Hedge Agreements and Power Purchase Agreements or other derivative instruments);

(I) any non-cash compensation expense recorded from grants of stock appreciation or similar rights, stock options, restricted stock or other rights to officers, directors or employees;

(J) any non-cash losses decreasing Net Income for such Measurement Period, other than the accrual of expenses in the ordinary course of business; and

(K) total provision for taxes (whether or not paid, estimated or accrued) based on the income and profits of the Company or alternative taxes imposed as reflected in the provisions for income taxes in the Company's consolidated financial statements;

(b) less the sum of the amounts for such Measurement Period of:

(i) any non-cash gains increasing Net Income for such Measurement Period, other than the accrual of revenues in the ordinary course of business;

(ii) any non-cash gain attributable to the mark-to-market movement in the valuation of Hedge Agreements and Power Purchase Agreements (to the extent the cash impact resulting from such gain has not been realized) or other derivative instruments pursuant to Financial Accounting Standards Board Statement No. 133, "Accounting for Derivative Instruments and Hedging Activities"; and

(iii) any non-cash gains from the early extinguishment of Indebtedness (including Hedge Agreements and Power Purchase Agreements or other derivative instruments),

all as determined on a Consolidated basis for the Company and its Subsidiaries in accordance with GAAP.

"Effective Date" means the first date written above.

"Employee Company" means Union Power Employee Company LLC, a Delaware limited liability company.

"Entergy" means Entergy Arkansas, Inc., an Arkansas corporation.

"Entergy Interconnection Agreements" means the Union Interconnection Agreement and the Entergy Payment Agreement.

"Entergy Payment Agreement" means the Payment Agreement for the Design, Order, Purchase and Construction of an Electrical Substation, Distribution Circuit and Associated Facilities, dated as of September 6, 2000, between Entergy and Union Power.

"Entergy Tolling Agreement" means that certain Capacity Sale and Fuel Conversion Services Agreement, dated as of October 22, 2012, as amended from time to time, between Entergy and Union Power.

"Environmental Laws" means all applicable and legally binding federal, state, local or foreign statutes, laws (including common law), ordinances, codes, rules, regulations and other requirements of any Governmental Authority (including consent decrees and administrative orders) relating to public health and safety and the preservation or protection of the indoor, outdoor, surface or subsurface environment, including those relating to the generation, use, storage, handling, treatment or Release of or exposure to Hazardous Materials.

"Environmental Liabilities" means all liabilities, obligations, responsibilities, obligations to conduct investigations or cleanups, and all environmental claims pending or threatened against any Obligor or its Subsidiaries or against any Person whose liability for any environmental claim any Obligor or its Subsidiaries may have retained or assumed either contractually or by operation of law, arising from (a) environmental, health or safety conditions, (b) compliance with applicable Environmental Laws, (c) the presence, Release or threatened

Release of Hazardous Materials at any location, whether or not owned, leased or operated by the Company or its Subsidiaries, or (d) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law.

"EP Act" means the Energy Policy Act of 2005.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto of similar import, together with the regulations thereunder, in each case as in effect from time to time. References to Sections of ERISA also refer to any successor Sections thereto.

"ERISA Event" means:

(a) a "reportable event" within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to a Pension Plan (other than an event for which the provision for 30-day notice to the PBGC has been waived);

(b) a withdrawal by the Company or any member of its Controlled Group from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA;

(c) a complete or partial withdrawal by the Company or any member of its Controlled Group from a Multiemployer Plan or receipt of notification that a Multiemployer Plan is in reorganization;

(d) the filing of a notice of intent to terminate a Pension Plan, the treatment of a Pension Plan amendment as a termination under Section 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan;

(e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan;

(f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Company or any member of its Controlled Group; or

(g) any other event with respect to an employee benefit plan in connection with which the Company or any of its Subsidiaries directly or indirectly could reasonably be expected to be subject to any material liability under ERISA or the Code or pursuant to any obligation of the Company, any of its Subsidiaries or any member of their Controlled Group to indemnify any person against liability incurred under ERISA or the Code.

"Event of Default" has the meaning specified in Section 501.

"Excess Cash Flow" means, for any Fiscal Year of the Company, the excess of (a) the sum, without duplication, of (i) Consolidated EBITDA for such Fiscal Year (excluding in the

case of the 2014 Fiscal Year, Consolidated EBITDA for the Pre-Closing Period) and (ii) the decrease, if any, in Current Assets minus Current Liabilities from the beginning to the end of such Fiscal Year (excluding, in the case of the 2014 Fiscal Year, such decrease attributable to the Pre-Closing Period) over (b) the sum, without duplication, of (i) the amount of any Taxes payable in cash by the Company and the Subsidiaries with respect to such Fiscal Year (excluding, in the case of the 2014 Fiscal Year, such Taxes attributable to the Pre-Closing Period), (ii) the aggregate amount of all Tax Distributions made or to be made for such Fiscal Year (excluding, in the case of the 2014 Fiscal Year, the amount of such Tax Distributions attributable to the Pre-Closing Period), (iii) Consolidated Interest Expense for such Fiscal Year paid in cash (excluding, in the case of the 2014 Fiscal Year, Consolidated Interest Expense attributable to the Pre-Closing Period), (iv) Capital Expenditures made in cash during such Fiscal Year, except to the extent financed with the proceeds of Indebtedness, equity issuances, casualty proceeds, condemnation proceeds or other proceeds that would not be included in Consolidated EBITDA, and excluding, in the case of the 2014 Fiscal Year, Capital Expenditures made in cash during the Pre-Closing Period, (v) permanent repayments of Indebtedness (other than mandatory redemptions of the Notes) made by the Company and its Subsidiaries during such Fiscal Year, but only to the extent that such prepayments by their terms cannot be reborrowed or redrawn and do not occur in connection with a refinancing of all or any portion of such Indebtedness (excluding, in the case of the 2014 Fiscal Year, repayments made during the Pre-Closing Period), (vi) the increase, if any, in Current Assets minus Current Liabilities from the beginning to the end of such Fiscal Year (excluding, in the case of the 2014 Fiscal Year, such increase attributable to the Pre-Closing Period), (vii) the amount of cash in such Fiscal year deposited in the Major Maintenance Reserve Account (excluding, in the case of the 2014 Fiscal Year, the amount of cash deposited therein in the Pre-Closing Period), and (viii) cash reserves created in the Company's reasonable discretion to fund Capital Expenditures to the extent such Capital Expenditures are permitted pursuant to the terms of the Transaction Documents and will be undertaken and paid for in the first two fiscal quarters of the succeeding Fiscal Year, in an aggregate amount, for any such Fiscal Year, not to exceed $10,000,000.

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

"Existing Second Lien Loans" means the "Loans" (as defined in the Prepetition Second Lien Credit Agreement immediately prior to the Effective Date) owing to each "Lender" under the Prepetition Second Lien Credit Agreement.

"Facility Letter Agreement" means the Facility Letter Agreement, dated November 23, 1999, among TGT and Trans-Union as amended on October 25, 2000.

"Fair Share" has the meaning specified in Section 1108.

"Fair Share Contribution Amount" has the meaning specified in Section 1108.

"FERC" means the Federal Energy Regulatory Commission.

"Finance Co." means UPP Finance Co, LLC, a Delaware limited liability company.

"Finance Co. Loan Agreement" means the Amended and Restated Intercompany Loan Agreement, dated as of June 1, 2005, by and between Union Power and Finance Co.

"First Lien Credit Agreement" means any credit agreement evidencing Indebtedness of an Obligor in the form of First Lien Obligations, as amended, supplemented, amended and restated or otherwise modified from time to time in accordance with the terms hereof and thereof.

"First Lien Intercreditor Agreement" means an intercreditor agreement (as amended, supplemented, amended and restated or otherwise modified from time to time), among any Obligors, the Collateral Agent, Trustee, the Third Lien Collateral Agent, the Third Lien Administrative Agent and the collateral agent and administrative agent appointed by the lenders under the First Lien Credit Agreement, in substantially the form attached hereto as Exhibit F, or in such other form as has been approved by the Required Noteholders.

"First Lien Letters of Credit" means those letters of credit issued under the First Lien Credit Agreement from time to time.

"First Lien Obligations" has the meaning given to such term (or other comparable term) in the First Lien Intercreditor Agreement.

"Fiscal Quarter" means any fiscal quarter of a Fiscal Year.

"Fiscal Year" means a fiscal year of the Company; references to a Fiscal Year with a number corresponding to any calendar year (e.g., "2014 Fiscal Year") refer to the Fiscal Year ending on or about December 31 of such calendar year.

"Forced Outage" means any outage or derating of at least one block of generating capacity consisting of a 2-on-1 combined-cycle generating facility at the Union Facility caused by equipment failure or required maintenance (in accordance with Prudent Industry Practices) that is not scheduled or planned by the Company or the applicable Subsidiary.

"FPA" means the Federal Power Act of 1935, as amended.

"Funding Guarantor" has the meaning specified in Section 1108.

"GAAP" means, with respect to the interpretation of all accounting terms used herein and in each other Note Document, the calculation of all accounting determinations and computations required to be made hereunder or thereunder (including in respect of any defined terms used herein or in any other Note Document), those U.S. generally accepted accounting principles applied in the preparation of the audited consolidated financial statements of the Company, copies of which are required to be delivered pursuant to Section 908(b).

"Gas Interconnection Agreements" means, collectively, the Facility Letter Agreement, the Regency Interconnection Agreement and the TGPC Interconnection Agreement, as amended by change orders dated as of March 9, 2000, March 29, 2000, May 23, 2000, May 31, 2000, July 18, 2000, August 15, 2000, August 18, 2000, November 7, 2000, January 30, 2001 and May 10, 2001.

"Gas Marketer" means any Person whose business includes the sale, marketing or distribution of gas.

"Gila River Disposition" has the meaning given in the Prepetition Third Lien Credit Agreement.

"Gila River Energy" means Gila River Energy LLC, a Delaware limited liability company.

"Gila River Energy Credit Agreement" has the meaning specified in the definition of "Gila River Energy Financing Documents."

"Gila River Energy Financing Documents" means, collectively, (a) that certain Credit and Guaranty Agreement, dated as of August 10, 2011 (as amended, amended and restated, supplemented, modified, replaced or refinanced from time to time, the "Gila River Energy Credit Agreement"), among Gila River Energy, as borrower, Gila River Power, as subsidiary guarantor, the lenders party thereto from time to time, Union Bank, N.A., as administrative agent and letter of credit issuer, and Union Bank, N.A., as collateral agent, and (b) each of the other Credit Documents (as defined in the Gila River Energy Credit Agreement), in each case, as amended, amended and restated, supplemented, modified, replaced or refinanced from time to time.

"Gila River Facility" means the 2,146 MW natural gas-fired combined-cycle power generation facility located in Maricopa County, Arizona.

"Gila River Holdco" means Gila River Energy Holdco LLC, a Delaware limited liability company.

"Gila River O&M Subsidiary" means Gila Bend Operations Co., LLC, a Delaware limited liability company.

"Gila River Power" means Gila River Power LLC, a Delaware limited liability company (f/k/a Gila River Power, L.P., a Delaware limited partnership).

"Global Note Legend" means the legend set forth in Section 203 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 Depository or its nominee, substantially in the form of Exhibit A hereto and that bears the Global Note Legend and that has the "Schedule of Exchanges of Interests in the Global Note" attached thereto, issued in accordance with Sections 201, 311(b)(3), 311(b)(4), 311(d)(2) or 311(f).

"Government Securities" means securities that are:

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

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

which, in either case, are not callable or redeemable at the option of the issuers thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act), as custodian with respect to any such Government Securities or a specific payment of principal of or interest on any such Government Securities held by such custodian for the account of the holder of such depository receipt; provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Securities or the specific payment of principal of or interest on the Government Securities evidenced by such depository receipt.

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

"GRE 2014" means GRE 2014 LLC, a Delaware limited liability company.

"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, letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

"Guarantee" means the guarantee by any Subsidiary Guarantor of the Issuers' Obligations.

"Hazardous Material" means

(a) any "hazardous substance," as defined by CERCLA;

(b) any "hazardous waste," as defined by the Resource Conservation and Recovery Act;

(c) any petroleum, petroleum product, by-product or fraction; or

(d) any pollutant or contaminant or hazardous, dangerous or toxic chemical, material or substance (including any petroleum product) defined, listed or regulated under any other Environmental Laws.

"Hedge Agreements" means Commodity Hedge Agreements, Interest Rate Hedge Agreements and any currency exchange agreements, and all other agreements or arrangements designed to protect a Person against fluctuations in interest rates, currency exchange rates, commodity prices or equity security prices or values.

"Hedging Obligations" means, with respect to any Person, all liabilities of such Person under Hedge Agreements.

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

"Home Office Payment Agreement" means the Home Office Payment Agreement referred to in Section 214 of the Act 9 Indenture.

"Impermissible Qualification" means, relative to the opinion or certification of any independent public accountant as to any financial statement of the Company, any qualification or exception to such opinion or certification (a) which is of a "going concern" or similar nature, or (b) which relates to the limited scope of examination of matters relevant to such financial statement (except, in the case of matters relating to any acquired business or assets, in respect of the period prior to the acquisition by the Company of such business or assets).

"incur" means incur, create, issue, assume, become liable in respect of or suffer to exist (and the words "incurred" and "incurrence" shall have correlative meanings);

"Indebtedness" or "Debt" of any Person means, without duplication:

(1) all obligations of such Person for borrowed money or advances and all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;

(2) the principal component of all obligations, contingent or otherwise, relative to the face amount of all letters of credit, whether or not drawn, and banker's acceptances issued for the account of such Person;

(3) all Capitalized Lease Liabilities;

(4) all obligations of such Person in respect of Specified Commodity Hedge Agreements which are secured as permitted by Section 912(13), in each case valued at the Agreement Value;

(5) whether or not so included as liabilities in accordance with GAAP, all obligations of another Person secured by any Lien on any property or assets owned or held by that Person regardless of whether the obligations secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person; provided that the amount of any Indebtedness of others that constitutes Indebtedness of such Person solely by reason of this subsection (5) will, in the event that such Indebtedness is limited recourse to such property (without recourse to such Person), be equal to the lesser of the amount of such obligation and the fair market value of the property or assets to which the Lien attaches, determined in good faith by such Person;

(6) whether or not so included as liabilities in accordance with GAAP, all obligations of such Person to pay the deferred purchase price of property or services (excluding trade accounts payable in the ordinary course of business which are not

overdue for a period of more than ninety (90) days or, if overdue for more than ninety (90) days, as to which a dispute exists and adequate reserves in conformity with GAAP have been established on the books of such Person);

(7) obligations arising under Synthetic Leases;

(8) Redeemable Capital Securities; and

(9) all Contingent Liabilities of such Person in respect of any of the foregoing.

The Indebtedness of any Person shall include the Indebtedness of any other Person (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 Person, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"Indenture" means this instrument as originally executed and as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, including, for all purposes of this Indenture and any such supplemental indenture, the provisions of the Trust Indenture Act that are deemed to be part of and govern this instrument and any such supplemental indenture, respectively.

"Independent Engineer" means Filsinger Energy Partners or another engineering advisor selected by the Required Noteholders and reasonably acceptable to the Company.

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

"Initial Notes" means the Series A Notes and the Series B Notes issued on the Effective Date.

"Intercreditor Agreements" means the First Lien Intercreditor Agreement and the Subordinated Lien Intercreditor Agreement.

"Interest Determination Date" has the meaning specified in Section 310.

"Interest Expense" means, for any applicable period, the aggregate consolidated interest expense of the Company for such applicable period (including the portion of any payments made in respect of Capitalized Lease Liabilities allocable to interest expense) with respect to all outstanding Indebtedness of the Company, including, and together with, up-front and annual fees and expenses relating to Indebtedness and letter of credit fees payable pursuant to the First Lien Credit Agreement and with respect to First Lien Letters of Credit.

"Interest Payment Date" means [●], [●], [●] and [●] of each year.

"Interest Period" means each period beginning on (and including) the Effective Date and ending on (but excluding) the day which numerically corresponds to such date three

months thereafter (or, if such month has no numerically corresponding day, on the last Business Day of such month); provided that,

(a) if such Interest Period would otherwise end on a day which is not a Business Day, such Interest Period shall end on the next following Business Day (unless such next following Business Day is the first Business Day of a calendar month, in which case such Interest Period shall end on the Business Day next preceding such numerically corresponding day); and

(b) no Interest Period may end later than the Maturity Date.

"Interest Rate Hedge Agreements" means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement, each of which is for the purpose of hedging the interest rate exposure associated with the Company's and its Subsidiaries' operations and not for speculative purposes.

"Interest Reset Date" has the meaning specified in Section 310.

"Investment" means, relative to any Person,

(1) any loan, advance or extension of credit (excluding any extensions of credit made in connection with sales by the Company and its Subsidiaries in the ordinary course of business) made by such Person to any other Person (other than officers and employees in the ordinary course of business for commissions, travel, relocation and similar expenses), including the purchase by such Person of any bonds, notes, debentures or other debt securities of any other Person; and

(2) any Capital Securities acquired by such Person in any other Person.

The amount of any Investment shall be the original principal or capital amount thereof less all returns of principal or equity thereon and shall, if made by the transfer or exchange of property other than cash, be deemed to have been made in an original principal or capital amount equal to the fair market value of such property at the time of such Investment.

"Issuer Request" or "Issuer Order" means a written request or order signed in the name of the Issuers by an Officer of each of the Issuers and delivered to the Trustee.

"LIBO Rate" shall mean, with respect to any Interest Period, the greater of (a) 1.00% per annum and (b) the rate per annum determined by the Calculation Agent 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 on the applicable Bloomberg screens for deposits in Dollars (or, if such published rate is not available, such other commercially available source providing such quotations as designated by the Calculation Agent from time to time) 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 Calculation Agent to be the average of the rates per annum at which deposits in Dollars are offered for such relevant Interest Period to major banks in the

London interbank market in London, England by the Calculation Agent at approximately 11:00 a.m. (London time) on the date that is two (2) Business Days prior to the beginning of such Interest Period.

"Lien" means any mortgage, pledge, security interest, hypothecation, assignment, deposit arrangement, lien (statutory or other) or similar encumbrance of any kind or nature whatsoever, and any easement, right-of-way, license, restriction (including zoning restrictions), defect, exception or irregularity in title or similar charge or encumbrance of any kind whatsoever, including in each case any agreement to give any of the foregoing, any conditional sale or other title retention agreement or any lease in the nature thereof.

"Major Maintenance Expenses" has the meaning assigned to such term in the Depositary Agreement.

"Major Maintenance Reserve Account" has the meaning assigned to such term in the Depositary Agreement.

"Market Consultant" means Filsinger Energy Partners or any other market consultant retained by the Required Noteholders and reasonably acceptable to the Company.

"Master Agreement" means any Master Agreement published by the International Swap and Derivatives Association, Inc. or the Edison Electric Institute or the North American Energy Standards Board.

"Material Adverse Effect" means a material adverse effect, after taking into account the effects of the transactions contemplated hereby, on (a) the business, properties, operations or condition (financial or otherwise) of the Company and its Subsidiaries, taken as a whole, (b) the ability of the Obligors, taken as a whole, to fully and timely perform the Obligations or (c) the rights and remedies of the Trustee, the Collateral Agent, any Holder or any Noteholder Secured Party under any Note Document.

"Material Project Documents" means (a) the Entergy Interconnection Agreements, (b) the Entergy Tolling Agreement, (c) the Gas Interconnection Agreements, (d) the Water Supply Agreement, (e) the Act 9 Bond Documents (prior to the date, if any, on which the financing contemplated thereby has terminated in accordance with its terms and any Liens in connection therewith have been released), (f) the GT Parts Purchase Agreement between the Company (as assignee of Gila River Power) and Pratt & Whitney dated January 24, 2006, and (g) the Services Agreements, in each case as amended, supplemented, amended and restated or otherwise modified or replaced from time to time in accordance with the terms hereof and thereof.

"Maturity," when used with respect to any Note, means the date on which the principal of such Note or an installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, notice of redemption or otherwise.

"Maturity Date" means [●], 2017.

"Measurement Period" means each period of four consecutive Fiscal Quarters, commencing with the first such four Fiscal Quarter period ending [●], 2014.

"Moody's" means Moody's Investors Service, Inc. and any successor to its rating agency business.

"Mortgage" means each mortgage, deed of trust or other agreement, in any case in form and substance reasonably satisfactory to the Collateral Agent, executed and delivered by any Obligor in favor of the Collateral Agent, for the benefit of the "Second Lien Secured Parties" (as defined in the Subordinated Lien Intercreditor Agreement), pursuant to the requirements of this Indenture and in accordance with the Intercreditor Agreements, under which a Lien is granted on the real property and fixtures described therein, in each case as amended, supplemented, amended and restated or otherwise modified from time to time.

"Mortgaged Property" means all real property owned or leased by any Obligor on the Effective Date as set forth in Item 912(9) of the Disclosure Schedule.

"Multiemployer Plan" means a multiemployer plan within the meaning of Section 4001(a)(3) or Section 3(37) of ERISA (a) to which the Company or any member of its Controlled Group is then making or accruing an obligation to make contributions; (b) to which the Company or any member of its Controlled Group has within the preceding five (5) plan years made contributions; or (c) with respect to which the Company could incur liability as a result of the prior participation therein by the Company or any member of its Controlled Group.

"NAIC" means the National Association of Insurance Commissioners.

"Net Casualty Proceeds" means, with respect to any Casualty Event, the cash amount of any insurance proceeds under any casualty insurance policy (other than any insurance proceeds in respect of or arising under any casualty insurance policy relating to business interruption or forced outage) or condemnation awards received by any Obligor in connection therewith, but excluding any proceeds or awards required to be paid to a creditor (other than the Holders) which holds a Lien on the property which is the subject of such Casualty Event which Lien (a) is a Permitted Lien and (b) has priority over the Liens securing the Obligations, less amounts expended by such Obligor on legal, accounting and other professional fees, expenses and charges incurred in connection with collecting such insurance proceeds or condemnation awards.

"Net Debt Proceeds" means with respect to the incurrence, sale or issuance by any Obligor of any Indebtedness (other than any Indebtedness permitted by Section 910), the excess of:

(a) the gross cash proceeds received by such Person from such incurrence, sale or issuance,

over

(b) the sum of (i) all reasonable and customary underwriting commissions and legal, investment banking, brokerage and accounting and other professional fees, sales

commissions and disbursements and all other reasonable fees, expenses and charges, in each case actually incurred in connection with such incurrence, sale or issuance and (ii) the aggregate amount of any and all Tax Distributions estimated by the Company (in good faith) to be required to be made that is attributable to such incurrence, sale or issuance.

"Net Disposition Proceeds" means, with respect to any Disposition of any assets of any Obligor (other than Permitted Dispositions), the excess of

(a) the gross cash proceeds received by such Obligor from any such Disposition and any cash payments when received in respect of promissory notes or other non-cash consideration delivered to such Obligor in respect thereof,

over

(b) the sum of (i) all reasonable and customary fees and expenses with respect to legal, investment banking, brokerage and accounting and other professional fees, sales commissions and disbursements and all other reasonable fees, expenses and charges, in each case actually incurred in connection with such Disposition, (ii) all Taxes and other governmental costs and expenses actually paid or estimated by the Company (in good faith) to be payable in cash in connection with such Disposition, (iii) the aggregate amount of any and all Tax Distributions estimated by the Company (in good faith) to be required to be made with respect to such Disposition that is attributable to such Disposition, (iv) payments made by any Obligor to retire Indebtedness (other than the Obligations and Indebtedness of the Company under the Third Lien Credit Agreement) secured by the asset so Disposed where payment of such Indebtedness is required in connection with such Disposition, (v) reserves for purchase price adjustments and retained fixed liabilities that are payable by such Obligor in cash to the extent required under GAAP in connection with such Disposition and (vi) the amount of cash collateral (not to exceed $15,000,000 in the aggregate) required to be posted by the Obligors to secure their obligations to the applicable buyer in connection with such Disposition (such cash collateral, "Disposition Cash Collateral");

provided, however, that if, after the payment of all Taxes, Tax Distributions, purchase price adjustments and retained fixed liabilities with respect to such Disposition, the amount of estimated Taxes, Tax Distributions, purchase price adjustments, and retained fixed liabilities, if any, pursuant to clause (b)(ii), b(iii) or (b)(iv) above exceeds the amount of Taxes, Tax Distributions, purchase price adjustments, and retained fixed liabilities actually paid in cash in respect of such Disposition, the aggregate amount of such excess shall, at such time, constitute Net Disposition Proceeds.

"Net Income" means, for any period, (a) the net income (or loss) of the Company and its Subsidiaries on a Consolidated basis for such period taken as a single accounting period, determined in conformity with GAAP, minus (b) (i) the income (or loss) of any Person (other than a Subsidiary of the Company) in which any other Person (other than the Company or any of its Subsidiaries) has a joint interest, except to the extent of the amount of dividends or other distributions actually paid to the Company or any of its Subsidiaries by such Person during such period, (ii) the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of the Company or is merged into or consolidated with the Company or any of its Subsidiaries or

that Person's assets are acquired by the Company or any of its Subsidiaries, (iii) the income of any Subsidiary of the Company to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, (iv) any after-tax gains or losses attributable to asset sales or returned surplus assets of any Pension Plan and (v) (to the extent not included in clauses (i) through (iii) above) any net extraordinary gains or net extraordinary losses and provided that, in determining Net Income for such period, there (A) shall be excluded Major Maintenance Expenses paid in such period with proceeds from the Major Maintenance Reserve Account, (B) for the avoidance of doubt, shall not be excluded any amount drawn by the Company from the Major Maintenance Reserve Account for additional funds for working capital, (C) shall be excluded income attributable to capitalized prepaid commodity hedges and (D) shall be excluded the income (or loss) of Gila River Energy, GRE 2014 and Gila River Power, except to the extent of the amount of dividends or other distributions actually paid to the Company or any of its Subsidiaries (other than Gila River Energy, GRE 2014 and Gila River Power) by Gila River Energy, GRE 2014 and Gila River Power during such period.

Notwithstanding the foregoing, the proceeds from any asset sale and any financing entered into by the Company or any of its Subsidiaries, and any fees and expenses associated with any such asset sales and financings, shall be excluded from the calculation of Net Income.

"Net SPV Disposition Proceeds" means, with respect to any Disposition of any assets by any Union SPV or Subsequent Gila River SPV (other than Dispositions that would constitute Permitted Dispositions if such Union SPV or Subsequent Gila River SPV were an Obligor), the excess of

(a) the gross cash proceeds received by such Union SPV or Subsequent Gila River SPV, as applicable, from any such Disposition and any cash payments when received in respect of promissory notes or other non-cash consideration delivered to such Union SPV or Subsequent Gila River SPV, as applicable, in respect thereof,

over

(b) the sum of (i) all reasonable and customary fees and expenses with respect to legal, investment banking, brokerage and accounting and other professional fees, sales commissions and disbursements and all other reasonable fees, expenses and charges, in each case actually incurred in connection with such Disposition, (ii) all Taxes and other governmental costs and expenses actually paid or estimated by the Company (in good faith) to be payable in cash in connection with such Disposition, (iii) the aggregate amount of any and all Tax Distributions estimated by the Company (in good faith) to be required to be made with respect to such Disposition that is attributable to such Disposition, (iv) payments made by such Union SPV or Subsequent Gila River SPV, as applicable, to retire Indebtedness of such Union SPV or Subsequent Gila River SPV, as applicable (other than the Obligations and Indebtedness of the Company under the Third Lien Credit Agreement), secured by the asset so Disposed where payment of such Indebtedness is required in connection with such Disposition, (v) reserves for purchase price adjustments and retained fixed liabilities that are payable by such Union SPV or

Subsequent Gila River SPV, as applicable, in cash to the extent required under GAAP in connection with such Disposition and (vi) the amount of cash collateral required to be posted by such Union SPV or Subsequent Gila River SPV, as applicable, to secure its obligations to the applicable buyer in connection with such Disposition;

provided, however, that if, after the payment of all Taxes, Tax Distributions, purchase price adjustments and retained fixed liabilities with respect to such Disposition, the amount of estimated Taxes, Tax Distributions, purchase price adjustments, and retained fixed liabilities, if any, pursuant to clause (b)(ii), b(iii) or (b)(iv) above exceeds the amount of Taxes, Tax Distributions, purchase price adjustments, and retained fixed liabilities actually paid in cash in respect of such Disposition, the aggregate amount of such excess shall, at such time, constitute Net SPV Disposition Proceeds.

"Net SPV Financing Proceeds" means, with respect to (a) any Union SPV Financing or (b) any Subsequent Gila River SPV Financing (each an "SPV Financing"), in each case, the excess of:

(i) the gross cash proceeds received by such Union SPV or Subsequent Gila River SPV, as applicable, from any such Non-Recourse Indebtedness for borrowed money,

over

(ii) the sum of (A) all reasonable and customary fees and expenses and charges (including reasonable attorneys' fees and fees of independent consultants), in each case actually incurred in connection with the incurrence of such Non-Recourse Indebtedness, (B) the amounts required to fund reserve accounts pursuant to the terms of such Non-Recourse Indebtedness, (C) the amounts to be used for working capital purposes of such Union SPV or Subsequent Gila River SPV, as applicable, under a working capital, revolving credit or other similar Indebtedness facility, (D) the aggregate amount of any and all Tax Distributions estimated by the Company (in good faith) to be required to be made with respect to such incurrence that is attributable to such incurrence of such Non-Recourse Indebtedness and (E) such other amounts required by the terms of such Non-Recourse Indebtedness to be retained by such Union SPV or Subsequent Gila River SPV, as applicable, for liquidity, collateral and other similar or corporate purposes.

"Net SPV Foreclosure Excess Proceeds" means the net amount of proceeds from the foreclosure or other similar exercise of remedies by the holders of Indebtedness of any Union SPV or any Subsequent Gila River SPV in respect of the assets of such Union SPV or Subsequent Gila River SPV, as applicable, remaining after the payment in full of all Indebtedness of such Union SPV or Subsequent Gila River SPV, as applicable, and other customary expenses related to such foreclosure or other similar exercise of remedies.

"Non-Recourse Indebtedness" means Indebtedness (a) in respect of which neither the Company nor any Obligor (i) is directly or indirectly obligated to pay or repay, (ii) provides credit support of any kind (including any undertaking, guaranty, agreement or instrument that would constitute Indebtedness or a Contingent Liability), or (iii) is directly or indirectly liable as

a guarantor or otherwise; and (b) in respect of which the holders thereof have agreed in writing that they shall have no recourse against the Company, any Obligor or any Collateral.

"Non-Recourse Persons" has the meaning specified in Section 114.

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

"Note Documents" means, collectively, this Indenture, the Notes, the Security Documents, the Depositary Agreement, the Intercreditor Agreements and each other agreement, certificate, document or instrument delivered in connection with any of the foregoing and executed by an Obligor, which is specifically mentioned herein or therein to be a "Note Document."

"Note Register" has the meaning specified in Section 305.

"Note Registrar" has the meaning specified in Section 305.

"Noteholder Secured Parties" means the Trustee, the Collateral Agent, the Holders and any successor or transferee of any of the foregoing.

"Noteholder Super-Majority" means, on any date of determination, those Holders who collectively hold more than 66-2/3% of the outstanding principal amount of all Notes (not including any Notes held by the Issuers, any Subsidiary Guarantor or other direct or indirect subsidiary of the Company).

"Notes" has the meaning stated in the third recital of this Indenture and more particularly means any Notes authenticated and delivered under this Indenture, including any PIK Notes issued in respect of Notes and any increase in the principal amount of outstanding Notes as a result of a PIK Payment. The Series A Notes, the Series B Notes, if any, any Additional Notes and the PIK Notes shall be treated as a single class for all purposes of this Indenture, and unless the context otherwise requires, all references to the Notes shall include the Series A Notes, the Series B Notes, if any, any Additional Notes and the PIK Notes. The Series A Notes, the Series B Notes, if any, any Additional Notes and the PIK Notes shall have the same priority and voting rights and be governed by the same terms and conditions.

"Obligations" means all obligations (monetary or otherwise, whether absolute or contingent, matured or unmatured) of each Obligor arising under or in connection with a Note Document or Specified Commodity Hedge Agreement including the principal of and premium, if any, and interest (including interest accruing during the pendency of any proceeding of the type described in Section 501(10), whether or not allowed in such proceeding) on the Notes and payments for early termination of Specified Commodity Hedge Agreements.

"Obligor" means, as the context may require, the Issuers and the Subsidiary Guarantors.

"Officer" means the Chairman of the Board of Directors, the Chief Executive Officer, the Chief Financial Officer, the President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of the Company.

"Officers' Certificate" means a certificate signed on behalf of the Company by two Officers, one of whom must be the Company's principal executive officer, the principal financial officer, the treasurer or the principal accounting officer that meets the requirements set forth in this Indenture.

"Operating Agreement" means the Second Amended and Restated Limited Liability Company Agreement of the Company, dated [●], 2014.

"Operation and Maintenance Expenses" means, for any period, the sum without duplication of (i) all costs and expenses of administering and operating the Union Facility and all other equipment and facilities ancillary to the Union Facility and in maintaining them in good repair and operating condition; (ii) insurance costs and expenses; (iii) all sales, use, property and other taxes (other than taxes imposed on or measured by income or receipt) to which the Union Facility, the Company or the Subsidiary Guarantors may be subject; (iv) costs, fees and expenses incurred in connection with obtaining and maintaining in effect the Permits required to maintain and operate the Union Facility; (v) the reasonable costs and expenses of administration and enforcement of the Transaction Documents; (vi) all costs and expenses associated with commodity or fuel transactions and fuel transportation, in each case to the extent incurred pursuant to arrangements permitted hereunder; and (vii) reasonable and necessary legal, accounting and other professional fees and expenses incurred in connection with any of the foregoing items.

"Opinion of Counsel" means, with respect to any Person, a written opinion from legal counsel reasonably acceptable to the Trustee. The legal counsel may be counsel for such Person, including an employee of such Person or any Subsidiary of such Person.

"Organic Document" means, relative to any Person, as applicable, its certificate of incorporation, by-laws, certificate of partnership, partnership agreement, certificate of formation, limited liability agreement and all shareholder agreements, voting trusts and similar arrangements applicable to any of such Person's partnership interests, limited liability company interests or authorized shares of Capital Securities.

"Original Subordinated Lien Intercreditor Agreement" has the meaning set forth in the Subordinated Lien Intercreditor Agreement.

"Other Person" has the meaning specified in the definition of "Subsidiary."

"Outstanding," when used with respect to Notes, means, as of the date of determination, all Notes theretofore authenticated and delivered under this Indenture, except:

(i) Notes theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

(ii) Notes, or portions thereof, redeemed pursuant to Article Ten hereof; and

(iii) Notes which have been paid pursuant to Section 306 or in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture, other than any such Notes in respect of which there shall have been presented

to the Trustee proof satisfactory to it that such Notes are held by a bona fide purchaser in whose hands the Notes are valid obligations of the Company.

For the avoidance of doubt, a Note does not cease to be Outstanding because the Company or one of its Affiliates holds the Note.

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

"PATRIOT Act" means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), as amended or otherwise modified from time to time.

"Paying Agent" means any Person (including the Company or any Subsidiary Guarantor acting as Paying Agent) authorized by the Company to pay the principal of or interest on any Notes on behalf of the Issuers.

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

"Pension Plan" means an "employee benefit plan", as such term has the meaning specified in Section 3(3) of ERISA, which is subject to Title IV of ERISA (other than a Multiemployer Plan), and to which the Company or any corporation, trade or business that is, along with the Company, a member of its Controlled Group, may have liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

"Permit" means any permit, authorization, registration, consent, approval, waiver, exception, variance, order, judgment, written interpretation, decree, license, exemption, publication, filing, notice to and declaration of or with, or required by, any Governmental Authority, and shall include any environmental or operating permit or license that is required for the full use, occupancy, zoning and operation of the Union Facility.

"Permitted Dispositions" has the meaning specified in Section 926.

"Permitted Holders" means Wayzata Investment Partners LLC, Luminus Management, LLC, Silver Point Capital, L.P., Highland Capital Management, L.P., Metropolitan West Asset Management, LLC, and each of their respective Affiliates and managed funds. For the avoidance of doubt, LS Power (and each of its Affiliates and managed funds) is an Affiliate of Luminus Management, LLC.

"Permitted Investments" has the meaning specified in Section 923.

"Permitted Lien" has the meaning specified in Section 912.

"Permitted Refinancing" means, as to any Indebtedness, the incurrence of other Indebtedness to refinance, extend, renew, defease, restructure, replace or refund (collectively,

"refinance") such existing Indebtedness; provided that, in the case of such other Indebtedness, the following conditions are satisfied:

(a) the weighted average life to maturity of such refinancing Indebtedness shall be greater than or equal to the weighted average life to maturity of the Indebtedness being refinanced;

(b) the principal amount of such refinancing Indebtedness shall be less than or equal to the principal amount (including any accreted or capitalized amount) then outstanding of the Indebtedness being refinanced, plus other reasonable amounts paid, and fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal or extension and by any amount equal to any existing commitments unutilized thereunder;

(c) the security, if any, for the refinancing Indebtedness shall be substantially the same as that for the Indebtedness being refinanced (except to the extent that less security is granted to holders of refinancing Indebtedness);

(d) the refinancing Indebtedness is subordinated to the Obligations to the same degree, if any, or to a greater degree as the Indebtedness being refinanced; and

(e) no material terms (other than interest rate and other pricing terms) applicable to such refinancing Indebtedness or, if applicable, the related security or guarantees of such refinancing Indebtedness (including covenants, events of default, remedies or acceleration rights) shall be, taken as a whole, materially more favorable to the refinancing lenders than the terms that are applicable under the instruments and documents governing the Indebtedness being refinanced.

"Person" means any natural person, corporation, limited liability company, partnership, joint venture, association, cooperative, trust or unincorporated organization, Governmental Authority or any other legal entity, whether acting in an individual, fiduciary or other capacity.

"Petition Date" has the meaning specified in the recitals.

"PIK Interest" means interest paid in the form of (1) an increase in the outstanding principal amount of the Notes or (2) the issuance of PIK Notes.

"PIK Notes" means additional Series A Notes issued under this Indenture on the same terms and conditions as the Notes issued on the Effective Date in connection with a PIK Payment.

"PIK Payment" means an interest payment with respect to the Notes made by (1) an increase in the outstanding principal amount of the Notes or (2) the issuance of PIK Notes.

"Plan of Reorganization" has the meaning specified in the recitals.

"Power Distributor" means, with respect to any power purchase agreement, any Person that is a public utility or one of whose primary businesses includes the sale or distribution of electric energy.

"Power Purchase Agreements" means power purchase and/or tolling agreements pursuant to which the Company or any of its Subsidiaries (other than Gila River Energy, GRE 2014 or Gila River Power) sells power and energy to third parties, but excluding all such agreements which are daily sales, spot market or other short-term (not to exceed three months) arrangements; provided that such Power Purchase Agreement is with (a) a Commodity Institution with the Required Rating or (b) a Power Distributor (i) with the Required Rating or (ii) whose obligations under such Power Purchase Agreement are supported by cash or a letter of credit issued by a commercial bank with the Required Rating in an amount sufficient to cover the expected exposure of the Power Distributor thereunder, as reasonably determined by the Company in a manner consistent with the principles described in the Risk Management Policy.

"Pre-Closing Period" means the period from January 1, 2014 to the Effective Date.

"Predecessor Note" of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 306 in exchange for a mutilated Note or in lieu of a lost, destroyed or stolen Note shall be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Note.

"Prepetition Second Lien Claims" has the meaning set forth in the Plan of Reorganization.

"Prepetition Second Lien Credit Agreement" means the Credit Agreement (Second Lien), dated as of March 27, 2014, among the Company, Entegra Power Group LLC, the "Subsidiary Guarantors" (as defined therein) party thereto, the financial institutions from time to time parties thereto as lenders and U.S. Bank National Association, as administrative agent, as amended, supplemented, amended and restated or otherwise modified or replaced from time to time.

"Prepetition Third Lien Credit Agreement" means the Credit Agreement (Third Lien), dated as of April 19, 2007, among Entegra Power Group LLC, the Borrower, as a guarantor, the "Subsidiary Guarantors" (as defined therein) party thereto, the financial institutions from time to time parties thereto as lenders, Wells Fargo, as administrative agent, and the other agents and arrangers from time to time party thereto, as amended, supplemented, amended and restated or otherwise modified or replaced from time to time.

"Private Placement Legend" has the meaning specified in Section 203.

"Prudent Industry Practices" means any of the practices, methods and acts engaged in or approved by a significant portion of the independent gas-fired power generation industry in the United States during the relevant time period, or any of the practices, methods and acts 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, sound engineering practices, reliability, safety and

expedition. "Prudent Industry Practices" is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable principles, methods and acts generally accepted in the United States, having due regard for, among other things, the requirements or guidance of Governmental Authorities, applicable laws, applicable interconnection operating guidelines and rules, transmission provider rules, and the requirements of insurers.

"Project Documents" means, without duplication, (a) the Material Project Documents and (b) any other agreement or document relating to the construction, leasing, ownership, or operation of the Union Facility to which Union Power is a party.

"PUHCA 2005" means the Public Utility Holding Company Act of 2005.

"PW Intercreditor Agreement" means that certain Second Amended and Restated Intercreditor, Subordination and Consent Agreement, dated as of August 10, 2011, by and among Pratt & Whitney Power Services, Inc., the "Collateral Agents" (as defined therein), Union Power, and the Company and the other parties thereto.

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

"Record Date" means the Regular Record Date.

"Redeemable Capital Securities" means, with respect to any Person, Capital Securities of such Person that, either by their terms, by the terms of any security into which they are convertible or exchangeable or otherwise, (a) are, or upon the happening of an event or passage of time would be, required to be redeemed in whole or in part (except for consideration comprised of Capital Securities of such Person which are not Redeemable Capital Securities) on or prior to the date that is six (6) months following the Maturity Date, (b) are redeemable in whole or in part at the option of the holder thereof (except for consideration comprised of Capital Securities of such Person which are not Redeemable Capital Securities) at any time prior to such date or (c) are convertible into or exchangeable (in whole or in part) for Indebtedness of such Person or any of its Subsidiaries at any time prior to such date.

"Redemption Date" when used with respect to any Note to be redeemed, in whole or in part, means the date fixed for such redemption by or pursuant to this Indenture.

"Redemption Price" when used with respect to any Note to be redeemed, means 100% of the principal amount thereof.

"Regency" means Regency Interstate Gas LLC (formerly known as Gulf States Pipeline Corporation).

"Regency Interconnection Agreement" means the Interconnect and Metering Facility Agreement, dated March 29, 2000, between Regency and Trans-Union, as amended on December 22, 2000 and on March 7, 2001.

"Regular Record Date" has the meaning specified in Section 301.

"Regulation S Global Note" means a Global Note that bears the Regulation S Legend.

"Regulation S Legend" has the meaning specified in Section 203.

"Regulation S-X" means Regulation S-X under the Securities Act.

"Release" means a "release," as such term has the meaning specified in CERCLA.

"Required Noteholders" means, on any date of determination, those Holders who collectively hold more than 50% of the outstanding principal amount of all Notes (not including any Notes held by the Issuers, any Subsidiary Guarantor or other direct or indirect subsidiary of the Company).

"Required Rating" means, with respect to (a) any Commodity Institution, that either (i) the unsecured senior debt obligations of such Person are rated at least A3 by Moody's and at least A- by S&P at the time of the execution of the applicable Power Purchase Agreement, or (ii) such Commodity Institution's obligations under the applicable Power Purchase Agreement are guaranteed by a Person that is rated at least A3 by Moody's and at least A- by S&P at the time of the execution of the applicable Power Purchase Agreement, (b) any Power Distributor or Gas Marketer, that either (i) the unsecured senior debt obligations of such Person are rated at least Baa3 by Moody's and at least BBB- by S&P at the time of the execution of the applicable Power Purchase Agreement, or (ii) such Power Distributor's or Gas Marketer's obligations under any Power Purchase Agreement are guaranteed by a Person that is rated at least Baa3 by Moody's and at least BBB- by S&P, at the time of the execution of the applicable Power Purchase Agreement or (c) any commercial bank issuing a letter of credit in support of a Power Distributor's or Gas Marketer's obligations, that the unsecured senior debt obligations of such Person are rated at least A3 by Moody's and at least A- by S&P at the time of the issuance of such letter of credit.

"Resource Conservation and Recovery Act" means the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., as amended.

"Responsible Officer," when used with respect to the Trustee, means any vice president, any assistant treasurer, any trust officer or assistant trust officer, or any other officer of the Trustee customarily performing functions similar to those performed by any of the above-designated officers, and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject and 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 Payment" means (a) the declaration or payment of any dividend (other than dividends to be paid or in fact paid in Capital Securities of the Company (other than

Redeemable Capital Securities) or by an increase in the liquidation preference of any Capital Securities of the Company) on, or the making of any payment or distribution on account of, or setting apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of any class of Capital Securities of the Company or any warrants or options to purchase any such Capital Securities, whether now or hereafter outstanding, or the making of any other payment or distribution (other than in Capital Securities (other than Redeemable Capital Securities) of the Company or by an increase in the liquidation preference of any Capital Securities of the Company) in respect thereof, either directly or indirectly, whether in cash or property, obligations of the Company or otherwise, and (b) the making of any deposit (including the payment of amounts into a sinking fund or other similar fund) for any of the foregoing purposes.

"Restructuring Support Agreement" means that certain Restructuring Support Agreement, dated as of June 27, 2014, by and among the "Debtors" and the "Plan Support Parties" (each as defined therein), including all exhibits thereto.

"Risk Management Policy" means the Entegra Power Risk Management Policy (Union Assets), as approved by the Company's Board of Directors from time to time.

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

"Rule 144A" means Rule 144A 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 Standard and Poor's Ratings Group, a division of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

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

"Security Agreement" means the Second Amended and Restated Pledge and Security Agreement (Second Lien), dated as of [•], 2014, among the Issuers, the Subsidiary Guarantors and the Collateral Agent, as may be amended, restated, supplemented or otherwise modified from time to time.

"Security Documents" means the Security Agreement, the Intercreditor Agreements, each Mortgage and each other agreement pursuant to which the Collateral Agent is granted a Lien to secure the Obligations.

"Services Agreements" means each of (a) the Purchase and Services Agreement Reference Number PW0511-3821TC, dated as of January 24, 2006, between Pratt & Whitney and the Company (as assignee of Gila River Power) and (b) the Purchase and Services Agreement Reference Number PW0504-39548TC, dated as of January 24, 2006, between Pratt & Whitney and Union Power.

"Series A Notes" means the Senior Secured Second Lien Series A Notes due 2017.

"Series B Notes" means the Senior Secured Second Lien Series B Notes due 2017.

"Specified Commodity Hedge Agreements" means (i) Commodity Hedge Agreements, Power Purchase Agreements and fuel supply agreements, each of which may not exceed thirty-six (36) months in maturity, (ii) Commodity Hedge Agreements or Power Purchase Agreements involving the purchase or sale of up to 510 MW of power or an equivalent amount of fuel, in any case, for a tenor not greater than six (6) years and (iii) Commodity Hedge Agreements or Power Purchase Agreements so long as at the time such Commodity Hedge Agreement or Power Purchase Agreement is entered into, it is structured such that the Commodity Institutions' or other applicable hedge counterparties' credit exposure and actual or projected mark-to-market exposure to the applicable Obligor thereunder is positively correlated with the price of the relevant commodity (the agreements described in this clause (iii), the "Specified Right-Way Hedge Agreements").

"Specified Right-Way Hedge Agreements" has the meaning specified in the definition of "Specified Commodity Hedge Agreements."

"SPV Financing" is defined in the definition of "Net SPV Financing Proceeds."

"SPV Subsidiary" means any Union SPV and any Subsequent Gila River SPV.

"SPV Subsidiary Collateral Actions" has the meaning specified in Section 921.

"Stated Maturity," when used with respect to any Note or any installment of principal thereof or interest thereon, means the date specified in such Notes as the fixed date on which the principal of such Notes or such installment of principal or interest is due and payable.

"Subordinated Intercompany Note" means the subordinated note, substantially in the form of Exhibit E hereto, evidencing all Indebtedness by and among the Obligors.

"Subordinated Lien Intercreditor Agreement" means the Amended and Restated Collateral Agency and Intercreditor Agreement, dated as of the date hereof, among the Issuers, the Subsidiary Guarantors, the Collateral Agent, the Third Lien Collateral Agent and the other parties thereto, as amended, supplemented, amended and restated or otherwise modified from time to time.

"Subsequent Gila River SPV" means, at any time following the occurrence of the events described in clauses (i) and (ii) of Section 926(j), (a) a special purpose entity that is directly or indirectly owned by the Company and formed for the purpose of owning and operating any or all of the assets transferred to it pursuant to a Subsequent Gila River SPV Disposition or (b) if the applicable Subsequent Gila River SPV Disposition is structured on substantially similar terms as the Gila River Disposition, Gila River Energy, GRE 2014 or Gila River Power.

"Subsequent Gila River SPV Disposition" means, at any time following the occurrence of the events described in clauses (i) and (ii) of Section 926(j), (a) the transfer by the

Obligor that then owns the assets that were secured by the Non-Recourse Indebtedness incurred by Gila River Energy pursuant to the Gila River Energy Financing Documents to a Subsequent Gila River SPV of all or a portion of such assets or (b) a Disposition of all or a portion of such assets in a manner substantially similar to the Gila River Disposition.

"Subsequent Gila River SPV Financing" means any incurrence by a Subsequent Gila River SPV of Non-Recourse Indebtedness for borrowed money.

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership or other entity ("Other Person") of which more than 50% of the Voting Securities of such Other Person (irrespective of whether at the time Capital Securities of any other class or classes of such Other Person shall or might have voting power upon the occurrence of any contingency) is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more other Subsidiaries of such Person, or by one or more other Subsidiaries of such Person.

Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Company, other than the Co-Issuer. "Subsidiary Guarantors" means, collectively, each Subsidiary of the Company other than (a) the Employee Company, (b) the Gila River O&M Subsidiary, (c) Gila River Energy and Gila River Power, (d) the SPV Subsidiaries; provided that if at any time any SPV Subsidiary is no longer prohibited by the terms of (i) in the case of any Union SPV, the Union SPV Financing incurred by such Union SPV or (ii) in the case of any Subsequent Gila River SPV, the Subsequent Gila River SPV Financing incurred by such Subsequent Gila River SPV, as applicable, from being a Subsidiary Guarantor hereunder, then such SPV Subsidiary shall become a Subsidiary Guarantor in accordance with the terms of Section 921 and (e) GRE 2014.

"Synthetic Lease" means, as applied to any Person, any lease (including leases that may be terminated by the lessee at any time) of any property (whether real, personal or mixed) (a) that is not a capital lease in accordance with GAAP and (b) in respect of which the lessee retains or obtains ownership of the property so leased for federal income tax purposes, other than any such lease under which that Person is the lessor.

"Tax Distributions" means any and all distributions by the Company pursuant to Section 6.4(d) of the Operating Agreement.

"Taxes" means any and all income, stamp or other taxes, duties, levies, imposts, charges, assessments, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, and all interest, penalties or similar liabilities with respect thereto.

"TEP Proceeds" means the Net Disposition Proceeds from the disposition of a 2-on-1 combined-cycle generating block of the 2,146 MW natural-gas-fired combined-cycle power generation facility located in Maricopa County, Arizona, indirectly owned by Gila River Holdco, to Tucson Electric Power Company and UNS Electric, Inc. pursuant to that certain Asset Purchase and Sale Agreement, dated as of December 13, 2013 (as amended or modified from time to time).

"Terrorism Laws" means any of the following (a) Executive Order 13224 issued by the President of the United States, (b) the Terrorism Sanctions Regulations (Title 31 Part 595 of the U.S. Code of Federal Regulations), (c) the Terrorism List Governments Sanctions Regulations (Title 31 Part 596 of the U.S. Code of Federal Regulations), (d) the Foreign Terrorist Organizations Sanctions Regulations (Title 31 Part 597 of the U.S. Code of Federal Regulations), (e) the PATRIOT Act, (f) all other present and future legal requirements of any Governmental Authority addressing, relating to, or attempting to eliminate, terrorist acts and acts of war and (g) any regulations promulgated pursuant thereto or pursuant to any legal requirements of any Governmental Authority governing terrorist acts and acts of war.

"TGPC" means Tennessee Gas Pipeline Company, a Delaware corporation.

"TGPC Interconnection Agreement" means the Facilities Agreement, dated May 12, 2000, among TGPC, Union Power and Regency, as amended February 27, 2001.

"TGT" means Texas Gas Transmission Corporation, a Delaware corporation.

"Third Lien Administrative Agent" means any Person appointed as administrative agent pursuant to the terms of the Third Lien Credit Agreement.

"Third Lien Collateral Agent" means any Person appointed as collateral agent pursuant to the terms of the Third Lien Credit Agreement.

"Third Lien Credit Agreement" means the third lien credit agreement, dated as of the date hereof, among the Company, as borrower, the "Subsidiary Guarantors" (as defined therein) party thereto, the several lenders from time to time party thereto, and Wells Fargo Bank, National Association, as the Third Lien Administrative Agent.

"Third Lien Lenders" means the "Lenders" as defined under the Third Lien Credit Agreement.

"Third Lien Loans" means "Loans" as defined under the Third Lien Credit Agreement.

"Title Policy" means with respect to each Mortgage, a mortgagee's title insurance policy or signed commitment to issue such policy with no unsatisfied conditions in favor of the Collateral Agent, as mortgagee, in amounts and in form and substance and issued by insurers, in each case reasonably satisfactory to the Required Noteholders, with respect to the property purported to be covered by such Mortgage, insuring that title to such property is indefeasible and that the interest created by the Mortgage constitutes a valid second-priority perfected Lien on the Mortgaged Property and fixtures described therein.

"Transaction Documents" means, collectively, (a) this Indenture and the other Note Documents, (b) the Third Lien Credit Agreement and the other "Loan Documents" (as defined therein), (c) the Project Documents and (d) any and all other documents, agreements, instruments and arrangements related to or in connection with any of the foregoing.

"Trust Indenture Act" or "TIA" means the Trust Indenture Act of 1939 as in force at the date as of which this Indenture was executed.

"Trustee" means the Person named as the "Trustee" in the first paragraph of this Indenture until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Trustee" shall mean such successor Trustee.

"UCC" means the Uniform Commercial Code as in effect from time to time in the state of New York; provided that if, with respect to any financing statement or by reason of any provisions of law, the perfection or the effect of perfection or non-perfection of the security interests granted to the Collateral Agent pursuant to the applicable Note Document is governed by the Uniform Commercial Code as in effect in a jurisdiction of the United States other than New York, UCC means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions of each Note Document and any financing statement relating to such perfection or effect of perfection or non-perfection.

"UCWCB" means the Union County Water Conservation Board, a public body organized under the laws of Arkansas.

"UCWCB Water Supply Agreement" means that certain Water Supply Agreement, dated as of September 22, 2000, between UCWCB and Union Power.

"Union Facility" means the 2,152 MW natural-gas-fired combined-cycle power generation facility located in the MISO South region in Union County, Arkansas.

"Union Interconnection Agreement" means the Interconnection and Operating Agreement, dated as of February 14, 2001, by and between Union Power and Entergy.

"Union Power" means Union Power Partners, L.P., a Delaware limited partnership.

"Union SPV" means a special purpose entity that is directly or indirectly owned by the Company and formed for the purpose of owning and operating one or more power blocks of the Union Facility and selling energy products or tolling services relating to substantially all of the capacity of such power block(s) to one or more load serving entities pursuant to one or more agreements having a term of at least five (5) years.

"Union SPV Disposition" means the transfer by Union Power to a Union SPV of one or more power blocks of the Union Facility and may include a related undivided interest in common and shared facilities.

"Union SPV Financing" means any incurrence by a Union SPV of Non-Recourse Indebtedness for borrowed money.

"United States" or "U.S." means the United States of America, its fifty states and the District of Columbia.

"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.

"Vice President," when used with respect to the Company, the Co-Issuer or the Trustee, means any vice president, whether or not designated by a number or a word or words added before or after the title "vice president."

"Volumetric Production Payment Obligations" means production payment obligations of the Company or any of its Subsidiaries which are payable from a specified share of production from specific assets of the Company or any of its Subsidiaries, together with all undertakings and obligations in connection therewith.

"Voting Securities" means, with respect to any Person, Capital Securities of any class or kind ordinarily having the power to vote (that is, not contingent on the happening of any event) for the election of directors, managers or other voting members of the governing body of such Person.

"Water Supply Agreement" means, collectively, the UCWCB Water Supply Agreement and the Agency Agreement.

SECTION 102. Compliance Certificates and Opinions.

Upon any application or request by the Company to the Trustee to take or refrain from taking any action under any provision of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate in form reasonably satisfactory to the Trustee stating that all conditions precedent, if any, provided for in this Indenture (including any covenant compliance with which constitutes a condition precedent) relating to the proposed action have been complied with and an Opinion of Counsel in form reasonably satisfactory to the Trustee stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with (provided that, such Opinion of Counsel shall not be given in connection with the original issuance of the Notes on the Effective Date), except that (i) in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished and (ii) no Opinion of Counsel shall be required in connection with the addition of a Subsidiary Guarantor under this Indenture upon execution and delivery by such Subsidiary Guarantor and the Trustee of a supplemental indenture to this Indenture, the form of which is attached as Exhibit D hereto.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

(1) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(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 each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

SECTION 103. Form of Documents Delivered to Trustee.

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an Officer or Officers may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an Officer or Officers stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

SECTION 104. Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders (including the Required Noteholders) may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by agents duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Issuers. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent

shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Issuers, if made in the manner provided in this Section 104.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Trustee deems sufficient.

(c) The principal amount and serial numbers of Notes held by any Person, and the date of holding the same, shall be proved by the Note Register.

(d) If the Issuers shall solicit from the Holders any request, demand, authorization, direction, notice, consent, waiver or other Act, the Issuers may, at their option, by or pursuant to a Board Resolution, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Issuers shall have no obligation to do so. Notwithstanding TIA Section 316(c), such record date shall be the record date specified in or pursuant to such Board Resolution, which shall be a date not earlier than the date ten (10) days prior to the first solicitation of Holders generally in connection therewith and not later than the date such solicitation is completed, subject to compliance with applicable law, including the requirements of Rule 14e-l under the Exchange Act. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business on such record date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of Outstanding Notes have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the Outstanding Notes shall be computed as of such record date (subject to compliance with Section 205); provided that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than eleven (11) months after the record date. Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Note shall bind every future Holder of the same Note and the Holder of every Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee, the Issuers or any Subsidiary Guarantor in reliance thereon, whether or not notation of such action is made upon such Note.

SECTION 105. Notices, Etc., to Trustee, Issuers, Any Subsidiary Guarantor and Agent.

Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(1) the Trustee by any Holder or by the Issuers or any Subsidiary Guarantor shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing (which may be via facsimile) to or with the Trustee at U.S. Bank National Association, 225 Asylum Street, 23rd Floor, Hartford, CT 06103, Attn: Arthur Blakeslee, Tel: (860) 241-6859, Fax: (866) 350-2126, or

(2) the Issuers or any Subsidiary Guarantor by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if made, given, furnished or delivered in writing and mailed, first-class postage prepaid, or delivered by recognized overnight courier, to the Issuers or such Subsidiary Guarantor addressed to it at the address of its principal office specified in the first paragraph, Attention: General Counsel, or at any other address previously furnished in writing to the Trustee by the Issuers or such Subsidiary Guarantor.

Any notice or communication, if mailed and properly addressed with postage prepaid or if properly addressed and sent by prepaid courier service, shall be deemed given when received; any notice, if transmitted by facsimile, shall be deemed given when the confirmation of transmission thereof is received by the transmitter. Electronic mail and Internet and intranet websites may, at the discretion of the Trustee, be used to distribute routine communications, such as financial statements and other information as provided herein, to distribute Note Documents for execution by the parties thereto and distribute executed Note Documents and may not be used for any other purpose.

SECTION 106. Notice to Holders; Waiver.

Where this Indenture provides for notice of any event to Holders by the Issuers or the Trustee, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid or by overnight air courier guaranteeing next day delivery, to each Holder affected by such event, at his address as it appears in the Note Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Notices given by publication or electronic delivery shall be deemed given on the first date on which publication or electronic delivery is made and notices given by first-class mail, postage prepaid, shall be deemed given five (5) calendar days after mailing.

In case by reason of the suspension of or irregularities in regular mail service or by reason of any other cause, it shall be impracticable to mail notice of any event to Holders when such notice is required to be given pursuant to any provision of this Indenture, then any manner of giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice for every purpose hereunder.

Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be

filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 107. Effect of Headings and Table of Contents.

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

SECTION 108. Successors and Assigns.

All agreements of each Issuer in this Indenture and the Notes will bind its successors. All agreements of the Trustee and the Collateral Agent in this Indenture will bind their respective successors. All agreements of each Subsidiary Guarantor in this Indenture will bind its successors, except as otherwise provided in Section 1109 hereof. The provisions of Article Twelve relating to the Collateral Agent shall inure to the benefit of such Collateral Agent.

SECTION 109. Separability Clause.

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

SECTION 110. Benefits of Indenture.

Nothing in this Indenture or in the Notes, express or implied, shall give to any Person, other than the parties hereto, any Paying Agent, any Note Registrar and their successors hereunder, and the Holders, any benefit or any legal or equitable right, remedy or claim under this Indenture.

SECTION 111. Governing Law.

This Indenture, the Notes and any Guarantee shall be governed by and construed in accordance with the laws of the State of New York without regard to conflict of laws principles thereof. This Indenture is subject to the provisions of the Trust Indenture Act that are referred to herein or are otherwise required to be part of this Indenture and shall, to the extent applicable, be governed by such provisions.

SECTION 112. Communication by Holders of Notes with Other Holders of Notes.

Holders may communicate pursuant to Trust Indenture Act Section 312(b) with other Holders with respect to their rights under this Indenture or the Notes. The Issuers, the Trustee, the Note Registrar and anyone else shall have the protection of Trust Indenture Act Section 312(c).

SECTION 113. Legal Holidays.

In any case where any Interest Payment Date, Redemption Date or Stated Maturity or Maturity of any Note shall not be a Business Day, then (notwithstanding any other provision of this Indenture or of the Notes) payment of principal or interest need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the Interest Payment Date, Redemption Date, or at the Stated Maturity or Maturity; provided that no interest shall accrue for the period from and after such Interest Payment Date, Redemption Date, Stated Maturity or Maturity, as the case may be.

SECTION 114. No Personal Liability of Directors, Officers, Employees and Equity holders.

Notwithstanding anything to the contrary in this Indenture, any other Note Document, or any other document, certificate or instrument executed by any Obligor pursuant hereto or thereto, none of the Noteholder Secured Parties shall have any claims with respect to the transactions contemplated by the Note Documents against any past, present or future holder (whether direct or indirect) of any equity interests in the Company and its Affiliates (other than the Company and its Subsidiaries), equity holders, officers, directors, employees' representatives, Controlling persons, executives or agents (collectively, the "Non-Recourse Persons"), such claims against such Non-Recourse Persons (including as may arise by operation of law) being expressly waived hereby; provided that the foregoing provision of this Section 114 shall not (a) constitute a waiver, release or discharge (or otherwise impair the enforceability) of any of the Obligations, or of any of the terms, covenants, conditions or provisions of this Indenture or any other Note Document and the same shall continue (but without personal liability to the Non-Recourse Persons) until fully paid, discharged, observed or performed; (b) constitute a waiver, release or discharge of any lien or security interest purported to be created pursuant to the Security Documents (or otherwise impair the ability of any Noteholder Secured Party to realize or foreclose upon any Collateral); (c) limit or restrict the right of the Noteholder Secured Parties (or any assignee, beneficiary or successor to any of them) to name the Company 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 Indenture or any other Note 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 Section 114; (d) in any way limit or restrict any right or remedy of the Noteholder Secured Parties (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 (which shall not include innocent or negligent misrepresentation) or willful misconduct, or (e) affect or diminish or constitute a waiver, release or discharge of any specific written obligation, covenant or agreement made by any of the Non-Recourse Persons (or any security granted by the Non-Recourse Persons in support of the obligations of any person) under or in connection with any Security Document (or as security for the Obligations). The limitations on recourse set forth in this Section 114 shall survive the termination of this Indenture and the termination of all Hedge Agreements to which any Noteholder Secured Party is a party and the full payment and performance of the Obligations hereunder and under the other Note Documents.

SECTION 115. Trust Indenture Act Controls.

If any provision of this Indenture limits, qualifies or conflicts with another provision which is required to be included in this Indenture by the TIA, the provision required by the TIA shall control. If any provision of this Indenture modifies or excludes any provision of the TIA that may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or excluded, as the case may be.

SECTION 116. Counterparts.

This Indenture may be executed in any number of counterparts, each of which shall be original; but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

SECTION 117. Intercreditor Agreements Govern.

Reference is made to the Intercreditor Agreements. Each Holder, by its acceptance of a Note, (a) consents to the terms provided for in the Intercreditor Agreements, (b) agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreements and (c) authorizes and instructs the Collateral Agent to enter into the Intercreditor Agreements as Collateral Agent and on behalf of such Holder and on behalf of such Holder. In the event of any conflict between the express terms and provisions of this Indenture or any other Note Document on the one hand, and of the Intercreditor Agreements on the other hand, the terms and provisions of the Intercreditor Agreements shall control.

SECTION 118. Waiver of Jury Trial.

EACH OF THE ISSUERS AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTION CONTEMPLATED HEREBY.

SECTION 119. No Adverse Interpretation of Other Agreements.

This Indenture may not be used to interpret another indenture or loan or debt agreement of the Issuers or any Subsidiary of the Company, and no such indenture or loan or debt agreement may be used to interpret this Indenture.

ARTICLE TWO

NOTE FORMS

SECTION 201. Forms Generally.

The Series A Notes and the Series B Notes, if any, shall be known and designated as "Series A Notes due 2017" and "Series B Notes due 2017" of the Issuers, respectively. The Notes and the Trustee's certificate of authentication shall be substantially in the forms set out in Exhibit A hereto. The Notes may have notations, legends or endorsements required by law, stock exchange rule or usage; provided, that any such notations, legends or endorsements are in a form reasonably acceptable to the Issuers. Each Note will be dated the date of its authentication. The Notes shall be in minimum denominations of $1,000.00 and any integral multiple of $1.00 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 Issuers, the Subsidiary Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

Any Definitive Notes shall be printed, lithographed, typewritten or engraved on steel-engraved borders or may be produced in any other manner, all as determined by the Officers of the Company on behalf of the Issuers executing such Notes, as evidenced by their execution of such 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 written instructions given by the Holder thereof as required by Section 311.

SECTION 202. Form of Trustee's Certificate of Authentication.

The Trustee shall, upon receipt of an Issuer Order containing the information specified in Section 303, authenticate Notes for original issue that may be validly issued under this Indenture. The aggregate principal amount of Notes outstanding at any time may not exceed

the aggregate principal amount of Notes authorized for issuance by the Issuers pursuant to one or more Issuer Orders, except as provided in Section 306 hereof.

The Trustee may appoint an authenticating agent acceptable to the Issuers 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 Issuers.

The Trustee's certificate of authentication shall be in substantially the following form:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION.

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

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

Dated: _____

By _____
Authorized Signatory

SECTION 203. Restrictive Legends.

Except as permitted by Section 204 below, each Global Note and each Definitive Note (and all Notes issued in exchange therefor or substitution therefor) shall bear the following legend set forth below (the "Private Placement Legend") on the face thereof:

THE NOTES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE ''SECURITIES ACT'') AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (A) (1) TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (2) IN AN OFFSHORE TRANSACTION COMPLYING WITH RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (3) PURSUANT TO ANOTHER EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT, OR (4) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND (B) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES, AND ANY SELLER AGREES THAT IT WILL DELIVER TO EACH

PERSON TO WHOM THIS NOTE OR AN INTEREST HEREIN IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

Each Global Note shall also bear the following legend (the "Global Note Legend") on the face thereof:

UNLESS THIS CERTIFICATE IS PRESENTED, BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, TO THE ISSUERS OR THEIR AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY OR SUCH OTHER REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL BECAUSE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF CEDE & CO. OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN SECTION 311 OF THE INDENTURE.

Each Regulation S Global Note, and each Definitive Note issued in exchange therefor or substitution therefor, will bear a legend in substantially the following form (the "Regulation S Legend"):

BY ITS ACQUISITION HEREOF, THE HOLDER THEREOF REPRESENTS THAT IT IS NOT A U.S. PERSON, NOR IS IT PURCHASING FOR THE ACCOUNT OF A U.S. PERSON, AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT.

SECTION 204. Unrestricted Global Notes.

Any Global Note or Definitive Note issued pursuant to subparagraphs (b)(4), (c)(3), (c)(4), (d)(2), (d)(3), (e)(2), (e)(3) or (f) of Section 311 (and all Notes issued in exchange therefor or substitution thereof) shall not bear the Private Placement Legend.

SECTION 205. Disregarded Notes.

Notwithstanding Section 316(a) of the TIA, in determining whether the Holders of the required principal amount of Notes have concurred in any declaration of acceleration, notice of default, direction, waiver, consent, amendment, modification, supplemental indenture or other change or other matter with respect to this Indenture or the Notes, Notes owned by any Person Controlling or Controlled by or under Control with the Company or any Subsidiary Guarantor (each, a "Control Person"), shall not be disregarded. Each Holder and each direct and indirect beneficial owner of an interest in the Notes hereby (i) waives the application of the final sentence of Section 316(a) of the TIA with respect to any Control Person, (ii) specifically agrees that such sentence and the terms thereof shall be excluded from this Indenture and the Notes and shall not be deemed included herein or therein, and (iii) to the extent necessary, waives the application of Section 318 of the TIA and agrees that the provisions of this Section 205 shall govern and control. As of the Effective Date, the beneficial owners of the Notes include one or more Control Persons, and such Control Persons would not have accepted the Notes issued hereunder in the absence of the waivers and agreements set forth in this Section 205. The provisions of this Section 205 may be specifically enforced by the Trustee or any Holder or direct or indirect beneficial owner of the Notes.

ARTICLE THREE

THE NOTES

SECTION 301. Title and Terms.

The aggregate principal amount of Notes which may be authenticated and issued under this Indenture is not limited; provided, however, that any Additional Notes issued under this Indenture are issued in accordance with Section 910 hereof, as part of the same series as the Notes.

The Stated Maturity of the Series A Notes and any Series B Notes is [●], 2017, and the Notes shall bear interest at the LIBO Rate, as determined by the Calculation Agent, plus the Applicable Margin, from the Effective Date, or from the most recent Interest Payment Date to which interest has been paid or duly provided for. Interest on the Notes will accrue and be payable quarterly in arrears on each Interest Payment Date, until the principal thereof is paid or duly provided for, to the Person in whose name the Note (or any Predecessor Note) is registered at the close of business on the date fifteen (15) days prior to such Interest Payment Date (each, a "Regular Record Date"). If any Interest Payment Date falls on a day that is not a Business Day, the required payment on that day will be due on the next succeeding Business Day.

The Notes shall be redeemable as provided in Article Ten.

SECTION 302. Denominations.

The Notes shall be issuable only in registered form without coupons and only in minimum denominations of $1,000.00 and any integral multiple of $1.00 in excess thereof.

SECTION 303. Execution, Authentication, Delivery and Dating.

The Notes shall be executed by at least one Officer of each of the Company and the Co-Issuer. The signature of any Officer on the Notes may be a manual or facsimile signature of the present or any future such authorized officer and may be imprinted or otherwise reproduced on the Notes.

Notes bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Issuers, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Notes or did not hold such offices at the date of such Notes.

At any time and from time to time after the execution and delivery of this Indenture, the Issuers may deliver Notes executed by the Issuers to the Trustee for authentication, together with an Issuer Order for the authentication and delivery of such Notes, and the Trustee in accordance with such Issuer Order shall authenticate and deliver such Notes. Such Issuer Order shall identify the Notes to be authenticated, whether the Notes to be authenticated shall be Series A Notes, Series B Notes, Additional Notes and/or PIK Notes, the date on which the original issue of the Notes is to be authenticated, the number of separate Note certificates, the principal amount of such Notes to be authenticated, the registered holder of each of the said Notes, and delivery instructions.

On the Effective Date, the Issuers shall deliver the Series A Notes in the aggregate principal amount of $[●] executed by the Issuers to the Trustee for authentication, together with an Issuer Order from the Company for the authentication and delivery of such Series A Notes, directing the Trustee to authenticate the Series A Notes and certifying that all conditions precedent to the issuance of Series A Notes contained herein have been fully complied with, and the Trustee in accordance with such Issuer Order shall authenticate and deliver such Series A Notes. If any Series B Notes shall be deemed issued on the Effective Date, then the Issuer Order from the Company referred to in the preceding sentence shall also state the following: (i) the aggregate principal amount of the Series A Notes originally deemed to be issued on the Effective Date prior to giving effect to the deemed issuance of the Series B Notes on the Effective Date, (ii) the aggregate principal amount of the Series B Notes that will be deemed to be issued on the Effective Date, (iii) certification by the Company that all conditions precedent to the deemed issuance of Series B Notes contained herein have been fully complied with, (iv) the aggregate principal amount of Series A Notes deemed to be issued on the Effective Date after giving effect to the reduction of the Series A Notes by the aggregate principal amount of Series B Notes deemed to be issued on the Effective Date but prior to the deemed automatic conversion of Series B Notes into a like principal amount of Series A Notes, (v) the aggregate principal amount of Series B Notes that shall be deemed to automatically convert into a like principal amount of Series A Notes and (vi) the aggregate principal amount of the Series A Notes to be authenticated and delivered by the Trustee on the Effective Date after giving effect to the foregoing deemed issuance and conversion of the Series B Notes and corresponding decrease and increase of the Series A Notes.

At any time and from time to time after the Effective Date, the Issuers may deliver Additional Notes executed by the Issuers to the Trustee for authentication, together with

an Issuer Order from the Company and the Co-Issuer for the authentication and delivery of such Additional Notes, directing the Trustee to authenticate the Additional Notes and certifying that the issuance of such Additional Notes is in compliance with this Indenture and that all other conditions precedent to the issuance of Additional Notes contained herein have been fully complied with, and the Trustee in accordance with such Issuer Order shall authenticate and deliver such Additional Notes. The Trustee shall receive an Officers' Certificate and an Opinion of Counsel of the Company that it may reasonably require in connection with such authentication of Additional Notes. Such Issuer Order shall specify the principal amount of Additional Notes to be authenticated, the date on which the original issue of Additional Notes is to be authenticated, the number of separate Note certificates, the registered holder of each of the said Notes, and delivery instructions.

Each Note shall be dated the date of its authentication.

No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Note a certificate of authentication substantially in the form provided for herein duly executed by the Trustee by manual signature of an authorized officer, and such certificate upon any Note shall be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder and is entitled to the benefits of this Indenture.

SECTION 304. Temporary Notes.

In the event Definitive Notes are to be issued pursuant to the terms of this Indenture, pending the preparation of Definitive Notes, the Issuers may execute, and upon Issuer Order the Trustee shall authenticate and deliver, temporary Notes which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the Definitive Notes in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Notes may determine, as conclusively evidenced by their execution of such Notes.

If temporary Notes are issued, the Issuers will cause Definitive Notes to be prepared without unreasonable delay. After the preparation of Definitive Notes, the temporary Notes shall be exchangeable for Definitive Notes upon surrender of the temporary Notes at the office or agency of the Issuers designated for such purpose pursuant to Section 902, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Notes, the Issuers shall execute and upon Issuer Order the Trustee shall authenticate and deliver in exchange therefor a like principal amount of Definitive Notes of authorized denominations. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits under this Indenture as Definitive Notes.

SECTION 305. Registration, Paying Agent, Registration of Transfer and Exchange.

The Issuers shall cause to be kept at the Corporate Trust Office of the Trustee a register (the register maintained in such office and in any other office or agency designated pursuant to Section 902 being herein sometimes referred to as the "Note Register") in which,

subject to such reasonable regulations as it may prescribe, the Issuers shall provide for the registration of Notes and of transfers of Notes. The Note Register shall be in written form or any other form capable of being converted into written form within a reasonable time. At all reasonable times, the Note Register shall be open to inspection by the Trustee. The Trustee is hereby initially appointed as note registrar (the "Note Registrar") for the purpose of registering Notes and transfers of Notes as herein provided and as Paying Agent. The Issuers may appoint one or more co-registrars and one or more additional paying agents. The Issuers may change any Paying Agent or Note Registrar without prior notice to any Holder. The Issuers shall notify the Trustee in writing of the name and address of any Agent not party to this Indenture. If the Issuers fail to appoint or maintain another entity as Note Registrar or Paying Agent, the Trustee shall act as such. The Issuers or any Subsidiary Guarantor may act as Paying Agent or Note Registrar.

The Issuers initially appoint DTC to act as Depository with respect to the Global Notes.

Upon surrender for registration of transfer of any Note at the office or agency of the Issuers designated pursuant to Section 902, the Issuers shall execute, and upon Issuer Order the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denomination or denominations of a like aggregate principal amount.

At the option of the Holder, Notes may be exchanged for other Notes of any authorized denomination and of a like aggregate principal amount, upon surrender of the Notes to be exchanged at such office or agency. Whenever any Notes are so surrendered for exchange, the Issuers shall execute, and upon Issuer Order the Trustee shall authenticate and deliver, the Notes which the Holder making the exchange is entitled to receive.

All Notes issued upon any registration of transfer or exchange of Notes shall be the valid obligations of the Issuers, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Notes surrendered upon such registration of transfer or exchange.

Every Note presented or surrendered for registration of transfer or for exchange shall be duly endorsed, or be accompanied by written instruments of transfer, in form satisfactory to the Issuers and the Note Registrar, duly executed by the Holder thereof or his attorney duly authorized in writing.

Neither the Note Registrar nor the Issuers shall be required to register the transfer of or exchange any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

SECTION 306. Mutilated, Destroyed, Lost and Stolen Notes.

If (i) any mutilated Note is surrendered to the Trustee, or (ii) the Issuers and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Note, and there is delivered to the Issuers and the Trustee such security or indemnity as may be required by them to protect the Trustee, any Agent and the Issuers from any loss, claim, liability or expense, then, in the absence of written notice to the Issuers or the Trustee that such Note has been

acquired by a bona fide purchaser, the Issuers shall execute and upon Issuer Order the Trustee shall authenticate and deliver, in exchange for any such mutilated Note or in lieu of any such destroyed, lost or stolen Note, a new Note of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Note has become or is about to become due and payable, the Issuers in their discretion may, instead of issuing a new Note, pay such Note.

Upon the issuance of any new Note under this Section 306, the Issuers may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Note issued pursuant to this Section 306 in lieu of any mutilated, destroyed, lost or stolen Note shall constitute an original additional contractual obligation of the Issuers and each Subsidiary Guarantor and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Notes duly issued hereunder.

The provisions of this Section 306 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

SECTION 307. Payment of Interest; Interest Rights Preserved.

Interest on any Note which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be payable to the Person in whose name such Note (or one or more Predecessor Notes) is registered at the close of business on the Regular Record Date for such interest at the office or agency of the Issuers maintained for such purpose pursuant to Section 902. The interest on any Note shall be paid in kind in accordance with Section 313 hereof and any installment on PIK Interest shall be considered paid on the applicable Interest Payment Date. The due and punctual payment of principal of, and interest on, the Notes payable by the Issuers is irrevocably and unconditionally guaranteed, to the extent set forth herein, by each of the Subsidiary Guarantors.

Any interest on any Note which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date shall forthwith cease to be payable to the Holder on the Regular Record Date by virtue of having been such Holder, and such defaulted interest and (to the extent lawful) interest on such defaulted interest at a rate per annum of 2% in excess of the interest rate applicable to the Notes at the applicable Interest Payment Date (such defaulted interest and interest thereon herein collectively called "Defaulted Interest") shall be payable by the Issuers upon demand of the Required Noteholders or, if no such demand is made, on the next succeeding Interest Payment Date. Any Defaulted Interest shall be paid in kind in accordance with Section 313.

Subject to the foregoing provisions of this Section 307, each Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Note shall

carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note.

SECTION 308. Persons Deemed Owners.

Prior to the due presentment of a Note for registration or transfer, the Issuers, any Subsidiary Guarantor, the Trustee and any agent of the Issuers or the Trustee shall treat, absent manifest error, the Person in whose name such Note is registered as the owner of such Note for the purpose of receiving payment of principal of and (subject to Sections 305 and 307) interest on such Note and for all other purposes whatsoever, whether or not such Note be overdue, and none of the Issuers, the Trustee or any agent of the Issuers or the Trustee shall be affected by notice to the contrary.

SECTION 309. Cancellation.

All Notes surrendered for payment, redemption, registration of transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it. The Issuers may at any time deliver to the Trustee for cancellation any Notes previously authenticated and delivered hereunder. All Notes so delivered shall be promptly cancelled by the Trustee. If the Issuers shall so acquire any of the Notes, however, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Notes unless and until the same are surrendered to the Trustee for cancellation. No Notes shall be authenticated in lieu of or in exchange for any Notes cancelled as provided in this Section 309, except as expressly permitted by this Indenture. All cancelled Notes held by the Trustee shall be disposed of by the Trustee in accordance with its customary procedures. Certification of the cancellation of all cancelled Notes shall upon the written request of the Issuers be delivered to the Issuers.

SECTION 310. Computation of Interest.

The Calculation Agent shall be responsible for setting the interest rate for the Notes in accordance with this Section 310 and based on its determination of the LIBO Rate.

The Calculation Agent will set the initial interest rate on the Effective Date and reset the interest rate on each Interest Payment Date (each such date, an "Interest Reset Date"). The second London business day preceding an Interest Reset Date will be the "Interest Determination Date" for that Interest Reset Date. The interest rate in effect on each date that is not an Interest Reset Date will be the interest rate determined as of the Interest Determination Date pertaining to the immediately preceding Interest Reset Date. The interest rate in effect on any day that is an Interest Reset Date will be the interest rate determined as of the Interest Determination Date pertaining to the Interest Reset Date. Interest shall be computed on the basis of the actual number of days in the relevant Interest Period and a 360-day year.

The Calculation Agent will cause the rate of interest and amount of interest payable for each Interest Period to be notified to the Issuers and the Paying Agent as soon as reasonably practicable following each Interest Determination Date. Each calculation of the interest rate on the Notes by the Calculation Agent will (in the absence of manifest error) be final and binding on the Holders of the Notes, the Issuers and the Subsidiary Guarantors, and no

liability will (in the absence of willful misconduct) attach to the Calculation Agent in connection with the exercise or non-exercise by the Calculation Agent of its powers, duties and discretion.

So long as any of the Notes remain outstanding, there shall at all times be a calculation agent, which shall initially be the Calculation Agent. If the Calculation Agent is unable or unwilling to continue to act as the calculation agent or if it fails to calculate properly the interest rate on the Notes for any Interest Period, the Company will appoint another leading commercial or investment bank engaged in the London interbank market to act as calculation agent in its place. Any such calculation agent may not resign its duties without a successor having been appointed.

SECTION 311. Book-Entry and Transfer Provisions.

(a) Transfer and Exchange of Global Notes. A Global Note may not be transferred except as a whole by the Depository to a nominee of the Depository, by a nominee of the Depository to the Depository or to another nominee of the Depository, or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository. All Global Notes may be exchanged by the Issuers for Definitive Notes if:

(1) the Depository (a) notifies the Issuers that it is unwilling or unable to continue as depository for the Global Notes or (b) has ceased to be a clearing agency registered under the Exchange Act and, in either case, the Issuers fail to appoint a successor depository;

(2) the Issuers, at their option, notify the Trustee in writing that it elects to cause the issuance of the Definitive Notes; or

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

Upon the occurrence of either of the preceding events in subparagraphs (1) or (2) above, Definitive Notes shall be issued in such names as the Depository shall instruct the Trustee in writing. Global Notes also may be exchanged or replaced, in whole or in part, as provided in Sections 304 and 306 hereof. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 311 or Sections 304 or 306 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 311(a), however, beneficial interests in a Global Note may be transferred and exchanged as provided in Sections 311(b), (c) or (f) hereof.

(b) Transfer and Exchange of Beneficial Interests in the Global Notes. The transfer and exchange of beneficial interests in the Global Notes will be effected through the Depository, in accordance with the provisions of this Indenture and the Applicable Procedures. None of the Company, the Co-Issuer, the Trustee, Paying Agent, nor any agent of the Company shall have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in a Global Note, or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests. 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. 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 Note Registrar to effect the transfers described in this Section 311(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 311(b)(1) above, the transferor of such beneficial interest must deliver to the Note Registrar either:

(A) both:

(x) a written order from a Participant or an Indirect Participant given to the Depository in accordance with the Applicable Procedures directing the Depository 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

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

(B) both:

(x) a written order from a Participant or an Indirect Participant given to the Depository in accordance with the Applicable Procedures directing the Depository to cause to be issued a Definitive Note in an amount equal to the beneficial interest to be transferred or exchanged; and

(y) instructions given by the Depository to the Note 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 (A) above.

(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 311(b)(2) above and:

(A) if the transferee will take delivery in the form of a beneficial interest in the 144A Global Note, then the transferor must deliver to the Note Registrar a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof.

(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 311(b)(2) above and:

(A) the Note Registrar receives the following:

(x) 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

(y) 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 certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (A), if the Note Registrar or the Issuers so request or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Issuers 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 Issuers shall issue and, upon receipt of an Issuer Order in accordance with Section 202 and Section 303 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, then, upon receipt by the Note 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 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; or

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

the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 311(f), and the Issuers shall execute and, upon receipt of an Issuer Order, the Trustee shall authenticate and deliver to the Person designated in the instructions a Definitive Note in the appropriate principal amount. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 311(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 Note Registrar through instructions from the Depository and the Participant or Indirect Participant. The Trustee shall deliver such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 311(c)(1) shall bear the Private Placement Legend and shall be subject to all restrictions on transfer contained therein.

(2) [Reserved.]

(3) *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 only if:

(A) the Note Registrar receives the following:

(x) 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

(y) 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 certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (3), if the Note Registrar or the Issuers so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Issuers 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.

(4) *Beneficial Interests in Unrestricted Global Notes to Unrestricted Definitive Notes*. If any holder of a beneficial interest in an Unrestricted Global Note proposes to exchange such beneficial interest for a Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Definitive Note, then, upon satisfaction of the conditions set forth in Section 311(b)(2), the Trustee will cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 311(f) hereof, and the Issuers will execute and, upon receipt of an Issuer Order, the Trustee will authenticate and deliver to the Person designated in the instructions a Definitive Note in the appropriate principal amount. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 311(c)(4) 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 Note Registrar from or through the Depository and the Participant or Indirect Participant. The Trustee will deliver such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 311(c)(4) will not bear the Private Placement Legend.

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

(1) *Restricted Definitive Notes to Beneficial Interests in Restricted Global Notes*. If any Holder of a Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note or to transfer such Restricted Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in a Restricted Global Note, then, upon receipt by the Note 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 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; or

(F) if such Restricted Definitive Note is being transferred pursuant to an effective registration statement under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(c) 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, and in the case of clause (C) above, the Regulation S Global Note.

(2) *Restricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes*. A Holder of a Restricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note only if:

(A) the Note Registrar receives the following:

(x) 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

(y) 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 (2), if the Note Registrar or the Issuers so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Issuers 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 311(d)(2), the Trustee will cancel the Definitive Notes and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Note.

(3) *Unrestricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes*. A Holder of an Unrestricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note at any time. Upon receipt of a written 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 in a Global Note is effected pursuant to subparagraph (3) above at a time when an Unrestricted Global Note has not yet been issued, the Issuers will issue and, upon receipt of an Issuer Order in accordance with Section 202 and Section 303 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 311(e), the Note 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 Note Registrar the Definitive Notes duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Note 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 311(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 Note 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) 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 Note Registrar receives the following:

(x) 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

(y) 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.

(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 Note Registrar shall register the Unrestricted Definitive Notes pursuant to the instructions from the Holder thereof.

(f) *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 309 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 Depository 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 Depository at the direction of the Trustee to reflect such increase.

(g) General Provisions Relating to Transfers and Exchanges.

(1) To permit registrations of transfers and exchanges, the Issuers will execute and the Trustee will authenticate Global Notes and Definitive Notes upon receipt of an Issuer Order in accordance with Section 202 and Section 303 hereof or at the Note 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 Issuers 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 304, 806 and 1008 hereof).

(3) The Note 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 Issuers, 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 Note Registrar nor the Issuers 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 fifteen (15) days before the day of the mailing of a notice of redemption of Notes for redemption under Section 1004 hereof and ending at the close of business on the day of such mailing;

(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 Issuers 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 Issuers shall be affected by notice to the contrary.

(7) The Trustee will authenticate Global Notes and Definitive Notes in accordance with the provisions of Section 202 hereof.

(8) All certifications, certificates and Opinions of Counsel required to be submitted to the Note Registrar pursuant to this Section 311 to effect a registration of transfer or exchange may be submitted by facsimile.

(9) 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 Depository Participants or beneficial owners of interests 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 compliance as to form with the express requirements hereof.

(10) Neither the Trustee nor any Agent shall have any responsibility for any actions taken or not taken by the Depository.

SECTION 312. CUSIP Numbers.

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

SECTION 313. Issuance of PIK Notes.

(1) The Issuers shall be entitled to and shall exclusively issue PIK Notes under this Indenture as interest on the Notes.

(2) No later than two Business Days prior to the relevant Interest Payment Date the Company shall deliver to the Trustee and the Paying Agent (if other than the Trustee), (i) if such PIK Notes are Definitive Notes, the required amount of new Definitive Notes (rounded up to the nearest whole dollar) and an Issuer Order to authenticate and deliver such PIK Notes or (ii) if such PIK Notes are Global Notes, an

Issuer Order to increase the outstanding principal amount of Series A Notes or Series B Notes, as applicable, by the required amount (rounded up to the nearest whole dollar) (or, if necessary, pursuant to the requirements of the Depository or otherwise to authenticate and deliver such new Global Notes).

(3) Any PIK Notes shall, after being executed and authenticated pursuant to Section 202 and Section 303, be (i) if such PIK Notes are Definitive Notes, mailed to the person entitled thereto as shown on the Note Register for the Definitive Notes as of the relevant Regular Record Date or (ii) if such PIK Notes are Global Notes, deposited into the account specified by the Holder or Holders thereof as of the relevant Regular Record Date. Alternatively, in connection with any PIK Payment, the Issuer may direct the Paying Agent to make appropriate amendments to the schedule of principal amounts of the relevant Global Notes outstanding for which PIK Notes will be issued and arrange for deposit into the account specified by the Holder or Holders thereof as of the relevant Regular Record Date.

ARTICLE FOUR

SATISFACTION AND DISCHARGE

SECTION 401. Satisfaction and Discharge of Indenture.

This Indenture shall upon Issuer Request be discharged and will cease to be of further effect as to all Notes issued hereunder (except as to surviving rights of registration of transfer or exchange of Notes expressly provided for herein or pursuant hereto) and the Trustee, at the expense of the Issuers, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture when:

(1) either

(A) all Notes theretofore authenticated and delivered (other than Notes which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 306) have been delivered to the Trustee for cancellation; or

(B) all such Notes not theretofore delivered to the Trustee for cancellation have become due and payable by reason of the making of a notice of redemption pursuant to Section 1005 or otherwise, and the Issuers or any Subsidiary 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 Dollars, 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 such Notes not theretofore delivered to the Trustee for cancellation, for principal and accrued and unpaid interest to the Redemption Date;

(2) no Default or Event of Default (other than that resulting from borrowing funds to be applied to make such deposit or the granting of Liens in connection therewith) with respect to this Indenture or the Notes shall have occurred and be continuing on the

date of such deposit or shall occur as a result of such deposit and such deposit shall not result in a breach or violation of, or constitute a default under, any other instrument to which the Issuers or any Subsidiary Guarantor is a party or by which the Issuers or any Subsidiary Guarantor is bound (other than an instrument to be terminated contemporaneously with or prior to the borrowing of funds to be applied to make such deposit and the granting of Liens in connection therewith);

(3) the Issuers have paid or caused to be paid all sums payable by them under this Indenture;

(4) the Company has on behalf of the Issuers delivered irrevocable written instructions to the Trustee under this Indenture to apply the deposited money toward the payment of such Notes at the Redemption Date; and

(5) the Company has on behalf of the Issuers delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein to the satisfaction and discharge of this Indenture have been complied with.

The Collateral will be released from the Lien securing the Notes upon a satisfaction and discharge in accordance with the provisions of this Article Four described above.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Issuers to the Trustee under Section 607, the obligations of the Issuers to any Authenticating Agent under Section 612 and, if money or Government Securities shall have been deposited with the Trustee pursuant to Section 401(1)(B), the obligations of the Trustee under Section 402 shall survive such satisfaction and discharge.

SECTION 402. Application of Trust Money.

All money or Government Securities deposited with the Trustee pursuant to Section 401 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 Paying Agent for itself) as the Trustee may determine, to the Persons entitled thereto, of the principal and interest for whose payment such money or Government Securities has been deposited with the Trustee; but such money or Government Securities need not be segregated from other funds except to the extent required by law.

The Issuers shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or Government Securities deposited pursuant to Section 401 or the principal and interest received in respect thereof.

If the Trustee or Paying Agent is unable to apply any money or Government Securities in accordance with Section 401 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 Issuers' and any Subsidiary Guarantor's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 401 until such time as the Trustee or Paying Agent is permitted to apply all such money or Government Securities in accordance with Section 401; provided that if the

Issuers have made any payment of principal of, or interest on, any Notes because of the reinstatement of their obligations, the Issuers 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 FIVE

REMEDIES

SECTION 501. Events of Default.

Each of the following events or occurrences described in this Section 501 shall constitute an "Event of Default":

(1) A default in any:

(a) payment of interest (including any Defaulted Interest) on any Note when the same becomes due and payable, and such default continues unremedied for a period of fifteen (15) Business Days; or

(b) payment of principal of any Note when due at its Stated Maturity, upon mandatory or optional redemption, upon declaration or otherwise.

(2) Any representation or warranty of any Obligor made or deemed to be made in any Note Document that is or shall be incorrect when made or deemed to have been made in any material respect; provided, however, that if: (i) the Company was not aware that such misrepresentation or warranty was false or incorrect at the time such representation or warranty was made; (ii) the fact, event or circumstance resulting in such false or incorrect representation or warranty is capable of being cured, corrected or otherwise remedied; and (iii) such fact, event or circumstance resulting in such false or incorrect representation or warranty shall have been cured, corrected or otherwise remedied within thirty (30) days from the date on which the Company or any Officer thereof first obtained knowledge thereof, such that such incorrect or false representation or warranty (as cured, corrected or remedied) could not reasonably be expected to result in a Material Adverse Effect, then such incorrect or false representation or warranty shall not constitute a Default or Event of Default.

(3) The default by any Obligor in the due performance or observance of any of its obligations pursuant to Sections 909 through 913 and Sections 922 through 932; provided, however, that if such default in the due performance or observance of such obligation is: (i) with respect to an obligation under any of Section 912 (other than with respect to Liens securing Indebtedness for borrowed money), Section 923 (other than with respect to Investments exceeding $2,500,000 in the aggregate), Section 927 or Section 928; (ii) capable of being cured or otherwise remedied; and (iii) cured or otherwise remedied within sixty (60) days from the date on which the Company or any Officer thereof first obtained knowledge thereof, then such default in the due performance or observance of such obligation will not constitute a Default or Event of Default.

(4) The default by any Obligor in the due performance or observance of any agreement contained in any Note Document to which such Obligor is party, where such default has continued unremedied for a period of sixty (60) days after notice thereof having been given to the Company by the Trustee or by any Holder.

(5) A default (i) in the payment of any amount when due (subject to any applicable grace period), whether by acceleration or otherwise, of any principal or stated amount of, or interest or fees on, any Indebtedness under the Credit Agreements or any other Indebtedness (other than the Notes) of any Obligor having a principal or stated amount (or, in the case of any Hedge Agreement or Power Purchase Agreement the obligations under which comprise Indebtedness, an Agreement Value), individually or in the aggregate, in excess of $10,000,000; or (ii) in the performance or observance of any obligation or condition with respect to such Indebtedness if the effect of such default is to accelerate the maturity of any such Indebtedness or such default continues unremedied for any applicable period of time sufficient to permit the holder or holders of such Indebtedness, or any trustee or agent for such holders, to cause or declare such Indebtedness to become due and payable or to require such Indebtedness to be prepaid, redeemed, purchased or defeased, or require an offer to purchase or defease such Indebtedness to be made, prior to its expressed maturity; provided that no Default under this subsection (ii) will exist by virtue of a default under the Credit Agreements until the earlier of: (x) five (5) days from the date of such default to the extent such default is continuing; and (y) the moment in which such default results in the acceleration of the maturity of the Indebtedness thereunder or otherwise causes such Indebtedness to mature or any such Indebtedness is declared due and payable or required to be prepaid or redeemed, prior to the stated maturity thereof.

(6) Any judgment or order for the payment of money, individually or in the aggregate, in excess of $10,000,000 (exclusive of any amounts fully covered by insurance (less any applicable deductible) and as to which the insurer has acknowledged its responsibility to cover such judgment or order) or for injunctive relief that could reasonably be expected to result in a Material Adverse Effect shall be rendered against any Obligor and such judgment shall not have been vacated or discharged or stayed or bonded pending appeal within sixty (60) days after the entry thereof or enforcement proceedings shall have been commenced by any creditor upon such judgment or order.

(7) Any of the following events occurs with respect to any Pension Plan which individually or in the aggregate could reasonably be expected to result in a liability in excess of $10,000,000:

(A) one or more ERISA Events; or

(B) the failure of any Pension Plan to satisfy the minimum funding standard required for any plan year or part thereof under Section 412 of the Code or Section 302 of ERISA or a waiver of such standard or extension of any amortization period is sought or granted under Section 412 of the Code or Section 303 or 304 of ERISA.

(8) If any Indebtedness of Gila River Energy, GRE 2014 or Gila River Power shall, at any time, not constitute Non-Recourse Indebtedness.

(9) If (i) any Note Document or any Lien granted thereunder shall (except in accordance with its terms), in whole or in part, terminate, cease to be effective or cease to be the legally valid, binding and enforceable obligation of any Obligor party thereto; (ii) any Obligor or any other party shall, directly or indirectly, contest in any manner such effectiveness, validity, binding nature or enforceability; (iii) any Intercreditor Agreement shall terminate (other than in accordance with its terms), cease to be effective or cease to be the legally valid, binding and enforceable obligation of any Person party thereto; or (iv) except as permitted under any Note Document, any Lien securing any Obligation shall, in whole or in part, cease to be a perfected second-priority Lien (subject to Permitted Liens) or any Obligor shall, directly or indirectly, contest such perfection or priority.

(10) If any Obligor shall:

(A) become insolvent or generally fail to pay, or admit in writing its inability or unwillingness generally to pay, debts as they become due;

(B) apply for, consent to, or acquiesce in the appointment of a trustee, receiver, sequestrator or other custodian for any substantial part of the property of any thereof, or make a general assignment for the benefit of creditors;

(C) in the absence of such application, consent or acquiescence in or permit or suffer to exist the appointment of a trustee, receiver, sequestrator or other custodian for a substantial part of the property of any thereof, and such trustee, receiver, sequestrator or other custodian is not discharged within sixty (60) days; provided that, each Obligor hereby expressly authorizes each of the Trustee and the Collateral Agent to appear in any court conducting any relevant proceeding during such 60-day period to preserve, protect and defend their rights under the Note Documents;

(D) permit or suffer to exist the commencement of any bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law or any dissolution, winding up or liquidation proceeding, in respect thereof, and, if any such case or proceeding is not commenced by any Obligor, such case or proceeding is consented to or acquiesced in by such Person or results in the entry of an order for relief or shall remain for sixty (60) days undismissed; provided that, each Obligor hereby expressly authorizes each of the Trustee and the Collateral Agent to appear in any court conducting any relevant proceeding during such 60-day period to preserve, protect and defend their rights under the Note Documents; or

(E) take any action authorizing, or in furtherance of, any of the foregoing;

(11) (i) A destruction of, or loss of, all or a substantial part of the Union Facility or (ii) any condemnation, seizure or appropriation of all or a substantial part of the Union Facility.

(12) If the Company shall have voluntarily abandoned operation of the Union Facility with no intent to resume such operation, such abandonment to be evidenced by the Company's cessation of such operation for a period of sixty (60) consecutive days for reasons not associated with the occurrence of any of the events set forth in Section 501(11) above or a Forced Outage or a force majeure event; provided that, for the avoidance of doubt, no Default or Event of Default shall occur under this Section 501(12) if the Union Facility is not operating during any period in which, consistent with past practice, the Company has not operated such Facility.

(13) A Change in Control shall have occurred.

SECTION 502. Acceleration of Maturity.

(1) If any Event of Default described in Sections 501(10)(A) through (D) with respect to any Obligor shall occur, the principal of, and accrued but unpaid interest on, all the Notes shall automatically be and become immediately due and payable, without notice or demand to any Person.

(2) If any Event of Default (other than any Event of Default described in Sections 501(10)(A) through (D)) shall occur for any reason, whether voluntary or involuntary, and be continuing, the Trustee, upon the written direction of the Required Noteholders, shall by notice to the Company (on behalf of the Issuers) declare all the principal of, and accrued but unpaid interest on, all the Notes to be due and payable, whereupon the full amount of such principal of, and accrued but unpaid interest on, all the Notes which shall be so declared due and payable shall be and become immediately due and payable, without further notice, demand or presentment.

SECTION 503. Collection of Indebtedness and Suits for Enforcement by Trustee.

The Issuers covenant that if an Event of Default specified in Section 501(1) hereof occurs and is continuing, the Issuers will, upon demand of the Trustee, pay to the Trustee for the benefit of the Holders of such Notes, the whole amount then due and payable on such Notes for principal and interest (including, without limitation, Defaulted Interest), and interest on any overdue principal and, to the extent that payment of such interest shall be legally enforceable, upon any overdue installment of interest, at the rate borne by the Notes, and, in addition thereto, 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.

If the Issuers fail to pay such amounts forthwith upon such demand, the Trustee, in its own name as trustee of an express trust, may pursue any available remedy, including instituting a judicial proceeding for the collection of the sums so due and unpaid, prosecuting such proceeding to judgment or final decree and enforcing the same against the Issuers, any

Subsidiary Guarantor or any other obligor upon the Notes and collecting the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Issuers, any Subsidiary Guarantor or any other obligor upon the Notes, wherever situated.

If an Event of Default occurs and is continuing, the Trustee, may in its discretion, or at the direction of the Required Noteholders shall, proceed to protect and enforce its rights and remedies and the rights and remedies of the Holders under this Indenture, the Guarantees and the Security Documents by such appropriate remedies as the Trustee shall deem necessary to protect and enforce any such rights, including seeking recourse against any Subsidiary Guarantor, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy, including but without limitation, seeking recourse against any Subsidiary Guarantor or exercising rights against Collateral.

SECTION 504. Trustee May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Issuers or any other obligor including any Subsidiary Guarantor, upon the Notes or the property of the Issuers or of such other obligor or their creditors, and subject to the Intercreditor Agreements, the Trustee (irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Issuers for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(1) to file and prove a claim for the whole amount of principal and interest owing and unpaid in respect of the Notes and to file such 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 of the Holders allowed in such judicial proceeding, and

(2) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or similar official 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 the Trustee any amount due 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 607.

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 thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

SECTION 505. Trustee May Enforce Claims Without Possession of Notes.

All rights of action and claims under this Indenture or the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name and as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders in respect of which such judgment has been recovered.

SECTION 506. Application of Money Collected.

Subject to the Intercreditor Agreements, and subject to the terms of the Security Documents with respect to any proceeds of Collateral, any money collected by the Trustee pursuant to this Article Five shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal or interest, upon presentation of the Notes and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

(1) FIRST: To the payment of all amounts due the Trustee under Section 607 and the Collateral Agent under Section 1204;

(2) SECOND: After payment in full in cash of the amounts specified in clause (1), to the payment of the amounts then due and unpaid for principal of and interest (including, without limitation, Defaulted Interest) on the Notes in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Notes for principal and interest, respectively;

(3) THIRD: After payment in full in cash of the amounts specified in clauses (1) through (2), to payment of the obligations outstanding under the Third Lien Credit Agreement and the related Note Documents (as defined therein) in accordance with the terms thereof; and

(4) FOURTH: After payment in full in cash of the amounts specified in clauses (1) through (3), the balance, if any, to the Issuers or any other obligor on the Notes, as their interests may appear or as a court of competent jurisdiction may direct in writing; provided that all sums due and owing to the Holders and the Trustee have been paid in full as required by this Indenture.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section. At least 15 days before such record date, the Issuers shall cause to be sent to each Holder and the Trustee a notice that states the record date, the payment date and amount to be paid.

SECTION 507. Limitation on Suits.

No Holder of any Notes shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

(1) such Holder has previously given written notice to the Trustee of a continuing Event of Default;

(2) the Required Noteholders shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(3) such Holder or Holders have offered to the Trustee indemnity and/or security reasonably satisfactory to it against the costs, expenses and liabilities to be incurred in compliance with such request; and

(4) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of security or indemnity.

it being understood and intended that no one or more Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture or the Guarantees to affect, disturb or prejudice the rights of any other Holders, or to obtain or to seek to obtain priority or preference over any other Holders or to enforce any right under this Indenture or the Guarantees, except in the manner herein provided and for the equal and ratable benefit of all the Holders (it being further understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders).

SECTION 508. Unconditional Right of Holders To Receive Principal, Premium and Interest.

Subject to Section 503 and notwithstanding any other provision in this Indenture, the Holder, or the Trustee at the direction of the Holder, of any Note shall have the right, which is absolute and unconditional, to receive payment, as provided herein (including, if applicable, Article Eleven) and in such Note of the principal of and (subject to Section 307) interest on such Note on the respective Stated Maturities expressed in such Note (or, in the case of redemption, on the Redemption Date) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

SECTION 509. Restoration of Rights and Remedies.

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture or the Guarantees and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Issuers, any Subsidiary Guarantor, any other obligor of the Notes, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights

and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

SECTION 510. Rights and Remedies Cumulative.

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes in the last paragraph of Section 306, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

SECTION 511. Delay or Omission Not Waiver.

No delay or omission of the Trustee or of any Holder of any Note to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article Five or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

SECTION 512. Control by Holders.

The Required Noteholders shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, provided that:

(1) such direction shall not be in conflict with any rule of law or with this Indenture, the Notes, the Guarantees or the Security Documents,

(2) subject to Section 315 of the Trust Indenture Act, the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction, and

(3) the Trustee need not take any action which might involve it in personal liability or be unjustly prejudicial to the Holders not consenting.

Prior to taking any action hereunder, the Trustee shall be entitled to indemnification reasonably satisfactory to it in its sole discretion against all losses and expenses caused by taking or not taking such action.

SECTION 513. Waiver of Past Defaults.

Subject to Sections 502, 508 and 802, the Required Noteholders may, by written notice to the Trustee and the Issuers, on behalf of the Holders of all such Notes waive any past Default hereunder and its consequences, except a continuing Default or Event of Default (1) in

respect of the payment of interest on or the principal of any such Note held by a non-consenting Holder, or (2) in respect of a covenant or provision hereof which under Article Nine cannot be modified or amended without the consent of the Holder of each Outstanding Note affected.

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 Event of Default or impair any right consequent thereon.

SECTION 514. Waiver of Stay or Extension Laws.

Each of the Issuers, the Subsidiary Guarantors and any other obligor on the Notes covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and each of the Issuers, the Subsidiary Guarantors and any other obligor on the Notes (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 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 had been enacted.

ARTICLE SIX

THE TRUSTEE

SECTION 601. Duties of the Trustee.

(a) Except during the continuance of an Event of Default,

(1) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of willful misconduct 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; but in the case of any such certificates or opinions specifically required by any provision hereof to be provided to it, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but not to verify the contents or confirm or investigate the accuracy of mathematical calculations) thereof.

(b) In case an Event of Default has occurred and is continuing of which a Responsible Officer of the Trustee has actual knowledge or of which written notice of such Default or Event of Default shall have been given to the Trustee by the Issuers, the Obligors or by any Holder, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent Person would exercise or use under the circumstances in the conduct of such Person's own affairs.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that

(1) this paragraph (c) shall not be construed to limit the effect of paragraph (a) of this Section 601;

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

(3) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of Required Noteholders relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture; and

(4) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 601 and to the provisions of the TIA.

SECTION 602. Notice of Defaults.

Except as otherwise provided for in this Indenture, within thirty (30) days after the earlier of receipt from the Issuers of notice of the occurrence of any Default or Event of Default hereunder or the date when such Default or Event of Default becomes known to the Trustee, the Trustee shall transmit to the Holders, in the manner and to the extent provided in TIA Section 313(c), notice of such Default or Event of Default hereunder known to the Trustee, unless such Default or Event of Default shall have been cured or waived; provided, however, that, except in the case of a Default or Event of Default in the payment of the principal of or interest on any Note, the Trustee shall be protected in withholding such notice if and so long as it in good faith determines that the withholding of such notice is in the interest of the Holders.

SECTION 603. Certain Rights of Trustee.

Subject to the provisions of TIA Sections 315(a) through 315(d):

(1) the Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document (whether in original or facsimile form) believed by it to be genuine and to have been signed or presented by the proper party or parties;

(2) any request or direction of the Issuers mentioned herein shall be sufficiently evidenced by an Issuer Request or Issuer Order and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

(3) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of willful misconduct on its part, conclusively rely upon an Officers' Certificate;

(4) the Trustee may consult with counsel of its own selection and the advice of such counsel or any Opinion of Counsel with respect to legal matters relating to this Indenture and the Notes shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(5) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to it against the costs, expenses, losses and liabilities which might be incurred by it in compliance with such request or direction;

(6) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the expense of the Company and shall incur no liability of any kind by reason of such inquiry or investigation;

(7) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(8) the Trustee shall not be liable for any action taken, suffered or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(9) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder;

(10) in no event shall the Trustee be responsible or liable for special, indirect, punitive 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;

(11) the Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder;

(12) the grant of permissive rights or powers to the Trustee shall not be construed to impose duties to act;

(13) the Trustee shall have no duty to inquire as to the performance of the Issuers with respect to the covenants contained in Article Nine; and

(14) delivery of reports to the Trustee pursuant to Section 908 shall not constitute actual knowledge of, or notice to, the Trustee of the information contained therein.

The Trustee shall not be required to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has received written notice of any event which is in fact such a Default or Event of Default at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Indenture.

The rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, the Collateral Agent and each agent, custodian and other Person employed to act hereunder.

SECTION 604. Trustee Not Responsible for Recitals or Issuance of Notes.

The recitals contained herein and in the Notes, except for the Trustee's certificates of authentication, shall be taken as the statements of the Issuers, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Notes, except that the Trustee represents that it is duly authorized to execute and deliver this Indenture, authenticate the Notes and perform its obligations hereunder. The Trustee shall not be accountable for the use or application by the Issuers of Notes or the proceeds thereof and shall not be responsible for any statement of the Issuers in this Indenture or in any document issued in connection with the sale of the Notes or in the Notes other than the Trustee's certification of authentication.

SECTION 605. May Hold Notes.

The Trustee, any Paying Agent, any Note Registrar, any Calculation Agent or any other agent of the Issuers or of the Trustee, in its individual or any other capacity, may become the owner or pledgee of Notes and, subject to TIA Sections 310(b) and 311, may otherwise deal

with the Issuers with the same rights it would have if it were not the Trustee, Paying Agent, Note Registrar, Calculation Agent or such other agent; provided, however, that, if it acquires any conflicting interest, it must eliminate such conflict within ninety (90) days, apply to the Commission for permission to continue or resign.

SECTION 606. Money Held in Trust.

Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Issuers.

SECTION 607. Compensation and Reimbursement.

The Issuers agree:

(1) to pay to the Trustee from time to time such compensation as shall be agreed in writing between the Issuers and the Trustee for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(2) except as otherwise expressly provided herein, to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel (including local counsel in any relevant material jurisdiction)), except any such expense, disbursement or advance as shall be determined to have been caused by its own negligence or willful misconduct; and

(3) to jointly and severally indemnify the Trustee and its officers, directors, agents and employees and any predecessor Trustee for, and to hold it harmless against, any and all loss, liability, claim, damage or expense, including taxes (other than the taxes based on the income of the Trustee) incurred without negligence or willful misconduct on its part, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending itself against any claim regardless of whether the claim is asserted by the an Obligor, a Holder or any other Person or liability in connection with the exercise or performance of any of its powers or duties hereunder.

The Trustee will notify the Issuers promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Issuers will not relieve the Issuers of their obligations hereunder. The Issuers will defend the claim and the Trustee will cooperate in the defense. The Trustee may have separate counsel and the Issuers will pay the fees and expenses of such counsel. The Issuers need not pay for any settlement made without the Issuers' consent, which consent will not be unreasonably withheld. The Issuers need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee through the Trustee's own willful misconduct or negligence.

The obligations of the Issuers under this Section 607 to compensate the Trustee, to pay or reimburse the Trustee for reasonable expenses (including the reasonable charges and

expenses of its counsel (including local counsel in any relevant material jurisdiction)), disbursements and advances and to indemnify and hold harmless the Trustee shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of this Indenture and resignation or removal of the Trustee. As security for the performance of such obligations of the Issuers, the Trustee shall have a claim prior to the Notes upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of or interest on particular Notes.

When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 501(10), the expenses (including the reasonable charges and expenses of its counsel) of and the compensation for such services are intended to constitute expenses of administration under any applicable federal or state bankruptcy, insolvency or other similar law.

The provisions of this Section 607 shall survive the termination of this Indenture.

SECTION 608. Corporate Trustee Required; Eligibility.

There shall be at all times a Trustee hereunder which shall be eligible to act as Trustee under TIA Sections 310(a)(1), (2) and (5) and shall have a combined capital and surplus of at least $50,000,000. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of federal, state, territorial or District of Columbia supervising or examining authority, then for the purposes of this Section 608, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 608, it shall promptly resign in the manner and with the effect hereinafter specified in this Article Six.

SECTION 609. Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article Six shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 610.

(b) The Trustee may resign at any time by giving written notice thereof to the Issuers. Upon receiving such notice of resignation, the Issuers shall promptly appoint a successor trustee by written instrument executed by authority of the Board of Directors of the Company, a copy of which shall be delivered to the resigning Trustee and a copy to the successor Trustee. If the instrument of acceptance by a successor Trustee required by Section 610 shall not have been delivered to the Trustee within thirty (30) days after the giving of such notice of resignation, the resigning Trustee may petition, at the expense of the Issuers, any court of competent jurisdiction for the appointment of a successor Trustee.

(c) The Trustee may be removed at any time by Act of the Required Noteholders, delivered to the Trustee and to the Issuers. If the instrument of acceptance by a successor Trustee required by Section 610 shall not have been delivered to the Trustee within thirty (30) days after the giving of such notice of resignation, the resigning Trustee may petition,

at the expense of the Issuers, any court of competent jurisdiction for the appointment of a successor Trustee.

(d) If at any time:

(1) the Trustee shall fail to comply with the provisions of TIA Section 310(b) after written request therefor by the Issuers or by any Holder who has been a bona fide Holder of a Note for at least six (6) months, or

(2) the Trustee shall cease to be eligible under Section 608 and shall fail to resign after written request therefor by the Issuers or by any Holder who has been a bona fide Holder of a Note for at least six (6) months, or

(3) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (i) the Issuers, by a Board Resolution of the Company, may remove the Trustee, or (ii) subject to TIA Section 315(e), any Holder who has been a bona fide Holder of a Note for at least six (6) months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, the Issuers shall promptly appoint a successor Trustee. If, within one (1) year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee shall be appointed by Act of the Required Noteholders delivered to the Issuers and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee and supersede the successor Trustee appointed by the Issuers. If no successor Trustee shall have been so appointed by the Issuers or the Holders and accepted appointment in the manner hereinafter provided, any Holder who has been a bona fide Holder of a Note for at least six (6) months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Issuers shall give notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee to the Holders in the manner provided for in Section 106. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office.

SECTION 610. Acceptance of Appointment by Successor.

(a) Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Issuers and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on written request of the Issuers or

the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder. Upon request of any such successor Trustee, the Issuers shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts.

(b) Upon request of any such successor Trustee, the Issuers shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all rights, powers and trusts referred to in paragraph (a) of this Section 610.

(c) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article Six.

SECTION 611. Merger, Conversion, Consolidation or Succession to Business.

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article Six, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Notes shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Notes so authenticated with the same effect as if such successor Trustee had itself authenticated such Notes. In case at that time any of the Notes shall not have been authenticated, any successor Trustee may authenticate such Notes either in the name of any predecessor hereunder or in the name of the successor Trustee. In all such cases such certificates shall have the full force and effect which this Indenture provides that the certificate of authentication of the Trustee shall have; provided, however, that the right to adopt the certificate of authentication of any predecessor Trustee or to authenticate Notes in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

SECTION 612. Appointment of Authenticating Agent.

At any time when any of the Notes remain Outstanding, the Trustee may appoint an Authenticating Agent or Agents with respect to the Notes (the "Authenticating Agent") which shall be authorized to act on behalf of the Trustee to authenticate Notes and the Trustee shall give written notice of such appointment to all Holders of Notes with respect to which such Authenticating Agent will serve, in the manner provided for in Section 106. Notes so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Any such appointment shall be evidenced by an instrument in writing signed by a Responsible Officer of the Trustee, and a copy of such instrument shall be promptly furnished to the Issuers. Wherever reference is made in this Indenture to the authentication and delivery of Notes by the Trustee or the Trustee's certificate of

authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Issuers and shall at all times be a corporation organized and doing business under the laws of the United States of America, any state thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than $50,000,000 and subject to supervision or examination by federal or state authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section 612, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 612, it shall resign immediately in the manner and with the effect specified in this Section 612.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to all or substantially all the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such corporation shall be otherwise eligible under this Section 612, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Issuers. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Issuers. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 612, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Issuers and shall give written notice of such appointment to all Holders of Notes, in the manner provided for in Section 106. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section 612.

The Issuers agree to pay to each Authenticating Agent from time to time such compensation for its services under this Section 612 as shall be agreed in writing between the Issuers and such Authenticating Agent.

If an appointment is made pursuant to this Section 612, the Notes may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternate certificate of authentication in the following form:

This is one of the Notes designated therein referred to in the within-mentioned Indenture.

Dated:

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
as Authenticating Agent

By: _____
as Authorized Signatory

SECTION 613. Force Majeure.

In no event shall the Trustee be responsible or liable 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 shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

ARTICLE SEVEN

HOLDERS LISTS AND REPORTS BY TRUSTEE AND ISSUERS

SECTION 701. Issuers To Furnish Trustee Names and Addresses.

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 and shall otherwise comply with TIA Section 312(a). If the Trustee is not the Note Registrar, the Issuers will furnish to the Trustee at least ten (10) Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders of Notes and the Issuers shall otherwise comply with TIA Section 312(a).

SECTION 702. Disclosure of Names and Addresses of Holders.

Every Holder of Notes, by receiving and holding the same, agrees with the Issuers and the Trustee that neither of the Issuers nor the Trustee nor any agent of any of them shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders in accordance with TIA Section 312, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under TIA Section 312(b).

SECTION 703. Reports by Trustee.

The Trustee shall transmit to the Holders of Notes (with a copy to the Issuers), in the manner and to the extent provided in TIA Section 313(c), a brief report if required by TIA Section 313(a).

ARTICLE EIGHT

SUPPLEMENTAL INDENTURES

SECTION 801. Amendments or Supplements Without Consent of Holders.

Subject to the Intercreditor Agreements, without the consent of any Holders, the Issuers and any Subsidiary Guarantor (with respect to a Guarantee or this Indenture to which it is a party), at any time and from time to time, may amend or supplement the Note Documents, in form and substance reasonably satisfactory to the Trustee, for any of the following purposes:

(1) to cure any ambiguity or to correct or supplement any provision in such Note Document that may be inconsistent with any other provision of the Note Documents or to further the intended purposes thereof;

(2) to make any change that would provide any additional rights or benefits to the Holders;

(3) to make, complete or confirm any grant of collateral permitted or required by any Note Document or any release of any Collateral that becomes effective as set forth in any of the Note Documents;

(4) to provide for uncertificated Notes in addition to or in place of certificated Notes or to alter the provisions of this Indenture relating to the form of Notes (including the related definitions) in a manner that does not materially adversely affect any Holder;

(5) to make any change that does not materially adversely affect the rights under this Indenture of any such Holder;

(6) to add covenants for the benefit of the Holders or to surrender any right or power conferred in this Indenture upon the Issuers;

(7) to comply with requirements of the Commission in order to effect or maintain the qualification of this Indenture under the Trust Indenture Act;

(8) to evidence and provide for the acceptance and appointment under this Indenture of a successor Trustee pursuant to the requirements of Sections 609 and 610;

(9) To add a Subsidiary Guarantor under this Indenture or to add additional assets as Collateral or release Collateral, in each case in accordance with the terms of this Indenture; or

(10) to make any amendment to the provisions of this Indenture relating to the transfer and legending of the Notes as permitted by this Indenture, including, without limitation, to facilitate the issuance and administration of the Notes; provided that (a) compliance with this Indenture as so amended would not result in Notes being transferred in violation of the Securities Act or any applicable securities law and (b) such amendment does not materially and adversely affect the rights of Holders to transfer such Notes,

provided, however, that a copy of any such amendment, supplement or other modification shall be furnished to the Holders by the Issuers in accordance with the notice provisions hereof not later than three (3) Business Days prior to the execution thereof by the Trustee.

SECTION 802. Amendments, Supplements or Waivers with Consent of Holders.

Subject to the Intercreditor Agreements, the provisions of each Note Document may from time to time be amended, modified or waived, if such amendment, modification or waiver (i) in the case of this Indenture and subject to Section 801, is pursuant to an agreement or agreements in writing entered into by the Obligors and the Trustee and consented to by the Required Noteholders and (ii) in the case of any such other Note Document and subject to Section 801 above is pursuant to an agreement or agreements in writing entered into by each party thereto and the Trustee and consented to by the Required Noteholders; provided, however, that no such amendment, modification or waiver shall:

(1) extend the Stated Maturity of the Notes or any installment of principal thereof or interest thereon, or amend the definition of "Interest Period," in each case without the consent of all of the Holders (it being agreed, however, that any vote to rescind any acceleration made pursuant to Section 502 of amounts owing with respect to the Notes and other Obligations or any direction to the Trustee to forbear as an exercise of remedies shall only require the vote of the Required Noteholders);

(2) reduce or forgive the principal amount of or reduce the rate of interest on any Notes or extend the date on which interest or fees are payable to any Holder, or reduce or forgive any amounts payable in connection with any mandatory redemption of the Notes or extend the date on which any such amount is paid to the Holders, in each case without the consent of such Holder; provided that, the vote of Required Noteholders shall be sufficient to waive the payment, or reduce the increased portion of Defaulted Interest;

(3) modify this Section 802, reduce the percentage set forth in the definition of "Required Noteholders" or modify any requirement hereunder that any particular action be taken by all Holders without the consent of all Holders; provided that clauses (5) and (8) of this Section 802 may be modified with the consent of a Noteholder Super-Majority;

(4) except as otherwise expressly provided in a Note Document release an Obligor from its Obligations under the Note Documents or any Subsidiary Guarantor

from its obligations under a Guarantee without the prior written the consent of all Holders;

(5) except as otherwise expressly provided in a Note Document (including in the context of an exercise of remedies), release any of the Collateral with a fair market value in excess of $20,000,000 without the prior written consent of a Noteholder Super-Majority;

(6) release all of substantially all of the Collateral without the consent of all of the Holders;

(7) amend, modify or waive Section 4.1 of the Subordinated Lien Intercreditor Agreement in a manner that would alter the priority of payments as set forth therein, unless, in each case, such amendment, modification or waiver shall have been consented to by all of the Holders; or

(8) amend, modify or waive Section 913 (including, for the avoidance of doubt, the definition of Affiliate as it relates to Section 913) unless, in each case, such amendment, modification or waiver shall have been consented to by a Noteholder Super-Majority.

No failure or delay on the part of any party to a Note Document that is not an Obligor in exercising any power or right granted to such party under any Note Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such power or right preclude any other or further exercise thereof or the exercise of any other power or right. No notice to or demand on any Obligor in any case shall entitle it to any notice or demand in similar or other circumstances. No waiver or approval by any party to a Note Document that is not an Obligor under any Note Document shall, except as may be otherwise stated in such waiver or approval, be applicable to subsequent transactions. No waiver or approval hereunder shall require any similar or dissimilar waiver or approval thereafter to be granted hereunder.

It is not necessary for the consent of the Holders of Notes under this Section 802 to approve the particular form of any proposed amendment, supplement or waiver, but it is sufficient if such consent approves the substance thereof.

SECTION 803. Execution of Amendments, Supplements or Waivers.

In executing, or accepting the additional trusts created by, any amendment, supplement or waiver permitted by this Article Eight or the modifications thereby of the trusts created by this Indenture, the Trustee shall receive indemnity reasonably satisfactory to it and shall be provided with, and shall be fully protected in conclusively relying upon, an Officers' Certificate and Opinion of Counsel stating that the execution of such amendment, supplement or waiver is authorized or permitted by this Indenture and is the valid, legal and binding obligation of the Issuers and the Subsidiary Guarantors, enforceable against the Issuers and the Subsidiary Guarantors, in accordance with its terms. Such Opinion of Counsel shall be at the expense of the Issuers. The Trustee may, but shall not be obligated to, enter into any such amendment, supplement or waiver which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise. Notwithstanding the foregoing, no Opinion of Counsel shall be required

in connection with the addition of a Subsidiary Guarantor under this Indenture upon execution and delivery by such Subsidiary Guarantor and the Trustee of a supplemental indenture to this Indenture, the form of which is attached as Exhibit D hereto, and delivery of an Officers' Certificate.

SECTION 804. Effect of Amendments, Supplements or Waivers.

Upon the execution of any supplemental indenture under this Article Eight, this Indenture shall be modified in accordance therewith, and such amendment, supplement or waiver shall form a part of this Indenture for all purposes; and every Holder of Notes theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

SECTION 805. Conformity with Trust Indenture Act.

To the extent applicable, every supplemental indenture executed pursuant to this Article Eight shall conform to the requirements of the TIA as then in effect.

SECTION 806. Reference in Notes to Supplemental Indentures.

Notes authenticated and delivered after the execution of any supplemental indenture pursuant to this Article Eight may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Issuers shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Issuers, to any such supplemental indenture may be prepared and executed by the Issuers and authenticated and delivered by the Trustee in exchange for Outstanding Notes. 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 807. Notice of Supplemental Indentures.

Promptly after the execution by the Issuers, any Subsidiary Guarantor and the Trustee of any supplemental indenture pursuant to the provisions of Section 802, the Issuers shall give notice thereof to the Holders of each Outstanding Note affected, in the manner provided for in Section 106, briefly setting forth in general terms the substance of such supplemental indenture. Any failure of the Issuers 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.

ARTICLE NINE

COVENANTS

SECTION 901. Payment of Principal and Interest.

The Issuers covenant and agree for the benefit of the Holders that they will duly and punctually pay the principal of and interest and Defaulted Interest, if any, on the Notes in accordance with the terms of the Notes and this Indenture.

SECTION 902. Maintenance of Office or Agency.

The Issuers will maintain in the continental United States, an office or agency where Notes may be presented or surrendered for payment, where Notes may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Issuers in respect of the Notes and this Indenture may be served. The designated office of the Trustee shall be such office or agency of the Issuers, unless the Issuers shall designate and maintain some other office or agency for one or more of such purposes. The Issuers will give prompt written notice to the Trustee of any change in the location of any such office or agency. If at any time the Issuers shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Issuers hereby appoint the Trustee as their agent to receive all such presentations, surrenders, notices and demands.

The Issuers 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 any such designation; provided, however, that no such designation or rescission shall in any manner relieve the Issuers of their obligation to maintain an office or agency in the continental United States for such purposes. The Issuers will give prompt written notice to the Trustee of any such designation or rescission and any change in the location of any such other office or agency.

SECTION 903. Maintenance of Existence; Compliance with Contracts, Laws, etc.

Each Obligor will:

(a) preserve and maintain (i) its legal existence and (ii) its qualification as a foreign corporation in each jurisdiction where the nature of its business or the location of its assets requires it to be so qualified, except where the failure to so qualify could not reasonably be expected to have a Material Adverse Effect;

(b) comply with all applicable material laws, rules, regulations and orders (such compliance to include compliance in all material respects with ERISA, the PATRIOT Act, the Racketeer Influenced and Corrupt Organizations Chapter of the Organized Crime Control Act of 1970, the FPA, the EP Act, including PUHCA 2005, and state regulatory laws governing public utilities, public service companies, generation owners, or similar entities, in each case, as applicable), including the payment (before the same become delinquent) of all material Taxes imposed upon any Obligor or upon its property, except to the extent being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP have been set aside on the books of such Obligor, except, in each case, to the extent such non-compliance could not reasonably be expected to cause a Material Adverse Effect;

(c) ensure that no portion of the proceeds from any Notes will be used, disbursed or distributed for any purpose, or to any Person, directly or indirectly, in violation of any of the Terrorism Laws and shall take all necessary action to comply with all Terrorism Laws with respect thereto; and

(d) ensure that no Obligor, other than Union Power, enters into a transaction for the sale of electricity, unless and until such Obligor has obtained FERC authorization to make such sale.

SECTION 904. [Reserved]

SECTION 905. Maintenance of Properties.

Each Obligor will (a) maintain, preserve, protect and keep its and their respective properties in good repair, working order and condition (ordinary wear and tear excepted) in accordance with Prudent Industry Practices, (b) make necessary repairs, renewals and replacements to the Union Facility in accordance with Prudent Industry Practices, (c) maintain all equipment and spare parts inventory in accordance with Prudent Industry Practices and (d) maintain all material permits, licenses, approvals, privileges, franchises and governmental authorizations necessary for the operation of the Union Facility.

SECTION 906. Insurance.

Each Obligor will maintain insurance (including generation outage insurance) in the forms, types, amounts and with the deductibles specified by Schedule II, or such other insurance as is customarily maintained by companies in comparable businesses as such Obligor (the "Required Insurance").

SECTION 907. Statement by Officers as to Default.

(a) The Issuers will deliver to the Trustee copies of the following within one hundred and twenty (120) days after the end of each fiscal year, an Officers' Certificate signed by the principal executive officer, the principal accounting officer or the principal financial officer of each of the Issuers stating that a review of the activities of the Obligors during the preceding fiscal year has been made under the supervision of the signing Officers with a view to determining whether they have kept, observed, performed and fulfilled, and have caused each of the Subsidiary Guarantors to keep, observe, perform and fulfill their obligations under this Indenture and further stating, as to each such officer signing such certificate, that, to the best of such officer's knowledge, the Issuers during such preceding fiscal year, has kept, observed, performed and fulfilled, and has caused each of the Subsidiary Guarantors to keep, observe, perform and fulfill each and every such covenant contained in this Indenture and no Default or Event of Default occurred during such year and at the date of such certificate there is no Default or Event of Default which has occurred and is continuing or, if such signers do know of such Default or Event of Default, the certificate shall describe its status, with particularity and that, to the best of such officer's knowledge, no event has occurred and remains by reason of which payments on the 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 each is taking or proposes to take with respect thereto. Such Officers' Certificate shall also notify the Trustee should any Issuer elect to change the manner in which it fixes its fiscal year-end. For purposes of this Section 907(a), such compliance shall be determined without regard to any period of grace or requirement of notice under this Indenture.

(b) (i) When any Default or Event of Default has occurred and is continuing under this Indenture, or (ii) if the trustee for or the holder of any other evidence of Indebtedness of any Obligor gives any notice or takes any other action with respect to a claimed default (other than with respect to Indebtedness in the principal amount of less than $10,000,000), the Company shall deliver to the Trustee by registered or certified mail or facsimile transmission an Officers' Certificate specifying such event, notice or other action within five (5) Business Days of any Officer becoming aware of the foregoing.

SECTION 908. Reports and Other Information.

The Company will furnish (which may be through a confidential, password protected electronic datasite or similar method) to the Trustee and the Holders copies of the following financial statements, reports, notices and information:

(a) as soon as available and in any event within forty-five (45) days after the end of each of the first three (3) Fiscal Quarters of each Fiscal Year, an unaudited consolidated and consolidating balance sheet of the Company as of the end of such Fiscal Quarter and consolidated and consolidating statements of income and cash flow of the Company for such Fiscal Quarter and for the period commencing at the end of the previous Fiscal Year and ending with the end of such Fiscal Quarter, and including (in each case), in comparative form the figures for the corresponding Fiscal Quarter in, and year-to-date portion of, the immediately preceding Fiscal Year, certified as complete and correct by an Authorized Financial Officer of the Company and as presenting fairly in all material respects the financial condition and results of operation of the Company on a consolidated and consolidating basis in accordance with GAAP consistently applied (subject to normal year-end audit adjustments and the absence of footnotes);

(b) as soon as available and in any event within one hundred and twenty (120) days after the end of each Fiscal Year commencing with the Fiscal Year ending December 31, 2014, a copy of the consolidated and consolidating balance sheet of the Company, and the related consolidated and consolidating statements of income and cash flow of the Company for such Fiscal Year audited (without any Impermissible Qualification) by independent public accountants reasonably acceptable to the Required Noteholders (as evidenced by an Officers' Certificate delivered to the Trustee by the Company), all such financial statements to be certified as complete and correct by an Authorized Financial Officer of the Company and as presenting fairly in all material respects the financial condition and results of operation of the Company on a consolidated and consolidating basis in accordance with GAAP consistently applied;

(c) as soon as available and in any event no later than the earlier to occur of (i) thirty (30) days after the approval thereof by the Board of Directors or its equivalent of the Company and (ii) forty-five (45) days after the first day of the Fiscal Year, an annual operating and capital budget for such Fiscal Year (with respect to each such Fiscal Year, the "Budget"), which Budget shall be certified by an Authorized Financial Officer of the Company as having been prepared in good faith based upon assumptions believed by the Company to be reasonable at the time made and at the time so furnished, it being understood that such Budget is subject to significant uncertainties and contingencies, many of which are beyond the control of the Obligors, and no assurance can be given that the projections underlying such Budget will be realized;

(d) [Reserved];

(e) as soon as possible and in any event within three (3) Business Days after any Obligor obtains knowledge of the occurrence of any event, condition or development that results in, or could reasonably be expected to result in, a Material Adverse Effect, notice thereof and, to the extent the Trustee requests, copies of all documentation relating thereto;

(f) promptly upon becoming aware of any ERISA Event, notice thereof and copies of all documentation relating thereto;

(g) promptly upon receipt thereof, copies of all "management letters" submitted to the Company or any other Obligor by the independent public accountants referred to in clause (b) in connection with each audit made by such accountants;

(h) upon the request of any Holder, provide (or cause the applicable Obligor to provide) any information that such Holder believes is reasonably necessary to be delivered to comply with the PATRIOT Act;

(i) promptly after delivery thereof, any additional information regarding (i) any Obligor, (ii) Gila River Energy and its Subsidiaries or (iii) any Union SPV or Subsequent Gila River SPV and their respective Subsidiaries, in each case, that is delivered to the Third Lien Administrative Agent or the Third Lien Lenders or that is required to be and is actually delivered to any holder of Indebtedness under the Gila River Energy Financing Documents or pursuant to the terms of any Union SPV Financing or Subsequent Gila River SPV Financing (including, for the avoidance of doubt, financial information with respect to Gila River Energy, any Union SPV, any Subsequent Gila River SPV and their respective Subsidiaries); and

(j) such other financial and other information as any Holder directly or through the Trustee may from time to time reasonably request (including information and reports in such detail as the Holder may request with respect to reconciling the financial information required to be delivered pursuant to clauses (a) and (b) above with the Budget).

The availability of any the foregoing materials on the Commission's EDGAR service (or its successor) shall be deemed to satisfy the Obligors' related delivery obligations; provided, however, that the Trustee shall have no obligation whatsoever to determine if such materials have been made so available.

The Trustee shall have no obligation whatsoever to determine or evaluate if the financial statements, reports, notices and information delivered by the Company to the Trustee and the Holders pursuant to this Section 908 comply with the requirements set forth herein.

SECTION 909. Limitation on Restricted Payments.

No Obligor will declare or make a Restricted Payment, or make any deposit for any Restricted Payment, except that the Company may make Restricted Payments the holders of Capital Securities of the Company in an amount necessary to pay any Tax Distributions. No Obligor will (i) make any payment or prepayment or other distribution (whether in cash, securities or other property) on account of the purchase, redemption, retirement, acquisition,

cancellation or termination of any Indebtedness for borrowed money (or any other payment that has a substantially similar effect to any of the foregoing), or any payment of interest (excluding interest paid-in-kind under the Third Lien Credit Agreement) in respect of such Indebtedness (in each case, a "Debt Payment"), other than the payment or prepayment of principal of or interest on (x) the Obligations or (y) Indebtedness incurred under the First Lien Credit Agreement when due and payable under the terms thereof or pursuant to a "Refinancing" (or other comparable term) thereof in accordance with Section 910(6), provided, that such payment or prepayment would not violate the terms of the applicable Intercreditor Agreements; or (ii) make any deposit (including the payment of amounts into a sinking fund or other similar fund) for any of the foregoing purposes; provided that the Company may make a Debt Payment in respect of the principal of the Third Lien Loans (i) if an equivalent aggregate principal amount of the Notes is redeemed concurrently by the Company in accordance with Section 1001; or (ii) in the amount equivalent to 100% of the TEP Proceeds pursuant to Section 3.1.1(c) of the Third Lien Credit Agreement.

SECTION 910. Limitation on Incurrence of Indebtedness.

No Obligor will create, incur, assume or permit to exist any Indebtedness, other than:

(1) Indebtedness in respect of the Notes (including PIK Notes but excluding Additional Notes);

(2) Indebtedness existing as of the Effective Date which is identified in Item 910(2) of the Disclosure Schedule and any Permitted Refinancing of such Indebtedness;

(3) Indebtedness of the Company or any Subsidiary Guarantor (i) evidencing the deferred purchase price of newly acquired property or incurred to finance the acquisition of or improvement of equipment of the Company or any Subsidiary Guarantor (pursuant to purchase money mortgages, whether owed to the seller or a third party) used in the ordinary course of business of the Company or any Subsidiary Guarantor (provided that such Indebtedness is incurred within ninety (90) days following the acquisition of such equipment or property), and (ii) in respect of Capitalized Lease Liabilities; provided that the aggregate amount of all Indebtedness outstanding pursuant to this clause (3) shall not at any time exceed $25,000,000;

(4) Hedging Obligations of the Obligors arising under any Specified Commodity Hedge Agreements and any other Hedge Agreement (other than an Interest Rate Hedge Agreement) entered into in the ordinary course of business consistent with prudent business practice and not for speculative purposes;

(5) Indebtedness of one Obligor to another Obligor; provided that such Indebtedness is unsecured and issued pursuant to the Subordinated Intercompany Note;

(6) (i) (A) Indebtedness of the Company under the Third Lien Credit Agreement in an original principal amount not to exceed $550,000,000, plus interest thereon paid in kind by capitalization to principal, and any Refinancing (as permitted by and as defined in the Subordinated Lien Intercreditor Agreement) thereof; and (B)

Contingent Liabilities of the Subsidiary Guarantors in respect of such Indebtedness; and (ii) (A) Indebtedness of the Company under the First Lien Credit Agreement in respect of letters of credit and drawings or revolving loans for working capital thereunder and any "Refinancing" (or other comparable term) (as permitted by and as defined in the First Lien Intercreditor Agreement) of such Indebtedness in an aggregate principal amount not to exceed $40,000,000 and (B) Contingent Liabilities of the Subsidiary Guarantors in respect of such Indebtedness, in each case, that is subject to the First Lien Intercreditor Agreement; provided that, no Subsidiary of the Company may undertake a Contingent Liability with respect to the Indebtedness under the Third Lien Credit Agreement or the First Lien Credit Agreement unless such Subsidiary has become a Subsidiary Guarantor or Obligor hereunder and has satisfied the requirements of Section 917.

(7) obligations under any Power Purchase Agreements that would constitute Indebtedness;

(8) trade or other similar indebtedness incurred in the ordinary course of business (but not for borrowed money) and (i) not more than sixty (60) days past due, or (ii) being contested in good faith and by appropriate proceedings;

(9) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or other cash management services in the ordinary course of business;

(10) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds, financial assurances and completion guarantees and similar obligations in each case provided in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;

(11) Volumetric Production Payment Obligations (to the extent constituting Indebtedness) to the extent permitted under Section 930;

(12) Indebtedness in respect of the Act 9 Bonds;

(13) Indebtedness secured by Liens described in clause (24) of Section 912;

(14) Indebtedness pursuant to the terms of a Project Document;

(15) Intercompany Loans (as defined in the Finance Co. Loan Agreement) made from Union Power to Finance Co. pursuant to the Finance Co. Loan Agreement;

(16) Indebtedness in respect of financing arrangements for purchased gas to the extent such financing is permitted to be secured by a Lien described in Section 912(29); and

(17) unsecured Indebtedness, other than Indebtedness described in clauses (1) through (16) above, in an aggregate principal amount not to exceed $15,000,000 at any time outstanding.

provided, however, that no Indebtedness otherwise permitted by Section 910(3) shall be created, incurred or assumed if an Event of Default has occurred and is then continuing or would result therefrom;

SECTION 911. Gila River and Union SPV Project Indebtedness and Liens

(a) The Obligors will not permit Gila River Power, GRE 2014 or Gila River Energy to create, incur, assume or permit to exist any Indebtedness unless such Indebtedness is Non-Recourse Indebtedness.

(b) The Obligors will not permit any Union SPV or, following the occurrence of the events described in clauses (i) and (ii) of Section 926(j), any Subsequent Gila River SPV to create, incur, assume or permit to exist any Indebtedness unless (i) such Indebtedness is Non-Recourse Indebtedness and (ii) the Net SPV Financing Proceeds received in connection therewith are applied to redeem the Notes in accordance with Section 1001.

For the avoidance of doubt, other than the requirements that any such Indebtedness incurred pursuant to this Section 911 be Non-Recourse Indebtedness and that the Net SPV Financing Proceeds be applied to redeem the Notes in accordance with Section 1001, nothing contained herein shall limit in any respect the amount or terms of any Indebtedness incurred by a Union SPV or, following the occurrence of the events described in clauses (i) and (ii) of Section 926(j), any Subsequent Gila River SPV.

(c) The Obligors will not permit any SPV Subsidiary to create, incur, assume or permit to exist a Lien on any of its properties, except for Liens created pursuant to or permitted by (i) in the case of any Union SPV, the terms of any Union SPV Financing incurred by such Union SPV and (ii) in the case of any Subsequent Gila River SPV, the terms of any Subsequent Gila River SPV Financing incurred by such Subsequent Gila River SPV, as applicable.

SECTION 912. Limitation on Liens.

No Obligor will create, incur, assume or permit to exist any Lien upon any of its property (including Capital Securities of any Person), revenues or assets, whether now owned or hereafter acquired, except the following (each, a "Permitted Lien"):

(1) Liens securing payment and performance of the Obligations under the Note Documents;

(2) Liens on the property or assets of the Company or any other Obligor existing as of the Effective Date and disclosed in Item 912(2) of the Disclosure Schedule securing Indebtedness described in Section 910(2), and Permitted Refinancings of such Indebtedness; provided that no such Lien shall encumber any additional property and the amount of Indebtedness secured by such Lien is not increased from that existing on the Effective Date (as such Indebtedness may have been permanently reduced subsequent to the Effective Date);

(3) Liens securing Indebtedness of the type permitted under Section 910(3); provided that (i) such Lien is granted within ninety (90) days after such Indebtedness is incurred, (ii) the Indebtedness secured thereby does not exceed 100% of the lesser of the cost or the fair market value of the applicable property, improvements or equipment at the time of such acquisition (or construction), including transaction costs and (iii) such Lien secures only the assets that are the subject of the Indebtedness referred to in such Section 910(3) or the proceeds thereof;

(4) Liens securing Indebtedness described in (i) clause (i) of Section 910(6) to the extent the terms of the Subordinated Lien Intercreditor Agreement are in full force and effect and such Liens are subordinated to the Liens described in clause (1) of this Section 912 in accordance with the terms of the Subordinated Lien Intercreditor Agreement and (ii) clause (ii) of Section 910(6) to the extent the terms of the First Lien Intercreditor Agreement are in full force and effect and such Liens are subject to the terms of the First Lien Intercreditor Agreement;

(5) Liens in favor of carriers, warehousemen, mechanics, materialmen and repairmen and other like Liens imposed by applicable laws, in each case created in the ordinary course of business securing obligations with respect to the Union Facility for amounts not yet due or which are being diligently contested in good faith by appropriate proceedings and that have been fully bonded or for which adequate reserves in accordance with GAAP shall have been set aside by the Company or such other applicable Obligor on its books;

(6) (i) Liens incurred or deposits made in the ordinary course of business in connection with worker's compensation, unemployment insurance or other forms of governmental insurance or benefits (other than Liens under ERISA), or to secure performance of tender and return of money bonds, statutory obligations, bids, security and appeal bonds (but not in excess of $15,000,000 in the aggregate), leases, trade contracts or similar obligations (other than for borrowed money) entered into in the ordinary course of business, and (ii) deposits made in the ordinary course of business in respect of acquisitions under fuel purchase or sale contracts;

(7) judgment Liens in existence for less than thirty (30) days after the entry thereof or with respect to which execution has been stayed or the payment of which is covered in full (subject to a customary deductible) by adequate reserves in accordance with GAAP, bonds or other security or by insurance maintained with responsible insurance companies and which do not otherwise result in an Event of Default under Section 501(6);

(8) easements, rights-of-way, restrictions (including zoning restrictions), trackage rights, licenses, covenants, conditions, declarations development agreements, site plan agreements, minor defects or irregularities in title, restrictions on use of real property and other similar encumbrances or Liens that, in the aggregate, do not interfere in any material respect with the value or use of the property (as used by such Obligor in its operations or business) to which such Lien is attached;

(9) all matters disclosed in the surveys and in the Title Policies (or executed pro forma policies delivered on the Effective Date) insuring any real property on which the Union Facility is located, including easements and rights of way appertaining thereto that in each case have been delivered pursuant to Section 5.1.10(b)(iii) of the Third Lien Credit Agreement;

(10) Liens for Taxes, assessments or other governmental charges or levies not at the time delinquent or being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;

(11) any interest or title of a lessor, sublessor or licensor in leases or subleases entered into by the Company or any Subsidiary Guarantor or any leases, subleases, licenses and sublicenses granted to third parties in the ordinary course of business, in each case not interfering in any material respect with the operations or business of the Company or such Subsidiary Guarantor;

(12) landlord Liens arising under any lease contracts entered into by the Company or any Subsidiary Guarantor in the ordinary course of business for amounts not yet due or being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;

(13) Liens securing hedge obligations of the Obligors arising under any Specified Commodity Hedge Agreements so long as (i) such Liens and the obligations thereunder are either First Lien Obligations and subject to the terms of the First Lien Intercreditor Agreement; provided that the aggregate amount of obligations under the First Lien Credit Agreement and hedge obligations that are secured pursuant to this subclause (i) shall not exceed $100,000,000 (excluding letter of credit fees and other similar amounts payable in respect of the letters of credit issued under the First Lien Credit Agreement), or (ii) such Specified Commodity Hedge Agreements are Specified Right-Way Hedge Agreements and such Liens and the obligations thereunder are secured on a pari passu basis with the Obligations under the Note Documents and subject to the terms of the Subordinated Lien Intercreditor Agreement; provided further that the aggregate amount of hedge obligations that are secured pursuant to this clause (13) shall not exceed $175,000,000;

(14) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness or (ii) relating to purchase orders and other agreements entered into with customers of the Company in the ordinary course of business;

(15) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights;

(16) licenses or sublicenses of intellectual property granted in the ordinary course of business;

(17) Liens arising from precautionary UCC financing statements regarding operating leases;

(18) Liens on securities that are the subject of repurchase agreements constituting Cash Equivalent Investments under clause (d) of the definition thereof;

(19) statutory Liens of depository or collecting banks on items in collection and any accompanying documents or the proceeds thereof;

(20) (i) Liens arising from the terms and conditions of the Project Documents and Organic Documents in existence on the Effective Date or as amended in accordance herewith, or any other contractual obligations of any Obligor entered into in the ordinary course of business, in each case so long as such Liens do not constitute security interests supporting obligations comprising Indebtedness and (ii) Liens existing solely by virtue of an Obligor's ownership of the Capital Securities of another Obligor;

(21) extensions, renewals and replacements of any of the foregoing Liens to the extent and for so long as the Indebtedness secured thereby remains outstanding;

(22) Liens securing the Act 9 Bonds;

(23) (i) other Liens incident to the ordinary course of business (including Company's trading activities), such as contract netting, that are not incurred in connection with the obtaining of any loan, advance or credit and that do not in the aggregate materially impair the use of the property or assets of Company or the value of such property or assets for the purposes of such business and (ii) Liens incurred in connection with the hedging and margining transactions permitted by the Risk Management Policy in an aggregate amount not to exceed $20,000,000 outstanding at any time;

(24) (i) the purchase money security interest of Pratt & Whitney in the Encumbered GT Parts Collateral (as defined in the PW Intercreditor Agreement) but only so long as (A) the Collateral Agent maintains a third-priority Lien on such Encumbered GT Parts Collateral and (B) the PW Intercreditor Agreement (as such PW Intercreditor Agreement may be amended from time to time with the consent of the Required Noteholders) remains in full force and effect, and (ii) upon the termination of the Pratt & Whitney purchase money security interest according to its terms, any subsequent purchase money security agreement with a creditor, provided that, such purchase money security interest of the creditor shall (A) have terms substantially similar to those agreed to by the Company and Pratt & Whitney with respect to the Encumbered GT Parts Collateral (as defined in the PW Intercreditor Agreement) and (B) secure Indebtedness in an aggregate amount not to exceed $15,000,000;

(25) cash collateral pledged to secure the Company's obligations under the First Lien Letters of Credit;

(26) cash collateral pledged to secure any Obligor's obligations to any trade counterparty in an aggregate amount not to exceed $40,000,000 outstanding at any time;

(27) the subordinated Lien of Union Power on the Act 9 Bonds pursuant to the Bond Pledge Agreement;

(28) the rights and interests of the County under the Act 9 Lease;

(29) Liens on Union Power's receivables under its Power Purchase Agreements (for up to 510 MW of power and for a tenor not greater than six (6) years) granted in favor of Union Power's gas supply counterparties (or Union Power's financial counterparties that advance funds to pay such Union Power gas supply counterparties); provided that in no case shall any such Lien secure more than an amount equal to (i) the volume of gas necessary to run a 2–on-1 block of generating capacity at full load for a period equal to sixty (60) days times (ii) the daily spot price applicable to such gas purchases during such sixty (60) day period; and

(30) cash collateral pledged to secured an Obligor's obligations under any agreement in respect of a Disposition in an aggregate amount not to exceed $50,000,000 outstanding at any time.

SECTION 913. Limitations on Transactions with Affiliates.

No Obligor will, and will not permit any of its Subsidiaries to, enter into or cause or permit to exist any arrangement, transaction or contract (including for the purchase, lease or exchange of property or the rendering of services) with any of its other Affiliates, unless such arrangement, transaction or contract is any of the following:

(1) (i) on fair and reasonable terms no less favorable to such Obligor than it could obtain in an arm's length transaction with a Person that is not an Affiliate and (ii) of the kind which would be entered into by a prudent Person in the position of such Obligor with a Person that is not one of its Affiliates;

(2) an arrangement, transaction or contract expressly permitted by the terms of this Indenture;

(3) the payment of fees and indemnities to directors, officers, consultants and employees of the Company or its respective Subsidiaries in the ordinary course of business;

(4) (i) any employment or severance agreements or arrangements entered into by the Company or its Subsidiaries in the ordinary course of business, or (ii) any employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers employees, and any reasonable employment contract or arrangement and transactions pursuant thereto;

(5) the payment of fees, expenses, bonuses and awards related to the transactions contemplated by the Transaction Documents and Note Documents;

(6) any agreement between one Obligor and another Obligor not specifically prohibited hereunder; or

(7) any Union SPV Disposition or Subsequent Gila River SPV Disposition.

SECTION 914. Amendments to Operating Agreement.

The Company shall not amend, modify or waive any provision of the Operating Agreement in a manner that has the effect of increasing the amount of Tax Distributions the Company is permitted to make in accordance with the provisions of the Operating Agreement.

SECTION 915. Books and Records; Inspection.

Each Obligor will keep books and records in accordance with GAAP which accurately reflect all of its business affairs and transactions and permit the Trustee or any of its respective representatives, agents, accountants and consultants (including, without limitation, the Independent Engineer), at reasonable times and upon reasonable notice to such Obligors (which visits shall be limited to once per calendar year in the aggregate absent a Default occurring and continuing), to visit such Obligor's offices, to discuss such Obligor's financial matters with its officers and employees, and its independent public accountants (and each Obligor hereby authorizes any such independent public accountant to discuss such Obligor's financial matters with the Trustee or any of its respective representatives whether or not any representative of such Obligor is present) and to examine (and photocopy extracts from) any of such Person's books and records. The Company shall pay any fees of any agents, accountants and consultants retained by the Trustee and of the Obligor's independent public accountants incurred in connection with the Trustee's exercise of its rights pursuant to this Section 915; provided that the Trustee shall not be required or obligated under any circumstances to exercise its rights pursuant to this Section 915 unless the Trustee receives written direction from the Required Noteholders.

SECTION 916. Environmental Laws.

Each Obligor will (and will cause Gila River Energy, GRE 2014 and Gila River Power to): (a) comply, and use commercially reasonable efforts to cause all lessees and other Persons operating or occupying its properties to comply, with all Environmental Laws and environmental Permits, except to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect; (b) obtain, maintain and renew all environmental Permits necessary for its operations and properties, except to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect; (c) conduct any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Materials from any of its properties in accordance with the requirements of all Environmental Laws, except where failure to do so could not reasonably be expected to have a Material Adverse Effect; provided, however, that such Obligor shall not be required to conduct any such investigation, study, sampling or testing, or to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances; (d) promptly notify the Trustee and the Holders and provide copies upon receipt of any written claims, complaints, notices of violation or information requests related to any actual, alleged or potential material non-compliance with or material liability under Environmental Laws and provide the Trustee with periodic updates (at least quarterly) on the status of such matters; (e) promptly notify the Trustee and the Holders of any

Release or discovery of Hazardous Materials at any of its properties that is reasonably likely to require material expenditures to investigate and/or remediate said and provide the Trustee with periodic updates (at least quarterly) on the status of such matters; (f) keep its property free of any Lien imposed under any Environmental Law, except to the extent and only for the period during which the Obligor is diligently contesting such Lien in good faith by appropriate proceedings and for which appropriate reserves are being maintained; and (g) provide reasonable access to the Trustee and its representatives, agents, consultants and engineers to each Obligor's property, personnel and records, at the cost and expense of each Obligor, to allow the Trustee to evaluate whether said Obligor is in compliance with the covenants set forth in this Section 916; provided, further, as to this clause (g), that any Obligor's obligation to reimburse the Trustee for such inspections shall be limited to one time in any calendar year unless (x) the Trustee has a reasonable basis for believing that said Obligor is not in compliance with the covenants set forth in this Section 916, (y) said Obligor is otherwise in default pursuant to the terms of this Indenture or (z) the Trustee is directed to conduct such evaluation by the Required Noteholders; provided that the Trustee shall not be required or obligated under any circumstances to exercise its rights pursuant to this Section 916 unless the Trustee receives written direction from the Required Noteholders.

SECTION 917. Security, Further Assurances, etc.

Each Obligor will execute any documents, financing statements, agreements and instruments, and take all further action (including filing Mortgages on any real property acquired after the Effective Date) that may be required under applicable law, or that the Collateral Agent may reasonably request, in order to effectuate the transactions contemplated by the Note Documents and in order to grant, preserve, protect and perfect the validity and second priority (subject only to Permitted Liens) of the Liens created or intended to be created by the Note Documents. In addition, from time to time, to the extent permitted under applicable law each Obligor will, at its cost and expense, promptly secure the Obligations by pledging or creating, or causing to be pledged or created, perfected Liens with respect to such of its assets and properties as the Required Noteholders shall designate (it being agreed that it is the intent of the parties that the Obligations shall be secured by, among other things, substantially all the assets of the Obligors and each of their Subsidiaries, including any real or personal property acquired after the Effective Date). Such Liens will be created under the Note Documents in form and substance reasonably satisfactory to the Collateral Agent. The Obligors, as applicable, shall deliver, or cause to be delivered, to the Collateral Agent all such instruments and documents (including legal opinions, title insurance policies and lien searches) as the Collateral Agent shall reasonably request to evidence compliance with this Section 917.

SECTION 918. Maintenance of Corporate Separateness.

Each Obligor, Gila River O&M Subsidiary, Gila River Energy, GRE 2014 and Gila River Power will satisfy customary corporate formalities. None of the Obligors nor Gila River O&M Subsidiary, Gila River Energy, GRE 2014 or Gila River Power shall take any action, or conduct its affairs in a manner, which is likely to result in the separate existence of an Obligor from any non-Obligor being ignored by any court of competent jurisdiction.

SECTION 919. Intercompany Loans.

The Company shall cause all Indebtedness issued by one Obligor to another Obligor to be evidenced by a Subordinated Intercompany Note substantially in the form of Exhibit E hereto.

SECTION 920. Performance of Project Documents.

Except as could not reasonably be expected to have a material adverse effect on the Holders, each Obligor will perform and observe all of the material terms and provisions of each Project Document to be performed or observed by it and maintain each such Project Document to which it is a party in full force and effect, and enforce such Project Document in accordance with its material terms.

SECTION 921. SPV Subsidiary Collateral and Obligors.

If, at any time, any SPV Subsidiary is no longer prohibited by the terms of any Union SPV Financing or Subsequent Gila River SPV Financing, as applicable, from granting Liens in favor of the Collateral Agent on any of its assets or from being an Obligor hereunder and under the other Note Documents, then the Obligors shall promptly cause such SPV Subsidiary to (a) enter into such security documents (including supplements to the Security Documents) as are necessary to create a Lien in favor of the Collateral Agent on all such assets, with the priority contemplated by the Intercreditor Agreements and (b) to become a Subsidiary Guarantor and Obligor hereunder (collectively, the "SPV Subsidiary Collateral Actions"). After giving effect to the SPV Subsidiary Collateral Actions, (i) any such SPV Subsidiary shall be subject to all covenants and agreements applicable to Obligors hereunder and under the other Note Documents and (ii) the obligations specifically referred to herein as being applicable to the Union Facility shall be equally applicable to the assets owned by such SPV Subsidiary.

SECTION 922. Business Activities.

No Obligor will engage in any business activity except those business activities engaged in on the date this Indenture and activities reasonably incidental or related thereto, or any business or business activity that is reasonably similar thereto or a reasonable extension, development or expansion thereof or ancillary thereto.

SECTION 923. Investments.

No Obligor will purchase, make, incur, assume or permit to exist any Investment in any other Person, except the following (each, a "Permitted Investment"):

(a) Investments existing as of the Effective Date and identified in Item 923(a) of the Disclosure Schedule;

(b) Ownership by any Obligor of Capital Securities of any Obligor;

(c) Cash Equivalent Investments (it being understood that any Investment which when made complies with the requirements of the definition of the term "Cash Equivalent

Investment" may continue to be held notwithstanding that such Investment if made thereafter would not comply with such requirements);

(d) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, or judgments against, customers and suppliers, in each case in the ordinary course of business;

(e) Investments permitted as intercompany Indebtedness pursuant to Section 910;

(f) Investments consisting of the deferred portion of the sales price received by any Obligor or otherwise arising out of the receipt of non-cash consideration in connection with any Permitted Disposition (other than a Permitted Disposition described in Section 926(f));

(g) Investments in respect of loans and advances made by the Company and its Subsidiaries in the ordinary course of business and consistent with past practices to their respective employees or consultants for moving, travel and emergency expenses and other similar expenses or for income tax liabilities, or advances of payroll payments and expenses to employees in the ordinary course of business, so long as the aggregate principal amount thereof at any one time outstanding (determined without regard to any write-downs or write-offs of such loans and advances) does not exceed $500,000 in the aggregate for all such employees and consultants;

(h) Investments by the Obligors in Hedge Agreements permitted under this Indenture;

(i) the transactions contemplated hereby;

(j) Investments resulting from pledges and deposits referred to in Section 912(6);

(k) Investments, other than Investments described in clauses (a) through (j) above in an aggregate principal amount not to exceed $1,000,000 at any time outstanding (plus any returns of capital actually received in cash by the relevant investor in respect of investments theretofore made by it pursuant to this clause (k)), but in an aggregate amount not exceeding the amount of such Investments;

(l) to the extent constituting Investments, Volumetric Production Payment Obligations to the extent permitted under Section 930;

(m) ownership by Gila River Holdco of Capital Securities of (i) directly, GRE 2014 and (ii) indirectly, Gila River Energy, Gila River Power and Gila River O&M Subsidiary; and

(n) ownership by any Obligor of the Capital Securities of any Union SPV or any Subsequent Gila River SPV formed in connection with a transaction permitted by Section 926(i) or (j), respectively.

SECTION 924. Consolidation, Merger, etc.

No Obligor will liquidate or dissolve, consolidate with, or merge into or with, any other Person, or purchase or otherwise acquire any substantial part of the assets of any Person (or any division thereof); provided that, any Subsidiary Guarantor may merge into or with the Company or any other Subsidiary Guarantor.

SECTION 925. SPV Dispositions.

No Obligor shall permit any Union SPV or any Subsequent Gila River SPV to consummate any Disposition of assets, including by way of merger or consolidation, unless such Disposition (i) is for (A) fair value and on fair and reasonable terms no less favorable to the applicable Union SPV or Subsequent Gila River SPV than it could obtain in an arm's length transaction with a Person that is not an Affiliate of such Union SPV or Subsequent Gila River SPV, as the case may be, and (B) not less than 66-2/3% cash consideration; provided that the Obligors shall cause any Net SPV Disposition Proceeds from such Disposition to be applied in accordance with Section 1001; (ii) would otherwise be permitted pursuant to Section 926 (other than clauses (d), (h), (i) or (j) thereof) as if such Union SPV were an Obligor or (iii) consists of the granting of a Lien securing any Indebtedness permitted by Section 911.

SECTION 926. Permitted Dispositions.

No Obligor will Dispose of any of such Obligor's assets (including accounts receivable and Capital Securities of Subsidiaries, but excluding assets specifically not constituting Collateral pursuant to the Security Documents) to any Person in one transaction or a series of transactions unless such Disposition (each, a "Permitted Disposition") is:

(a) of inventory (including all sales of energy and capacity products and any ancillary services) or obsolete, damaged, worn out or surplus assets Disposed of in the ordinary course of business;

(b) of Cash Equivalent Investments in the ordinary course of business;

(c) in respect of Investments permitted by Section 923;

(d) Liens permitted by Section 912 (to the extent that the granting of any such Lien would constitute a Disposition);

(e) the sale of defaulted receivables in the ordinary course of business and not as part of an accounts receivable financing transaction;

(f) the issuance of Capital Securities of the Company to the extent permitted under the terms of this Indenture;

(g) to the extent considered a Disposition, any arrangement providing for direct payment of power sale receivables to gas supply counterparties (or financial counterparties that advance funds to pay such gas counterparties) as permitted in Section 910(16);

(h) for (i) fair value and on fair and reasonable terms no less favorable to the applicable Obligor than it could obtain in an arm's length transaction with a Person that is not an Affiliate of such Obligor and (ii) not less than 66-2/3% cash consideration; provided that, (A) any Net Disposition Proceeds from such Disposition are applied in accordance with Section 1001 and (B) the Company shall be permitted to sell one power block (but not more than one power block) of the Union Facility in a manner that does not satisfy the requirements of clause (ii);

(i) up to two Union SPV Dispositions; provided that, the aggregate number of power blocks of the Union Facility transferred pursuant to Union SPV Dispositions permitted by this clause (i) shall not exceed two power blocks; provided, further, that the indirect equity interests of the applicable Union SPV shall be pledged as Collateral in accordance with the terms of the Pledge and Security Agreement; provided, further, however, that (x) such Union SPV Disposition is made in connection with a substantially concurrent Union SPV Financing incurred by the applicable Union SPV and (y) the Net SPV Financing Proceeds in connection therewith are applied in accordance with Section 1001;

(j) in the event that (i) the Non-Recourse Indebtedness incurred by Gila River Energy pursuant to the Gila River Energy Financing Documents is repaid in full in cash and (ii) the assets securing such Non-Recourse Indebtedness are owned directly by an Obligor (it being understood and agreed that there is no requirement contained herein that such assets be owned directly by an Obligor after giving effect to such repayment), a Subsequent Gila River SPV Disposition; provided that, the indirect equity interests of the applicable Subsequent Gila River SPV shall be pledged as Collateral in accordance with the terms of the Pledge and Security Agreement; provided, further, however, that (x) such Subsequent Gila River SPV Disposition is made in connection with a substantially concurrent Subsequent Gila River SPV Financing incurred by the applicable Subsequent Gila River SPV and (y) the Net SPV Financing Proceeds in connection therewith are applied in accordance with Section 1001; and

(k) the merger of two Obligors.

SECTION 927. Modification of Certain Agreements.

(a) No Obligor will consent to any amendment, supplement, waiver or other modification of its Organic Documents if as a result thereof there would reasonably be expected to be a material adverse effect on the rights or remedies of any party to the Note Documents that is not an Obligor.

(b) (i) No Obligor will consent to any amendment, supplement, waiver or other modification of the Third Lien Credit Agreement (and the "Note Documents" as defined therein), except to the extent permitted under the terms of the Subordinated Lien Intercreditor Agreement, and (ii) no Obligor will consent to any amendment, supplement, waiver or other modification of the First Lien Credit Agreement (and the "Note Documents" or other comparable term as defined therein), except to the extent permitted under the terms of the First Lien Intercreditor Agreement.

(c) No Obligor will cancel or terminate any Project Document in effect as of the Effective Date or consent to or accept any cancellation or termination thereof, or amend,

modify or change any term or condition of any Project Document or give any consent waiver or approval thereunder, waive any default under or any breach of any term or condition of any term or condition of any Project Document or cause or allow the assignment of rights or obligations of any Obligor to any Project Document other than pursuant to the Note Documents, in each case, to the extent any of the foregoing actions, either individually or in the aggregate, could reasonably be expected to cause a material adverse effect (taken as a whole after giving effect to all applicable amendments, modifications, changes, consents, waivers and approvals) on the Holders.

SECTION 928. Restrictive Agreements, etc.

No Obligor will enter into any agreement (other than the Credit Agreements, the Intercreditor Agreements, any Hedge Agreement and any Power Purchase Agreement) prohibiting:

(a) the ability of any Obligor to amend or otherwise modify any Note Document; or

(b) the creation or assumption of any Lien upon its properties, revenues or assets, whether now owned or hereafter acquired, except, in the case of this clause (b), restrictions existing by reason of:

(1) restrictions imposed by applicable law;

(2) contractual encumbrances or restrictions in effect on the Effective Date and described in Item 928(b)(2) of the Disclosure Schedule or contained in any agreement in respect of a Permitted Refinancing of Indebtedness described in Section 910(2) so long as such encumbrance or restriction has not been expanded from (i) the encumbrance or restriction contained in the agreements relating to the Indebtedness being refinanced and described in Item 928(b)(2) of the Disclosure Schedule;

(3) any restrictions imposed by any agreement relating to secured Indebtedness permitted by this Indenture to the extent that such restrictions apply only to the property or assets securing such Indebtedness;

(4) customary provisions contained in leases or licenses of intellectual property and other similar agreements entered into in the ordinary course of business;

(5) customary provisions restricting subletting or assignment of any lease governing a leasehold interest;

(6) customary provisions restricting assignment of any agreement entered into in the ordinary course of business;

(7) customary restrictions and conditions contained in any agreement relating to the sale of any asset permitted under Section 926 pending the consummation of such sale;

(8) contractual encumbrances or restrictions contained in any agreement in respect of permitted unsecured Indebtedness so long as such encumbrances or restrictions permit the Liens granted to secure the Obligations and all other Permitted Liens hereunder; or

(9) customary restrictions and conditions contained in the documents relating to any Lien, so long as (A) such Lien is permitted under Section 912 and such restrictions or conditions relate only to the specific asset subject to such Lien and (B) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 928.

The foregoing prohibitions shall not apply to restrictions contained in any Note Document.

SECTION 929. Accounting Changes.

After the Effective Date, no Obligor will make any change in accounting policies or reporting policies, except as required by GAAP, or change its fiscal year, except that the Company may elect to cease the use of mark-to-market accounting.

SECTION 930. Limitation on Volumetric Production Payment Obligations.

The Obligors shall not establish or enter into any Volumetric Production Payment Obligation arrangements other than with respect to Union Power; provided that (a) such financing is provided on a non-recourse basis by the counterparty to the related gas reserve and the required hedge with respect thereto and gas remarketing arrangements and (b) the Company enters into a concurrent hedging transaction effectively hedging the full market exposure for the purchased gas.

SECTION 931. Interest Rate Hedge Agreements; Speculative Transactions.

No Obligor will (a) enter into any Interest Rate Hedge Agreement or (b) engage in any transaction involving commodity options or futures contracts or any similar speculative transactions, other than Hedge Agreements described in Section 910(4). Notwithstanding the foregoing, the parties hereto agree that transactions entered into in the ordinary course of business, including the Power Purchase Agreements, fuel supply agreements, gas hedge agreements to hedge against fluctuations in electricity prices, capacity and energy commitments in organized electricity markets, and other similar undertakings, are not speculative transactions for purposes of this Section 931, so long as no Obligor has entered into any Hedge Agreement or agreement for the purchase and sale of electricity in respect of the electric generation capacity of the Union Facility which would result in the aggregate amount of contracted capacity of the Union Facility subject to all such Hedge Agreements and purchase and sale agreements to exceed, for any calendar year, the projected available capacity for such year.

SECTION 932. Restrictions on Co-Issuer.

Co-Issuer shall not (i) engage in any business activity other than acting as a co-issuer of the Notes pursuant to the terms of this Indenture and as a guarantor under the Third

Lien Credit Agreement; (ii) own any assets, except as may be reasonably incidental or related to activities specified in the foregoing clause (i); or (iii) incur any Indebtedness except as required of a guarantor under this Indenture and the Note Documents.

ARTICLE TEN

REDEMPTION OF NOTES

SECTION 1001. Right of Redemption; Mandatory Redemption; Optional Redemption.

(1) *Mandatory Redemption*. The Notes will be required to be redeemed as follows, subject to the Intercreditor Agreements:

(a) in the event that there shall be Excess Cash Flow with respect to any Fiscal Year beginning with the Fiscal Year ended December 31, 2014, the Company shall, no later than the date upon which the Company is required to deliver financial statements under Section 908, submit an irrevocable notice of redemption in respect of the principal amount of Notes equal to 100% of such Excess Cash Flow;

(b) no later than five (5) Business Days following the receipt by any Obligor of any Net Disposition Proceeds, Net SPV Disposition Proceeds, Net SPV Financing Proceeds, Net SPV Foreclosure Excess Proceeds or Disposition Cash Collateral (at the time such Disposition Cash Collateral is no longer required to secure such Obligor's or Gila River Power's obligations to the applicable buyer in connection with a Disposition), the Company shall deliver to the Calculation Agent a calculation of the amount of such proceeds or Disposition Cash Collateral, and if (x) in the case of Net Disposition Proceeds and Net SPV Disposition Proceeds, as applicable, the aggregate amount of such proceeds received by such Obligor in any Fiscal Year exceeds $5,000,000 or (y) such proceeds are Net SPV Financing Proceeds, Net SPV Foreclosure Excess Proceeds or Disposition Cash Collateral, the Company shall and shall submit an irrevocable notice of redemption in respect of the principal amount of Notes equal to 100% of all such Net Disposition Proceeds, Net SPV Disposition Proceeds, Net SPV Financing Proceeds, Net SPV Foreclosure Excess Proceeds or Disposition Cash Collateral, as applicable; provided, however, that, no TEP Proceeds shall be subject to this Section 1001 and shall instead be applied solely to prepay Indebtedness under the Third Lien Credit Agreement in accordance with the terms of the Third Lien Credit Agreement;

(c) no later than one (1) Business Day following the receipt by any Obligor of any Net Debt Proceeds, the Company shall deliver to the Calculation Agent a calculation of the amount of such Net Debt Proceeds and submit an irrevocable notice of redemption in respect of the principal amount of Notes equal to 100% of such Net Debt Proceeds; and

(d) no later than five (5) Business Days following the receipt by any Obligor of any Net Casualty Proceeds, the Company shall, subject to the Intercreditor Agreements and the Depositary Agreement, submit an irrevocable notice of redemption in respect of the principal amount of Notes equal to 100% of such Net Casualty Proceeds.

(2) Optional Redemption. At any time and from time to time, subject to the Intercreditor Agreements, the Issuers may redeem some or all of the Notes at par, subject to Section 1005 and in a minimum principal amount of $1,000,000 and in multiples of $1.00 (and together with accrued interest thereon), pro rata, without premium or penalty.

SECTION 1002. Applicability of Article.

Redemption of Notes at the election of the Issuers or otherwise, as permitted or required by any provision of this Indenture, shall be made in accordance with such provision and this Article Ten.

SECTION 1003. Election To Redeem; Notice to Trustee.

The election of the Issuers to redeem any Notes pursuant to Section 1001 above shall be evidenced by an Issuer Order. In case of any redemption at the election of the Issuers, the Issuers shall, at least three (3) Business Days prior to mailing the Notice of Redemption pursuant to Section 1005 (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee in writing of such Redemption Date and of the principal amount of Notes (together with any accrued interest thereon) to be redeemed and shall deliver to the Trustee such documentation and records as shall enable the Trustee to select the Notes to be redeemed pursuant to Section 1004.

SECTION 1004. Selection by Trustee of Notes To Be Redeemed.

If less than all of the Notes are to be redeemed at any time, selection of such Notes for redemption will be made by the Trustee in compliance with the requirements of the principal national securities exchange, if any, on which such Notes are listed, or, if such Notes are not so listed and are held by DTC and DTC prescribes a method of selection, in compliance with DTC's procedures, or on a pro rata basis or by lot; provided that no Notes of $1.00 or less shall be purchased or redeemed in part.

Notices of purchase or redemption shall be mailed by first class mail, postage prepaid, at least five (5) but not more than sixty (60) days before the purchase or Redemption Date to each Holder of Notes to be purchased or redeemed at such Holder's registered address. If any Note is to be purchased or redeemed in part only, any notice of purchase or redemption that relates to such Note shall state the portion of the principal amount thereof that has been or is to be purchased or redeemed.

A new Note issued under this Indenture in principal amount equal to the unpurchased or unredeemed portion of any Note purchased or redeemed in part will be issued in the name of the Holder thereof upon cancellation of the original Note. On and after the purchase or Redemption Date, unless the Issuers default in payment of the purchase or redemption price, interest shall cease to accrue on Notes or portions thereof purchased or called for redemption.

SECTION 1005. Notice of Redemption.

Notice of redemption shall be given in the manner provided for in Section 106 not less than five (5) but not more than sixty (60) days prior to the Redemption Date, to each Holder

to be redeemed at such Holder's registered address. Notices of redemption may not be conditional.

All notices of redemption shall state:

(1) the Redemption Date,

(2) the Redemption Price and the amount of accrued interest to the Redemption Date payable as provided in Section 1007, if any,

(3) if less than all Outstanding Notes are to be redeemed, the identification (and, in the case of a partial redemption, the principal amounts) of the particular Notes, to be redeemed,

(4) in case any Note is to be redeemed in part only, the notice which relates to such Note shall state that on and after the Redemption Date, upon surrender of such Note, the Holder will receive, without charge, a new Note or Notes of authorized denominations for the principal amount thereof remaining unredeemed,

(5) that on the Redemption Date the Redemption Price (and accrued interest, if any, to the Redemption Date payable as provided in Section 1007) will become due and payable upon each such Note, or the portion thereof, to be redeemed, and that interest thereon will cease to accrue on and after said date (unless the Issuers default in making such payment),

(6) the place or places where such Notes are to be surrendered for payment of the Redemption Price and accrued interest, if any,

(7) the name and address of the Paying Agent,

(8) that Notes called for redemption must be surrendered to the Paying Agent to collect the Redemption Price,

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

(10) the paragraph of the Notes pursuant to which the Notes are to be redeemed; and

(11) if the redemption is pursuant to Section 1001(1), the provision of Section 1001(1) pursuant to which the Notes are being redeemed.

Notice of redemption of Notes to be redeemed at the election of the Issuers shall be given by the Issuers or, at the Issuers' written request and three (3) Business Days' prior notice to the Trustee, shall be given by the Trustee in the name and at the expense of the Issuers.

SECTION 1006. Deposit of Redemption Price.

On or before 10:00 a.m. New York City time on the Redemption Date, the Issuers shall deposit with the Trustee or with a Paying Agent an amount of money sufficient to pay the Redemption Price of, and accrued interest, if any, on, all the Notes which are to be redeemed on that date. The Trustee or the Paying Agent will promptly return to the Issuers any money deposited with the Trustee or the Paying Agent by the Issuers in excess of the amounts necessary to pay the redemption or purchase price of, and accrued interest, if any, on, all Notes to be redeemed or purchased.

SECTION 1007. Notes Payable on Redemption Date.

Notice of redemption having been given as aforesaid, the Notes so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified (together with accrued interest, if any, to the Redemption Date), and from and after such date (unless the Issuers shall default in the payment of the Redemption Price and accrued interest) such Notes shall cease to bear interest. Upon surrender of any such Note for redemption in accordance with said notice, such Note shall be paid by the Issuers at the Redemption Price, together with accrued interest, if any, to the Redemption Date; provided, however, that installments of interest whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Notes, or one or more Predecessor Notes, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 307.

If any Note called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid, bear interest from the Redemption Date at the rate borne by the Notes.

SECTION 1008. Notes Redeemed in Part.

Any Note which is to be redeemed only in part (pursuant to the provisions of this Article Ten) shall be surrendered at the office or agency of the Issuers maintained for such purpose pursuant to Section 902 (with, if the Issuers or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Issuers and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing), and the Issuers shall execute, and, upon receipt of an Issuer Order, the Trustee shall authenticate and deliver to the Holder of such Note without service charge, a new Note or Notes, of any authorized denomination as requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Note so surrendered.

ARTICLE ELEVEN

GUARANTEES

SECTION 1101. Guarantee.

Each Subsidiary Guarantor hereby absolutely, unconditionally and irrevocably and jointly and severally, guarantees the due, prompt and faithful performance of, and

compliance with, all obligations, covenants, terms, conditions and agreements of the Company and each other Obligor now or hereafter existing under this Indenture, each other Note Document and any Specified Commodity Hedge Agreement to which the Company and each other Obligor is or may become a party in accordance with the terms thereof, including the full and punctual payment when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, of all Obligations of the Company and each other Obligor now or hereafter existing under this Indenture, each other Note Document and any Specified Commodity Hedge Agreement to which the Company and each other Obligor is or may become a party, whether for principal, interest (including, for the avoidance of doubt, Defaulted Interest), early termination payments, fees, expenses or otherwise (including all such amounts which would become due but for the operation of the automatic stay under Section 362(a) of the United States Bankruptcy Code, 11 U.S.C. §362(a), and the operation of Sections 502(b) and 506(b) of the United States Bankruptcy Code, 11 U.S.C. §502(b) and §506(b)), and indemnifies and holds harmless each party to the Note Documents that is not an Obligor and each holder of Notes for any and all costs and expenses (including reasonable attorney's fees and expenses) incurred by such party or such holder, as the case may be, in enforcing any rights under this Article Eleven.

This Article Eleven constitutes a guaranty of payment when due and not of collection, and each Subsidiary Guarantor specifically agrees that it shall not be necessary or required that any party to the Note Documents that is not an Obligor or any holder of any Note exercise any right, assert any claim or demand or enforce any remedy whatsoever against the Company or any other Obligor (or any other Person) before or as a condition to the obligations of the Subsidiary Guarantors hereunder.

SECTION 1102. Acceleration of Obligations Hereunder.

Each Subsidiary Guarantor agrees that, in the case of an Event of Default described in Section 501(10), and if such Event of Default shall occur at a time when any of the Obligations of the Company or any other Obligor may not then be due and payable, it will pay to the Holders forthwith the full amount which would be payable hereunder by such Subsidiary Guarantor if all such Obligations were then due and payable.

SECTION 1103. Obligations Hereunder Absolute, etc.

The obligations of each Subsidiary Guarantor under this Article Eleven shall in all respects be a continuing, absolute, unconditional and irrevocable and joint and several guaranty of performance and payment and shall remain in full force and effect until all Obligations of the Company and each other Obligor have been paid in full in cash and all obligations of each Subsidiary Guarantor hereunder shall have been paid in full in cash. Each Subsidiary Guarantor guarantees that the Obligations of the Company and each other Obligor will be paid strictly in accordance with the terms of this Indenture, each other Note Document and any Specified Commodity Hedge Agreement under which they arise, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of any party to the Note Documents that is not an Obligor or any holder of any Note with respect thereto. The liability of each Subsidiary Guarantor under this Article Eleven shall be absolute, unconditional, irrevocable and joint and several irrespective of:

(a) any lack of validity, legality or enforceability of the other provisions of this Indenture, any Note, any other Note Document or any Specified Commodity Hedge Agreement;

(b) the failure of any party to the Note Documents that is not an Obligor or any holder of any Note:

(i) to assert any claim or demand or to enforce any right or remedy against the Company, any other Obligor or any other Person (including any other guarantor (including the Subsidiary Guarantors)) under the provisions of this Indenture, any Note, any other Note Document, any Specified Commodity Hedge Agreement or otherwise, or

(ii) to exercise any right or remedy against any other guarantor (including the Subsidiary Guarantors) of, or the Collateral securing, any Obligations of the Company or any other Obligor;

(c) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations of the Company or any other Obligor, or any other extension, compromise or renewal of any Obligation of the Company or any other Obligor;

(d) any reduction, limitation, impairment or termination of any Obligation of the Company or any other Obligor for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to (and each Subsidiary Guarantor hereby waives any right to or claim of) any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality, non-genuineness, irregularity, compromise, unenforceability of, or any other event or occurrence affecting, any Obligation of the Company, any other Obligor or otherwise;

(e) any amendment to, rescission, waiver, or other modification of, or any consent to departure from, any of the terms of this Indenture, any Note, any other Note Document or any Specified Commodity Hedge Agreement;

(f) any addition, exchange, release, surrender or non-perfection of any Collateral, or any amendment to or waiver or release or addition of, or consent to departure from, any other guaranty, held by any party to the Note Documents that is not an Obligor or any holder of any Note securing any of the Obligations of the Company or any other Obligor; or

(g) any other circumstance which might otherwise constitute a defense available to, or a legal or equitable discharge of, the Company, any other Obligor, any surety or any guarantor.

SECTION 1104. Reinstatement, etc.

Each Subsidiary Guarantor agrees that this Article Eleven shall continue to be effective or be reinstated, as the case may be, if at any time any payment (in whole or in part) of any of the Obligations is rescinded or must otherwise be restored by any party to the Note Documents that is not an Obligor or any holder of any Note, upon the insolvency, bankruptcy or

reorganization of the Company or any other Obligor or otherwise, all as though such payment had not been made.

SECTION 1105. Waiver, etc.

Each Subsidiary Guarantor hereby waives promptness, diligence, notice of acceptance and any other notice with respect to any of the Obligations of the Company or any other Obligor and this Article Eleven and any requirement that the Collateral Agent, any other party to the Note Documents that is not an Obligor or any holder of any Note protect, secure, perfect or insure any security interest or Lien, or any property subject thereto, or exhaust any right or take any action against the Company, any other Obligor or any other Person (including any other guarantor) or any Collateral, as the case may be.

SECTION 1106. Postponement of Subrogation.

Each Subsidiary Guarantor agrees that it will not exercise any rights which it may acquire by way of rights of subrogation under this Article Eleven by any payment made hereunder or otherwise, until the prior payment in full in cash of all Obligations of the Company and each other Obligor. Any amount paid to a Subsidiary Guarantor on account of any such subrogation rights prior to the payment in full in cash of all Obligations of the Company and each other Obligor shall be held in trust for the benefit of parties to the Note Documents that are not Obligors and each holder of a Note and shall forthwith be paid to the Administrative Agent for the benefit of the Credit Parties and each holder of a Note and credited and applied against the Obligations of the Company and each other Obligor, whether matured or unmatured, in accordance with the terms of this Indenture or to be held as collateral for the Obligations.

In furtherance of the foregoing, for so long as any Obligations remain outstanding, each Subsidiary Guarantor shall refrain from taking any action or commencing any proceeding against the Company or any other Obligor (or its successors or assigns, whether in connection with a bankruptcy proceeding or otherwise) to recover any amounts in respect of payments made under this Article Eleven to any party to the Note Documents that is not an Obligor or any holder of a Note.

SECTION 1107. Successors, Transferees and Assigns; Transfers of Notes, etc.

This Article Eleven shall:

(a) be binding upon each Subsidiary Guarantor, and its successors, transferees and assigns; and

(b) inure to the benefit of and be enforceable by the Trustee and each other party to the Note Documents that is not an Obligor.

Without limiting the generality of Section 108 and subject to the limitations set forth therein, any Holder may assign or otherwise transfer (in whole or in part) any Note held by it to any other Person, and such other Person shall thereupon become vested with all rights and benefits in respect thereof granted to such Holder under any Note Document (including this

Article Eleven) or otherwise, subject, however, to any contrary provisions in such assignment or transfer, and to the provisions of Section 108 and this Article Eleven.

SECTION 1108. Contribution by Subsidiary Guarantors.

All Subsidiary Guarantors desire to allocate among themselves (collectively, the "Contributing Guarantors"), in a fair and equitable manner, their obligations arising under this Guarantee. Accordingly, in the event any payment or distribution is made on any date by a Subsidiary Guarantor (a "Funding Guarantor") under this Guarantee such that its Aggregate Payments (as defined below) exceeds its Fair Share (as defined below) as of such date, such Funding Guarantor shall be entitled to a contribution from each of the other Contributing Guarantors in an amount sufficient to cause each Contributing Guarantor's Aggregate Payments to equal its Fair Share as of such date. "Fair Share" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount (as defined below) with respect to such Contributing Guarantor to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Contributing Guarantors multiplied by (b) the aggregate amount paid or distributed on or before such date by all Funding Guarantors under this Guarantee in respect of the obligations Guaranteed. "Fair Share Contribution Amount" means, with respect to a Contributing Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Contributing Guarantor under this Guarantee that would not render its obligations hereunder or thereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; provided that, solely for purposes of calculating the "Fair Share Contribution Amount" with respect to any Contributing Guarantor for purposes of this Section 1108, any assets or liabilities of such Contributing Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Contributing Guarantor. "Aggregate Payments" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (1) the aggregate amount of all payments and distributions made on or before such date by such Contributing Guarantor in respect of this Guarantee (including in respect of this Section 1108), minus (2) the aggregate amount of all payments received on or before such date by such Contributing Guarantor from the other Contributing Guarantors as contributions under this Section 1108. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Guarantor. The allocation among Contributing Guarantors of their obligations as set forth in this Section 1108 shall not be construed in any way to limit the liability of any Contributing Guarantor hereunder. Each Subsidiary Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 1108.

SECTION 1109. Release of a Guarantor.

Notwithstanding the foregoing and the other provisions of this Indenture, any Guarantee by a Subsidiary Guarantor of the Notes shall provide by its terms that it shall be automatically and unconditionally released and discharged (1) upon any sale, exchange or transfer (by merger or otherwise) of all of the Company's Capital Stock in such Guarantor or all or substantially all the assets of such Guarantor, which sale, exchange or transfer is made in

compliance with the applicable provisions of this Indenture, or (2) if its obligations under this Indenture are discharged in accordance with the terms of this Indenture.

ARTICLE TWELVE

SECURITY

SECTION 1201. Recordings and Opinions.

(a) To the extent applicable, the Issuers will cause TIA § 313(b), relating to reports and TIA § 314(d), relating to the release of property or securities subject to the Lien of the Security Documents, to be complied with.

(b) Any release of Collateral permitted by Section 1202 hereof will be deemed not to impair the Liens under this Indenture, the Security Agreement and the other Security Documents in contravention thereof. Any certificate or opinion required by TIA § 314(d) may be made by an officer or legal counsel, as applicable, of the Issuers except in cases where TIA § 314(d) requires that such certificate or opinion be made by an independent Person, which Person shall be an independent engineer, appraiser or other expert selected by or reasonably satisfactory to the Trustee.

(c) Notwithstanding anything to the contrary in this Section 1201, the Issuers will not be required to comply with all or any portion of TIA § 314(d) if they determine, in good faith, that under the terms of TIA § 314(d) or any interpretation or guidance as to the meaning thereof of the Commission and its staff, including "no action" letters or exemptive orders (whether issued to the Issuer or any other person), all or any portion of TIA § 314(d) is inapplicable to any release or series of releases of Collateral. Without limiting the generality of the foregoing, the Issuers and the Subsidiary Guarantors may, subject to the other provisions of this Indenture, among other things, without any release or consent by the Noteholder Secured Parties, conduct ordinary course activities with respect to the Collateral, including, without limitation, (i) selling or otherwise disposing of, in any transaction or series of related transactions, any property subject to the Lien of the Security Documents that has become worn out, defective, obsolete or not used or useful in the business; (ii) abandoning, terminating, canceling, releasing or making alterations in or substitutions of any leases or contracts subject to the Lien of this Indenture or any of the Security Documents; (iii) surrendering or modifying any franchise, license or permit subject to the Lien of the Security Documents that it may own or under which it may be operating; (iv) altering, repairing, replacing, changing the location or position of and adding to its structures, machinery, systems, equipment, fixtures and appurtenances; (v) granting a license of any intellectual property; (vi) selling, transferring or otherwise disposing of inventory in the ordinary course of business; (vii) collecting accounts receivable in the ordinary course of business; (viii) making cash payments (including for the repayment of Indebtedness or interest) from cash that is at any time part of the Collateral in the ordinary course of business that are not otherwise prohibited by this Indenture and the Security Documents; and (ix) abandoning any intellectual property that is no longer used or useful in the Issuers' business.

SECTION 1202. Release of Collateral.

(a) Subject to Section 1201(b) hereof, Collateral may be released from the Lien and security interest created by the Security Documents at any time or from time to time in accordance with the provisions of the Security Documents and the Intercreditor Agreements.

(b) Upon receipt of an Officers' Certificate and an Opinion of Counsel certifying that all conditions precedent under this Indenture and the Security Documents (and TIA § 314(d), if applicable), if any, to such release have been met and any necessary or proper instruments of termination, satisfaction or release prepared by the Issuers, the Trustee shall, or shall cause the Collateral Agent to, execute, deliver or acknowledge (at the Issuers' expense) such instruments or releases to evidence the release of any Collateral permitted to be released pursuant to this Indenture or the Security Documents or the Intercreditor Agreements; provided that the Issuers will not be required to comply with all or any portion of TIA § 314(d) if they determine, in good faith, that under the terms of TIA § 314(d) and/or any interpretation or guidance as to the meaning thereof of the Commission and its staff, including "no-action" letters or exemptive orders (whether issued to the Issuers or any other person), all or any portion of TIA § 314(d) is inapplicable to any release or series of releases of Collateral. Neither the Trustee nor the Collateral Agent shall be liable for any such release undertaken in good faith in conclusive reliance upon any such Officers' Certificate or Opinion of Counsel, and notwithstanding any term hereof or in any Security Document to the contrary, the Trustee and the Collateral Agent shall not be under any obligation to release any such Lien and security interest, or execute and deliver any such instrument of release, satisfaction or termination, unless and until it receives such Officers' Certificate and Opinion of Counsel.

SECTION 1203. Collateral Agent.

(a) The Trustee and each of the Holders by acceptance of the Notes hereby designates and appoints the Collateral Agent as its collateral agent under this Indenture, the Security Agreement, the Security Documents and the Intercreditor Agreements and the Trustee and each of the Holders by acceptance of the Notes hereby irrevocably authorizes the Collateral Agent to take such action on its behalf under the provisions of this Indenture, the Security Agreement, the Security Documents and the Intercreditor Agreements and to exercise such powers and perform such duties as are expressly delegated to the Collateral Agent by the terms of this Indenture, the Security Agreement, the Security Documents and the Intercreditor Agreements, together with such powers as are reasonably incidental thereto. The Collateral Agent agrees to act as such on the express conditions contained in this Section 1203. The provisions of this Section 1203 are solely for the benefit of the Collateral Agent and none of the Trustee, any of the Holders, the Issuers or any of the Subsidiary Guarantors shall have any rights as a third-party beneficiary of any of the provisions contained herein other than as expressly provided in Section 1202. Notwithstanding any provision to the contrary contained elsewhere in this Indenture, the Security Agreement, the Security Documents and the Intercreditor Agreements, the Collateral Agent shall not have any duties or responsibilities, except those expressly set forth herein or in the Security Documents, nor shall the Collateral Agent have or be deemed to have any fiduciary relationship with the Trustee, any Holder, the Issuers or any Subsidiary Guarantor, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Indenture, the Security Agreement, the Security Documents

and the Intercreditor Agreements or otherwise exist against the Collateral Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" in this Indenture with reference to the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. Except as expressly otherwise provided in this Indenture, the Collateral Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions which the Collateral Agent is expressly entitled to take or assert under this Indenture, the Security Agreement, the Security Documents and the Intercreditor Agreements, including, to the extent applicable and provided that such action is not taken by the Trustee, the exercise of remedies pursuant to Article Five, and any action so taken or not taken shall be deemed consented to by the Trustee and the Holders.

(b) The Collateral Agent may execute any of its duties under this Indenture, the Security Documents or the Intercreditor Agreements by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Collateral Agent shall not be responsible for the negligence or misconduct of any agent, employee or attorney-in-fact that it selects as long as such selection was made without gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final proceeding.

(c) None of the Collateral Agent or any of its agents or employees shall (i) be liable for any action taken or omitted to be taken by any of them under or in connection with this Indenture or the transactions contemplated hereby (except for its own gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final proceeding) or under or in connection with the Security Agreement, any Security Document or Intercreditor Agreements or the transactions contemplated thereby (except for its own gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final proceeding), or (ii) be responsible in any manner to the Trustee or any Holder for any recital, statement, representation, warranty, covenant or agreement made by the Issuers or any Subsidiary Guarantor, contained in this or any Indenture, or in any certificate, report, statement or other document referred to or provided for in, or received by the Collateral Agent under or in connection with, this or any other Indenture, the Security Agreement, the Security Documents or the Intercreditor Agreements, or the validity, effectiveness, genuineness, enforceability or sufficiency of this or any other Indenture, the Security Agreement, the Security Documents or the Intercreditor Agreements, or for any failure of the Issuers or any Subsidiary Guarantor or any other party to this Indenture, the Security Agreement, the Security Documents or the Intercreditor Agreements to perform its obligations hereunder or thereunder. None of the Collateral Agent or any of its agents or employees shall be under any obligation to the Trustee or any Holder to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this or any other Indenture, the Security Agreement, the Security Documents or the Intercreditor Agreements or to inspect the properties, books or records of the Issuers or any Subsidiary Guarantor.

(d) The Collateral Agent shall be entitled to conclusively rely, and shall be fully protected in and shall not incur any liability for relying, upon any writing, resolution, notice,

consent, certificate, affidavit, letter, facsimile or telephone message, statement 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, without limitation, counsel to the Issuers or any Subsidiary Guarantor), independent accountants and other experts and advisors selected by the Collateral Agent. The Collateral Agent shall be fully justified in failing or refusing to take any action under this or any other Indenture, the Security Documents or the Intercreditor Agreements unless it shall first receive such advice or concurrence of the Trustee as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Holders against any and all liability, claims, loss and expense which may be incurred by it by reason of taking or continuing to take any such action. The Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, under this or any other Indenture, the Security Documents or the Intercreditor Agreements in accordance with a request or consent of the Trustee and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Holders.

(e) The Collateral Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, unless the Collateral Agent shall have received written notice from the Trustee or the Issuers referring to this Indenture, describing such Default or Event of Default and stating that such notice is a "notice of default." The Collateral Agent shall take such action with respect to such Default or Event of Default as may be requested by the Trustee in accordance with Article Five (subject to this Section 1203); provided, however, that unless and until the Collateral Agent has received any such request, 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 it shall deem advisable.

(f) U.S. Bank National Association and its Affiliates (and any successor Collateral Agent and its Affiliates) may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with the Issuers and the Subsidiary Guarantors as though it was not the Collateral Agent hereunder and without notice to or consent of the Trustee. The Trustee and the Holders acknowledge that, pursuant to such activities, U.S. Bank National Association or its Affiliates (and any successor Collateral Agent and its Affiliates) may receive information regarding the Issuers and the Subsidiary Guarantors (including information that may be subject to confidentiality obligations in favor of the Issuers and the Subsidiary Guarantors) and acknowledge that the Collateral Agent shall not be under any obligation to provide such information to the Trustee or the Holders. Nothing herein shall impose or imply any obligation on the part of U.S. Bank National Association (or any successor Collateral Agent) to advance funds.

(g) The Collateral Agent may resign at any time upon thirty (30) days' prior written notice to the Trustee and the Issuers, such resignation to be effective upon the acceptance of a successor agent to its appointment as Collateral Agent. If the Collateral Agent resigns under this Indenture, a successor Collateral Agent shall be appointed pursuant to Section 7.7 of the Subordinated Lien Intercreditor Agreement. After the retiring Collateral Agent's resignation hereunder, the provisions of this Section 1203 (and Section 1204) shall continue to inure to its benefit and the retiring Collateral Agent shall not by reason of such resignation be deemed to be

released from liability as to any actions taken or omitted to be taken by it while it was the Collateral Agent under this Indenture.

(h) The Trustee shall initially act as Collateral Agent and shall be authorized to appoint co-Collateral Agents as necessary in its sole discretion, in each case, as provided in the Intercreditor Agreements. Except as otherwise explicitly provided herein or in the Security Documents or the Intercreditor Agreements, neither the Collateral Agent nor any of its officers, directors, employees or agents shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The Collateral Agent shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither the Collateral Agent nor any of its officers, directors, employees or agents shall be responsible for any act or failure to act hereunder, except for its own willful misconduct or gross negligence as determined by a court of competent jurisdiction in a final proceeding.

(i) The Trustee and the Collateral Agent are authorized and directed by the Holders and the Holders by acquiring the Notes are deemed to have authorized the Trustee and Collateral Agent to (i) enter into the Security Agreement and the Security Documents, (ii) enter into the Intercreditor Agreements, (iii) bind the Holders on the terms as set forth in the Security Agreement, the Security Documents and the Intercreditor Agreements and (iv) perform and observe its obligations under the Security Agreement, the Security Documents and the Intercreditor Agreements.

(j) The Trustee agrees that it shall not be obliged to instruct the Collateral Agent to, unless specifically requested to do so in writing by a majority of the Holders, take or cause to be taken any action to enforce its rights under this Indenture or against the Issuers and the Subsidiary Guarantors, including the commencement of any legal or equitable proceedings, to foreclose any Lien on, or otherwise enforce any security interest in, any of the Collateral, as may be permitted by applicable law including, without limitation, pursuant to a credit bid.

(k) The Trustee is each Holder's agent for the purpose of perfecting the Holders' security interest in assets which, in accordance with Article 9 of the Uniform Commercial Code, can be perfected only by possession. Should the Trustee obtain possession of any such Collateral, upon written request from the Issuers, the Trustee shall notify the Collateral Agent thereof, and, promptly upon the Collateral Agent's request therefor, shall deliver such Collateral to the Collateral Agent or otherwise deal with such Collateral in accordance with the Collateral Agent's instructions.

(l) The Collateral Agent shall have no obligation whatsoever to the Trustee or any of the Holders to assure that the Collateral exists or is owned by the Issuers and the Subsidiary Guarantors or is cared for, protected or insured or has been encumbered, or that the Collateral Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, maintained or enforced or are entitled to any particular priority, or to determine whether all of the Grantor's property constituting collateral intended to be subject to the Lien and security interest of the Security Documents has been properly and completely listed or delivered, as the case may be, or the genuineness, validity, marketability or sufficiency thereof or title

thereto, or, except as expressly provided in the Security Documents, to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to the Collateral Agent pursuant to this Indenture, any Security Document or the Intercreditor Agreements, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Collateral Agent may act in any manner it may deem appropriate, in its sole discretion given the Collateral Agent's own interest in the Collateral, and that the Collateral Agent shall have no other duty or liability whatsoever to the Trustee or any Holder as to any of the foregoing.

(m) No provision of this Indenture, the Security Agreement, the Intercreditor Agreements or any Security Document shall require the Collateral Agent (or the Trustee) to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or thereunder or to take or omit to take any action hereunder or thereunder or take any action at the request or direction of Holders (or the Trustee in the case of the Collateral Agent) if it shall have reasonable grounds for believing that repayment of such funds is not assured to it.

(n) The Collateral Agent (i) shall not be liable for any action it takes or omits to take in good faith which it reasonably believes to be authorized or within its rights or powers, or for any error of judgment made in good faith by a Responsible Officer, unless it is determined by a court of competent jurisdiction in a final proceeding that the Collateral Agent was grossly negligent in ascertaining the pertinent facts, (ii) shall not be liable for interest on any money received by it except as the Collateral Agent may agree in writing with the Issuers (and money held in trust by the Collateral Agent need not be segregated from other funds except to the extent required by law), (iii) may consult with counsel of its selection and the advice or opinion of such counsel as to matters of law shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it in good faith and in accordance with the advice or opinion of such counsel, and (iv) in no event shall the Collateral Agent be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Collateral Agent has been advised of the likelihood of such loss or damage and regardless of the form of action. The grant of permissive rights or powers to the Collateral Agent shall not be construed to impose duties to act.

SECTION 1204. Compensation and Indemnification

The Collateral Agent shall be entitled to the compensation and indemnification set forth in Section 607 (with the references to the Trustee therein being deemed to refer to the Collateral Agent).

SECTION 1205. Intercreditor Agreements, Security Agreement and Other Security Documents.

The Trustee and the Collateral Agent are each hereby directed and authorized to execute and deliver the Intercreditor Agreements, the Security Agreement and any other Security Document in which it is named as a party. It is hereby expressly acknowledged and agreed that, in doing so, the Trustee and the Collateral Agent are not responsible for the terms or contents of

such agreements, or for the validity or enforceability thereof, or the sufficiency thereof for any purpose. Whether or not so expressly stated therein, in entering into, or taking (or forbearing from) any action under or pursuant to the Intercreditor Agreements, the Security Agreement or any other Security Document, the Trustee and the Collateral Agent each shall have all of the rights, immunities, indemnities and other protections granted to it under this Indenture (in addition to those that may be granted to it under the terms of such other agreement or agreements).

ARTICLE THIRTEEN

RANKING OF NOTE LIENS

SECTION 1301. Relative Rights.

Nothing in this Indenture or the Intercreditor Agreements will impair, as between the Issuers and Holders, the obligation of the Issuers, which is absolute and unconditional, to pay principal of and interest on such Notes in accordance with their terms or to perform any other obligation of the Issuers or any Subsidiary Guarantor under this Indenture, the Notes, the Guarantees and any Security Documents.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed all as of the day and year first above written.

ENTEGRA TC LLC

By: _____
Name:
Title:

[FINCO]

By: _____
Name:
Title:

Subsidiary Guarantors:

EPG LLC

By: _____
Name:
Title:

UNION POWER LLC

By: _____
Name:
Title:

TRANS-UNION PIPELINE LLC

By: _____
Name:
Title:

ENTEGRA POWER SERVICES LLC

By: _____
Name:
Title:

GILA RIVER ENERGY HOLDCO LLC

By: _____
Name:
Title:

TRANS-UNION INTERSTATE PIPELINE, L.P.

By: _____
Name:
Title:

UNION POWER PARTNERS, L.P.

By: _____
Name:
Title:

UPP FINANCE CO, LLC

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION,
as Trustee and Collateral Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

Subsidiary Guarantors

NAME OF COMPANY	STATE OF FORMATION
EPG LLC	DE
UNION POWER LLC	DE
TRANS-UNION PIPELINE LLC	DE
ENTEGRA POWER SERVICES LLC	DE
GILA RIVER ENERGY HOLDCO LLC	DE
TRANS-UNION INTERSTATE PIPELINE, L.P.	DE
UNION POWER PARTNERS, L.P.	DE
UPP FINANCE CO, LLC	DE

EXHIBIT A

FORM OF NOTE

[FACE OF NOTE]

ENTEGRA TC LLC

[FINCO]
[Senior Secured Second Lien Series A Notes due 2017]

[Senior Secured Second Lien Series B Notes due 2017]

No. CUSIP No.
$

ENTEGRA TC LLC, a Delaware limited liability company (the "Company," which term includes any successor Person under the Indenture hereinafter referred to) and [FINCO], a Delaware corporation (the "Co-Issuer," which term includes any successor Person under the Indenture hereinafter referred to, and, together with the Company, the "Issuers"), for value received, promises to pay to , or its registered assigns, the principal sum of Dollars ($), on [●], 2017.

Interest Rate:	LIBO Rate + Applicable Margin, each as defined in the within-mentioned Indenture.
Interest Payment Dates:	[●], [●], [●] and [●] of each year commencing [●], 2014
Regular Record Dates:	[●], [●], [●] and [●] of each year.

Reference is hereby made to the further provisions of this Note set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

IN WITNESS WHEREOF, each of the Issuers has caused this Note to be signed manually or by facsimile by its duly authorized officers.

ENTEGRA TC LLC

By: _____
Name:
Title:

[FINCO]

By: _____
Name:
Title:

(Form of Trustee's Certificate of Authentication)

This is one of the [Senior Secured Second Lien Series A Notes due 2017][Senior Secured Second Lien Series B Notes due 2017] referred to in the within-mentioned Indenture.

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Signatory

Dated: _____

[REVERSE SIDE OF NOTE]

ENTEGRA TC LLC

[FINCO]

[Senior Secured Second Lien Series A Notes due 2017]
[Senior Secured Second Lien Series B Notes due 2017]

1. Principal and Interest.

The Issuers will pay the principal of this Note on [●], 2017.

The Issuers promise to pay interest on the principal amount of this Note on each Interest Payment Date, as set forth below, at the rate of LIBOR + 9% per annum.

Interest will be payable quarterly (to the Holders of record of the Notes (or any Predecessor Notes) at the close of business on [●], [●], [●] or [●] immediately preceding the Interest Payment Date) on each Interest Payment Date, commencing [●], 2014.

Interest on this Note will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from [●], 2014; provided that, if there is no existing default in the payment of interest and if this Note is authenticated between a Regular Record Date referred to on the face hereof and the next succeeding Interest Payment Date, interest shall accrue from such Interest Payment Date. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

The Issuers shall pay interest on overdue principal and interest on overdue installments of interest, to the extent lawful, at a rate per annum 2% in excess of the interest rate applicable to the Notes at the applicable Interest Payment Date.

2. Method of Payment.

The Issuers will pay interest (except defaulted interest) on the principal amount of the Notes on each [●], [●], [●] or [●] to the Persons who are Holders (as reflected in the Note Register at the close of business on [●], [●], [●] or [●] immediately preceding the Interest Payment Date), in each case, even if the Note is cancelled on registration of transfer or registration of exchange after such Regular Record Date; provided that, with respect to the payment of principal, the Issuers will make payment to the Holder that surrenders this Note to any Paying Agent on or after [●], 2017.

The Issuers will pay principal in money of the United States that at the time of payment is legal tender for payment of public and private debts. All payments of interest shall be payable in kind in accordance with the Indenture. Until otherwise designated by the Issuers, the Issuers' office or agency shall be the office of the Trustee maintained for such purpose. If a payment date is a date other than a Business Day at a place of payment, payment may be made at that place on the next succeeding day that is a Business Day and no interest shall accrue for the intervening period.

3. Paying Agent and Note Registrar.

Initially, the Trustee will act as Paying Agent and Note Registrar. The Issuers may change any Paying Agent or Note Registrar upon written notice thereto. The Issuers or any Subsidiary Guarantor may act as Paying Agent, Note Registrar or co-registrar.

4. Indenture; Limitations.

The Issuers issued the Notes under an Indenture dated as of [●], 2014 (the "Indenture"), among the Issuers, the Subsidiary Guarantors and U.S. Bank National Association, as trustee (the "Trustee") and as collateral agent. Capitalized terms herein are used as defined in the Indenture unless otherwise indicated. The terms of the Notes include those stated in the Indenture. To the extent permitted by applicable law, in the event of any inconsistency between the terms of this Note and the terms of the Indenture, the terms of the Indenture shall control.

The Notes are senior secured obligations of the Issuers. The Indenture does not limit the aggregate principal amount of the Notes.

5. Redemption.

Optional Redemption. At any time and from time to time, subject to the terms of the Intercreditor Agreements, the Issuers may redeem some or all of the Notes (together with accrued interest thereon) at the Redemption Price, subject to notice and in a minimum principal amount of $1,000,000 and in integral multiples of $1.00, pro rata, without premium or penalty.

Mandatory Redemption. The Notes will be required to be redeemed in certain circumstances as set forth in Section 1001 of the Indenture.

6. Denominations; Transfer; Exchange.

The Notes are in registered form without coupons, in minimum denominations of $1,000.00 and integral multiples of $1.00 in excess thereof. A Holder may register the transfer or exchange of Notes in accordance with the Indenture. The Note Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Issuer may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Note Registrar need not register the transfer or exchange of any Notes (i) during a period beginning at the opening of business fifteen (15) days before the mailing of a notice of redemption of Notes for redemption under Section 1004 of the Indenture and ending at the close of business on the day of such mailing, (ii) selected for redemption (except the unredeemed portion of any Note being redeemed in part) and (iii) between a Record Date and the next succeeding Interest Payment Date.

7. Persons Deemed Owners.

A registered Holder may be treated as the owner of a Note for all purposes.

8. Discharge Prior to Redemption.

Subject to certain conditions, the Issuers at any time shall be entitled to terminate some or all of their obligations under the Notes and the Indenture if the Issuers deposit with the Trustee money or Government Securities for the payment of principal and interest on the Notes to redemption.

9. Amendment; Supplement; Waiver.

Subject to the Intercreditor Agreements and certain exceptions that require the consent of all Holders or a supermajority of the Holders, the Indenture may be amended or supplemented with the consent of the Holders of at least a majority in aggregate principal amount of the Outstanding Notes, and any existing Default or compliance with any provision may be waived with the consent of the Holders of a majority in aggregate principal amount of the Outstanding Notes as set forth in Article VIII of the Indenture. Without notice to or the consent of any Holder, the parties thereto may amend or supplement the Indenture to, among other things, cure any ambiguity, defect or inconsistency and make any change that does not materially adversely affect the rights of any Holder.

10. Restrictive Covenants.

The Indenture contains certain restrictive covenants set forth in Article IX of the Indenture.

11. Remedies for Events of Default.

If an Event of Default (other than any Event of Default described in Sections 501(10)(A) through (D) of the Indenture), as defined in the Indenture, occurs and is continuing, for any reason, whether voluntary or involuntary, the Trustee, acting upon written direction of the Required Noteholders, shall by notice to the Issuers declare all or any portion of the Notes to be immediately due and payable. If an Event of Default described in Sections 501(10)(A) through (D) with respect to the Issuers or any of the Subsidiary Guarantors occurs and is continuing, the Notes automatically become immediately due and payable. Holders may not enforce the Indenture, the Security Documents, the Intercreditor Agreements or the Notes except as provided in the Indenture. The Trustee and the Collateral Agent may require indemnity reasonably satisfactory to them before they enforce the Indenture or the Notes. Subject to certain limitations, the Required Noteholders may direct the Trustee in its exercise of any trust or power.

12. Guarantees.

The Issuers' obligations under the Notes are fully, irrevocably and unconditionally guaranteed on a senior secured basis, to the extent set forth in the Indenture, by each of the Subsidiary Guarantors.

13. Trustee Dealings with Company.

The Trustee or the Collateral Agent under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Notes and may make loans to, accept

deposits from, perform services for, and otherwise deal with, the Issuers and their Affiliates as if it were not the Trustee or the Collateral Agent.

14. Authentication.

This Note shall not be valid until the Trustee signs the certificate of authentication on the other side of this Note.

15. 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).

The Issuers will furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to Entegra TC LLC, 100 South Ashley Drive, Tampa, Florida, Attention: [●].

16. GOVERNING LAW.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THEREOF.

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 Issuers. 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*:_____

(1) * 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 signatory 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

Entegra TC LLC
[FINCO]
100 South Ashley Drive
Tampa, Florida 33602

U.S. Bank National Association
Attn: Transfers
111 Fillmore Avenue
St. Paul, MN 55107-1402
Telephone No.: (800)-934-6802

Re: Senior Secured Second Lien Series A Notes due 2017

Reference is hereby made to the Indenture, dated as of [●], 2014 (the "Indenture"), among Entegra TC LLC, a Delaware limited liability company (the "Company"), [FINCO], a Delaware corporation (the "Co-Issuer" and, together with the Company, the "Issuers"), the Subsidiary Guarantors party thereto and U.S. Bank National Association, as Trustee and as Collateral Agent. 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 ("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**. 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 and (iii) the transaction is not part of a plan or scheme to evade the registration requirements of 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 Regulation S Global Note and/or the Restricted Definitive Note and in the Indenture and the Securities Act.

3. ☐ **Check if Transferee will take delivery of a beneficial interest in a Restricted Definitive Note pursuant to an exemption from the registration requirements 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 Issuers or a subsidiary thereof;

or

(c) ☐ such Transfer is being effected pursuant to an effective registration statement under the Securities Act and in compliance with the prospectus delivery requirements of the Securities Act;

or

(d) ☐ 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 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 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 Issuers.

_____
[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) ☐ Unrestricted 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

(b) ☐ a Restricted Definitive Note.

(c) ☐ an Unrestricted Definitive Note,

in accordance with the terms of the Indenture.

EXHIBIT C

FORM OF CERTIFICATE OF EXCHANGE

Entegra TC LLC
[FINCO]
100 South Ashley Drive
Tampa, Florida 33602

U.S. Bank National Association
Attn: Transfers
111 Fillmore Avenue
St. Paul, MN 55107-1402
Telephone No.: (800)-934-6802

Re: Senior Secured Second Lien Series A Notes due 2017

(CUSIP)

Reference is hereby made to the Indenture, dated as of [●], 2014 (the "Indenture"), among Entegra TC LLC., a Delaware limited liability company (the "Company"), [FINCO], a Delaware corporation (the "Co-Issuer" and, together with the Company, the "Issuers"), the Subsidiary Guarantors party thereto and U.S. Bank National Association, as trustee and Collateral Agent. 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, 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 Issuers.

_____
[Insert Name of Transferor]

By: _____
Name:
Title:

Dated: _____

EXHIBIT D

FORM OF SUPPLEMENTAL INDENTURE
TO BE DELIVERED BY SUBSEQUENT SUBSIDIARY GUARANTORS

SUPPLEMENTAL INDENTURE (this "Supplemental Indenture"), dated as of [ ], 20[ ], among (the "Guaranteeing Subsidiary"), a subsidiary of Entegra TC LLC, a Delaware limited liability company (the "Company") (or its permitted successor), the Company, [FINCO], a Delaware corporation (the "Co-Issuer" and, together with the Company, the "Issuers"), the other Subsidiary Guarantors (as defined in the Indenture referred to herein) and U.S. Bank National Association, a national banking association, as trustee and Collateral Agent under the Indenture referred to below (the "Trustee").

W I T N E S S E T H

WHEREAS, the Issuers have heretofore executed and delivered to the Trustee an indenture (the "Indenture"), dated as of [●], 2014, providing for the issuance of [Senior Secured Second Lien Series A Notes due 2017] and [Senior Secured Second Lien Series B Notes due 2017] (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 unconditionally guarantee all of the Issuers' Obligations under the Notes and the Indenture on the terms and conditions set forth herein (the "Guarantee"); and

WHEREAS, pursuant to Section 801 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 of the Notes as follows:

1. CAPITALIZED TERMS. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

2. AGREEMENT TO GUARANTEE. The Guaranteeing Subsidiary hereby agrees as follows:

(a) The Guaranteeing Subsidiary hereby agrees to become a party to the Indenture as a Subsidiary Guarantor and as such will have all of the rights and be subject to all of the obligations and agreements of a Subsidiary Guarantor under the Indenture. The Guaranteeing Subsidiary agrees to be bound by all of the provisions of the Indenture applicable to a Subsidiary Guarantor and to perform all of the obligations and agreements of a Subsidiary Guarantor under the Indenture.

(b) The Guaranteeing Subsidiary agrees, on a joint and several basis with all the existing Subsidiary Guarantors, to fully, unconditionally and irrevocably Guarantee to each Holder of the Notes and the Trustee the Obligations pursuant to and subject to the other conditions set forth in Article Eleven of the Indenture on a senior basis.

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 Issuers 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 of the Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. 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. THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THEREOF.

5. COUNTERPARTS. This Supplemental Indenture may be executed in any number of counterparts, each of which shall be original; but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

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 Issuers.

IN WITNESS WHEREOF, 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:

ENTEGRA TC LLC

By: _____
Name:
Title:

[FINCO]

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT E

[To come]

EXHIBIT F

[To come]

SCHEDULE I

DISCLOSURE SCHEDULE

[To come]

SCHEDULE II

REQUIRED INSURANCE

[To come]

Exhibit E

New Third Lien Credit Agreement

CREDIT AGREEMENT (THIRD LIEN)

dated as of [●], 2014

by and among

ENTEGRA TC LLC
as Borrower,

CERTAIN SUBSIDIARIES OF THE BORROWER
as Subsidiary Guarantors,

VARIOUS FINANCIAL INSTITUTIONS AND OTHER PERSONS
FROM TIME TO TIME PARTIES HERETO,
as the Lenders,

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent and Collateral Agent,

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MISCELLANEOUS PROVISIONS

CREDIT AGREEMENT (THIRD LIEN)

THIS CREDIT AGREEMENT (THIRD LIEN), dated as of [●], 2014, is made by and among ENTEGRA TC LLC, a Delaware limited liability company (the "Borrower"), each of the Subsidiary Guarantors (as defined below), various financial institutions and other Persons (as defined below) from time to time parties hereto (the "Lenders"), and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Wells Fargo"), as the administrative agent (in such capacity and together with its permitted successors and assigns, the "Administrative Agent") and collateral agent (the "Collateral Agent").

W I T N E S S E T H:

WHEREAS, on August 4, 2014 (the "Petition Date"), Entegra Power Group LLC, the Borrower and the Subsidiary Guarantors party hereto as of the Effective Date (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of Title 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") and continued in possession of their property and in the management of their businesses pursuant to Sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, on [●], 2014, the Bankruptcy Court entered an order confirming the Debtors' Joint Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated July 3, 2014 (as in effect on the "Effective Date" thereof (as defined therein) pursuant to the Confirmation Order and as thereafter may be amended in accordance with the Restructuring Support Agreement, the "Plan of Reorganization");

WHEREAS, in connection the confirmation and implementation of the Plan of Reorganization, and pursuant to the terms thereof, in full and complete settlement, release, and discharge of the obligations of the "Debtor Subsidiaries" (as such term is defined in the Plan of Reorganization) under the Prepetition Third Lien Credit Agreement, the holders of the Existing Third Lien Loans shall, without further action of any kind by any Person, become parties to this Agreement on the Effective Date;

WHEREAS, the Lenders originally party hereto are parties to the Prepetition Third Lien Credit Agreement and, in accordance with the terms of the Plan of Reorganization, shall make (or be deemed to make) the Loans hereunder; and

WHEREAS, subject to and upon the terms and conditions set forth herein, the Lenders shall make available to the Borrower the credit facility provided for herein.

NOW, THEREFORE, the parties hereto agree as follows.

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

Section 1.1 Defined Terms. The following terms (whether or not underscored) when used in this Agreement, including its preamble and recitals, shall, except where the context

otherwise requires, have the following meanings (such meanings to be equally applicable to the singular and plural forms thereof):

"Accrual Period" means, (i) the three month period commencing on the day following the Effective Date, (ii) to, and including, the fifth anniversary of the Effective Date, any three month period commencing on the day following the end of the immediately preceding Accrual Period, and (iii) following the fifth anniversary of the Effective Date, the one year period, or such shorter period ending on the Maturity Date, commencing on the day following the end of the immediately preceding Accrual Period.

"Act 9 Bond Documents" means, collectively, the Act 9 Lease, the Act 9 Indenture, the Act 9 Borrower Guaranty, the Act 9 Mortgage, the Act 9 Bonds, the Home Office Payment Agreement and each document, financing statement, certificate or instrument executed and delivered in connection with any of the foregoing.

"Act 9 Bonds" means those certain Union County, Arkansas Industrial Development Revenue Bonds (Union Power Partners, L.P. Project), Series 2001 (including effective when issued or deemed issued, those certain Industrial Development Revenue Bonds (Union Power Partners, L.P. Project), Series 2001 (restated 2005)), issued pursuant to the Act 9 Indenture.

"Act 9 Borrower Guaranty" means that certain Guaranty Agreement dated as of May 1, 2001 between Union Power and Act 9 Trustee.

"Act 9 Indenture" means the Trust Indenture, dated as of May 1, 2001 (as amended by that certain First Amendment to Trust Indenture, dated as of June 1, 2005), by County to Act 9 Trustee for the benefit of the holders of the Act 9 Bonds.

"Act 9 Lease" means the Lease Agreement, dated as of May 1, 2001 (as amended by that certain First Amendment to Lease Agreement, dated as of June 1, 2005), between Union Power and County.

"Act 9 Mortgage" means the Mortgage and Security Agreement, dated as of May 1, 2001, by County and Union Power and the in favor of Act 9 Trustee.

"Act 9 Trustee" means Regions Bank, Little Rock, Arkansas, in its capacity as Trustee under the Act 9 Indenture.

"Administrative Agent" is defined in the preamble and includes each other Person appointed as the successor Administrative Agent pursuant to Section 10.4.

"Affected Lender" is defined in Section 4.8.

"Affiliate" of any Person means any other Person which, directly or indirectly, Controls, is Controlled by or is under common Control with such Person. Notwithstanding the foregoing, other than for purposes of Section 8.10, no Person (or Affiliate of such Person (other than an Obligor)) that is a Lender on the Effective Date shall be an "Affiliate" of an Obligor for purposes of this Agreement and the other Loan Documents.

"Agency Agreement" means the Agency Agreement, dated March 23, 2000, between UCWCB and Union Power.

"Aggregate Payments" is defined in Section 11.8.

"Agreement" means, on any date, this Credit Agreement (Third Lien) as originally in effect on the Effective Date and as thereafter from time to time amended, supplemented, amended and restated or otherwise modified and in effect on such date.

"Agreement Value" means, for each Hedge Agreement or Power Purchase Agreement, on any date of determination, an amount determined by the applicable counterparty to such Hedge Agreement or Power Purchase Agreement equal to: (a) in the case of Hedge Agreements or Power Purchase Agreements documented pursuant to a Master Agreement, the net amount, if any, that would be payable by the applicable Obligor to its counterparty under all of such Hedge Agreements and/or Power Purchase Agreements documented pursuant to such Master Agreement with such counterparty, as if (i) all of such Hedge Agreements and/or Power Purchase Agreements 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 counterparty to such Hedge Agreements and/or Power Purchase Agreements were the sole party determining such payment amount (with the applicable counterparty to such Hedge Agreements and/or Power Purchase Agreements making such determination reasonably in accordance with the provisions of the applicable 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 counterparty to such Hedge Agreement or Power Purchase Agreement 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 or Power Purchase Agreement, which will be the unrealized loss on such Hedge Agreement or Power Purchase Agreement to the Obligor party to such Hedge Agreement or Power Purchase Agreement reasonably determined by the applicable counterparty to such Hedge Agreement or Power Purchase Agreement 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 or Power Purchase Agreement. Capitalized terms used in this definition and not otherwise defined in this definition or this Agreement shall have the respective meanings set forth in the applicable Master Agreement.

"Annual Payment Date" is defined in Section 3.1.1(d).

"Approved Fund" means any Person (other than a natural Person) that (a) is or will be engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course, and (b) is administered or managed by a Lender, an Affiliate of a Lender or a Person or an Affiliate of a Person that administers or manages a Lender. The Administrative Agent shall be entitled to conclusively rely upon a representation from the related Lender as to whether or not a party is an Approved Fund.

"Authorized Financial Officer" means, relative to any Obligor, an Authorized Officer that is the Chief Executive Officer, Chief Financial Officer, Chief Accounting Officer, Controller, President or Treasurer, as the case may be, of such Obligor.

"Authorized Officer" means, relative to any Obligor**,** those of its officers, general partners or managing members (as applicable) whose signatures and incumbency shall have been certified to the Administrative Agent and the Lenders pursuant to Section 5.1.1(b) or pursuant to a certificate delivered to the Lenders after the Effective Date in form and substance satisfactory to the Administrative Agent.

"Bankruptcy Code" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as now or hereafter in effect, or any successor thereto.

"Bankruptcy Court" is defined in the recitals.

"Bond Pledge Agreement" means the Amended and Restated Bond Pledge Agreement, dated June 1, 2005, by Finance Co. in favor of the collateral agent named therein for the benefit of the Banks (as defined therein).

"Borrower" is defined in the preamble.

"Borrowing" means the borrowing (or deemed borrowing) of the Loans.

"Borrowing Request" is defined in Section 2.2.

"Budget" is defined in Section 7.1(d).

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed.

"Capital Expenditures" means, for any period, the sum of (a) the aggregate amount of all expenditures of the Borrower and its Subsidiaries on a consolidated basis payable during such period which, in accordance with GAAP, would be classified as capital expenditures, and (b) the aggregate amount of the principal component of all Capitalized Lease Liabilities payable during such period by the Borrower and its Subsidiaries on a consolidated basis in connection with any such Capital Expenditures; provided that Capital Expenditures shall not include (i) Major Maintenance Expenses paid from amounts on deposit in the Major Maintenance Reserve Account; (ii) any such expenditures or principal component funded with (A) any Net Casualty Proceeds, as permitted under Section 3.1.1(f) hereof and Section 1001(1)(d) of the Second Lien Indenture, (B) any Net Disposition Proceeds (including any TEP Proceeds), as permitted under Sections 3.1.1(c) and (g) hereof and Section 1001(1)(b) of the Second Lien Indenture, (C) the net proceeds received from any Disposition of obsolete, damaged, worn out or surplus assets Disposed of in the ordinary course of business; or (D) the proceeds of capital contributions made substantially concurrently with such expenditures or payments of principal or (iii) expenses under long-term service agreements, turbine maintenance agreements or spare parts agreements and any Operation and Maintenance Expenses.

"Capital Securities" means, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated, whether voting or non-voting) of such Person's capital, whether now outstanding or issued after the Effective Date.

"Capitalized Lease Liabilities" means, all monetary obligations of the Borrower under any leasing or similar arrangement which have been (or, in accordance with GAAP, should be) classified as capitalized leases and, for purposes hereof, the amount of such obligations at any time shall be the capitalized amount thereof as determined in accordance with GAAP.

"Cash Equivalent Investment" means, at any time:

(a) any direct obligation of (or unconditionally guaranteed by) the United States (or any agency or political subdivision thereof, to the extent such obligations are supported by the full faith and credit of the United States) maturing not more than two years from the date of acquisition thereof;

(b) commercial paper maturing not more than 365 days from the date of acquisition and rated A+ or higher by S&P or P-1 or higher by Moody's;

(c) any certificate of deposit, time deposit, or bankers acceptance, maturing not more than one year after its date of acquisition, or any demand deposit accounts which, in any case, is issued by or established at any bank or trust company organized under the laws of the United States (or any state thereof) and which (i) has (A) a long-term debt credit rating of A2 or higher from Moody's or A or higher from S&P and (B) a combined capital and surplus greater than $250,000,000 or (ii) is the Administrative Agent;

(d) any repurchase agreement having a term of 180 days or less entered into with any Lender or any commercial banking institution satisfying the criteria set forth in clause (c) which (i) is secured by a fully perfected security interest in any obligation of the type described in clause (a), and (ii) has a market value at the time such repurchase agreement is entered into of not less than 100% of the repurchase obligation of such commercial banking institution thereunder;

(e) money market funds that (i) comply with the criteria set forth in Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated A or higher by S&P and A2 or higher by Moody's and (iii) have portfolio assets of at least $5,000,000,000;

(f) taxable and tax-exempt auction rate securities rated AAA by S&P and Aaa by Moody's and with a reset of less than 90 days; or

(g) shares of investment companies that are registered under the Investment Company Act of 1940, as amended, and that have investment guidelines restricting 95% of such funds' investments to one or more of the types of securities described in clauses (a) through (f) above.

"Casualty Event" means the damage, destruction or condemnation, as the case may be, of any property of any Obligor, but in any event shall exclude any losses due to business interruption.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

"Change in Control" means, at any time after the Effective Date, (a) any Person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) other than the Permitted Holders shall have acquired beneficial ownership of 50% or more on a fully diluted basis of the voting and/or economic interest in the equity interests of the Borrower or (b) the direct or indirect sale, lease, transfer, conveyance or other disposition, in one or a series of related transactions, of all or substantially all of the properties or assets of the Borrower or the Subsidiary Guarantors, taken as a whole (including, in each case, through a sale of Capital Securities in the Subsidiaries of the Borrower), to any Person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act).

"Change in Law" is defined in Section 4.1.

"Code" means the Internal Revenue Code of 1986, and the regulations thereunder, in each case as amended, reformed or otherwise modified from time to time.

"Collateral" means all property which is subject or is intended to become subject to the security interests or liens granted by any of the Security Documents.

"Collateral Agent" means Wells Fargo and includes each other Person appointed as the successor Collateral Agent pursuant to the terms hereof.

"Commodity Hedge Agreements" means any agreement (including each confirmation entered into pursuant to any Master Agreement) providing for swaps, caps, collars, puts, calls, floors, futures, options, spots, forwards, power purchase, tolling or sale agreements (including Power Purchase Agreements), fuel purchase or sale agreements, emissions credit purchase or sales agreements, power transmission agreements, fuel transportation agreements, fuel storage agreements, netting agreements, 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, but excluding all such agreements which are daily sales, spot market, or other short-term (not to exceed three months) arrangements.

"Commodity Institution" means any Person that is a commercial bank, investment bank, insurance company or other similar financial institution, or any Affiliate thereof, which is engaged in the business of entering into Commodity Hedge Agreements or Power Purchase Agreements.

"Communications" is defined in Section 10.12(a).

"Compliance Certificate" means a certificate duly completed and executed by an Authorized Financial Officer of the Borrower, substantially in the form of Exhibit D hereto.

"Confirmation Order" has the meaning set forth in the Plan of Reorganization.

"Consolidated" refers to the consolidation of accounts in accordance with GAAP.

"Contingent Liability" means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss) the Indebtedness of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the Capital Securities of any other Person. The amount of any Person's obligation under any Contingent Liability shall be deemed to be the outstanding principal amount of the debt, obligation or other liability guaranteed thereby (reduced to the extent that such Person's obligation thereunder is reduced by applicable law or valid contractual agreement).

"Contributing Guarantors" is defined in Section 11.8.

"Control" of a Person means the power, directly or indirectly, (a) to vote (under ordinary circumstances) 10% or more of the Capital Securities (on a fully diluted basis) of such Person for the election of directors, managing members or general partners (as applicable) or (b) to direct or cause the direction of the management and policies of such Person (whether by contract or otherwise). "Controlled" and "Controlling" shall have correlative meanings.

"Control Agreement" means an agreement in form and substance reasonably satisfactory to the Administrative Agent which provides for the Collateral Agent to have "control" (as defined in Section 8-106 of the UCC, as such term relates to investment property (other than certificated securities or commodity contracts), or as used in Section 9-106 of the UCC, as such term relates to commodity contracts, or as used in Section 9-104(a) of the UCC, as such term relates to deposit accounts).

"Controlled Group" means, with respect to any entity, all members of a controlled group of corporations and all members of a controlled group of trades or businesses (whether or not incorporated) under common control which, together with such entity, are treated as a single employer under Section 414(b) or 414(c) of the Code or Section 4001 of ERISA.

"Corporate Co-Issuer" means [●].

"County" means Union County, Arkansas, a political subdivision of the State of Arkansas.

"Credit Extension" means the making (or deemed making) of a Loan by a Lender.

"Credit Parties" means, collectively, the Lenders, the Collateral Agent and the Administrative Agent and each of their respective successors, transferees and assigns.

"Current Assets" means, at any time, the consolidated current assets (other than cash and Cash Equivalent Investments) of the Borrower and its Subsidiaries.

"Current GAAP Financials" is defined in Section 1.4(b).

"Current Liabilities" means, at any time, the consolidated current liabilities of the Borrower and its Subsidiaries at such time, but excluding the current portion of any Indebtedness.

"Debtors" is defined in the recitals.

"Default" means any Event of Default or any condition, occurrence or event which, after notice or lapse of time or both, would constitute an Event of Default.

"Deposit Account" means a "deposit account" as that term is defined in Section 9-102(a) of the UCC.

"Depositary Agent" means Citibank, N.A., or such other successor depositary bank appointed pursuant to the terms of the Depositary Agreement.

"Depositary Agreement" means that certain Eighth Amended and Restated Depositary Agreement, dated as of the date hereof, among the Borrower, the Subsidiary Guarantors, the Second Lien Indenture Trustee, the Administrative Agent, the Second Lien Collateral Agent, the Collateral Agent and the Depositary Agent (as defined therein), as amended, supplemented, amended and restated or otherwise modified or replaced from time to time in accordance with the terms hereof and thereof.

"Discharge of Second Lien Obligations" has the meaning set forth in the Subordinated Lien Intercreditor Agreement.

"Disclosure Schedule" means the Disclosure Schedule attached hereto as Schedule I, as it may be amended, supplemented, amended and restated or otherwise modified from time to time by the Borrower with the written consent of the Required Lenders.

"Disposition" (or similar words such as "Disposed") means, with respect to any Obligor, any sale, transfer, lease, contribution or other conveyance (including by way of merger) of, or the granting of options, warrants or other rights to, any of such Obligor's or its Subsidiaries' assets (including accounts receivables and Capital Securities of Subsidiaries) to any other Person in a single transaction or series of related transactions, other than with respect to assets for aggregate consideration of less than $100,000 in any Fiscal Year.

"Disposition Cash Collateral" is defined in the definition of "Net Disposition Proceeds."

"Dollar" and the sign "$" mean lawful money of the United States.

"EBITDA" means, for any Measurement Period, (a) the sum, without duplication, of the amounts for such Measurement Period of (i) Net Income of the Borrower and its Subsidiaries for such Measurement Period and (ii) solely to the extent deducted in arriving at such Net Income:

(A) Interest Expense;

(B) total depreciation expense;

(C) total amortization expense, including the amortization of deferred financing fees;

(D) any non-cash loss attributable to the mark-to-market movement in the valuation of Hedge Agreements and Power Purchase Agreements (to the extent the cash impact resulting from such loss has not been realized) or other derivative instruments pursuant to Financial Accounting Standards Board Statement No. 133, "*Accounting for Derivative Instruments and Hedging Activities*;"

(E) any reasonable and customary expenses or charges incurred in connection with any issuance of debt or equity securities, any refinancing transaction or any amendment or other modification of any debt instrument to the extent consummated in accordance with the terms of the Loan Documents;

(F) any reasonable fees (including legal and investment banking fees), transfer or mortgage recording taxes and other out-of-pocket costs and expenses of any Obligor (including expenses of third parties paid or reimbursed by any Obligor) incurred as a result of the Transactions;

(G) any impairment charge or asset write-off pursuant to Financial Accounting Standards Board Statement No. 142, "*Goodwill and Other Intangible Assets*" or Financial Accounting Standards Board Statement No. 144, *"Accounting for the Impairment or Disposal of Long-Lived Assets*" and the amortization of intangibles arising pursuant to Financial Accounting Standards Board Statement No. 141, "*Business Combinations*;"

(H) any losses from the early extinguishment of Indebtedness (including Hedge Agreements and Power Purchase Agreements or other derivative instruments);

(I) any non-cash compensation expense recorded from grants of stock appreciation or similar rights, stock options, restricted stock or other rights to officers, directors or employees;

(J) any non-cash losses decreasing Net Income for such Measurement Period, other than the accrual of expenses in the ordinary course of business;

(K) total provision for taxes (whether or not paid, estimated or accrued) based on the income and profits of the Borrower or alternative taxes imposed as reflected in the provisions for income taxes in the Borrower's consolidated financial statements; and

(L) fees and expenses incurred in connection with the Transactions;

(b) less the sum of the amounts for such Measurement Period of:

(i) any non-cash gains increasing Net Income for such Measurement Period, other than the accrual of revenues in the ordinary course of business;

(ii) any non-cash gain attributable to the mark-to-market movement in the valuation of Hedge Agreements and Power Purchase Agreements (to the extent the cash impact resulting from such gain has not been realized) or other derivative instruments pursuant to Financial Accounting Standards Board Statement No. 133, "*Accounting for Derivative Instruments and Hedging Activities*;" and

(iii) any non-cash gains from the early extinguishment of Indebtedness (including Hedge Agreements and Power Purchase Agreements or other derivative instruments);

all as determined on a Consolidated basis for the Borrower and its Subsidiaries in accordance with GAAP.

"Effective Date" is defined in Section 12.8.

"Effective Date Certificate" means the certificate dated the Effective Date, duly executed and delivered by an Authorized Officer of the Borrower substantially in the form of Exhibit F.

"Eligible Assignee" means any Person other than (a) a natural Person, (b) the Borrower and (c) any Subsidiary of the Borrower.

"Employee Company" means Union Power Employee Company LLC, a Delaware limited liability company.

"Entergy" means Entergy Arkansas, Inc., an Arkansas corporation.

"Entergy Interconnection Agreements" means the Union Interconnection Agreement and the Entergy Payment Agreement.

"Entergy Payment Agreement" means the Payment Agreement for the Design, Order, Purchase and Construction of an Electrical Substation, Distribution Circuit and Associated Facilities, dated as of September 6, 2000, between Entergy and Union Power.

"Entergy Tolling Agreement" means that certain Capacity Sale and Fuel Conversion Services Agreement, dated as of October 22, 2012, as amended from time to time, between Entergy and Union Power.

"Environmental Consultant" means Environ International Corporation, or any other environmental advisor selected by the Required Lenders and reasonably acceptable to the Borrower.

"Environmental Laws" means all applicable and legally binding federal, state, local or foreign statutes, laws (including common law), ordinances, codes, rules, regulations and other

requirements of any Governmental Authority (including consent decrees and administrative orders) relating to public health and safety and the preservation or protection of the indoor, outdoor, surface or subsurface environment, including those relating to the generation, use, storage, handling, treatment or Release of or exposure to Hazardous Materials.

"Environmental Liabilities" means all liabilities, obligations, responsibilities, obligations to conduct investigations or cleanups, and all environmental claims pending or threatened against any Obligor or its Subsidiaries or against any Person whose liability for any environmental claim any Obligor or its Subsidiaries may have retained or assumed either contractually or by operation of law, arising from (a) environmental, health or safety conditions, (b) compliance with applicable Environmental Laws, (c) the presence, Release or threatened Release of Hazardous Materials at any location, whether or not owned, leased or operated by the Borrower or its Subsidiaries, or (d) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law.

"EP Act" means the Energy Policy Act of 2005.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto of similar import, together with the regulations thereunder, in each case as in effect from time to time. References to Sections of ERISA also refer to any successor Sections thereto.

"ERISA Event" means (a) a "reportable event" within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to a Pension Plan (other than an event for which the provision for 30-day notice to the PBGC has been waived); (b) a withdrawal by the Borrower or any member of its Controlled Group from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any member of its Controlled Group from a Multiemployer Plan or receipt of notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate a Pension Plan, the treatment of a Pension Plan amendment as a termination under Section 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any member of its Controlled Group; or (g) any other event with respect to an employee benefit plan in connection with which the Borrower or any of its Subsidiaries directly or indirectly could reasonably be expected to be subject to any material liability under ERISA or the Code or pursuant to any obligation of the Borrower, any of its Subsidiaries or any member of their Controlled Group to indemnify any person against liability incurred under ERISA or the Code.

"ETC Series A Equity Interests" has the meaning set forth in the Plan of Reorganization.

"ETC Series C Equity Interests" has the meaning set forth in the Plan of Reorganization.

"Event of Default" is defined in Section 9.1.

"Excess Cash Flow" means, for any Fiscal Year of the Borrower, the excess of (a) the sum, without duplication, of (i) Consolidated EBITDA for such Fiscal Year (excluding, in the case of the 2014 Fiscal Year, Consolidated EBITDA for the Pre-Closing Period) and (ii) the decrease, if any, in Current Assets minus Current Liabilities from the beginning to the end of such Fiscal Year (excluding, in the case of the 2014 Fiscal Year, such decrease attributable to the Pre-Closing Period) over (b) the sum, without duplication, of (i) the amount of any Taxes payable in cash by the Borrower and the Subsidiaries with respect to such Fiscal Year (excluding, in the case of the 2014 Fiscal Year, the amount of such Taxes attributable to the Pre-Closing Period), (ii) the aggregate amount of all Tax Distributions made or to be made for such Fiscal Year (excluding, in the case of the 2014 Fiscal Year, the amount of such Tax Distributions attributable to the Pre-Closing Period), (iii) Consolidated Interest Expense for such Fiscal Year paid in cash (excluding in the case of the 2014 Fiscal Year, Consolidated Interest Expense for the Pre-Closing Period), (iv) Capital Expenditures made in cash during such Fiscal Year, except to the extent financed with the proceeds of Indebtedness, equity issuances, casualty proceeds, condemnation proceeds or other proceeds that would not be included in Consolidated EBITDA, and excluding, in the case of the 2014 Fiscal Year, Capital Expenditures made in cash during the Pre-Closing Period, (v) permanent repayments of Indebtedness (other than mandatory prepayments of Loans under Section 3.1) made by the Borrower and its Subsidiaries during such Fiscal Year, but only to the extent that such prepayments by their terms cannot be reborrowed or redrawn and do not occur in connection with a refinancing of all or any portion of such Indebtedness (excluding, in the case of the 2014 Fiscal Year, repayments made during the Pre-Closing Period), (vi) the increase, if any, in Current Assets minus Current Liabilities from the beginning to the end of such Fiscal Year (excluding, in the case of the 2014 Fiscal Year, such increase attributable to the Pre-Closing Period), and (vii) the amount of cash in such Fiscal Year deposited in the Major Maintenance Reserve Account (excluding, in the case of the 2014 Fiscal Year, the amount of cash deposited therein in the Pre-Closing Period) and (viii) cash reserves created in the Company's reasonable discretion to fund Capital Expenditures to the extent such Capital Expenditures are permitted pursuant to the terms of the Transaction Documents and will be undertaken and paid for in the first two fiscal quarters of the succeeding Fiscal year, in an aggregate amount, for any such Fiscal year, not to exceed $10,000,000.

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

"Excluded Disposition" means, with respect to any Disposition of any assets of any Obligor, any Disposition:

(a) of inventory (including all sales of energy and capacity products and any ancillary services) or obsolete, damaged, worn out or surplus assets Disposed of in the ordinary course of business;

(b) of Cash Equivalent Investments in the ordinary course of business;

(c) in respect of Investments permitted by Section 8.5;

(d) that constitutes a Lien permitted by Section 8.3 (to the extent that the granting of any such Lien would constitute a Disposition);

(e) that is a Restricted Payment permitted by Section 8.6;

(f) consisting of the sale of defaulted receivables in the ordinary course of business and not as part of an accounts receivables financing transaction;

(g) [Reserved];

(h) to the extent considered a Disposition, any arrangement providing for direct payment of power sale receivables to gas supply counterparties (or financial counterparties that advance funds to pay such gas counterparties) as permitted in Section 8.2.1(q);

(i) the merger of two Obligors that is permitted by Section 8.9;

(j) up to two Union SPV Dispositions; provided that, the aggregate number of power blocks of the Union Power Facility transferred pursuant to Union SPV Dispositions shall not exceed two power blocks; provided further that, the indirect equity interests of the applicable Union SPV shall be pledged as Collateral in accordance with the terms of the Pledge and Security Agreement; provided further that, (i) such Union SPV Disposition is made in connection with a substantially concurrent Union SPV Financing incurred by the applicable Union SPV and (ii) the Net SPV Financing Proceeds in connection therewith are applied in accordance with Sections 3.1.1 and 3.1.2; and

(k) in the event that (i) the Non-Recourse Indebtedness incurred by Gila River Energy pursuant to the Gila River Energy Financing Documents is repaid in full in cash and (ii) the assets securing such Non-Recourse Indebtedness are owned directly by an Obligor (it being understood and agreed that there is no requirement contained herein that such assets be owned directly by an Obligor after giving effect to such repayment), a Subsequent Gila River SPV Disposition; provided that, the indirect equity interests of the applicable Subsequent Gila River SPV shall be pledged as Collateral in accordance with the terms of the Pledge and Security Agreement; provided further that, (x) such Subsequent Gila River SPV Disposition is made in connection with a substantially concurrent Subsequent Gila River SPV Financing incurred by the applicable Subsequent Gila River SPV and (y) the Net SPV Financing Proceeds in connection therewith are applied in accordance with Sections 3.1.1 and 3.1.2.

"Exemption Certificate" is defined in Section 4.3(f)(ii).

"Existing Third Lien Loans" means the "Loans" (as defined in the Prepetition Third Lien Credit Agreement immediately prior to the Effective Date) owing to each Lender in its respective capacity as a "Lender" under the Prepetition Third Lien Credit Agreement, with respect to each Lender in the aggregate outstanding principal amount set forth opposite its name on Schedule II.

"Facility Letter Agreement" means the Facility Letter Agreement, dated November 23, 1999, among TGT and Trans-Union as amended on October 25, 2000.

"Fair Share" has the meaning given in Section 11.8.

"Fair Share Contribution Amount" has the meaning given in Section 11.8.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantially comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof.

"FERC" means the Federal Energy Regulatory Commission.

"Filing Statements" is defined in Section 5.1.10(a)(ii).

"Finance Co." means UPP Finance Co. LLC, a Delaware limited liability company.

"Finance Co. Loan Agreement" means the Amended and Restated Intercompany Loan Agreement, dated as of June 1, 2005, by and between Union Power and Finance Co.

"First Lien Credit Agreement" means any credit agreement evidencing Indebtedness of an Obligor in the form of First Lien Obligations, as amended, supplemented, amended and restated or otherwise modified from time to time in accordance with the terms hereof and thereof.

"First Lien Intercreditor Agreement" means an intercreditor agreement (as amended, supplemented, amended and restated or otherwise modified from time to time), among any Obligors, the Collateral Agent, the Administrative Agent, the Second Lien Collateral Agent, the Second Lien Indenture Trustee and the collateral agent and administrative agent appointed by the lenders under the First Lien Credit Agreement, in substantially the form attached hereto as Exhibit J, or in such other form as has been approved by the Required Lenders.

"First Lien Letters of Credit" means those letters of credit issued under the First Lien Credit Agreement from time to time.

"First Lien Obligations" has the meaning given to such term (or other comparable term) in the First Lien Intercreditor Agreement.

"Fiscal Quarter" means any fiscal quarter of a Fiscal Year.

"Fiscal Year" means a fiscal year of the Borrower; references to a Fiscal Year with a number corresponding to any calendar year (e.g., "2014 Fiscal Year ") refer to the Fiscal Year ending on or about December 31 of such calendar year.

"Forced Outage" means any outage or derating of at least one block of generating capacity consisting of a 2-on-1 combined-cycle generating facility at the Union Power Facility caused by equipment failure or required maintenance (in accordance with Prudent Industry Practices) that is not scheduled or planned by the Borrower or the applicable Subsidiary.

"FPA" means the Federal Power Act of 1935, as amended.

"Funding Guarantor" has the meaning given in Section 11.8.

"GAAP" means, with respect to the interpretation of all accounting terms used herein and in each other Loan Document, the calculation of all accounting determinations and computations required to be made hereunder or thereunder (including in respect of any defined terms used herein or in any other Loan Document), those U.S. generally accepted accounting principles applied in the preparation of the audited consolidated financial statements of the Borrower for the 2014 Fiscal Year, copies of which are required to be delivered pursuant to Section 7.1(b).

"Gas Interconnection Agreements" means, collectively, the Facility Letter Agreement, the Regency Interconnection Agreement and the TGPC Interconnection Agreement, as amended by change orders dated as of March 9, 2000, March 29, 2000, May 23, 2000, May 31, 2000, July 18, 2000, August 15, 2000, August 18, 2000, November 7, 2000, January 30, 2001 and May 10, 2001.

"Gas Marketer" means any Person whose business includes the sale, marketing or distribution of gas.

"Gila River Disposition" has the meaning given in the Prepetition Third Lien Credit Agreement.

"Gila River Energy" means Gila River Energy LLC, a Delaware limited liability company.

"Gila River Energy Financing Documents" means, collectively, (a) that certain Credit and Guaranty Agreement, dated as of August 10, 2011 (as amended, amended and restated, supplemented, modified, replaced or refinanced from time to time, the "Gila River Energy Credit Agreement"), among Gila River Energy, as borrower, Gila River Power, as subsidiary guarantor, the lenders party thereto from time to time, Union Bank, N.A., as administrative agent and letter of credit issuer, and Union Bank, N.A., as collateral agent, and (b) each of the other Credit Documents (as defined in the Gila River Energy Credit Agreement), in each case, as amended, amended and restated, supplemented, modified, replaced or refinanced from time to time.

"Gila River Facility" means the 2,146 MW natural gas-fired combined-cycle power generation facility located in Maricopa County, Arizona.

"Gila River Holdco" means Gila River Energy Holdco LLC, a Delaware limited liability company.

"Gila River O&M Subsidiary" means Gila Bend Operations Co., LLC a Delaware limited liability company.

"Gila River Power" means Gila River Power LLC, a Delaware limited liability company (f/k/a Gila River Power, L.P., a Delaware limited partnership).

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

"GRE 2014" means GRE 2014 LLC, a Delaware limited liability company.

"Guaranty" means the guaranty entered into by the Subsidiary Guarantors under Article XI.

"Hazardous Material" means

(a) any "hazardous substance," as defined by CERCLA;

(b) any "hazardous waste," as defined by the Resource Conservation and Recovery Act;

(c) any petroleum, petroleum product, by-product or fraction; or

(d) any pollutant or contaminant or hazardous, dangerous or toxic chemical, material or substance (including any petroleum product) defined, listed or regulated under any other Environmental Laws.

"Hedge Agreements" means Commodity Hedge Agreements, Interest Rate Hedge Agreements and any currency exchange agreements, and all other agreements or arrangements designed to protect a Person against fluctuations in interest rates, currency exchange rates, commodity prices or equity security prices or values.

"Hedging Obligations" means, with respect to any Person, all liabilities of such Person under Hedge Agreements.

"Home Office Payment Agreement" means the Home Office Payment Agreement referred to in Section 214 of the Act 9 Indenture.

"Impermissible Qualification" means, relative to the opinion or certification of any independent public accountant as to any financial statement of the Borrower, any qualification or exception to such opinion or certification (a) which is of a "going concern" or similar nature, or (b) which relates to the limited scope of examination of matters relevant to such financial statement (except, in the case of matters relating to any acquired business or assets, in respect of the period prior to the acquisition by the Borrower of such business or assets).

"Indebtedness" of any Person means, without duplication:

(a) all obligations of such Person for borrowed money or advances and all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;

(b) the principal component of all obligations, contingent or otherwise, relative to the face amount of all letters of credit, whether or not drawn, and banker's acceptances issued for the account of such Person;

(c) all Capitalized Lease Liabilities;

(d) all obligations of such Person in respect of Specified Commodity Hedge Agreements which are secured as permitted by Section 8.3(m), in each case valued at the Agreement Value;

(e) whether or not so included as liabilities in accordance with GAAP, all obligations of another Person secured by any Lien on any property or assets owned or held by that Person regardless of whether the obligations secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person; provided that the amount of any Indebtedness of others that constitutes Indebtedness of such Person solely by reason of this clause (e) shall, in the event that such Indebtedness is limited recourse to such property (without recourse to such Person), for purposes of this Agreement, be equal to the lesser of the amount of such obligation and the fair market value of the property or assets to which the Lien attaches, determined in good faith by such Person;

(f) whether or not so included as liabilities in accordance with GAAP, all obligations of such Person to pay the deferred purchase price of property or services (excluding trade accounts payable in the ordinary course of business which are not overdue for a period of more than 90 days or, if overdue for more than 90 days, as to which a dispute exists and adequate reserves in conformity with GAAP have been established on the books of such Person);

(g) obligations arising under Synthetic Leases;

(h) Redeemable Capital Securities; and

(i) all Contingent Liabilities of such Person in respect of any of the foregoing.

The Indebtedness of any Person shall include the Indebtedness of any other Person (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 Person, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"Indemnified Liabilities" is defined in Section 12.4.

"Indemnified Parties" is defined in Section 12.4.

"Independent Consultants" means the Independent Engineer, the Insurance Consultant, the Market Consultant and the Environmental Consultant.

"Independent Engineer" means Filsinger Energy Partners or another engineering advisor selected by the Administrative Agent (at the direction of the Required Lenders) and reasonably acceptable to the Borrower.

"Insurance Consultant" means Moore-McNeil, LLC or another insurance advisor selected by the Administrative Agent (at the direction of the Required Lenders) and reasonably acceptable to the Borrower.

"Intercompany Loans" has the meaning given in Section 2.1 of the Finance Co. Loan Agreement.

"Intercreditor Agreements" means the First Lien Intercreditor Agreement and the Subordinated Lien Intercreditor Agreement.

"Interest Expense" means, for any applicable period, the aggregate consolidated interest expense of the Borrower for such applicable period (including the portion of any payments made in respect of Capitalized Lease Liabilities allocable to interest expense) with respect to all outstanding Indebtedness of the Borrower, including, and together with, up-front and annual fees and expenses relating to Indebtedness and letter of credit fees payable pursuant to the First Lien Credit Agreement and with respect to First Lien Letters of Credit.

"Interest Rate" means 9.25%.

"Interest Rate Hedge Agreements" means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement, each of which is for the purpose of hedging the interest rate exposure associated with the Borrower's and its Subsidiaries' operations and not for speculative purposes.

"Investment" means, relative to any Person,

(a) any loan, advance or extension of credit (excluding any extensions of credit made in connection with sales by the Borrower and its Subsidiaries in the ordinary course of business) made by such Person to any other Person (other than officers and employees in the ordinary course of business for commissions, travel, relocation and similar expenses), including the purchase by such Person of any bonds, notes, debentures or other debt securities of any other Person; and

(b) any Capital Securities acquired by such Person in any other Person.

The amount of any Investment shall be the original principal or capital amount thereof less all returns of principal or equity thereon and shall, if made by the transfer or exchange of property other than cash, be deemed to have been made in an original principal or capital amount equal to the fair market value of such property at the time of such Investment.

"Lender Assignment Agreement" means an assignment agreement substantially in the form of Exhibit C hereto.

"Lenders" is defined in the preamble and includes each Lender and any Person that becomes a Lender pursuant to Section 12.11.

"Lender's Environmental Liability" means, to the extent arising out of, in connection with, or in any way related to the Transactions, or any facilities and property owned or leased by the Obligors (including any operations by the Obligors with respect to such facilities and property), any and all actions, causes of action, suits, losses, costs, liabilities, penalties, obligations, claims, demands, judgments, suits, proceedings and damages (including consequential damages), and expenses incurred in connection therewith, including reasonable

attorneys' and experts' fees and disbursements and expenses, which may at any time be imposed upon, or asserted or awarded against, the Administrative Agent, the Collateral Agent, any Lender, or any of such Person's Affiliates, shareholders, directors, officers, employees, and agents, all in their capacities as such, in connection with or arising from:

(a) any Hazardous Material on, in, under or affecting all or any portion of any property of the Borrower or any of its Subsidiaries, the groundwater thereunder or, to the extent caused by Releases from the Borrower's or any of its Subsidiaries' or any of their respective predecessors' properties, any surrounding areas thereof;

(b) any investigation, claim, litigation or proceeding related to personal injury arising from exposure or alleged exposure to Hazardous Materials handled by the Borrower or any of its Subsidiaries;

(c) any violation or claim of violation by the Borrower or any of its Subsidiaries of any Environmental Laws;

(d) the imposition of any lien for damages caused by or the recovery of any costs for the cleanup, Release or threatened Release of Hazardous Material by the Borrower or any of its Subsidiaries, or in connection with any property owned or formerly owned by the Borrower or any of its Subsidiaries; or

(e) the storage, disposal, recycling, treatment or transportation of Hazardous Materials, or arrangement for the same, by or on behalf of Borrower or any of its Subsidiaries, at any property, whether or not such property is owned or operated by Borrower or any of its Subsidiaries.

"Lien" means any mortgage, pledge, security interest, hypothecation, assignment, deposit arrangement, lien (statutory or other) or similar encumbrance of any kind or nature whatsoever, and any easement, right-of-way, license, restriction (including zoning restrictions), defect, exception or irregularity in title or similar charge or encumbrance of any kind whatsoever, including in each case any agreement to give any of the foregoing, any conditional sale or other title retention agreement or any lease in the nature thereof.

"Loan Documents" means, collectively, this Agreement, the Notes, the Security Documents, the Intercreditor Agreements and each other agreement, certificate, document or instrument delivered in connection with any of the foregoing and executed by an Obligor, which is specifically mentioned herein or therein to be a "Loan Document."

"Loans" means the loans made or deemed made by the Lenders to the Borrower pursuant to Section 2.1. For purposes of clarity, the Loans of each Lender shall include any interest thereon that has been paid in kind by capitalization to principal as provided herein.

"Major Maintenance Expenses" means, in any period, costs and expenses for major maintenance as determined in the reasonable discretion of the Borrower that could reasonably be expected to be incurred to maintain and operate the Union Power Facility in accordance with Prudent Industry Practices (including as a result of any change in law).

"Major Maintenance Reserve Account" has the meaning assigned to such term in the Depositary Agreement.

"Market Consultant" means Filsinger Energy Partners or any other market consultant retained by the Administrative Agent (at the direction of the Required Lenders) and reasonably acceptable to the Borrower.

"Master Agreement" means any Master Agreement published by the International Swap and Derivatives Association, Inc. or the Edison Electric Institute or the North American Energy Standards Board.

"Material Adverse Effect" means a material adverse effect, after taking into account the effects of the Transactions, on (a) the business, properties, operations or condition (financial or otherwise) of the Borrower and its Subsidiaries, taken as a whole, (b) the ability of the Obligors, taken as a whole, to fully and timely perform the Obligations or (c) the rights and remedies of the Administrative Agent, the Collateral Agent or any Lender under any Loan Document.

"Material Project Documents" means (a) the Entergy Interconnection Agreements, (b) the Entergy Tolling Agreement, (c) the Gas Interconnection Agreements, (d) the Water Supply Agreement, (e) the Act 9 Bond Documents (prior to the date, if any, on which the financing contemplated thereby has terminated in accordance with its terms and any Liens in connection therewith have been released), (f) the GT Parts Purchase Agreement between the Borrower (as assignee of Gila River Power) and Pratt & Whitney dated January 24, 2006 and (g) the Services Agreements, in each case as amended, supplemented, amended and restated or otherwise modified or replaced from time to time in accordance with the terms hereof and thereof.

"Maturity Date" means the Business Day immediately prior to the sixth anniversary of the Effective Date.

"Measurement Period" means each period of four consecutive Fiscal Quarters of the Borrower commencing with the first such four Fiscal Quarter period ending [●], 2014.

"Moody's" means Moody's Investors Service, Inc.

"Mortgage" means each mortgage, deed of trust or other agreement, in any case in form and substance reasonably satisfactory to the Administrative Agent and Collateral Agent, executed and delivered by any Obligor in favor of the Collateral Agent, for the benefit of the Secured Parties, pursuant to the requirements of this Agreement, under which a Lien is granted on the real property and fixtures described therein, in each case as amended, supplemented, amended and restated or otherwise modified from time to time.

"Mortgaged Property" means all real property owned or leased by any Obligor on the Effective Date as set forth in Item 5.1.10(b) of the Disclosure Schedule.

"Multiemployer Plan" means a multiemployer plan within the meaning of Section 4001(a)(3) or Section 3(37) of ERISA (a) to which the Borrower or any member of the Controlled Group is then making or accruing an obligation to make contributions; (b) to which the Borrower or any member of the Controlled Group has within the preceding five plan years

made contributions; or (c) with respect to which the Borrower could incur liability as a result of the prior participation therein by the Borrower or any member of the Controlled Group.

"NAIC" means the National Association of Insurance Commissioners.

"Net Casualty Proceeds" means, with respect to any Casualty Event, the cash amount of any insurance proceeds under any casualty insurance policy (other than any insurance proceeds in respect of or arising under any casualty insurance policy relating to business interruption or forced outage) or condemnation awards received by any Obligor in connection therewith, but excluding any proceeds or awards required to be paid to a creditor (other than the Lenders) which holds a Lien on the property which is the subject of such Casualty Event which Lien (a) is a Permitted Lien and (b) has priority over the Liens securing the Obligations, less amounts expended by such Obligor on legal, accounting and other professional fees, expenses and charges incurred in connection with collecting such insurance proceeds or condemnation awards.

"Net Debt Proceeds" means with respect to the incurrence, sale or issuance by any Obligor of any Indebtedness (other than any Indebtedness permitted by Section 8.2.1), the excess of:

(a) the gross cash proceeds received by such Person from such incurrence, sale or issuance,

over

(b) the sum of (i) all reasonable and customary underwriting commissions and legal, investment banking, brokerage and accounting and other professional fees, sales commissions and disbursements and all other reasonable fees, expenses and charges, in each case actually incurred in connection with such incurrence, sale or issuance and (ii) the aggregate amount of any and all Tax Distributions estimated by the Borrower (in good faith) to be required to be made with respect to such Disposition that is attributable to such incurrence, sale or issuance.

"Net Disposition Proceeds" means, with respect to any Disposition of any assets of any Obligor (other than an Excluded Disposition), the excess of

(a) the gross cash proceeds received by such Obligor from any such Disposition and any cash payments when received in respect of promissory notes or other non cash consideration delivered to such Obligor in respect thereof,

over

(b) the sum of (i) all reasonable and customary fees and expenses with respect to legal, investment banking, brokerage and accounting and other professional fees, sales commissions and disbursements and all other reasonable fees, expenses and charges, in each case actually incurred in connection with such Disposition, (ii) all Taxes and other governmental costs and expenses actually paid or estimated by the Borrower (in good faith) to be payable in cash in connection with such Disposition, (iii) the aggregate amount of any and all Tax Distributions estimated by the Borrower (in good faith) to be

required to be made with respect to such Disposition that is attributable to such Disposition, (iv) payments made by any Obligor to retire Indebtedness (other than the Obligations and Indebtedness of the Borrower under the Second Lien Indenture) secured by the asset so Disposed where payment of such Indebtedness is required in connection with such Disposition, (v) reserves for purchase price adjustments and retained fixed liabilities that are payable by such Obligor in cash to the extent required under GAAP in connection with such Disposition and (vi) the amount of cash collateral (not to exceed $15,000,000 in the aggregate) required to be posted by the Obligors to secure their obligations to the applicable buyer in connection with such Disposition (such cash collateral, "Disposition Cash Collateral");

provided, however, that if, after the payment of all Taxes, Tax Distributions, purchase price adjustments and retained fixed liabilities with respect to such Disposition, the amount of estimated Taxes, Tax Distributions, purchase price adjustments, and retained fixed liabilities, if any, pursuant to clause (b)(ii), (b)(iii) or (b)(iv) above exceeds the amount of Taxes, Tax Distributions, purchase price adjustments, and retained fixed liabilities actually paid in cash in respect of such Disposition, the aggregate amount of such excess shall, at such time, constitute Net Disposition Proceeds.

"Net Income" means, for any period, (a) the net income (or loss) of the Borrower and its Subsidiaries on a Consolidated basis for such period taken as a single accounting period, determined in conformity with GAAP, minus (b) (i) the income (or loss) of any Person (other than a Subsidiary of the Borrower) in which any other Person (other than the Borrower or any of its Subsidiaries) has a joint interest, except to the extent of the amount of dividends or other distributions actually paid to the Borrower or any of its Subsidiaries by such Person during such period, (ii) the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of the Borrower or is merged into or consolidated with the Borrower or any of its Subsidiaries or that Person's assets are acquired by the Borrower or any of its Subsidiaries, (iii) the income of any Subsidiary of the Borrower to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, (iv) any after-tax gains or losses attributable to asset sales or returned surplus assets of any Pension Plan, and (v) (to the extent not included in clauses (i) through (iii) above) any net extraordinary gains or net extraordinary losses, and provided that, in determining Net Income for such period, there (w) shall be excluded Major Maintenance Expenses paid in such period with proceeds from the Major Maintenance Reserve Account, (x) for the avoidance of doubt, shall not be excluded any amount drawn by the Borrower from the Major Maintenance Reserve Account for additional funds for working capital, (y) shall be excluded income attributable to capitalized prepaid commodity hedges and (z) shall be excluded the income (or loss) of Gila River Energy, GRE 2014 and Gila River Power, except to the extent of the amount of dividends or other distributions actually paid to the Borrower or any of its Subsidiaries (other than Gila River Energy, GRE 2014 and Gila River Power) by Gila River Energy, GRE 2014 and Gila River Power during such period.

Notwithstanding the foregoing, the proceeds from any asset sale and any financing entered into by the Borrower or any of its Subsidiaries and any fees and expenses associated with any such asset sales and financings shall be excluded from the calculation of Net Income.

"Net SPV Disposition Proceeds" means, with respect to any Disposition of any assets by any Union SPV or Subsequent Gila River SPV (other than a Disposition that would be an Excluded Disposition if such Union SPV or Subsequent Gila River SPV were an Obligor), the excess of:

(a) the gross cash proceeds received by such Union SPV or Subsequent Gila River SPV, as applicable, from any such Disposition and any cash payments when received in respect of promissory notes or other non-cash consideration delivered to such Union SPV or Subsequent Gila River SPV, as applicable, in respect thereof,

over

(b) the sum of (i) all reasonable and customary fees and expenses with respect to legal, investment banking, brokerage and accounting and other professional fees, sales commissions and disbursements and all other reasonable fees, expenses and charges, in each case actually incurred in connection with such Disposition, (ii) all Taxes and other governmental costs and expenses actually paid or estimated by the Borrower (in good faith) to be payable in cash in connection with such Disposition, (iii) the aggregate amount of any and all Tax Distributions estimated by the Borrower (in good faith) to be required to be made with respect to such Disposition that is attributable to such Disposition, (iv) payments made by such Union SPV or Subsequent Gila River SPV, as applicable, to retire Indebtedness of such Union SPV or Subsequent Gila River SPV, as applicable (other than the Obligations and Indebtedness of the Borrower under the Second Lien Indenture), secured by the asset so Disposed where payment of such Indebtedness is required in connection with such Disposition, (v) reserves for purchase price adjustments and retained fixed liabilities that are payable by such Union SPV or Subsequent Gila River SPV, as applicable, in cash to the extent required under GAAP in connection with such Disposition and (vi) the amount of cash collateral required to be posted by such Union SPV or Subsequent Gila River SPV, as applicable, to secure its obligations to the applicable buyer in connection with such Disposition;

provided, however, that if, after the payment of all Taxes, Tax Distributions, purchase price adjustments and retained fixed liabilities with respect to such Disposition, the amount of estimated Taxes, Tax Distributions, purchase price adjustments, and retained fixed liabilities, if any, pursuant to clause (b)(ii), (b)(iii) or (b)(iv) above exceeds the amount of Taxes, Tax Distributions, purchase price adjustments, and retained fixed liabilities actually paid in cash in respect of such Disposition, the aggregate amount of such excess shall, at such time, constitute Net SPV Disposition Proceeds.

"Net SPV Financing Proceeds" means, with respect to (a) any Union SPV Financing or (b) any Subsequent Gila River SPV Financing (each, an "SPV Financing"), in each case, the excess of:

(i) the gross cash proceeds received by such Union SPV or Subsequent Gila River SPV, as applicable, from any such Non-Recourse Indebtedness for borrowed money,

over

(ii) the sum of (A) all reasonable and customary fees and expenses and charges (including reasonable attorneys' fees and fees of independent consultants), in each case actually incurred in connection with the incurrence of such Non-Recourse Indebtedness, (B) the amounts required to fund reserve accounts pursuant to the terms of such Non-Recourse Indebtedness, (C) the amounts to be used for working capital purposes of such Union SPV or Subsequent Gila River SPV, as applicable, under a working capital, revolving credit or other similar Indebtedness facility, (D) the aggregate amount of any and all Tax Distributions estimated by the Borrower (in good faith) to be required to be made with respect to such incurrence that is attributable to such incurrence of such Non-Recourse Indebtedness and (E) such other amounts required by the terms of such Non-Recourse Indebtedness to be retained by such Union SPV or Subsequent Gila River SPV, as applicable, for liquidity, collateral and other similar or corporate purposes.

"Net SPV Foreclosure Excess Proceeds" means the net amount of proceeds from the foreclosure or other similar exercise of remedies by the holders of Indebtedness of any Union SPV or any Subsequent Gila River SPV in respect of the assets of such Union SPV or Subsequent Gila River SPV, as applicable, remaining after the payment in full of all Indebtedness of such Union SPV or Subsequent Gila River SPV, as applicable, and other customary expenses related to such foreclosure or other similar exercise of remedies.

"Non-Domestic Credit Party" means any Credit Party that is not a "United States person," as defined under Section 7701(a)(30) of the Code.

"Non-Excluded Taxes" means (i) any Taxes other than (a) Taxes imposed on, or measured by, net income (however denominated), franchise Taxes or other Taxes imposed in lieu of net income Taxes imposed with respect to any Credit Party by the United States or by the jurisdiction (or any political subdivision thereof) under the laws of which such Credit Party is organized or in which its principal office is located or in which it maintains its applicable lending office, (b) United States withholding or United States backup withholding Taxes imposed on or to which amounts payable to a Credit Party are subject to at the time such Credit Party becomes a party to (or is otherwise entitled to the benefits of) this Agreement except to the extent that such Credit Party's predecessor in interest (in the case of an assignment or the designation of a new lending office) was entitled to receive additional amounts pursuant to Section 4.3(a), (c) any branch profits Taxes imposed by the United States or any similar Tax imposed by any other jurisdiction described in Section 4.3(a) and (d) United States withholding Taxes imposed under FATCA, and (ii) to the extent not otherwise included in the foregoing clause (i), Other Taxes.

"Non-Recourse Indebtedness" means Indebtedness (a) in respect of which neither the Borrower nor any Obligor (i) is directly or indirectly obligated to pay or repay, (ii) provides credit support of any kind (including any undertaking, guaranty, agreement or instrument that would constitute Indebtedness or a Contingent Liability), or (iii) is directly or indirectly liable as a guarantor or otherwise; and (b) in respect of which the holders thereof have agreed in writing that they shall have no recourse against the Borrower, any Obligor or any Collateral.

"Non-Recourse Persons" is defined in Section 12.20.

"Note" means a promissory note of the Borrower payable to any Lender, in the form of Exhibit A hereto (as such promissory note may be amended, endorsed or otherwise modified from time to time), evidencing the aggregate Indebtedness of the Borrower to such Lender resulting from outstanding Loans and also means all other promissory notes accepted from time to time in substitution therefor or renewal thereof.

"Obligations" means all obligations (monetary or otherwise, whether absolute or contingent, matured or unmatured) of each Obligor arising under or in connection with a Loan Document or Specified Commodity Hedge Agreement including the principal of and premium, if any, and interest (including interest accruing during the pendency of any proceeding of the type described in Section 9.1.9, whether or not allowed in such proceeding) on the Loans and payments for early termination of Specified Commodity Hedge Agreements.

"Obligor" means, as the context may require the Borrower and each Subsidiary Guarantor.

"Operating Agreement" means the Second Amended and Restated Limited Liability Company Agreement of the Borrower, dated [●], 2014.

"Operation and Maintenance Expenses" means, for any period, the sum without duplication of (i) all costs and expenses of administering and operating the Union Power Facility and all other equipment and facilities ancillary to the Union Power Facility and in maintaining them in good repair and operating condition; (ii) insurance costs and expenses; (iii) all sales, use, property and other taxes (other than taxes imposed on or measured by income or receipt) to which the Union Power Facility, the Borrower or the Subsidiary Guarantors may be subject; (iv) costs, fees and expenses incurred in connection with obtaining and maintaining in effect the Permits required to maintain and operate the Union Power Facility; (v) the reasonable costs and expenses of administration and enforcement of the Transaction Documents; (vi) all costs and expenses associated with commodity or fuel transactions and fuel transportation, in each case to the extent incurred pursuant to arrangements permitted hereunder; and (vii) reasonable and necessary legal, accounting and other professional fees and expenses incurred in connection with any of the foregoing items.

"Organic Document" means, relative to any Person, as applicable, its certificate of incorporation, by laws, certificate of partnership, partnership agreement, certificate of formation, limited liability agreement and all shareholder agreements, voting trusts and similar arrangements applicable to any of such Person's partnership interests, limited liability company interests or authorized shares of Capital Securities.

"Original Subordinated Lien Intercreditor Agreement" has the meaning set forth in the Subordinated Lien Intercreditor Agreement.

"Other Person" is defined in the definition of "Subsidiary."

"Other Taxes" means any and all stamp, documentary or similar Taxes, or any other excise or property Taxes or similar levies that arise on account of any payment made or required

to be made under any Loan Document or from the execution, delivery, registration, recording or enforcement of any Loan Document.

"Participant" is defined in Section 12.11(d).

"Participant Register" is defined in Section 12.11(e).

"PATRIOT Act" means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), as amended or otherwise modified from time to time.

"PATRIOT Act Disclosures" means all documentation and other information which the Administrative Agent or any Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money-laundering rules and regulations, including the PATRIOT Act.

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

"Pension Plan" means an "employee benefit plan," as such term is defined in Section 3(3) of ERISA, which is subject to Title IV of ERISA (other than a Multiemployer Plan), and to which Borrower, or any corporation, trade or business that is, along with Borrower, or a member of its Controlled Groups, may have liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

"Permit" means any permit, authorization, registration, consent, approval, waiver, exception, variance, order, judgment, written interpretation, decree, license, exemption, publication, filing, notice to and declaration of or with, or required by, any Governmental Authority, and shall include any environmental or operating permit or license that is required for the full use, occupancy, zoning and operation of the Union Power Facility.

"Permitted Holders" means Wayzata Investment Partners LLC, Luminus Management, LLC, Silver Point Capital, L.P., Highland Capital Management, L.P., Metropolitan West Asset Management, LLC, and each of their respective Affiliates and managed funds. For the avoidance of doubt, LS Power (and each of its Affiliates and managed funds) is an Affiliate of Luminus Management, LLC.

"Permitted Lien" is defined in Section 8.3.

"Permitted Refinancing" means, as to any Indebtedness, the incurrence of other Indebtedness to refinance, extend, renew, defease, restructure, replace or refund (collectively, "refinance") such existing Indebtedness; provided that, in the case of such other Indebtedness, the following conditions are satisfied:

(a) the weighted average life to maturity of such refinancing Indebtedness shall be greater than or equal to the weighted average life to maturity of the Indebtedness being refinanced;

(b) the principal amount of such refinancing Indebtedness shall be less than or equal to the principal amount (including any accreted or capitalized amount) then outstanding of the Indebtedness being refinanced, plus other reasonable amounts paid, and fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal or extension and by any amount equal to any existing commitments unutilized thereunder;

(c) the security, if any, for the refinancing Indebtedness shall be substantially the same as that for the Indebtedness being refinanced (except to the extent that less security is granted to holders of refinancing Indebtedness);

(d) the refinancing Indebtedness is subordinated to the Obligations to the same degree, if any, or to a greater degree as the Indebtedness being refinanced; and

(e) no material terms (other than interest rate and other pricing terms) applicable to such refinancing Indebtedness or, if applicable, the related security or guarantees of such refinancing Indebtedness (including covenants, events of default, remedies or acceleration rights) shall be, taken as a whole, materially more favorable to the refinancing lenders than the terms that are applicable under the instruments and documents governing the Indebtedness being refinanced.

"Permitted Volumetric Production Payment Obligation" means any Volumetric Production Payment Obligation arrangement with respect to Union Power; provided that. (a) such financing is provided on a non-recourse basis by the counterparty to the related gas reserve and the required hedge with respect thereto and gas remarketing arrangements and (b) the Borrower enters into a concurrent hedging transaction effectively hedging the full market exposure for the purchased gas.

"Person" means any natural person, corporation, limited liability company, partnership, joint venture, association, cooperative, trust or unincorporated organization, Governmental Authority or any other legal entity, whether acting in an individual, fiduciary or other capacity.

"Petition Date" is defined in the recitals.

"Plan of Reorganization" is defined in the recitals.

"Platform" is defined in Section 10.12(b).

"Pledge and Security Agreement" means the Amended and Restated Pledge and Security Agreement (Third Lien) duly executed and delivered by an Authorized Officer of each Obligor, substantially in the form of Exhibit E hereto, as amended, supplemented, amended and restated or otherwise modified from time to time.

"Power Distributor" means, with respect to any power purchase agreement, any Person that is a public utility or one of whose primary businesses includes the sale or distribution of electric energy.

"Power Purchase Agreements" means power purchase and/or tolling agreements pursuant to which the Borrower or any of its Subsidiaries (other than Gila River Energy, GRE 2014 or Gila River Power) sells power and energy to third parties, but excluding all such agreements which are daily sales, spot market or other short-term (not to exceed three months) arrangements; provided that such Power Purchase Agreement is with (a) a Commodity Institution with the Required Rating or (b) a Power Distributor (i) with the Required Rating or (ii) whose obligations under such power purchase agreement are supported by cash or a letter of credit issued by a commercial bank with the Required Rating in an amount sufficient to cover the expected exposure of the Power Distributor thereunder, as reasonably determined by the Borrower in a manner consistent with the principles described in the Risk Management Policy, subject to the acceptance thereof, not to be unreasonably withheld, by the Required Lenders in consultation with the Market Consultant and based on reasonable assumptions.

"Pratt & Whitney" means Pratt & Whitney Power Services, Inc., a Delaware corporation.

"Pre-Closing Period" means the period from January 1, 2014 to the Effective Date.

"Prepetition Second Lien Claims" has the meaning set forth in the Plan of Reorganization.

"Prepetition Third Lien Credit Agreement" means the Credit Agreement (Third Lien), dated as of April 19, 2007, among Entegra Power Group LLC, the Borrower, as a guarantor, the Subsidiary Guarantors party thereto, the financial institutions from time to time parties thereto as lenders, Wells Fargo, as administrative agent, and the other agents and arrangers from time to time party thereto, as amended, supplemented, amended and restated or otherwise modified or replaced from time to time.

"Prior GAAP Financials" has the meaning given in Section 1.4(b).

"Project Documents" means, without duplication, the Material Project Documents and any other agreement or document relating to the construction, leasing, ownership, or operation of the Union Power Facility to which Union Power is a party.

"Prudent Industry Practices" means any of the practices, methods and acts engaged in or approved by a significant portion of the independent gas-fired power generation industry in the United States during the relevant time period, or any of the practices, methods and acts 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, sound engineering practices, reliability, safety and expedition, or any of the practices, methods or acts that are approved or accepted by the appropriate Independent Consultant. "Prudent Industry Practices" is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable principles, methods and acts generally accepted in the United States, having due regard for, among other things, the requirements or guidance of Governmental Authorities, applicable laws, applicable interconnection operating guidelines and rules, transmission provider rules, and the requirements of insurers.

"PUHCA 2005" means the Public Utility Holding Company Act of 2005.

"PW Intercreditor Agreement" means that certain Second Amended and Restated Intercreditor, Subordination and Consent Agreement, dated as of August 10, 2011, by and among Pratt & Whitney, Collateral Agent, Union Power, the Borrower and the other parties thereto.

"Redeemable Capital Securities" means, with respect to any Person, Capital Securities of such Person that, either by their terms, by the terms of any security into which they are convertible or exchangeable or otherwise, (a) are, or upon the happening of an event or passage of time would be, required to be redeemed in whole or in part (except for consideration comprised of Capital Securities of such Person which are not Redeemable Capital Securities) on or prior to the date that is six (6) months following the Maturity Date, (b) are redeemable in whole or in part at the option of the holder thereof (except for consideration comprised of Capital Securities of such Person which are not Redeemable Capital Securities) at any time prior to such date or (c) are convertible into or exchangeable (in whole or in part) for Indebtedness of such Person or any of its Subsidiaries at any time prior to such date.

"Regency" means Regency Interstate Gas LLC (formerly known as Gulf States Pipeline Corporation).

"Regency Interconnection Agreement" means the Interconnect and Metering Facility Agreement, dated March 29, 2000, between Regency and Trans-Union, as amended on December 22, 2000 and on March 7, 2001.

"Register" is defined in Section 2.3(b).

"Release" means a "release," as such term is defined in CERCLA.

"Replacement Lender" is defined in Section 4.8.

"Replacement Notice" is defined in Section 4.8.

"Required Insurance" is defined in Section 7.5.

"Required Lenders" means, at any time, Lenders holding more than 50% of the Total Exposure Amount.

"Required Rating" means, with respect to (a) any Commodity Institution, that either (i) the unsecured senior debt obligations of such Person are rated at least A3 by Moody's and at least A- by S&P at the time of the execution of the applicable Power Purchase Agreement, or (ii) such Commodity Institution's obligations under the applicable Power Purchase Agreement are guaranteed by a Person that is rated at least A3 by Moody's and at least A- by S&P at the time of the execution of the applicable Power Purchase Agreement, (b) any Power Distributor or Gas Marketer, that either (i) the unsecured senior debt obligations of such Person are rated at least Baa3 by Moody's and at least BBB- by S&P at the time of the execution of the applicable Power Purchase Agreement, or (ii) such Power Distributor's or Gas Marketer's obligations under any Power Purchase Agreement are guaranteed by a Person that is rated at least Baa3 by Moody's and at least BBB- by S&P, at the time of the execution of the applicable Power Purchase Agreement or (c) any commercial bank issuing a letter of credit in support of a Power Distributor's or Gas Marketer's obligations, that the unsecured senior debt obligations of such

Person are rated at least A3 by Moody's and at least A- by S&P at the time of the issuance of such letter of credit.

"Resource Conservation and Recovery Act" means the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., as amended.

"Restricted Payment" means (a) the declaration or payment of any dividend (other than dividends to be paid or in fact paid in Capital Securities of Borrower (other than Redeemable Capital Securities) or by an increase in the liquidation preference of any Capital Securities of Borrower) on, or the making of any payment or distribution on account of, or setting apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of any class of Capital Securities of Borrower or any warrants or options to purchase any such Capital Securities, whether now or hereafter outstanding, or the making of any other payment or distribution (other than in Capital Securities (other than Redeemable Capital Securities) of Borrower or by an increase in the liquidation preference of any Capital Securities of Borrower) in respect thereof, either directly or indirectly, whether in cash or property, obligations of the Borrower or otherwise, and (b) the making of any deposit (including the payment of amounts into a sinking fund or other similar fund) for any of the foregoing purposes.

"Restructuring Support Agreement" means that certain Restructuring Support Agreement, dated as of June 27, 2014, by and among the "Debtors" and the "Plan Support Parties" (each as defined therein), including all exhibits thereto.

"Retiring Administrative Agent" is defined in Section 10.4.

"Risk Management Policy" means the Entegra Power Risk Management Policy (Union Assets), as approved by the Borrower's board of directors from time to time.

"S&P" means Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc.

"Second Lien Cap Amount" means, as of any date of determination, (a) $[insert initial principal amount of Second Lien Notes] plus (b) interest thereon paid in kind by capitalization to principal, less (c) the amount of any principal repaid or prepaid under the Second Lien Indenture.

"Second Lien Collateral Agent" means U.S. Bank National Association, or such other successor collateral agent appointed pursuant to the terms of the Subordinated Lien Intercreditor Agreement.

"Second Lien Indenture" means the Second Lien Indenture, dated as of date hereof, among the Borrower and the Corporate Co-Issuer, as issuers, the Subsidiary Guarantors, as guarantors, and the Second Lien Indenture Trustee, as indenture trustee, as amended, supplemented, amended and restated or otherwise modified or replaced from time to time in accordance with the terms hereof and thereof.

"Second Lien Indenture Trustee" means U.S. Bank, National Association, together with its successors and assigns as indenture trustee under the Second Lien Indenture.

"Second Lien Notes" means the notes issued pursuant to and in accordance with the Second Lien Indenture.

"Second Lien Obligations" is defined in the Subordinated Lien Intercreditor Agreement.

"Secured Parties" has the meaning assigned to that term in the Pledge and Security Agreement.

"Securities Account" means a "securities account" as that term is defined in Section 8-501 of the UCC.

"Security Documents" means the Pledge and Security Agreement, the Intercreditor Agreements, each Mortgage, and each other agreement pursuant to which the Collateral Agent is granted a Lien to secure the Obligations.

"Services Agreements" means each of (a) the Purchase and Services Agreement Reference Number PW0511-3821TC, dated as of January 24, 2006, between Pratt & Whitney and the Borrower (as assignee of Gila River Power) and (b) the Purchase and Services Agreement Reference Number PW0504-39548TC, dated as of January 24, 2006, between Pratt & Whitney and Union Power.

"Solvent" means, with respect to any Person on a particular date, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to incur debts or liabilities beyond the ability of such Person to pay as such debts and liabilities mature, and (d) such Person is not engaged in business or a transaction, and such Person is not about to engage in business or a transaction, for which the property of such Person would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that, in light of all the facts and circumstances existing at such time, can reasonably be expected to become an actual or matured liability.

"Specified Commodity Hedge Agreements" means (i) Commodity Hedge Agreements, Power Purchase Agreements and fuel supply agreements, each of which may not exceed 36 months in maturity, (ii) Commodity Hedge Agreements or Power Purchase Agreements involving the purchase or sale of up to 510 MW of power or an equivalent amount of fuel, in any case, for a tenor not greater than six years and (iii) Commodity Hedge Agreements or Power Purchase Agreements so long as at the time such Commodity Hedge Agreement or Power Purchase Agreement is entered into, it is structured such that the Commodity Institutions' or other applicable hedge counterparties' credit exposure and actual or projected mark-to-market exposure to the applicable Obligor thereunder is positively correlated with the price of the relevant commodity (the agreements described in this clause (iii), the "Specified Right-Way Hedge Agreements").

"Specified Right-Way Hedge Agreements" is defined in the definition of "Specified Commodity Hedge Agreements."

"SPV Financing" is defined in the definition of "Net SPV Financing Proceeds."

"SPV Subsidiary" means any Union SPV and any Subsequent Gila River SPV.

"SPV Subsidiary Collateral Actions" is defined in Section 7.14.

"Subordinated Intercompany Note" means the subordinated note, substantially in the form of Exhibit G, evidencing all Indebtedness by and among the Obligors.

"Subordinated Lien Intercreditor Agreement" means the Amended and Restated Collateral Agency and Intercreditor Agreement (Subordinated Lien), dated as of the date hereof, executed and delivered by each Person party thereto, substantially in the form of Exhibit I hereto, as amended, supplemented, amended and restated or otherwise modified from time to time.

"Subsequent Gila River SPV" means, at any time following the occurrence of the events described in clauses (k)(i) and (k)(ii) of the definition of "Excluded Disposition," (a) a special purpose entity that is directly or indirectly owned by the Borrower and formed for the purpose of owning and operating any or all of the assets transferred to it pursuant to a Subsequent Gila River SPV Disposition or (b) if the applicable Subsequent Gila River SPV Disposition is structured on substantially similar terms as the Gila River Disposition, Gila River Energy, GRE 2014 or Gila River Power.

"Subsequent Gila River SPV Disposition" means, at any time following the occurrence of the events described in clauses (k)(i) and (k)(ii) of the definition of "Excluded Disposition," (a) the transfer by the Obligor that then owns the assets that were secured by the Non-Recourse Indebtedness incurred by Gila River Energy pursuant to the Gila River Energy Financing Documents to a Subsequent Gila River SPV of all or a portion of such assets or (b) a Disposition of all or a portion of such assets in a manner substantially similar to the Gila River Disposition.

"Subsequent Gila River SPV Financing" means any incurrence by a Subsequent Gila River SPV of Non-Recourse Indebtedness for borrowed money.

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership or other entity ("Other Person") of which more than 50% of the Voting Securities of such Other Person (irrespective of whether at the time Capital Securities of any other class or classes of such Other Person shall or might have voting power upon the occurrence of any contingency) is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more other Subsidiaries of such Person, or by one or more other Subsidiaries of such Person. Unless the context expressly provides otherwise, the term "Subsidiary" means a Subsidiary of the Borrower.

"Subsidiary Guarantors" means, collectively, each Subsidiary of the Borrower other than (a) the Employee Company, (b) the Gila River O&M Subsidiary, (c) Gila River Energy and Gila River Power, (d) the SPV Subsidiaries; provided that if at any time any SPV Subsidiary is no longer prohibited by the terms of (i) in the case of any Union SPV, the Union SPV Financing

incurred by such Union SPV or (ii) in the case of any Subsequent Gila River SPV, the Subsequent Gila River SPV Financing incurred by such Subsequent Gila River SPV, as applicable, from being a guarantor hereunder, then such SPV Subsidiary shall become a Subsidiary Guarantor in accordance with the terms of Section 7.14, and (e) GRE 2014.

"Super-Majority Lenders" means Lenders holding more than 66 2/3% of the Total Exposure Amount.

"Supplemental Agent" is defined in Section 10.10(a).

"Synthetic Lease" means, as applied to any Person, any lease (including leases that may be terminated by the lessee at any time) of any property (whether real, personal or mixed) (a) that is not a capital lease in accordance with GAAP and (b) in respect of which the lessee retains or obtains ownership of the property so leased for federal income tax purposes, other than any such lease under which that Person is the lessor.

"Tax Distributions" means any and all distributions by the Borrower pursuant to Section 6.4(d) of the Operating Agreement.

"Taxes" means any and all income, stamp or other taxes, duties, levies, imposts, charges, assessments, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, and all interest, penalties or similar liabilities with respect thereto.

"TEP Proceeds" means the Net Disposition Proceeds from the disposition of a 2-on-1 combined-cycle generating block of the Gila River Facility, indirectly owned by Gila River Holdco, to Tucson Electric Power Company and UNS Electric, Inc. pursuant to that certain Asset Purchase and Sale Agreement, dated as of December 13, 2013 (as amended or modified from time to time).

"Termination Date" means the date on which all Obligations have been paid in full (other than indemnity obligations not yet due and payable) in cash.

"Terrorism Laws" means any of the following (a) Executive Order 13224 issued by the President of the United States, (b) the Terrorism Sanctions Regulations (Title 31 Part 595 of the U.S. Code of Federal Regulations), (c) the Terrorism List Governments Sanctions Regulations (Title 31 Part 596 of the U.S. Code of Federal Regulations), (d) the Foreign Terrorist Organizations Sanctions Regulations (Title 31 Part 597 of the U.S. Code of Federal Regulations), (e) the PATRIOT Act, (f) all other present and future legal requirements of any Governmental Authority addressing, relating to, or attempting to eliminate, terrorist acts and acts of war and (g) any regulations promulgated pursuant thereto or pursuant to any legal requirements of any Governmental Authority governing terrorist acts and acts of war.

"TGPC" means Tennessee Gas Pipeline Company, a Delaware corporation.

"TGPC Interconnection Agreement" means the Facilities Agreement, dated May 12, 2000, among TGPC, Union Power and Regency, as amended February 27, 2001.

"TGT" means Texas Gas Transmission Corporation, a Delaware corporation.

"Title Policy" is defined in Section 5.1.10(b)(iii).

"Total Exposure Amount" means, on any date of determination, the outstanding principal amount of all Loans.

"Trans-Union" means Trans-Union Interstate Pipeline, L.P., a Delaware limited partnership.

"Transaction Documents" means, collectively, (a) this Agreement and the other Loan Documents, (b) the Second Lien Indenture and the other Loan Documents (as defined therein), (c) the First Lien Credit Agreement and the other Loan Documents (as defined therein), (d) the Project Documents, and (e) any and all other documents, agreements, instruments and arrangements related to or in connection with any of the foregoing.

"Transactions" means the making (or deemed making) of Loans hereunder, the exchange of the Prepetition Second Lien Claims for the Second Lien Notes, and the other transactions contemplated by this Agreement, the other Loan Documents, the Second Lien Indenture and the other Loan Documents (as defined in the Second Lien Indenture).

"UCC" means the Uniform Commercial Code as in effect from time to time in the state of New York; provided that if, with respect to any Filing Statement or by reason of any provisions of law, the perfection or the effect of perfection or non-perfection of the security interests granted to the Administrative Agent or the Collateral Agent pursuant to the applicable Loan Document is governed by the Uniform Commercial Code as in effect in a jurisdiction of the United States other than New York, UCC means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions of each Loan Document and any Filing Statement relating to such perfection or effect of perfection or non-perfection.

"UCWCB" means the Union County Water Conservation Board, a public body organized under the laws of Arkansas.

"UCWCB Water Supply Agreement" means that certain Water Supply Agreement, dated as of September 22, 2000, between UCWCB and Union Power.

"Union Interconnection Agreement" means the Interconnection and Operating Agreement, dated as of February 14, 2001, by and between Union Power and Entergy.

"Union Power" means Union Power Partners, L.P., a Delaware limited partnership.

"Union Power Facility" means the 2,152 MW natural gas-fired combined-cycle power generation facility located in the MISO South region in Union County, Arkansas.

"Union SPV" means a special purpose entity that is directly or indirectly owned by the Borrower and formed for the purpose of owning and operating one or more power blocks of the Union Power Facility and selling energy products or tolling services relating to substantially all

of the capacity of such power block(s) to one or more load serving entities pursuant to one or more agreements having a term of at least 5 years.

"Union SPV Disposition" means the transfer by Union Power to a Union SPV of one or more power blocks of the Union Power Facility and may include a related undivided interest in common and shared facilities.

"Union SPV Financing" means any incurrence by a Union SPV of Non-Recourse Indebtedness for borrowed money.

"United States" or "U.S." means the United States of America, its fifty states and the District of Columbia.

"Volumetric Production Payment Obligations" means production payment obligations of the Borrower or any of its Subsidiaries which are payable from a specified share of production from specific assets of the Borrower or any of its Subsidiaries, together with all undertakings and obligations in connection therewith.

"Voting Securities" means, with respect to any Person, Capital Securities of any class or kind ordinarily having the power to vote (that is, not contingent on the happening of any event) for the election of directors, managers or other voting members of the governing body of such Person.

"Water Supply Agreement" means, collectively, the UCWCB Water Supply Agreement and the Agency Agreement.

"Wells Fargo" is defined in the preamble.

Section 1.2 Use of Defined Terms. Unless otherwise defined or the context otherwise requires, terms for which meanings are provided in this Agreement shall have such meanings when used in each other Loan Document and the Disclosure Schedule, and each notice and other communication delivered from time to time in connection with any Loan Document.

Section 1.3 Cross-References. Unless otherwise specified, references in a Loan Document to any Article or Section are references to such Article or Section of such Loan Document, and references in any Article, Section or definition to any clause are references to such clause of such Article, Section or definition.

Section 1.4 Accounting and Financial Determinations; Time.

(a) Unless otherwise specified, all accounting terms used in each Loan Document shall be interpreted, and all accounting determinations and computations thereunder shall be made, in accordance with GAAP. Unless otherwise expressly provided, all defined financial terms shall be computed on a consolidated basis for Borrower and its Subsidiaries, in each case without duplication.

(b) If the Borrower notifies the Administrative Agent that the Borrower wishes to amend any covenant in Article VII or VIII or any related definition to eliminate the

effect of any change in GAAP occurring after the date of this Agreement on the operation of such covenant (or if the Administrative Agent notifies the Borrower that the Required Lenders wish to amend Article VII or VIII or any related definition for such purpose), then the Borrower's compliance with such covenant shall be determined on the basis of GAAP in effect immediately before the relevant change in GAAP became effective, until either such notice is withdrawn or such covenant is amended in a manner satisfactory to the Borrower and the Required Lenders. The Borrower, the Administrative Agent and the Lenders shall negotiate in good faith to amend any such covenant on mutually agreeable terms. In the event of any such notification from the Borrower or the Administrative Agent and until such notice is withdrawn or such covenant is so amended, the Borrower will furnish to each Lender and the Administrative Agent, in addition to the financial statements required to be furnished pursuant to Section 7.1 (the "Current GAAP Financials"), (i) the financial statements described in such Section based upon GAAP as in effect at the time such covenant was agreed to (the "Prior GAAP Financials") and (ii) a reconciliation between the Prior GAAP Financials and the Current GAAP Financials.

(c) Unless otherwise indicated, all references to the time of a day in a Loan Document shall refer to New York, New York time.

Section 1.5 Use of Certain Terms.

(a) As used herein and in the other Loan Documents, and any certificate or other document made or delivered pursuant hereto or thereto:

(i) in any computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding" and the word "through" means "to and including;"

(ii) the words "including" and "include" shall mean including without limiting the generality of any description preceding such term, and, for purposes of each Loan Document, the parties hereto agree that the rule of ejusdem generis shall not be applicable to limit a general statement, which is followed by or referable to an enumeration of specific matters, to matters similar to the matters specifically mentioned;

(iii) 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);

(iv) the expressions "payment in full," "paid in full" and any other similar terms or phrases when used herein with respect to the Obligations shall mean the payment in full, in immediately available funds, of all the Obligations; and

(v) 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 (whether real or personal), including cash, Capital Securities, securities, revenues, accounts, leasehold interests and contract rights.

(vi) The words "hereof," "herein," "hereto" 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, Article, Schedule, Annex, Exhibit and analogous references are to this Agreement unless otherwise specified.

(b) 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 (subject to any applicable restrictions herein).

ARTICLE II

LOANS AND NOTES

Section 2.1 Loans. Each of the Borrower, each Subsidiary Guarantor, each Lender and the Administrative Agent hereby confirms and acknowledges that each Lender has heretofore made credit extensions to the Borrower pursuant to the Prepetition Third Lien Credit Agreement, including the Existing Third Lien Loans in the amount for each Lender as set forth on Schedule II, the aggregate outstanding principal amount of which Existing Third Lien Loans of all Lenders on the Effective Date is $[●]. The Borrower and the Subsidiary Guarantors agree, ratify and confirm that, as of the Petition Date, the Existing Third Lien Loans, together with all accrued and unpaid interest thereon, are due and owing to the Lenders (in their capacity as Lenders under (and as defined in) the Prepetition Third Lien Credit Agreement) and were not subject to any offset, counterclaims or defenses of any kind or nature. As of the Effective Date, subject to the terms and conditions hereof and to give effect to the Plan of Reorganization, the Existing Third Lien Loans are hereby converted into, and exchanged for, Loans hereunder in an aggregate principal amount of $550,000,000, which Loans shall be allocated to each Lender in the respective principal amount specified for such Lender on Schedule II. Such Loans shall be denominated in Dollars. Once repaid, Loans may not be reborrowed.

Section 2.2 Borrowing Request. On the Effective Date, the Borrower shall give the Administrative Agent written notice of the Loans to be incurred (or deemed incurred) hereunder prior to 12:00 p.m. (New York time) on such day. Such notice (the "Borrowing Request") shall be irrevocable and shall be in the form of Exhibit B, appropriately completed to specify: (a) the aggregate principal amount of the Loans to be incurred (or deemed incurred) pursuant to such Borrowing; and (b) the date of such Borrowing (which shall be a Business Day). The Administrative Agent shall promptly give each Lender notice of such proposed Borrowing, of such Lender's proportionate share thereof and of the other matters required by the immediately preceding sentence to be specified in the Borrowing Request.

Section 2.3 Register; Notes. The Register shall be maintained on the following terms:

(a) Each Lender may maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrower to such Lender resulting from each Loan made or deemed made by such Lender, including the amounts of principal, interest and fees payable and paid to such Lender from time to time hereunder. In the case of a Lender

that does not request, pursuant to clause (c) below, execution and delivery of a Note evidencing the Loans made or deemed made by such Lender to the Borrower, such account or accounts shall, to the extent not inconsistent with the notations made by the Administrative Agent in the Register, be conclusive and binding on the Borrower absent manifest error; provided, however, that the failure of any Lender to maintain such account or accounts or any error in any such account shall not limit or otherwise affect any Obligations of any Obligor.

(b) The Borrower hereby designates the Administrative Agent to serve as the Borrower's agent, solely for the purpose of this clause (b), to maintain a register (the "Register") on which the Administrative Agent will record the Loans made or deemed made by each Lender and each repayment in respect of the principal amount of the Loans of each Lender and annexed to which the Administrative Agent shall retain a copy of each Lender Assignment Agreement delivered to the Administrative Agent pursuant to Section 12.11. Failure to make any recordation, or any error in such recordation, shall not affect the Borrower's obligation in respect of such Loans. The entries in the Register shall be conclusive, in the absence of manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person in whose name a Loan (and, as provided in clause (c) below, the Note evidencing such Loan, if any) is registered as the owner thereof for all purposes of this Agreement, notwithstanding notice or any provision herein to the contrary. A Lender's Loans made or deemed made pursuant hereto may be assigned or otherwise transferred in whole or in part only by registration of such assignment or transfer in the Register. Any assignment or transfer of a Lender's Loans made or deemed made pursuant hereto shall be registered in the Register only upon delivery to the Administrative Agent of a Lender Assignment Agreement duly executed by the assignor thereof and the compliance by the parties thereto with the other requirements of Section 12.11. No assignment or transfer of a Lender's Loans made or deemed made pursuant hereto shall be effective unless such assignment or transfer shall have been recorded in the Register by the Administrative Agent as provided in this Section 2.3.

(c) The Borrower agrees that, upon the request to the Administrative Agent by any Lender, the Borrower will execute and deliver to such Lender a Note evidencing the Loans made or deemed made by such Lender. The Borrower hereby irrevocably authorizes each Lender to make (or cause to be made) appropriate notations on the grid attached to such Lender's Notes (or on any continuation of such grid), which notations, if made, shall evidence, inter alia, the date of, the outstanding principal amount of, and the interest rate applicable to the Loans evidenced thereby. Such notations shall, to the extent not inconsistent with the notations made by the Administrative Agent in the Register, be conclusive and binding on the Borrower absent manifest error; provided, however, that the failure of any Lender to make any such notations or any error in any such notations shall not limit or otherwise affect any Obligations of any Obligor. A Note and the obligation evidenced thereby may be assigned or otherwise transferred in whole or in part only in accordance with Section 12.11.

ARTICLE III

REPAYMENTS, PREPAYMENTS, INTEREST AND FEES

Section 3.1 Repayments and Prepayments; Application. The Borrower agrees that the Loans shall be repaid and prepaid pursuant to the following terms.

Section 3.1.1 Repayments and Prepayments. The Borrower shall repay in full the unpaid principal amount of each Loan on the Maturity Date. Prior thereto, payments and prepayments of the Loans shall or may be made as set forth below.

(a) Subject to the terms of the Intercreditor Agreements, from time to time on any Business Day after the first anniversary of the Effective Date, the Borrower may make a voluntary prepayment, in whole or in part, of the outstanding principal amount of any Loans; provided that (A) any prepayment of Loans is to be applied as set forth in Section 3.1.2; (B) all such voluntary prepayments shall require at least one but no more than five Business Days' irrevocable prior written notice to the Administrative Agent (provided that, if a notice is conditioned upon the effectiveness of other credit facilities or any incurrence or issuance of debt or equity, such notice may be revoked by the Borrower (by notice to the Administrative Agent) if such credit facilities do not become effective or such other transaction does not close); and (C) all such voluntary partial prepayments of any Loans shall be in an aggregate minimum amount of, in the case of Loans, $1,000,000, and an integral multiple of $100,000. Each such irrevocable request may be made by telephone confirmed promptly by hand delivery or facsimile to the Administrative Agent of the applicable voluntary prepayment.

(b) [Reserved].

(c) No later than five Business Days following the receipt by any Obligor of any TEP Proceeds, the Borrower shall deliver to the Administrative Agent a calculation of the amount of such TEP Proceeds and make a mandatory prepayment of the Loans in an amount equal to 100% of such TEP Proceeds, to be applied as set forth in Section 3.1.2. For the avoidance of doubt, none of the TEP Proceeds shall be applied to redeem, repay or prepay Second Lien Obligations.

(d) After the Discharge of Second Lien Obligations only and subject to the Intercreditor Agreements, in the event that there shall be Excess Cash Flow with respect to any Fiscal Year beginning with the Fiscal Year ended December 31, 2014, the Borrower shall, no later than the date upon which the Borrower is required to deliver financial statements under Section 7.1(a) (the date of such prepayment, the "Annual Payment Date"), apply 100% of such Excess Cash Flow (or 100% of any such Excess Cash Flow remaining after Excess Cash Flow is applied to redeem, repay or prepay Second Lien Obligations that results in the Discharge of Second Lien Obligations) as set forth in Section 3.1.2.

(e) After the Discharge of Second Lien Obligations only and subject to the Intercreditor Agreements, no later than one Business Day following the receipt by any Obligor of any Net Debt Proceeds, the Borrower shall deliver to the Administrative Agent a calculation of the amount of such Net Debt Proceeds and make a mandatory prepayment of the Loans in an amount equal to 100% of such Net Debt Proceeds (or 100% of any such Net Debt Proceeds remaining after Net Debt Proceeds are applied to redeem, repay or prepay Second Lien Obligations that results in the Discharge of Second Lien Obligations), to be applied as set forth in Section 3.1.2.

(f) After the Discharge of Second Lien Obligations only and subject to the Intercreditor Agreements, no later than five Business Days following the receipt by any Obligor

of any Net Casualty Proceeds, the Borrower shall apply 100% of such Net Casualty Proceeds in accordance with the terms of the First Lien Intercreditor Agreement so long as any First Lien Obligations are outstanding and otherwise in accordance with the Subordinated Lien Intercreditor Agreement.

(g) After the Discharge of Second Lien Obligations only and subject to the Intercreditor Agreements, no later than five Business Days following the receipt by any Obligor of any Net Disposition Proceeds, Net SPV Disposition Proceeds, Net SPV Financing Proceeds, Net SPV Foreclosure Excess Proceeds or Disposition Cash Collateral (at the time such Disposition Cash Collateral is no longer required to secure such Obligor's or Gila River Power's obligations to the applicable buyer in connection with a Disposition), the Borrower shall deliver to the Administrative Agent a calculation of the amount of such proceeds or Disposition Cash Collateral, and if (x) in the case of Net Disposition Proceeds and Net SPV Disposition Proceeds, as applicable, the aggregate amount of such proceeds received by such Obligor in any Fiscal Year exceeds $5,000,000 or (y) such proceeds are Net SPV Financing Proceeds, Net SPV Foreclosure Excess Proceeds or Disposition Cash Collateral, the Borrower shall make a mandatory prepayment of the Loans in an amount equal to 100% of all such proceeds (or 100% of any such proceeds remaining after such proceeds are applied to redeem, repay or prepay Second Lien Obligations that results in the Discharge of Second Lien Obligations) or 100% of all such Disposition Cash Collateral (or 100% of any such Disposition Cash Collateral remaining after Disposition Cash Collateral is applied to redeem, repay or prepay Second Lien Obligations that results in the Discharge of Second Lien Obligations), in each case, to be applied as set forth in Section 3.1.2. For the avoidance of doubt, this clause (g) shall not apply with respect to any TEP Proceeds, the application of which is subject to clause (c) of this Section 3.1.1.

(h) Each prepayment of any Loans made pursuant to this Section 3.1.1 shall be without premium or penalty. The Borrower shall give prior written notice to the Lenders of any mandatory prepayment required under clauses (c), (d), (e), (f) and (g) of this Section 3.1.1 (including the date and an estimate of the aggregate amount of such mandatory prepayment at least five Business Days prior thereto or, in the case of notice with respect to a mandatory prepayment described in Section 3.1.1(e), at least one Business Day prior thereto); provided that, the failure to give such notice shall not relieve the Borrower of its obligation to make such mandatory prepayments on or prior to the dates set forth in such clauses (c), (d), (e), (f) and (g) and the Borrower shall be permitted to make such mandatory prepayments on or prior to such dates. No amounts paid or prepaid with respect to Loans may be reborrowed.

Section 3.1.2 Application. Amounts prepaid pursuant to Section 3.1.1 shall be applied, pro rata among the Loans of all Lenders, first to accrued and unpaid (including by way of capitalization) interest on the aggregate amount of principal prepaid, and second to the outstanding principal amount of the Loans.

Section 3.2 Interest Provisions. Interest on the outstanding principal amount of the Loans shall accrue at a rate per annum equal to the Interest Rate and be payable in accordance with the terms set forth below.

Section 3.2.1 Post-Default Rates. After the date any Event of Default the Borrower shall pay (in kind by capitalization to the principal amount of the Loans), but only to the extent

permitted by law, interest (after as well as before judgment) on the Loans and other monetary Obligations under the Loan Documents at a rate per annum equal to the Interest Rate plus 2%.

Section 3.2.2 Payment Dates. Subject to Section 3.2.3, interest accrued on each Loan shall be payable, without duplication:

(i) on the Maturity Date therefor;

(ii) on the date of any payment or prepayment, in whole or in part, of principal outstanding on any Loan, on the principal amount so paid or prepaid; and

(iii) with respect to each Accrual Period, on the first day of the immediately succeeding Accrual Period.

Interest (other than interest payable pursuant to clauses (i) and (ii) above) on the unpaid principal amount of each Loan owing to each Lender shall be capitalized on the applicable interest payment date and added to the outstanding amount of such Loan.

Interest accrued on Loans or other monetary Obligations after the date such amount is due and payable (whether on the Maturity Date, upon acceleration or otherwise) shall be payable upon demand of the Required Lenders; provided that, such interest shall be payable in kind by capitalization to the principal amount of the Loans.

Section 3.2.3 Post-Default Interest Payments. Interest payable pursuant to Section 3.2.1 shall be payable upon demand of the Required Lenders; provided that, such interest shall be payable in kind by capitalization to the principal amount of the Loans. If no such demand is made, such interest shall be payable on the next interest payment date as specified in Section 3.2.2.

Section 3.3 Agency Fees. The Borrower agrees to pay to the Administrative Agent, for its own account, the fees in the amounts and on the dates as are separately agreed between the Borrower and the Administrative Agent. All such fees shall be non-refundable.

ARTICLE IV

CERTAIN OTHER PAYMENT PROVISIONS

Section 4.1 Increased Loan Costs, etc. The Borrower agrees to reimburse each Credit Party for any increase in the cost to such Credit Party, or any reduction in the amount of any sum receivable by such Credit Party in respect of the making of Credit Extensions by such Credit Party hereunder that arise in connection with any change in, or the introduction, adoption, effectiveness, interpretation, reinterpretation or phase in after the Effective Date of, any law or regulation, directive, guideline, decision or request (whether or not having the force of law) of any Governmental Authority (each, a "Change in Law"), that (a) imposes, modifies or deems applicable any reserves, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by any Lender or (b) imposes on any Lender any other condition affecting this Agreement or the Loans made by such Lender or participation therein,

except for such changes with respect to increased capital costs and Taxes which are governed by Sections 4.2 and 4.3; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall be deemed to be a Change in Law, regardless of the date enacted, adopted, promulgated or issued. Each affected Credit Party shall promptly notify the Administrative Agent and the Borrower in writing of the occurrence of any such event, stating the reasons therefor and the additional amount required fully to compensate such Credit Party for such increased cost or reduced amount. Such additional amounts shall be payable by the Borrower directly to such Credit Party within 10 days of its receipt of such notice, and such notice shall, in the absence of manifest error, be conclusive and binding on the Borrower.

A certificate of an officer of a Credit Party setting forth the amount or amounts necessary to compensate such Credit Party as specified in this Section 4.1 shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Credit Party the amount shown as due on any such certificate within 5 days after receipt thereof.

Promptly after any Credit Party has determined that it will make a request for increased compensation pursuant to this Section 4.1, such Credit Party shall notify the Borrower thereof. Failure or delay on the part of any Credit Party to demand compensation pursuant to this Section 4.1 shall not constitute a waiver of such Credit Party's right to demand such compensation; provided that the Borrower shall not be required to compensate a Credit Party pursuant to this Section 4.1 for any increased costs or reductions incurred more than 120 days prior to the date that such Credit Party notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Credit Party's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 120-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 4.2 Increased Capital Costs. If, after the Effective Date, any Change in Law affects or would affect the amount of capital required or expected to be maintained by any Credit Party or any Person controlling such Credit Party, and such Credit Party determines (in good faith but in its sole and absolute discretion) that the rate of return on its or such controlling Person's capital as a consequence of the Credit Extensions made by such Credit Party is reduced to a level below that which such Credit Party or such controlling Person could have achieved but for the occurrence of any such circumstance, then upon notice from time to time by such Credit Party to the Borrower, the Borrower shall within five days following receipt of such notice pay directly to such Credit Party additional amounts sufficient to compensate such Credit Party or such controlling Person for such reduction in rate of return. A statement of such Credit Party as to any such additional amount or amounts shall, in the absence of manifest error, be conclusive and binding on the Borrower. In determining such amount, such Credit Party may use any reasonable method of averaging and attribution that it (in its sole and absolute discretion) shall deem applicable.

A certificate of an officer of a Lender setting forth the amount or amounts necessary to compensate such Lender as specified in this Section 4.2 shall be delivered to the Borrower and shall be conclusive absent manifest error.

Promptly after any Lender has determined that it will make a request for increased compensation pursuant to this Section 4.2, such Lender shall notify the Borrower thereof. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to this Section 4.2 for any increased costs or reductions incurred more than 120 days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 120-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 4.3 Taxes. The Borrower covenants and agrees as follows with respect to Taxes.

(a) Any and all payments by any Obligor or the Administrative Agent under each Loan Document shall be made free and clear of, and without deduction or withholding for or on account of, any Taxes, except to the extent such deduction or withholding is required by law. In the event that any Taxes are required by law to be deducted or withheld from any payment required to be made by or on behalf of any Obligor to or on behalf of any Credit Party under any Loan Document, then:

(i) subject to clause (g) below, if such Taxes are Non-Excluded Taxes, the amount payable by the Obligor shall be increased as may be necessary such that the net payment, after withholding or deduction for or on account of such Non-Excluded Taxes, (including such withholding or deduction attributable to additional amounts payable under this clause (a)(i)) is equal to the amount provided for in such Loan Document (and for the avoidance of doubt, it shall be the sole responsibility of the Borrower and the other Obligors to pay such increased amounts without regard to whether such Taxes are imposed on the Borrower or another party); and

(ii) each Obligor or Administrative Agent, as the case may be, shall withhold the full amount of such Taxes from such payment (as increased pursuant to clause (a)(i), if applicable) and shall pay such amount to the Governmental Authority imposing such Taxes in accordance with applicable law.

(b) Without duplication, the Borrower shall pay any and all Other Taxes that arise from the transactions contemplated by any of the Loan Documents to the relevant Governmental Authority imposing such Other Taxes in accordance with applicable law.

(c) As promptly as practicable after the payment of any Taxes or Other Taxes, and in any event within 45 days of any such payment, the Borrower shall furnish to the Administrative Agent a copy of an official receipt (or a certified copy thereof) or other documentation reasonably satisfactory to the Administrative Agent evidencing the payment of

such Taxes or Other Taxes. The Administrative Agent shall make copies thereof available to any Lender upon request therefor.

(d) [Reserved].

(e) Subject to clause (g) below, the Borrower shall indemnify each Credit Party for any Non-Excluded Taxes levied, imposed, assessed on or actually paid by or on behalf of such Credit Party. Promptly upon having actual knowledge that any such Non-Excluded Taxes have been levied, imposed or assessed, and promptly upon notice thereof by any Credit Party, the Borrower shall pay such Non-Excluded Taxes directly to the relevant Credit Party (provided, however, that no Credit Party shall be under any obligation to provide any such notice to the Borrower). In addition, the Borrower shall indemnify each Credit Party for any incremental Taxes that are paid or payable by such Credit Party as a result of any failure of the Borrower to pay any Taxes when due to the appropriate Governmental Authority or to deliver to the Administrative Agent, pursuant to clause (c) above, documentation evidencing the payment of Taxes. With respect to indemnification for Non-Excluded Taxes actually paid by any Credit Party or the indemnification provided in the immediately preceding sentence, such indemnification shall be made within 30 days after the date such Credit Party makes written demand therefor. A certificate stating the amount of such liability and setting forth in reasonable detail the calculation thereof delivered to the Borrower by a Credit Party, or by the Administrative Agent on behalf of the applicable Credit Party, shall be conclusive absent manifest error. Notwithstanding the foregoing, where a certificate described in the preceding sentence is not delivered to the Borrower within 180 days after the assessed Credit Party receives notice of the assertion of any Non-Excluded Taxes, no indemnification shall be required for penalties, additions to Tax, expenses and interest accruing on such Non-Excluded Taxes from the date that is 180 days after the receipt by the assessed Credit Party of written notice of the assertion of such Taxes until (and then only for periods after) 30 days after the date such certificate was actually received by the Borrower.

(f) Each Credit Party shall deliver documentation prescribed by applicable law and reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not and to what extent such Credit Party is subject to withholding, backup withholding or information reporting requirements. Without limiting the generality of the foregoing, each Non-Domestic Credit Party that is entitled to an exemption from U.S. withholding Tax, or is subject to such Tax at a reduced rate under an applicable Tax treaty, on or prior to the date on which such Non-Domestic Credit Party becomes a Credit Party hereunder (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent, but only for so long as such Non-Domestic Credit Party is legally entitled to do so), shall deliver to the Borrower and the Administrative Agent either

(i) two properly completed and duly executed copies (or such other reasonable number of copies as shall be requested by the recipient) of Internal Revenue Service Form W-8BEN-E or W-8BEN, or applicable successor forms thereto (claiming exemption from, or a reduction of U.S. Federal withholding Tax under an applicable Tax treaty), W-8ECI or W-8IMY, or applicable successor forms (including

any additional documentation that must be transmitted with the Form W-8IMY, including the appropriate forms described in this Section 4.3); or

(ii) in the case of a Non-Domestic Credit Party claiming the benefits of the exemption for portfolio interest under Section 871(h) or 881(c) of the Code, (x) a certificate of a duly authorized officer of such Non-Domestic Credit Party to the effect that such Non-Domestic Credit Party is not (A) a "bank" within the meaning of Section 881(c)(3)(A) of the Code (or the obligation of the Borrower hereunder is not, with respect to such bank, a loan agreement entered into in the ordinary course of the bank's trade or business within the meaning of such Section), (B) a "10 percent shareholder" of the Borrower within the meaning of Section 871(h)(3) or 881(c)(3)(B) of the Code, or (C) a controlled foreign corporation receiving interest from a related person within the meaning of Section 881(c)(3)(C) of the Code (such certificate, an "Exemption Certificate") and (y) two properly completed and duly executed copies (or such other reasonable number of copies as shall be requested by the recipient) of Internal Revenue Service Form W-8BEN-E or W-8BEN, as applicable, certifying that the Non-Domestic Credit Party is not a "United States person" or applicable successor form.

If a payment made to a Lender under this Agreement would be subject to U.S. Federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent, at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent, such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower or the Administrative Agent to comply with its obligations under FATCA, to determine that such Lender has or has not complied with such Lender's obligations under FATCA and, as necessary, to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (f), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Credit Party that is not a Non-Domestic Credit Party shall deliver to the Borrower and the Administrative Agent two copies (or such other reasonable number of copies as shall be requested by the recipient) on or prior to the date on which such Credit Party becomes a Credit Party hereunder (and from time to time thereafter upon the request of the Borrower or the Administrative Agent), properly completed and duly executed, of Internal Revenue Service Form W-9 (or any applicable successor form) establishing that such Credit Party is not subject to backup withholding Tax.

In addition, each Credit Party shall deliver such forms promptly upon the obsolescence or invalidity of any form previously delivered by such Credit Party. Each Credit Party shall promptly notify the Borrower and the Administrative Agent at any time it determines that it is no longer in a position to provide any previously delivered form or certificate to the Borrower or Administrative Agent. Notwithstanding anything to the contrary, no Credit Party shall be obligated to deliver any form or certificate it is not legally entitled to deliver.

(g) The Borrower shall not be obligated to pay any additional amounts to any Credit Party pursuant to clause (a)(i) above, or to indemnify any Credit Party pursuant to clause (e) above, in respect of U.S. Federal withholding Taxes to the extent imposed as a result of (i) the failure of such Credit Party to deliver to the Borrower the form or forms and/or an Exemption Certificate, as applicable to such Credit Party, pursuant to clause (f) above, (ii) such form or forms and/or Exemption Certificate not establishing a complete exemption from U.S. Federal withholding Tax or the information or certifications made therein by the Credit Party being untrue or inaccurate on the date delivered in any material respect, or (iii) the Credit Party designating a successor lending office at which it maintains its Loans which has the effect of causing such Credit Party to become obligated for Tax payments in excess of those in effect immediately prior to such designation; provided, however, that the Borrower shall be obligated to pay any additional amounts to any such Credit Party pursuant to clause (a)(i) above, and to indemnify any such Credit Party pursuant to clause (e) above, in respect of U.S. Federal withholding Taxes if (A) any such failure to deliver a form or forms or an Exemption Certificate or the failure of such form or forms or Exemption Certificate to establish a complete exemption from U.S. Federal withholding Tax or inaccuracy or untruth contained therein resulted from a change in any applicable statute, treaty, regulation or other applicable law or any interpretation of any of the foregoing occurring after the date on which such Credit Party became a Credit Party hereunder, which change rendered such Credit Party no longer legally entitled to deliver such form or forms or Exemption Certificate or otherwise ineligible for a complete exemption from U.S. Federal withholding Tax, or rendered the information or certifications made in such form or forms or Exemption Certificate untrue or inaccurate in a material respect, (B) the redesignation of such Credit Party's lending office was made at the request of the Borrower or (C) the obligation to pay additional amounts to any such Credit Party pursuant to clause (a)(i) above or to indemnify any such Credit Party pursuant to clause (e) above is with respect to an assignee Credit Party as a result of an assignment made at the request of the Borrower.

(h) If any Credit Party determines, in good faith, that it has received a refund of or with respect to any Taxes or Other Taxes as to which it has been indemnified by the Borrower or any other Obligor or with respect to which the Borrower or any other Obligor has paid additional amounts pursuant to this Section 4.3, it shall pay to the Borrower as soon as practical thereafter an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower or any other Obligor under this Section 4.3 with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such Credit Party and without interest (other than any interest paid or credited by the relevant Governmental Authority with respect to such refund); provided that the Borrower, upon the request of such Credit Party, shall repay the amount paid over to the Borrower (plus any interest, penalties or other charges imposed by the relevant Governmental Authority) to such Credit Party in the event such Credit Party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this clause (h), in no event will any Credit Party be required to pay any amount to the Borrower pursuant to this clause (h), the payment of which would place such Credit Party in a less favorable net after-Tax position than such Credit Party would have been in had the Tax subject to indemnification and giving rise to such refund not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax never been paid. In addition, if any Credit Party is entitled to claim any refund of or with respect to Taxes or Other Taxes as to which it has been indemnified by the Borrower (or any other Obligor) or with respect

to which the Borrower (or any other Obligor) has paid additional amounts pursuant to this Section 4.3, at the reasonable request of the Borrower, such Credit Party shall reasonably cooperate with the Borrower to make a claim for such refund at the Borrower's expense. This clause (h) shall not be construed to require any Credit Party 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.

Section 4.4 Payments, Computations, etc. Unless otherwise expressly provided in a Loan Document, all payments by the Borrower pursuant to each Loan Document shall be made by the Borrower to the Administrative Agent for the pro rata account of the Credit Parties entitled to receive such payment. All payments shall be made without setoff, deduction or counterclaim not later than 11:00 a.m. on the date due in same-day or immediately available funds to such account as the Administrative Agent shall specify from time to time by notice to the Borrower. Funds received after that time shall be deemed, in the Administrative Agent's sole discretion, to have been received by the Administrative Agent on the next succeeding Business Day. The Administrative Agent shall promptly remit in same-day funds to each Credit Party its share, if any, of such payments received by the Administrative Agent for the account of such Credit Party. All interest and fees shall be computed on the basis of the actual number of days (including the first day through and including the last day) occurring during the period for which such interest or fee is payable over a year comprised of 365 days or, if appropriate, 366 days. Except as otherwise set forth herein, payments due on a day other than a Business Day shall be made on the preceding Business Day. Except as otherwise set forth in any Loan Document, following an Event of Default, all payments made under any Loan Document shall be applied upon receipt (a) first, to the payment of all Obligations owing to the Administrative Agent, in its capacity as the Administrative Agent but not as a Lender, and the Collateral Agent, in its capacity as the Collateral Agent but not as a Lender (including the fees and expenses of counsel to the Administrative Agent and the Collateral Agent); (b) second, after payment in full in cash of the amounts specified in clause (a), to the ratable payment of all interest and fees owing with respect to the Credit Extensions and all costs and expenses owing to the Secured Parties pursuant to the terms of this Agreement, until paid in full in cash; (c) third, after payment in full in cash of the amounts specified in clauses (a) and (b), to the ratable payment of the principal amount of the Loans then outstanding; (d) fourth, after payment in full in cash of the amounts specified in clauses (a) through (c), to the ratable payment of all other Obligations owing to the Credit Parties; and (e) fifth, after payment in full in cash of the amounts specified in clauses (a) through (d), and following the Termination Date, to each Person lawfully entitled to receive such surplus.

Section 4.5 Sharing of Payments. If any Credit Party shall obtain any payment or other recovery (whether voluntary, involuntary, by application of setoff or otherwise) on account of any Credit Extension (other than pursuant to the terms of Section 4.1, 4.2 or 4.3) in excess of its pro rata share of payments obtained by all Credit Parties, such Credit Party shall promptly notify the Administrative Agent of such payment or recovery and shall thereafter as soon as practicable purchase from the other Credit Parties such participations in Credit Extensions made by them as shall be necessary to cause such purchasing Credit Party to share the excess payment or other recovery ratably (to the extent such other Credit Parties were entitled to receive a portion of such payment or recovery) with each of them; provided that, if all or any portion of the excess payment or other recovery is thereafter recovered from such purchasing Credit Party, the purchase shall be rescinded and each Credit Party which has sold a participation to the

purchasing Credit Party shall repay to the purchasing Credit Party the purchase price to the ratable extent of such recovery together with an amount equal to such selling Credit Party's ratable share (according to the proportion of (a) the amount of such selling Credit Party's required repayment to the purchasing Credit Party to (b) total amount so recovered from the purchasing Credit Party) of any interest or other amount paid or payable by the purchasing Credit Party in respect of the total amount so recovered. The Borrower agrees that any Credit Party purchasing a participation from another Credit Party pursuant to this Section may, to the fullest extent permitted by law, exercise all its rights of payment (including pursuant to Section 4.6) with respect to such participation as fully as if such Credit Party were the direct creditor of the Borrower in the amount of such participation; provided that, the Borrower shall have no liability to the Lenders hereunder to the extent that it has made all payments to the Lenders and the Administrative Agent required to be made by the Borrower hereunder. If under any applicable bankruptcy, insolvency or other similar law any Credit Party receives a secured claim in lieu of a setoff to which this Section 4.5 applies, such Credit Party shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Credit Parties entitled under this Section 4.5 to share in the benefits of any recovery on such secured claim.

Section 4.6 Setoff. Each Credit Party shall, upon the occurrence and during the continuance of any Default described in Sections 9.1.9(a) through (d) or, with the consent of the Required Lenders, upon the occurrence and during the continuance of any other Event of Default, have the right to appropriate and apply to the payment of the Obligations owing to it (whether or not then due), and (as security for such Obligations) the Borrower hereby grants to each Credit Party a continuing security interest in, any and all balances, credits, deposits, accounts (other than any trust accounts comprised entirely of moneys held in trust for the benefit of Persons other than the Borrower or their Affiliates) or moneys of the Borrower then or thereafter maintained with such Credit Party (other than any Deposit Accounts or Securities Accounts subject to a Control Agreement); provided that, any such appropriation and application shall be subject to the provisions of Section 4.5. Each Credit Party agrees promptly to notify the Borrower and the Administrative Agent after any such setoff and application made by such Credit Party; provided that, the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Credit Party under this Section 4.6 are in addition to other rights and remedies (including other rights of setoff under applicable law or otherwise) which such Credit Party may have.

Section 4.7 Change of Lending Office. Each Credit Party agrees that if it makes any demand for payment under Section 4.1, 4.2 or 4.3, it will, if requested by the Borrower, file a certificate or document reasonably requested by the Borrower and/or use reasonable efforts (in either case, consistent with its internal policy and legal and regulatory restrictions and so long as such efforts would not be disadvantageous to it, as determined in its sole discretion) to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if the filing of such certificate or document or the making of such a designation would reduce or obviate the need for the Borrower to make payments under Section 4.1, 4.2 or 4.3; provided that, nothing in this Section shall affect or postpone any of the Obligations of the Borrower or the right of any Credit Party provided in Section 4.1, 4.2 or 4.3.

Section 4.8 Replacement of Lenders. If any Lender (an "Affected Lender") (a) fails to consent to an election, consent, amendment, waiver or other modification to this Agreement or other Loan Document that requires the consent of a greater percentage of the Lenders than the Required Lenders and such election, consent, amendment, waiver or other modification is otherwise consented to by the Required Lenders or (b) makes a demand upon the Borrower for (or if the Borrower is otherwise required to pay) amounts pursuant to Section 4.1, 4.2 or 4.3 (and the payment of such amounts are, and are likely to continue to be, more onerous in the reasonable judgment of the Borrower than with respect to the other Lenders), the Borrower may, at its sole cost and expense (in the case of clause (a) only, within 30 days of such consent of Required Lenders, or in the case of clause (b), at any time), give notice (a "Replacement Notice") in writing to the Administrative Agent and such Affected Lender of its intention to cause such Affected Lender to sell all or any portion of its Loans and Notes (if any) to another financial institution or other Person (a "Replacement Lender") designated in such Replacement Notice and (in the case of clause (b)) which Replacement Lender would require no payment, or would require a reduced payment, pursuant to Section 4.1, 4.2 or 4.3, as the case may be; provided, however, that no Replacement Notice may be given by the Borrower if (i) such replacement conflicts with any applicable law or regulation, (ii) any Event of Default shall have occurred and be continuing at the time of such replacement or (iii) prior to any such replacement in connection with clause (b) above, such Lender shall have taken any necessary action under Section 4.2 or 4.3 (if applicable) so as to eliminate the continued need for payment of amounts owing pursuant to Section 4.2 or 4.3. If the Administrative Agent shall, in the exercise of its reasonable discretion and within 10 days of its receipt of such Replacement Notice, notify the Borrower and such Affected Lender in writing that the Replacement Lender is reasonably satisfactory to the Administrative Agent (such consent of the Administrative Agent not being required where the Replacement Lender is already a Lender, an Affiliate of a Lender or an Approved Fund), then such Affected Lender shall assign, in accordance with Section 12.11, the portion of its Loans, Notes (if any), and other rights and obligations under this Agreement and all other Loan Documents designated in the Replacement Notice to such Replacement Lender; provided that, (A) such assignment shall be without recourse, representation or warranty (in accordance with and subject to the restrictions contained in Section 12.11) and shall be on terms and conditions reasonably satisfactory to such Affected Lender and such Replacement Lender, (B) the purchase price paid by such Replacement Lender shall be in the amount of such Affected Lender's Loans designated in the Replacement Notice, together with all accrued and unpaid interest and fees in respect thereof, plus all other amounts (including the amounts demanded and unreimbursed under Sections 4.1, 4.2 and 4.3), owing to such Affected Lender hereunder, (C) in the case of an assignment and assumption from an event as described in clause (a) of the first sentence of this Section 4.8, the Replacement Lender shall consent, at the time of such assignment, to such event, and (D) the Borrower shall pay to the Affected Lender and the Administrative Agent all reasonable out-of-pocket expenses incurred by the Affected Lender and the Administrative Agent in connection with such assignment and assumption (including the processing fees described in Section 12.11). Upon the effective date of an assignment described above, the Replacement Lender shall become a "Lender" for all purposes under the Loan Documents. Each Lender hereby grants to the Administrative Agent an irrevocable power of attorney (which power is coupled with an interest) to execute and deliver, on behalf of such Lender as assignor, any assignment agreement necessary to effectuate any assignment of such Lender's interests hereunder in the circumstances contemplated by this Section 4.8.

ARTICLE V

CONDITIONS PRECEDENT

Section 5.1 Conditions Precedent to the Effective Date. The occurrence of the Effective Date pursuant to Section 12.8 and the obligation of each Lender to make (or be deemed to have made) Loans on the Effective Date are subject to the prior or concurrent satisfaction of each of the conditions precedent set forth in this Section 5.1.

Section 5.1.1 Resolutions, etc. The Administrative Agent shall have received from each Obligor, as applicable, (a) a copy of a good standing certificate, dated a date reasonably close to the Effective Date, for each such Person and (b) a certificate, dated as of the Effective Date (and with counterparts for each Lender), duly executed and delivered by such Person's Secretary or Assistant Secretary, managing member or general partner, as applicable, as to:

(i) solely with respect to the certificate to be delivered by Borrower, resolutions of Borrower's board of directors then in full force and effect authorizing the execution, delivery and performance of each Loan Document and Transaction Document, as the case may be, executed or to be executed by each Obligor and the transactions contemplated hereby and thereby;

(ii) the incumbency and signatures of those of its officers, managing members or general partners, as applicable, authorized to act with respect to each Loan Document to be executed by such Person; and

(iii) the full force and validity of each Organic Document of such Person and copies thereof;

upon which certificates each Credit Party may conclusively rely until it shall have received a further certificate of the Secretary, Assistant Secretary, managing member or general partner, as applicable, of any such Person canceling or amending the prior certificate of such Person.

Section 5.1.2 Effective Date Certificate. The Administrative Agent shall have received the Effective Date Certificate, in which certificate the Borrower shall agree and acknowledge that the statements made therein shall be deemed to be true and correct representations and warranties in all material respects of the Borrower as of such date (unless stated to relate solely to an earlier date, in which case such representations and warranties were true and correct as of such earlier date), and, at the time each such certificate is delivered, such statements shall in fact be true and correct in all material respects (it being understood that the Borrower shall not have to certify as to any matter set forth in this Agreement to the extent that the determination thereof is to be made (as expressly provided for in this Agreement) by the Administrative Agent or any Lender). All documents and agreements required to be appended to the Effective Date Certificate (including copies of all Material Project Documents) shall be in form and substance reasonably satisfactory to the Administrative Agent.

Section 5.1.3 Credit Agreement; Other Loan Documents. The Administrative Agent shall have received this Agreement, executed and delivered by an Authorized Officer of the Borrower and each of the Subsidiary Guarantors and each Lender. The Administrative Agent

shall have received each other Loan Document originally executed and delivered by each applicable Obligor and each applicable Credit Party.

Section 5.1.4 Consummation of Transactions Contemplated by Plan of Reorganization.

(a) Second Lien Notes. The Administrative Agent shall have received a copy of the Second Lien Indenture and each other Note Document (as defined therein) (together, in each case, with all amendments, supplements, schedules and exhibits thereto), which (a) has been duly authorized, executed and delivered by each Person party thereto, (b) is in form and substance satisfactory to the Super-Majority Lenders, and (c) is in full force and effect. The Second Lien Notes shall have been issued in an aggregate principal amount equal to $[●] in complete satisfaction and discharge of all obligations of the Debtors to the holders of Prepetition Second Lien Claims.

(b) Confirmation Order. The Confirmation Order shall be in form and substance reasonably satisfactory to the Super-Majority Lenders and shall have been entered and shall not be subject to any stay, and the conditions precedent to the effectiveness of the Plan of Reorganization shall have been satisfied (or waived) to the satisfaction of the Super-Majority Lenders.

(c) Newly Issued Equity. On the Effective Date, (i) subject to the proviso to Section 4.3(b)(i) of the Plan of Reorganization, each Lender shall have received its Pro Rata Share (as defined in the Plan of Reorganization) of 100% of the ETC Series A Equity Interests and (ii) if applicable, each applicable Lender contemplated by the proviso to Section 4.3(b)(i) of the Plan of Reorganization shall have receive, in lieu of its Pro Rata Share (as defined in the Plan of Reorganization) of the ETC Series A Equity Interests, 100% of the ETC Series C Equity Interests, in each case, in accordance with Section 4.3(b) of the Plan of Reorganization.

(d) No Other Indebtedness. The Obligors shall have no outstanding Indebtedness or preferred Capital Securities other than the Obligations, the obligations under the Second Lien Indenture and the other Indebtedness permitted hereunder.

Section 5.1.5 Delivery of Notes. The Administrative Agent shall have received, for the account of each Lender that has requested a Note in writing two Business Days prior to the Effective Date, such Lender's Notes duly executed and delivered by an Authorized Officer of the Borrower.

Section 5.1.6 Fees, Expenses, etc. The Administrative Agent and their counsel and consultants shall have received for their respective accounts all fees, costs and expenses due and payable pursuant to Section 12.3 (to the extent invoiced on or prior to the Effective Date).

Section 5.1.7 Representations and Warranties, No Default, etc.

(a) The representations and warranties set forth in each Loan Document are, in each case, true and correct in all material respects with the same effect as if then made (unless stated to relate solely to an earlier date, in which case such representations and warranties were true and correct as of such earlier date); and

(b) no Default shall have occurred and be continuing.

Section 5.1.8 Solvency, etc. The Administrative Agent shall have received a certificate, dated as of the Effective Date and substantially in the form of Exhibit H hereto from the Borrower duly executed and delivered by an Authorized Financial Officer of Borrower (in his capacity as such Authorized Financial Officer), certifying that Borrower and its Subsidiaries on a consolidated basis after giving effect to the Transactions, are Solvent.

Section 5.1.9 Opinions of Counsel. The Administrative Agent shall have received opinions, dated the Effective Date and addressed to the Administrative Agent and all Lenders, from New York, Delaware, Arizona, Louisiana and Arkansas counsel to the Obligors, in form and substance reasonably satisfactory to the Required Lenders and the Administrative Agent.

Section 5.1.10 Collateral Documents. The Administrative Agent shall have received:

(a) the Pledge and Security Agreement, dated as of the Effective Date, duly executed and delivered by an Authorized Officer of each Obligor together with:

(i) (A) the certificates evidencing all of the issued and outstanding shares of Capital Securities pledged pursuant to the Pledge and Security Agreement, which certificates in each case shall be accompanied by undated instruments of transfer duly executed in blank, or, if any such shares of Capital Securities pledged pursuant to the Pledge and Security Agreement are uncertificated securities, the Collateral Agent shall have obtained "control" (as provided in the UCC) over such shares of Capital Securities), (B) the Subordinated Intercompany Note, substantially in the form of Exhibit G, duly executed and delivered by an Authorized Officer of each Obligor, and (C) such other instruments and documents as shall be necessary or in the reasonable opinion of the Required Lenders desirable under applicable law to perfect the third-priority security interest (subject to certain Permitted Liens) of the Collateral Agent in all shares of Capital Securities and any instruments comprising Collateral;

(ii) copies of UCC financing statements (Form UCC-1) naming each such Obligor executing the Pledge and Security Agreement as a debtor and the Collateral Agent as the secured party, or other similar instruments or documents to be filed, or filed prior to the Effective Date with prior written authorization from the Obligors, under the UCC of all jurisdictions as may be necessary or, in the reasonable opinion of the Required Lenders, desirable to perfect the security interests of the Collateral Agent pursuant to the Pledge and Security Agreement ("Filing Statements"); and

(iii) a search report prepared by a party acceptable to the Collateral Agent, dated a date reasonably near to the Effective Date, listing effective financing statements which name such Obligor (under its present name and certain of its previous names) as the debtor and which are filed in certain of the jurisdictions in which filings are to be made pursuant to clause (ii) above, together with copies of such financing statements;

(b) a Mortgage, dated as of the Effective Date, encumbering each Mortgaged Property duly executed by the respective Obligor holding a fee, leasehold, easement or other real or personal property interest in such Mortgaged Property, in proper form for recording in the recording office of each political subdivision where such Mortgaged Property is located together with:

(i) evidence of the completion (or satisfactory arrangements for the completion) of all recordings and filings of such Mortgage as may be necessary or, in the reasonable opinion of the Required Lenders, desirable to effectively create a valid, perfected third-priority Lien, subject only to Permitted Liens, against the Mortgaged Property covered thereby;

(ii) evidence of the payment of (or satisfactory arrangements for the payment of) all Title Policy premiums, search and examination charges and related charges, mortgage recording taxes, fees, costs and expenses of filing of each Mortgage as may be necessary or, in the reasonable opinion of the Required Lenders, desirable to create a valid, perfected third-priority Lien against the Mortgaged Property identified in such Mortgage, subject only to Permitted Liens;

(iii) with respect to each Mortgage, a mortgagee's title insurance policy or signed commitment to issue such policy with no unsatisfied conditions in favor of the Collateral Agent, as mortgagee, in amounts and in form and substance and issued by insurers, in each case reasonably satisfactory to the Required Lenders, with respect to the property purported to be covered by such Mortgage, insuring that title to such property is indefeasible and that the interest created by the Mortgage constitutes a valid third-priority perfected Lien on the Mortgaged Property and fixtures described therein (the "Title Policy") free and clear of all Liens other than Permitted Liens, and such policies shall also include, to the extent available, such endorsements and affirmative coverage as the Required Lenders may reasonably request and is customarily available in the applicable jurisdiction and shall be accompanied by evidence of the payment in full of all premiums thereon;

(iv) with respect to each Mortgaged Property, a survey (A) prepared by a surveyor reasonably acceptable to the Required Lenders, (B) (x) dated not earlier than six months prior to the Effective Date, or (y) if dated earlier than six months prior to the Effective Date, if accompanied by an affidavit acceptable to the Required Lenders and First American Title Insurance Company in their sole discretion attesting to the accuracy of the state of facts on the survey, and sufficient to induce First American Title Insurance Company to provide the insurance coverage requested by the Required Lenders (to the extent such coverage is available), (C) to the extent required for First American Title Insurance Company to provide insurance coverage, certified to the Administrative Agent, the Collateral Agent and the title insurance company issuing the Title Policy for such Mortgaged Property pursuant to clause (b)(iii) above, which certification shall be reasonably acceptable to the Required Lenders and (D) complying with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by ALTA, ACSM and NSPS in 2005 (except for (1) such deviations as are acceptable to the Required Lenders and (2) the surveys of

easement areas situated outside of the main project sites of the Mortgaged Property may be dated earlier than six months prior to the Effective Date);

(v) with respect to each Mortgage, such UCC financing statements as may be necessary to perfect the Lien of the Collateral Agent, for the benefit of the Secured Parties, on the fixtures granted in such Mortgage;

(vi) opinions of counsel to the Obligors in each jurisdiction where a Mortgaged Property is located, in each case in form and substance, and from counsel, reasonably satisfactory to the Required Lenders, Administrative Agent and the Collateral Agent; and

(vii) such other affidavits, certificates, approvals, opinions or documents as the Administrative Agent or Collateral Agent may reasonably request; and

(c) such other executed (or otherwise in recordable form) documents, financing statements, agreements and instruments requested by the Required Lenders, Administrative Agent or the Collateral Agent as are necessary or desirable for the Secured Parties to obtain a valid and perfected third-priority security interest in the Collateral (subject to certain Permitted Liens), including without limitation any reaffirmation agreements and any other acknowledgments or other agreements relating to the Security Documents as the Required Lenders, Administrative Agent or the Collateral Agent may reasonably request.

Section 5.1.11 Insurance. The Administrative Agent shall have received a certification from the Borrower stating that (a) the Required Insurance is in full force and effect and is not subject to cancellation without 30 days' prior notice (or, in the case of non-payment of premiums due, 10 days' prior notice), and (b) all premiums then due thereon shall have been paid or the Borrower is not in arrears on any premium due.

Section 5.1.12 PATRIOT Act Disclosures. The Administrative Agent and each Lender shall have received all PATRIOT Act Disclosures and other applicable "Know-Your-Customer" and anti-money-laundering rules and regulations requested by them no less than five days prior to execution of this Agreement.

Section 5.1.13 Necessary Consents; Acknowledgments. Each Obligor shall have obtained all consents and approvals of Governmental Authorities and other Persons necessary to be obtained by the Effective Date in connection with the Transactions and each of the foregoing shall be in full force and effect, and the Administrative Agent shall have received evidence of such consents and approvals, all of which are set forth on Schedule V hereto. All applicable waiting periods with respect to such consents and approvals shall have expired without any action being taken or threatened by any competent authority which would reasonably be expected to restrain, prevent or otherwise impose materially burdensome conditions on the Transactions or the other transactions contemplated hereby

Section 5.1.14 Financial Statements. Receipt by the Administrative Agent all financial statements required, as of the Effective Date, to have been delivered to the administrative agent and/or the lenders under Section 7.1 of the Prepetition Third Lien Credit Agreement.

Section 5.1.15 Borrowing Request, etc. The Administrative Agent shall have received a Borrowing Request. Each of the delivery of a Borrowing Request and the acceptance by the Borrower of the benefits of the Loans shall constitute a representation and warranty by the Borrower that on the Effective Date (both before and after the making (or deemed making) of the Loans) the statements required to be true and correct under Section 5.1.7 as a condition to the Effective Date are true and correct in all material respects.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

In order to induce the Credit Parties to enter into this Agreement and the Lenders to make (or be deemed to have made) Loans hereunder, the Borrower and each Subsidiary Guarantor represents and warrants, as of the Effective Date, as set forth in this Article VI.

Section 6.1 Organization, etc. Each Obligor (a) is validly organized and existing and in good standing under the laws of the state or jurisdiction of its incorporation or organization, (b) is duly qualified to do business and is in good standing as a foreign entity in each jurisdiction where the nature of its business requires such qualification (except where the failure to so qualify could not reasonably be expected to have a Material Adverse Effect), and (c) has full power and authority to enter into and perform its Obligations under each Loan Document to which it is a party and to own and hold under lease its property and to conduct its business substantially as currently conducted by it.

Section 6.2 Due Authorization, Non-Contravention, etc. The execution, delivery and performance by each Obligor of each Loan Document executed or to be executed by it, each such Obligor's participation in the consummation of all aspects of the Transactions, and the execution, delivery and performance by the Borrower or (if applicable) any other Obligor of the agreements executed and delivered by it in connection with the Transactions are in each case within each such Person's powers, have been duly authorized by all necessary corporate, limited liability company or partnership action, and do not:

(a) contravene (i) any Obligor's Organic Documents, (ii) any contractual restriction binding on or affecting any Obligor (other than any such contractual restriction that shall have been waived on or prior to the Effective Date), except where such contravention would not reasonably be expected to have a Material Adverse Effect, (iii) any provision of any court decree or order binding on or affecting any Obligor in any material respect or (iv) any provision of any law or governmental regulation binding on or affecting any Obligor in any material respect; or

(b) result in, or require the creation or imposition of, any Lien on any Obligor's properties (except as permitted or required by this Agreement).

Section 6.3 Government Approval, Regulation, etc. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or other Person (other than those which have been, or on the Effective Date will be, duly obtained or made and which are, or on the Effective Date will be, in full force and effect) is required by any Obligor or

any holder of Capital Securities thereof for the consummation of the Transactions or the due execution, delivery or performance (including the valid granting of any security interest or the enforcement thereof) by any Obligor of any Loan Document to which it is a party.

Section 6.4 Validity, etc. Each Loan Document has been duly executed and delivered by each Obligor that is a party thereto and each Loan Document to which any Obligor is a party constitutes the legal, valid and binding obligation of such Obligor, enforceable against such Obligor in accordance with its respective terms (except, in any case, as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and by principles of equity).

Section 6.5 Insurance. All Required Insurance has been obtained and is in full force and effect.

Section 6.6 Lien Ranking. The payment obligations under each of the Loan Documents rank and will at all times rank first in right and priority of payment with all other present and future Indebtedness (actual or contingent) of the Obligors, except that such payment Obligations shall be secured on a third-priority basis subject only to Liens in favor of First Lien Obligations, Second Lien Obligations and Permitted Liens which by operation of law would rank senior in right of priority.

Section 6.7 Security Interests and Liens.

(a) All filings and other actions reasonably necessary to perfect and protect the security interest in the Collateral created under the Security Documents have been, as applicable, duly made, taken or delivered to the Collateral Agent for filing, and (subject to periodic filing of UCC continuation statements when required) are in full force and effect, and the Security Documents create in favor of the Collateral Agent, for the benefit of the respective Secured Parties, a valid and, together with such filings and other actions, perfected third-priority security interest in the Collateral (subject to Permitted Liens) securing the payment of the Obligations.

(b) All Liens securing the Obligations are subject to the subordination created by the Intercreditor Agreements and all such Obligations constitute "Third Lien Obligations" (as defined in the Subordinated Lien Intercreditor Agreement). Each of the Obligors acknowledges that the Administrative Agent, the Collateral Agent, and each Lender is entering into this Agreement and is making (or being deemed to have made) Loans hereunder in reliance upon the Intercreditor Agreements and the Lien subordination provisions of the Intercreditor Agreements.

ARTICLE VII

AFFIRMATIVE COVENANTS

Each of the Subsidiary Guarantors and the Borrower covenants and agrees with each Lender and the Administrative Agent that, until the Termination Date has occurred, such Person will perform or cause to be performed the obligations set forth below.

Section 7.1 Financial Information, Reports, Notices, etc. The Borrower will furnish the Administrative Agent, who will distribute to each Lender, copies of the following financial statements, reports, notices and information:

(a) as soon as available and in any event within 45 days after the end of each of the first three Fiscal Quarters of each Fiscal Year, an unaudited consolidated and consolidating balance sheet of Borrower as of the end of such Fiscal Quarter and consolidated and consolidating statements of income and cash flow of the Borrower for such Fiscal Quarter and for the period commencing at the end of the previous Fiscal Year and ending with the end of such Fiscal Quarter, and including (in each case), in comparative form the figures for the corresponding Fiscal Quarter in, and year-to-date portion of, the immediately preceding Fiscal Year, certified as complete and correct by an Authorized Financial Officer of the Borrower and as presenting fairly in all material respects the financial condition and results of operation of the Borrower on a consolidated and consolidating basis in accordance with GAAP consistently applied (subject to normal year-end audit adjustments and the absence of footnotes);

(b) as soon as available and in any event within 120 days after the end of each Fiscal Year commencing with the Fiscal Year ending December 31, 2014, a copy of the consolidated and consolidating balance sheet of the Borrower, and the related consolidated and consolidating statements of income and cash flow of the Borrower for such Fiscal Year audited (without any Impermissible Qualification) by independent public accountants reasonably acceptable to the Required Lenders, all such financial statements to be certified as complete and correct by an Authorized Financial Officer of the Borrower and as presenting fairly in all material respects the financial condition and results of operation of the Borrower on a consolidated and consolidating basis in accordance with GAAP consistently applied;

(c) concurrently with the delivery of the financial information pursuant to clauses (a) and (b) above, a Compliance Certificate, (i) stating that no Default has occurred and is continuing (or, if a Default has occurred, specifying the details of such Default and the action that an Obligor has taken or proposes to take with respect thereto), and (ii) stating that no Subsidiary has been formed or acquired since the delivery of the last Compliance Certificate;

(d) as soon as available and in any event no later than the earlier to occur of (i) 30 days after the approval thereof by the board of directors or its equivalent of the Borrower and (ii) 45 days after the first day of the Fiscal Year of the Borrower, an annual operating and capital budget for such Fiscal Year (with respect to each such Fiscal Year, the "Budget"), which Budget shall be certified by an Authorized Financial Officer of the Borrower as having been prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time made and at the time so furnished, it being understood that such Budget is subject to significant uncertainties and contingencies, many of which are beyond the control of the Obligors, and no assurance can be given that the projections underlying such Budget will be realized;

(e) as soon as possible and in any event within three Business Days after any Obligor obtains knowledge of the occurrence of a Default, a statement of an Authorized Financial Officer of such Obligor setting forth details of such Default and the action which such Obligor has taken and proposes to take with respect thereto;

(f) as soon as possible and in any event within three Business Days after any Obligor obtains knowledge of the occurrence of any event, condition or development that results in, or could reasonably be expected to result in, a Material Adverse Effect, notice thereof and, to the extent the Administrative Agent requests, copies of all documentation relating thereto;

(g) promptly upon becoming aware of any ERISA Event, notice thereof and copies of all documentation relating thereto;

(h) promptly upon receipt thereof, copies of all "management letters" submitted to the Borrower or any other Obligor by the independent public accountants referred to in clause (b) above in connection with each audit made by such accountants;

(i) upon the request of any Lender, provide (or cause the applicable Obligor to provide) any information with respect to any Obligor that such Lender believes is reasonably necessary to be delivered to comply with the PATRIOT Act;

(j) promptly after delivery thereof, any additional information regarding (i) any Obligor, (ii) Gila River Energy and its Subsidiaries or (iii) any Union SPV or Subsequent Gila River SPV and their respective Subsidiaries, in each case, that is delivered to the Second Lien Indenture Trustee or the holders of the Second Lien Notes or that is required to be and actually delivered to any holder of Indebtedness under the Gila River Energy Financing Documents or pursuant to the terms of any Union SPV Financing or Subsequent Gila River SPV Financing (including, for the avoidance of doubt, financial information with respect to Gila River Energy, any Union SPV, any Subsequent Gila River SPV and their respective Subsidiaries); and

(k) such other financial and other information as any Lender through the Administrative Agent may from time to time reasonably request (including information and reports in such detail as the Administrative Agent may request with respect to the terms of and information provided pursuant to the Compliance Certificate and with respect to reconciling the financial information required to be delivered pursuant to Section 7.1(a) and (b) with the Budget).

Section 7.2 Maintenance of Existence; Compliance with Contracts, Laws, etc. Each Obligor will:

(a) preserve and maintain (i) its legal existence and (ii) its qualification as a foreign corporation in each jurisdiction where the nature of its business or the location of its assets requires it to be so qualified, except where the failure to so qualify could not reasonably be expected to have a Material Adverse Effect;

(b) comply with all applicable material laws, rules, regulations and orders (such compliance to include compliance in all material respects with ERISA, the PATRIOT Act, the Racketeer Influenced and Corrupt Organizations Chapter of the Organized Crime Control Act of 1970, the FPA, the EP Act, including PUHCA 2005, and state regulatory laws governing public utilities, public service companies, generation owners, or similar entities, in each case, as applicable), including the payment (before the same become delinquent) of all material Taxes imposed upon any Obligor or upon its property, except to the extent being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with

GAAP have been set aside on the books of such Obligor, except, in each case, to the extent such non-compliance could not reasonably be expected to cause a Material Adverse Effect;

(c) ensure that no portion of the Loans will be used, disbursed or distributed for any purpose, or to any Person, directly or indirectly, in violation of any of the Terrorism Laws and shall take all necessary action to comply with all Terrorism Laws with respect thereto; and

(d) ensure that no Obligor, other than Union Power, enters into a transaction for the sale of electricity, unless and until such Obligor has obtained FERC authorization to make such sale.

Section 7.3 Reserved.

Section 7.4 Maintenance. Each Obligor will (a) maintain, preserve, protect and keep its and their respective properties in good repair, working order and condition (ordinary wear and tear excepted) in accordance with Prudent Industry Practices, (b) make necessary repairs, renewals and replacements to the Union Power Facility in accordance with Prudent Industry Practices, (c) maintain all equipment and spare parts inventory in accordance with Prudent Industry Practices and (d) maintain all material Permits, necessary for the operation of the Union Power Facility.

Section 7.5 Maintenance of Insurance. Each Obligor will maintain insurance (including generation outage insurance) in the forms, types, amounts and with the deductibles specified by Schedule IV, or such other insurance as is customarily maintained by companies in comparable businesses as such Obligor (the "Required Insurance").

Section 7.6 Books and Records; Inspection. Each Obligor will keep books and records in accordance with GAAP which accurately reflect all of its business affairs and transactions and permit each Credit Party or any of their respective representatives (including the Independent Engineer), at reasonable times and upon reasonable notice to such Obligors (which visits shall be limited to once per calendar year in the aggregate absent a Default occurring and continuing), to visit such Obligor's offices, to discuss such Obligor's financial matters with its officers and employees, and its independent public accountants (and each Obligor hereby authorizes such independent public accountant to discuss such Obligor's financial matters with each Credit Party or any of their respective representatives whether or not any representative of such Obligor is present) and to examine (and photocopy extracts from) any of such Person's books and records; provided that, unless any Default has occurred and is continuing, any such annual visit shall be coordinated with the Administrative Agent for the purpose of providing for one annual visit which is open to all the Credit Parties. The Borrower shall pay any fees of such independent public accountant incurred in connection with any Credit Party's exercise of its rights pursuant to this Section 7.6.

Section 7.7 Environmental Laws. Each Obligor will (and will cause Gila River Energy, GRE 2014 and Gila River Power to) (a) comply, and use commercially reasonable efforts to cause all lessees and other Persons operating or occupying its properties to comply, with all Environmental Laws and environmental Permits, except to the extent the failure to do so

could not reasonably be expected to have a Material Adverse Effect; (b) obtain, maintain and renew all environmental Permits necessary for its operations and properties, except to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect; (c) conduct any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Materials from any of its properties, in accordance with the requirements of all Environmental Laws, except where failure to do so could not reasonably be expected to have a Material Adverse Effect; provided that, such Obligor shall not be required to conduct any such investigation, study, sampling or testing, or to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances; (d) promptly notify the Administrative Agent and provide copies upon receipt of any written claims, complaints, notices of violation or information requests related to any actual, alleged or potential material non-compliance with or material liability under Environmental Laws and provide the Administrative Agent with periodic updates (at least quarterly) on the status of such matters; (e) promptly notify the Administrative Agent of any Release or discovery of Hazardous Materials at any of its properties that is reasonably likely to require material expenditures to investigate and/or remediate said Hazardous Materials and provide the Administrative Agent with periodic updates (at least quarterly) on the status of such matters; (f) keep its property free of any Lien imposed under any Environmental Law, except to the extent, and only for the period during which the Obligor is diligently contesting such Lien in good faith by appropriate proceedings and for which appropriate reserves are being maintained; and (g) provide reasonable access to the Administrative Agent and its representatives, consultants and engineers to each Obligor's property, personnel and records, at the cost and expense of each Obligor, to allow the Required Lenders (through the Administrative Agent) to evaluate whether said Obligor is in compliance with the covenants set forth in this Section 7.7; provided further that, as to this clause (g), that any Obligor's obligation to reimburse the Administrative Agent for such inspections shall be limited to one time in any calendar year unless (x) the Administrative Agent or the Required Lenders has a reasonable basis for believing that said Obligor is not in compliance with the covenants set forth in this Section 7.7 or (y) said Obligor is otherwise in default pursuant to the terms of this Agreement.

Section 7.8 Security, Further Assurances, etc. Each Obligor will execute any documents, Filing Statements, agreements and instruments, and take all further action (including filing Mortgages on any Mortgaged Properties existing on the Effective Date and any other real property acquired after the Effective Date) that may be required under applicable law, or that the Administrative Agent or the Collateral Agent (acting at the direction of the Required Lenders) may reasonably request, in order to effectuate the transactions contemplated by the Loan Documents and in order to grant, preserve, protect and perfect the validity and third priority (subject only to Permitted Liens) of the Liens created or intended to be created by the Loan Documents. In addition, from time to time, to the extent permitted under applicable law the Obligors will, at their cost and expense, promptly secure the Obligations by pledging or creating, or causing to be pledged or created, perfected Liens with respect to such of its assets and properties as the Required Lenders shall designate (it being agreed that it is the intent of the parties that the Obligations shall be secured by, among other things, substantially all the assets of the Obligors and each of their Subsidiaries, including any real and personal property acquired after the Effective Date). Such Liens will be created under the Loan Documents in form and

substance reasonably satisfactory to the Administrative Agent and the Collateral Agent (acting at the direction of the Required Lenders), and the Obligors, as applicable, shall deliver, or cause to be delivered, to the Administrative Agent and the Collateral Agent all such instruments and documents (including legal opinions, title insurance policies and lien searches) as the Required Lenders, Administrative Agent or the Collateral Agent shall reasonably request to evidence compliance with this Section 7.8.

Section 7.9 Maintenance of Corporate Separateness. Each Obligor, Gila River O&M Subsidiary, Gila River Energy, GRE 2014 and Gila River Power will satisfy customary corporate formalities. None of the Obligors nor Gila River O&M Subsidiary, Gila River Energy, GRE 2014 or Gila River Power shall take any action, or conduct its affairs in a manner, which is likely to result in the separate existence of an Obligor from any non-Obligor being ignored by any court of competent jurisdiction.

Section 7.10 Reserved.

Section 7.11 Reserved.

Section 7.12 Intercompany Loans. The Borrower shall cause all Indebtedness issued by one Obligor to another Obligor to be evidenced by a Subordinated Intercompany Note substantially in the form of Exhibit G

Section 7.13 Performance of Project Documents. Except as could not reasonably be expected to have a material adverse effect on the Lenders, each Obligor will perform and observe all of the material terms and provisions of each Project Document to be performed or observed by it, maintain each such Project Document to which it is a party in full force and effect, and enforce such Project Document in accordance with its material terms.

Section 7.14 SPV Subsidiary Collateral and Obligors. If, at any time, any SPV Subsidiary is no longer prohibited by the terms of any Union SPV Financing or Subsequent Gila River SPV Financing, as applicable, from granting Liens in favor of the Collateral Agent on any of its assets or from being an Obligor hereunder and under the other Loan Documents, then the Obligors shall promptly cause such SPV Subsidiary to (a) enter into such security documents (including supplements to the Security Documents) as are necessary to create a Lien in favor of the Collateral Agent on all such assets, with the priority contemplated by the Subordinated Lien Intercreditor Agreement and (b) to become a guarantor and Obligor hereunder (collectively, the "SPV Subsidiary Collateral Actions"). After giving effect to the SPV Subsidiary Collateral Actions, (i) any such SPV Subsidiary shall be subject to all covenants and agreements applicable to Obligors hereunder and under the other Loan Documents and (ii) the obligations specifically referred to herein as being applicable to the Union Power Facility shall be equally applicable to the assets owned by such SPV Subsidiary.

ARTICLE VIII

NEGATIVE COVENANTS

Each of the Subsidiary Guarantors and the Borrower covenants and agrees with each Lender and the Administrative Agent that, until the Termination Date has occurred, such Person will perform or cause to be performed the obligations set forth below.

Section 8.1 Business Activities.

(a) No Obligor will engage in any business activity except those business activities engaged in on the date of this Agreement and activities reasonably incidental or related thereto, or any business or business activity that is reasonably similar thereto or a reasonable extension, development or expansion thereof or ancillary thereto.

(b) The Borrower shall cause the Corporate Co-Issuer to (i) not engage in any business activity other than acting as co-issuer of the Second Lien Notes and as a Subsidiary Guarantor under this Agreement; (ii) own any assets, except as may be reasonably incidental or related to activities specified in the foregoing clause (i); or (iii) incur any Indebtedness except as required of a Subsidiary Guarantor under this Agreement, and as a guarantor under the Loan Documents (as defined in the First Lien Credit Agreement) and the Note Documents (as defined in the Second Lien Indenture).

Section 8.2 Indebtedness; Gila River and Union SPV Project Indebtedness.

Section 8.2.1 Indebtedness. No Obligor will create, incur, assume or permit to exist any Indebtedness, other than:

(a) Indebtedness in respect of the Obligations;

(b) Indebtedness existing as of the Effective Date which is identified in Item 8.2.1(b) of the Disclosure Schedule and any Permitted Refinancing of such Indebtedness;

(c) Indebtedness of the Borrower or any Subsidiary Guarantor (i) evidencing the deferred purchase price of newly acquired property or incurred to finance the acquisition of or improvement of equipment of the Borrower or any Subsidiary Guarantor (pursuant to purchase money mortgages, whether owed to the seller or a third party) used in the ordinary course of business of the Borrower or any Subsidiary Guarantor (provided that such Indebtedness is incurred within 90 days following the acquisition of such equipment or property), and (ii) in respect of Capitalized Lease Liabilities; provided that the aggregate amount of all Indebtedness outstanding pursuant to this clause (c) shall not at any time exceed $25,000,000;

(d) Hedging Obligations of the Obligors arising under any Specified Commodity Hedge Agreements, and any other Hedge Agreement (other than an Interest Rate Hedge Agreement) entered into in the ordinary course of business consistent with prudent business practice and not for speculative purposes;

(e) Indebtedness of one Obligor to another Obligor; provided that such Indebtedness is unsecured and issued pursuant to the Subordinated Intercompany Note;

(f) (i) (A) Indebtedness of the Borrower under the Second Lien Indenture (and any Refinancing thereof) in an aggregate outstanding principal amount not to exceed the Second Lien Cap Amount; and (B) Contingent Liabilities of the Subsidiary Guarantors in respect of such Indebtedness; and (ii) (A) Indebtedness of the Borrower under the First Lien Credit Agreement in respect of letters of credit and drawings or revolving loans for working capital thereunder and any "Refinancing" (or other comparable term) (as permitted by and as defined in the First Lien Intercreditor Agreement) of such Indebtedness in an aggregate principal amount not to exceed $40,000,000 and (B) Contingent Liabilities of the Subsidiary Guarantors in respect of such Indebtedness, in each case, that is subject to the First Lien Intercreditor Agreement; provided that, no Subsidiary of the Borrower may undertake a Contingent Liability with respect to the Indebtedness under the First Lien Credit Agreement or the Second Lien Indenture unless such Subsidiary has become a guarantor and Obligor hereunder and has satisfied the requirements of Section 7.8.

(g) obligations under any Power Purchase Agreements that would constitute Indebtedness;

(h) trade or other similar Indebtedness incurred in the ordinary course of business (but not for borrowed money) and (i) not more than sixty (60) days past due, or (ii) being contested in good faith and by appropriate proceedings;

(i) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or other cash management services in the ordinary course of business;

(j) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds, financial assurances and completion guarantees and similar obligations in each case provided in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;

(k) to the extent constituting Indebtedness, any Permitted Volumetric Production Payment Obligation;

(l) Indebtedness in respect of the Act 9 Bonds;

(m) Indebtedness secured by Liens described in Section 8.3(x);

(n) Indebtedness pursuant to the terms of a Project Document;

(o) Intercompany Loans made from Union Power to Finance Co. pursuant to the Finance Co. Loan Agreement;

(p) Indebtedness in respect of financing arrangements for purchased gas to the extent such financing is permitted to be secured by a Lien described in Section 8.3(cc); and

(q) unsecured Indebtedness, other than Indebtedness described in clauses (a) through (p) above, in an aggregate principal amount not to exceed $15,000,000 at any time outstanding;

provided, however, that no Indebtedness otherwise permitted by clause (c) above shall be created, incurred or assumed if an Event of Default has occurred and is then continuing or would result therefrom.

Section 8.2.2 Gila River and Union SPV Project Indebtedness and Liens.

(a) The Obligors will not permit Gila River Power, GRE 2014 or Gila River Energy to create, incur, assume or permit to exist any Indebtedness unless such Indebtedness is Non-Recourse Indebtedness.

(b) The Obligors will not permit any Union SPV or, following the occurrence of the events described in clauses (k)(i) and (k)(ii) of the definition of "Excluded Disposition," any Subsequent Gila River SPV to create, incur, assume or permit to exist any Indebtedness unless (i) such Indebtedness is Non-Recourse Indebtedness and (ii) the Net SPV Financing Proceeds received in connection therewith are applied to a mandatory prepayment of the Loans in accordance with Sections 3.1.1 and 3.1.2.

For the avoidance of doubt, other than the requirements that any such Indebtedness incurred pursuant to this Section 8.2.2(b) be Non-Recourse Indebtedness and that the Net SPV Financing Proceeds be applied in accordance with Sections 3.1.1 and 3.1.2, nothing contained herein shall limit in any respect the amount or terms of any Indebtedness incurred by a Union SPV or, following the occurrence of the events described in clauses (k)(i) and (k)(ii) of the definition of "Excluded Disposition," any Subsequent Gila River SPV.

(c) The Obligors will not permit any SPV Subsidiary to create, incur, assume or permit to exist a Lien on any of its properties, except for Liens created pursuant to or permitted by (i) in the case of any Union SPV, the terms of any Union SPV Financing incurred by such Union SPV and (ii) in the case of any Subsequent Gila River SPV, the terms of any Subsequent Gila River SPV Financing incurred by such Subsequent Gila River SPV, as applicable.

Section 8.3 Liens. No Obligor will create, incur, assume or permit to exist any Lien upon any of its property (including Capital Securities of any Person), revenues or assets, whether now owned or hereafter acquired, except the following (each, a "Permitted Lien"):

(a) Liens securing payment and performance of the Obligations under the Loan Documents;

(b) Liens on the property or assets of the Borrower or any other Obligor existing as of the Effective Date and disclosed in Item 8.3(b) of the Disclosure Schedule securing Indebtedness described in Section 8.2.1(b), and Permitted Refinancings of such Indebtedness; provided that, no such Lien shall encumber any additional property and the amount of Indebtedness secured by such Lien is not increased from that existing on the Effective Date (as such Indebtedness may have been permanently reduced subsequent to the Effective Date);

(c) Liens securing Indebtedness of the type permitted under Section 8.2.1(c); provided that (i) such Lien is granted within 90 days after such Indebtedness is incurred, (ii) the Indebtedness secured thereby does not exceed 100% of the lesser of the cost or the fair market value of the applicable property, improvements or equipment at the time of such acquisition (or construction), including transaction costs and (iii) such Lien secures only the assets that are the subject of the Indebtedness referred to in such clause or the proceeds thereof;

(d) Liens securing Indebtedness described in (A) clause (i) of Section 8.2.1(f) to the extent the terms of the Subordinated Lien Intercreditor Agreement are in full force and effect and such Liens are subject to the terms of the Subordinated Lien Intercreditor Agreement, and (B) clause (ii) of Section 8.2.1(f) to the extent the terms of the First Lien Intercreditor Agreement are in full force and effect and such Liens are subject to the terms of the First Lien Intercreditor Agreement;

(e) Liens in favor of carriers, warehousemen, mechanics, materialmen, and repairmen and other like Liens imposed by applicable laws, in each case created in the ordinary course of business securing obligations with respect to the Union Power Facility for amounts not yet due or which are being diligently contested in good faith by appropriate proceedings and that have been fully bonded or for which adequate reserves in accordance with GAAP shall have been set aside by the Borrower or such other applicable Obligor on its books;

(f) (i) Liens incurred or deposits made in the ordinary course of business in connection with worker's compensation, unemployment insurance or other forms of governmental insurance or benefits (other than Liens under ERISA), or to secure performance of tender and return of money bonds, statutory obligations, bids, security and appeal bonds (but not in excess of $15,000,000 in the aggregate), leases, trade contracts or similar obligations (other than for borrowed money) entered into in the ordinary course of business, and (ii) deposits made in the ordinary course of business in respect of acquisitions under fuel purchase or sale contracts;

(g) judgment Liens in existence for less than 30 days after the entry thereof or with respect to which execution has been stayed or the payment of which is covered in full (subject to a customary deductible) by adequate reserves, bonds or other security reasonably acceptable to the Administrative Agent or by insurance maintained with responsible insurance companies and which do not otherwise result in an Event of Default under Section 9.1.6;

(h) easements, rights-of-way, restrictions (including zoning restrictions), trackage rights, licenses, rights of way, covenants, conditions, restrictions, declarations development agreements, site plan agreements, minor defects or irregularities in title, restrictions on use of real property and other similar encumbrances or Liens that, in the aggregate, do not interfere in any material respect with the value or use of the property (as used by such Obligor in its operations or business) to which such Lien is attached;

(i) all matters disclosed in the surveys and in the Title Policies (or executed pro forma policies delivered on the Effective Date) insuring any real property on which the Union Power Facility is located, including easements and rights of way appertaining thereto that in each case have been delivered pursuant to Section 5.1.10(b);

(j) Liens for Taxes, assessments or other governmental charges or levies not at the time delinquent or being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;

(k) any interest or title of a lessor, sublessor or licensor in leases or subleases entered into by the Borrower or any Subsidiary Guarantor or any leases, subleases, licenses and sublicenses granted to third parties in the ordinary course of business, in each case not interfering in any material respect with the operations or business of the Borrower or such Subsidiary Guarantor;

(l) landlord Liens arising under any lease contracts entered into by the Borrower or any Subsidiary Guarantor in the ordinary course of business for amounts not yet due or being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;

(m) Liens securing hedge obligations of the Obligors arising under any Specified Commodity Hedge Agreements so long as (i) such Liens and the obligations thereunder are either First Lien Obligations and subject to the terms of the First Lien Intercreditor Agreement; provided that the aggregate amount of obligations under the First Lien Credit Agreement and hedge obligations that are secured pursuant to this subclause (i) shall not exceed $100,000,000 (excluding letter of credit fees and other similar amounts payable in respect of the letters of credit issued under the First Lien Credit Agreement), or (ii) such Specified Commodity Hedge Agreements are Specified Right-Way Hedge Agreements and such Liens and the obligations thereunder are secured on a pari passu basis with the Obligations under the Loan Documents and subject to the terms of the Subordinated Lien Intercreditor Agreement; provided further that, the aggregate amount of hedge obligations that are secured pursuant to this subclause (ii) shall not exceed $175,000,000;

(n) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness or (ii) relating to purchase orders and other agreements entered into with customers of the Borrower in the ordinary course of business;

(o) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights;

(p) licenses or sublicenses of intellectual property granted in the ordinary course of business;

(q) Liens arising from precautionary UCC financing statements regarding operating leases;

(r) Liens on securities that are the subject of repurchase agreements constituting Cash Equivalent Investments under clause (d) of the definition thereof;

(s) statutory Liens of depository or collecting banks on items in collection and any accompanying documents or the proceeds thereof;

(t) (i) Liens arising from the terms and conditions of the Project Documents and Organic Documents in existence on the Effective Date or as amended in accordance herewith, or any other contractual obligations of any Obligor entered into in the ordinary course of business, in each case so long as such Liens do not constitute security interests supporting obligations comprising Indebtedness, and (ii) Liens existing solely by virtue of an Obligor's ownership of the Capital Securities of another Obligor;

(u) extensions, renewals and replacements of any of the foregoing Liens to the extent and for so long as the Indebtedness secured thereby remains outstanding.

(v) Liens securing the Act 9 Bonds;

(w) (i) other Liens incident to the ordinary course of business (including Borrower's trading activities), such as contract netting, that are not incurred in connection with the obtaining of any loan, advance or credit and that do not in the aggregate materially impair the use of the property or assets of Borrower or the value of such property or assets for the purposes of such business and (ii) Liens incurred in connection with the hedging and margining transactions permitted by the Risk Management Policy in an aggregate amount not to exceed $20,000,000 outstanding at any time;

(x) (i) the purchase money security interest of Pratt & Whitney in the Encumbered GT Parts Collateral (as defined in the PW Intercreditor Agreement) but only so long as (A) the Collateral Agent maintains a fourth-priority Lien on such Encumbered GT Parts Collateral and (B) the PW Intercreditor Agreement (as such PW Intercreditor Agreement may be amended from time to time with the consent of the Administrative Agent) remains in full force and effect, and (ii) upon the termination of the Pratt & Whitney purchase money security interest according to its terms, any subsequent purchase money security agreement with a creditor, provided that, such purchase money security interest of the creditor shall (A) have terms substantially similar to those agreed to by the Company and Pratt & Whitney with respect to the Encumbered GT Parts Collateral (as defined in the PW Intercreditor Agreement) and (B) secure Indebtedness in an aggregate amount not to exceed $15,000,000;

(y) cash collateral pledged to secure the Borrower's obligations under the First Lien Letters of Credit;

(z) cash collateral pledged to secure any Obligor's obligations to any trade counterparty in an aggregate amount not to exceed $40,000,000 outstanding at any time;

(aa) the subordinated Lien of Union Power on the Act 9 Bonds pursuant to the Bond Pledge Agreement;

(bb) the rights and interests of the County under the Act 9 Lease; and

(cc) Liens on Union Power's receivables under its Power Purchase Agreements (for up to 510 MW of power and for a tenor not greater than six years) granted in favor of Union Power's gas supply counterparties (or Union Power's financial counterparties that advance funds to pay such Union Power gas supply counterparties); provided that in no case shall any such Lien secure more than an amount equal to (i) the volume of gas necessary to run a 2–on-1 block of

generating capacity at full load for a period equal to 60 days times (ii) the daily spot price applicable to such gas purchases during such 60-day period; and

(dd) cash collateral pledged to secured an Obligor's obligations under any agreement in respect of a Disposition in an aggregate amount not to exceed $50,000,000 outstanding at any time.

Section 8.4 Amendments to Operating Agreement. The Borrower shall not amend, modify or waive any provision of the Operating Agreement in a manner that has the effect of increasing the amount of Tax Distributions the Borrower is permitted to make in accordance with the provisions of the Operating Agreement.

Section 8.5 Investments. No Obligor will purchase, make, incur, assume or permit to exist any Investment in any other Person, except:

(a) Investments existing as of the Effective Date and identified in Item 8.5(a) of the Disclosure Schedule;

(b) Ownership by any Obligor of Capital Securities of any Obligor;

(c) Cash Equivalent Investments (it being understood that any Investment which when made complies with the requirements of the definition of the term "Cash Equivalent Investment" may continue to be held notwithstanding that such Investment if made thereafter would not comply with such requirements);

(d) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, or judgments against, customers and suppliers, in each case in the ordinary course of business;

(e) Investments permitted as intercompany Indebtedness pursuant to Section 8.2.1;

(f) Investments consisting of the deferred portion of the sales price received by any Obligor or otherwise arising out of the receipt of non-cash consideration in connection with any Disposition;

(g) Investments in respect of loans and advances made by the Borrower and its Subsidiaries in the ordinary course of business and consistent with past practices to their respective employees or consultants for moving, travel and emergency expenses and other similar expenses or for income tax liabilities, or advances of payroll payments and expenses to employees in the ordinary course of business, so long as the aggregate principal amount thereof at any one time outstanding (determined without regard to any write-downs or write-offs of such loans and advances) does not exceed $500,000 in the aggregate for all such employees and consultants;

(h) Investments by the Obligors in Hedge Agreements permitted under this Agreement;

(i) the Transactions;

(j) Investments resulting from pledges and deposits referred to in Section 8.3(f);

(k) Investments, other than Investments described in clauses (a) through (j) above in an aggregate principal amount not to exceed $1,000,000 at any time outstanding (plus any returns of capital actually received in cash by the relevant investor in respect of investments theretofore made by it pursuant to this clause (k)), but in an aggregate amount not exceeding the amount of such investments;

(l) to the extent constituting Investments, Permitted Volumetric Production Payment Obligations;

(m) ownership by Gila River Holdco of Capital Securities of (i) directly, GRE 2014 and (ii) indirectly, Gila River Energy, Gila River Power and Gila River O&M Subsidiary; and

(n) ownership by any Obligor of the Capital Securities of any Union SPV or any Subsequent Gila River SPV formed in connection with a transaction contemplated by clause (j) or (k), respectively, of the definition of "Excluded Disposition."

Section 8.6 Restricted Payments, etc.

(a) No Obligor will declare or make a Restricted Payment, or make any deposit for any Restricted Payment, except that the Borrower may make Restricted Payments to the holders of Capital Securities of the Borrower in an amount necessary to pay any Tax Distributions.

(b) No Obligor will (i) make any payment or prepayment or other distribution (whether in cash, securities or other property) on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Indebtedness for borrowed money (or any other payment that has a substantially similar effect to any of the foregoing), or any payment of interest in respect of such Indebtedness, other than the payment or prepayment of principal of, or premium or interest on (x) the Obligations or (y) Indebtedness incurred under the First Lien Credit Agreement or the Second Lien Indenture when due and payable under the respective terms thereof as in effect on the date hereof or pursuant to a Refinancing of such Indebtedness (as defined in the applicable Intercreditor Agreement) which would not violate the terms of the applicable Intercreditor Agreement; or (ii) make any deposit (including the payment of amounts into a sinking fund or other similar fund) for any of the foregoing purposes.

Section 8.7 Reserved.

Section 8.8 Consolidation, Merger; etc. No Obligor will liquidate or dissolve, consolidate with, or merge into or with, any other Person, or purchase or otherwise acquire any substantial part of the assets of any Person (or any division thereof), provided that any Subsidiary Guarantor may merge into or with the Borrower or any other Subsidiary Guarantor.

Section 8.9 Modification of Certain Agreements.

(a) No Obligor will consent to any amendment, supplement, waiver or other modification of its Organic Documents if as a result thereof there would reasonably be expected to be an adverse effect on the rights or remedies of any Credit Party.

(b) No Obligor will consent to any amendment, supplement, waiver or other modification of the Second Lien Indenture (and the Note Documents as defined therein), except to the extent permitted under the terms of the Subordinated Lien Intercreditor Agreement; and (ii) no Obligor will consent to any amendment, supplement, waiver or other modification of the First Lien Credit Agreement (and the Loan Documents (or other comparable term) as defined therein), except to the extent permitted under the terms of the First Lien Intercreditor Agreement.

(c) No Obligor will cancel or terminate any Project Document in effect as of the Effective Date or consent to or accept any cancellation or termination thereof, or amend, modify or change any term or condition of any Project Document or give any consent waiver or approval thereunder, waive any default under or any breach of any term or condition of any term or condition of any Project Document or cause or allow the assignment of rights or obligations of any Obligor to any Project Document other than pursuant to the Loan Documents, in each case, to the extent any of the foregoing actions, either individually or in the aggregate, could reasonably be expected to cause a material adverse effect (taken as a whole after giving effect to all applicable amendments, modifications, changes, consents, waivers and approvals) on the Lenders.

Section 8.10 Transactions with Affiliates. No Obligor will, and will not permit any of their respective Subsidiaries to, enter into or cause or permit to exist any arrangement, transaction or contract (including for the purchase, lease or exchange of property or the rendering of services) with any of its other Affiliates, unless such arrangement, transaction or contract is any of the following:

(a) (i) on fair and reasonable terms no less favorable to such Obligor than it could obtain in an arm's length transaction with a Person that is not an Affiliate and (ii) of the kind which would be entered into by a prudent Person in the position of such Obligor with a Person that is not one of its Affiliates;

(b) an arrangement, transaction or contract expressly permitted by the terms of this Agreement;

(c) the payment of fees and indemnities to directors, officers, consultants and employees of the Borrower or its Subsidiaries in the ordinary course of business;

(d) (i) any employment or severance agreements or arrangements entered into by the Borrower or its Subsidiaries in the ordinary course of business, or (ii) any employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers employees, and any reasonable employment contract or arrangement and transactions pursuant thereto;

(e) the payment of fees, expenses, bonuses and awards related to the Transactions contemplated by the Transaction Documents and Loan Documents to the extent, in the case of the Transaction Documents, written notice thereof has been provided to the Administrative Agent prior to the Effective Date;

(f) any agreement between one Obligor and another Obligor not specifically prohibited hereunder;

(g) any Union SPV Disposition or Subsequent Gila River SPV Disposition.

Section 8.11 Restrictive Agreements, etc. No Obligor will enter into any agreement (other than the First Lien Credit Agreement, the Second Lien Indenture, the Intercreditor Agreements, any Hedge Agreement and any Power Purchase Agreement) prohibiting

(a) the ability of any Obligor to amend or otherwise modify any Loan Document; or

(b) the creation or assumption of any Lien upon its properties, revenues or assets, whether now owned or hereafter acquired, except, in the case of this clause (b), restrictions existing by reason of:

(i) restrictions imposed by applicable law;

(ii) contractual encumbrances or restrictions in effect on the Effective Date and described in Item 8.11(b) of the Disclosure Schedule or contained in any agreement in respect of a Permitted Refinancing of Indebtedness described in Section 8.2.1(b) so long as such encumbrance or restriction has not been expanded from the encumbrance or restriction contained in the agreements relating to the Indebtedness being refinanced and described in Item 8.11(b) of the Disclosure Schedule;

(iii) any restrictions imposed by any agreement relating to secured Indebtedness permitted by this Agreement to the extent that such restrictions apply only to the property or assets securing such Indebtedness;

(iv) customary provisions contained in leases or licenses of intellectual property and other similar agreements entered into in the ordinary course of business;

(v) customary provisions restricting subletting or assignment of any lease governing a leasehold interest;

(vi) customary provisions restricting assignment of any agreement entered into in the ordinary course of business;

(vii) customary restrictions and conditions contained in any agreement relating to the sale of any asset pending the consummation of such sale;

(viii) contractual encumbrances or restrictions contained in any agreement in respect of permitted unsecured Indebtedness so long as such encumbrances or restrictions permit the Liens granted to secure the Obligations and all other Permitted Liens hereunder; or

(ix) customary restrictions and conditions contained in the documents relating to any Lien, so long as (A) such Lien is permitted under Section 8.3 and such restrictions or conditions relate only to the specific asset subject to such Lien and (B) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 8.11.

The foregoing prohibitions shall not apply to restrictions contained in any Loan Document.

Section 8.12 Reserved.

Section 8.13 Sales and Lease-Backs. The Borrower will not and, other than any such lease arrangement existing on the Effective Date and disclosed in Item 8.13 of the Disclosure Schedule, will cause each of its Subsidiaries not to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease, whether an operating lease or Capitalized Lease Liabilities, of any property (whether real, personal or mixed), whether now owned or hereafter acquired, (a) which the Borrower or any Subsidiary has sold or transferred or is to sell or transfer to any other Person (other than the Borrower or another Subsidiary) or (b) which the Borrower or any Subsidiary intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by the Borrower or any Subsidiary to any Person (other than the Borrower or another Subsidiary).

ARTICLE IX

EVENTS OF DEFAULT

Section 9.1 Listing of Events of Default. Each of the following events or occurrences described in this Article IX shall constitute an "Event of Default."

Section 9.1.1 Non-Payment of Obligations. Any Obligor shall default in the payment or prepayment when due of:

(a) any principal (including capitalized interest) of any Loan; or

(b) any other monetary Obligations under the Loan Documents and such default shall continue unremedied for a period of 15 Business Days after such amount was due.

Section 9.1.2 Breach of Warranty. Any representation or warranty of any Obligor made or deemed to be made in any Loan Document (including any certificates delivered pursuant to Article V) is or shall be incorrect when made or deemed to have been made in any material respect; provided, however, that if (i) the Borrower was not aware that such misrepresentation or warranty was false or incorrect at the time such representation or warranty was made, (ii) the fact, event or circumstance resulting in such false or incorrect representation or warranty is

capable of being cured, corrected or otherwise remedied and (iii) such fact, event or circumstance resulting in such false or incorrect representation or warranty shall have been cured, corrected or otherwise remedied, within 30 days from the date on which the Borrower or any officer thereof first obtained knowledge thereof such that such incorrect or false representation or warranty (as cured, corrected or remedied) could not reasonably be expected to result in a Material Adverse Effect, then such incorrect or false representation or warranty shall not constitute a Default or Event of Default.

Section 9.1.3 Non-Performance of Certain Covenants and Obligations. Any Obligor shall default in the due performance or observance of any of its obligations under Section 7.1(e), 7.2(a) or Article VIII; provided, however, that if such default in the due performance or observance of such obligation is (a) with respect to an obligation under any of Sections 8.3 (other than with respect to Liens securing Indebtedness for borrowed money), 8.5 (other than with respect to Investments exceeding $2,500,000 in the aggregate), 8.9 or 8.11, (b) is capable of being cured or otherwise remedied and (c) shall have been cured or otherwise remedied within 60 days from the date on which the Borrower or any officer thereof first obtained knowledge thereof, then such default in the due performance or observance of such obligation shall not constitute a Default or Event of Default.

Section 9.1.4 Non-Performance of Other Covenants and Obligations. Any Obligor shall default in the due performance or observance of any other agreement contained in any Loan Document to which such Obligor is party, and such default shall continue unremedied for a period of 60 days after notice thereof has been given to the Borrower by the Administrative Agent or any Lender.

Section 9.1.5 Default on Other Indebtedness. A default shall occur (i) in the payment of any amount when due (subject to any applicable grace period), whether by acceleration or otherwise, of any principal or stated amount of, or interest or fees on, any Indebtedness under the First Lien Credit Agreement, the Second Lien Indenture or any other Indebtedness (other than Indebtedness described in Section 9.1.1) of any Obligor having a principal or stated amount (or, in the case of any Hedge Agreement or Power Purchase Agreement the obligations under which comprise Indebtedness, an Agreement Value), individually or in the aggregate, in excess of $10,000,000, or (ii) in the performance or observance of any obligation or condition with respect to such Indebtedness if the effect of such default is to accelerate the maturity of any such Indebtedness or such default shall continue unremedied for any applicable period of time sufficient to permit the holder or holders of such Indebtedness, or any trustee or agent for such holders, to cause or declare such Indebtedness or to become due and payable or to require such Indebtedness to be prepaid, redeemed, purchased or defeased, or require an offer to purchase or defease such Indebtedness to be made, prior to its expressed maturity; provided that no Default under clause (ii) of this Section 9.1.5 shall exist by virtue of a default under the First Lien Credit Agreement or the Second Lien Indenture until the earlier of (x) 5 days from the date of such default and (y) the moment in which such default results in the acceleration of the maturity of the Indebtedness thereunder or otherwise causes such Indebtedness to mature or any such Indebtedness is declared due and payable or required to be prepaid or redeemed, prior to the stated maturity thereof.

Section 9.1.6 Judgments. Any judgment or order for the payment of money, individually or in the aggregate, in excess of $10,000,000 (exclusive of any amounts fully covered by insurance (less any applicable deductible) and as to which the insurer has acknowledged its responsibility to cover such judgment or order) or for injunctive relief that could reasonably be expected to result in a Material Adverse Effect shall be rendered against any Obligor and such judgment shall not have been vacated or discharged or stayed or bonded pending appeal within 60 days after the entry thereof or enforcement proceedings shall have been commenced by any creditor upon such judgment or order.

Section 9.1.7 Pension Plans. Any of the following events shall occur with respect to any Pension Plan which individually or in the aggregate could reasonably be expected to result in a liability in excess of $10,000,000:

(a) one or more ERISA Events; or

(b) the failure of any Pension Plan to satisfy the minimum funding standard required for any plan year or part thereof under Section 412 of the Code or Section 302 of ERISA or a waiver of such standard or extension of any amortization period is sought or granted under Section 412 of the Code or Section 303 or 304 of ERISA.

Section 9.1.8 Impairment of Security, etc. Any Loan Document or any Lien granted thereunder shall (except in accordance with its terms), in whole or in part, terminate, cease to be effective or cease to be the legally valid, binding and enforceable obligation of any Obligor party thereto; any Obligor or any other party shall, directly or indirectly, contest in any manner such effectiveness, validity, binding nature or enforceability; any Intercreditor Agreement shall terminate (other than in accordance with its terms), cease to be effective or cease to be the legally valid, binding and enforceable obligation of any Person party thereto; or, except as permitted under any Loan Document, any Lien securing any Obligation shall, in whole or in part, cease to be a perfected third priority Lien (subject to Permitted Liens) or any Obligor shall, directly or indirectly, contest such perfection or priority.

Section 9.1.9 Bankruptcy, Insolvency, etc. Any Obligor shall:

(a) become insolvent or generally fail to pay, or admit in writing its inability or unwillingness generally to pay, debts as they become due;

(b) apply for, consent to, or acquiesce in the appointment of a trustee, receiver, sequestrator or other custodian for any substantial part of the property of any thereof, or make a general assignment for the benefit of creditors;

(c) in the absence of such application, consent or acquiescence in or permit or suffer to exist the appointment of a trustee, receiver, sequestrator or other custodian for a substantial part of the property of any thereof, and such trustee, receiver, sequestrator or other custodian shall not be discharged within 60 days; provided that each Obligor hereby expressly authorizes each Credit Party to appear in any court conducting any relevant proceeding during such 60-day period to preserve, protect and defend their rights under the Loan Documents;

(d) permit or suffer to exist the commencement of any bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law or any dissolution, winding up or liquidation proceeding, in respect thereof, and, if any such case or proceeding is not commenced by any Obligor, such case or proceeding shall be consented to or acquiesced in by such Person or shall result in the entry of an order for relief or shall remain for 60 days undismissed; provided that each Obligor hereby expressly authorizes each Credit Party to appear in any court conducting any such case or proceeding during such 60-day period to preserve, protect and defend their rights under the Loan Documents; or

(e) take any action authorizing, or in furtherance of, any of the foregoing.

Section 9.1.10 Change in Control. A Change in Control shall occur.

Section 9.1.11 Event of Loss. (i) A destruction of, or loss of, all or a substantial part of the Union Power Facility or (ii) any condemnation, seizure or appropriation of all or a substantial part of the Union Power Facility.

Section 9.1.12 Abandonment. The Borrower shall have voluntarily abandoned operation of the Union Power Facility with no intent to resume such operation, such abandonment to be evidenced by the Borrower's cessation of such operation for a period of 60 consecutive days for reasons not associated with the occurrence of any of the events set forth in Section 9.1.11 or a Forced Outage or a force majeure event; provided that, for the avoidance of doubt, no Default or Event of Default shall occur under this Section 9.1.12 if the Union Power Facility is not operating during any period in which, consistent with past practice, the Borrower has not operated such Facility.

Section 9.1.13 SPV Indebtedness. Any Indebtedness of Gila River Energy, GRE 2014, Gila River Power, any Subsequent Gila River SPV or any Union SPV shall, at any time, not constitute Non-Recourse Indebtedness.

Section 9.2 Action if Bankruptcy. If any Event of Default described in Sections 9.1.9(a) through (d) with respect to any Obligor shall occur, the outstanding principal amount of all outstanding Loans and all other Obligations shall automatically be and become immediately due and payable, without notice or demand to any Person.

Section 9.3 Action If Other Event of Default. If any Event of Default (other than any Event of Default described in Sections 9.1.9(a) through (d) with respect to an Obligor) shall occur for any reason, whether voluntary or involuntary, and be continuing, the Administrative Agent, upon the direction of the Required Lenders, shall by notice to the Borrower declare all or any portion of the outstanding principal amount of the Loans and other Obligations to be due and payable, whereupon the full unpaid amount of such Loans and other Obligations which shall be so declared due and payable shall be and become immediately due and payable, without further notice, demand or presentment.

ARTICLE X

THE AGENTS

Section 10.1 Actions. Each Lender hereby appoints Wells Fargo as its Administrative Agent under and for purposes of each Loan Document. Each Lender authorizes the Administrative Agent to act on behalf of such Lender under each Loan Document (including each Intercreditor Agreement) and, in the absence of other written instructions from the Required Lenders received from time to time by the Administrative Agent (with respect to which the Administrative Agent agrees that it will comply, except as otherwise provided in this Section 10.1 or as otherwise advised by counsel in order to avoid incurring liability or the contravention of applicable law), to exercise such powers hereunder and thereunder as are specifically delegated to or required of the Administrative Agent by the terms hereof and thereof, together with such powers as may be incidental thereto (including the release of Liens on assets Disposed of in accordance with the terms of the Loan Documents). Each Lender irrevocably authorizes the Administrative Agent to release any Lien granted to or held by or in favor of the Collateral Agent for the benefit of the Secured Parties upon the occurrence of the Termination Date or in connection with (a) the Disposition of Collateral under the Loan Documents or (b) the release of any Subsidiary Guarantor, so long as, in the case of either clause (a) or (b), such Disposition or release is otherwise permitted under the terms of a Loan Document; provided that, the Administrative Agent may, prior to any such release, request that the Borrower certify in a written notice delivered to the Administrative Agent (with such detail as the Administrative Agent may reasonably request) that such Disposition or release is made in compliance with the terms of the Loan Documents and in releasing any Lien, the Administrative Agent shall be entitled to conclusively rely upon such certification.. Each Lender hereby indemnifies (which indemnity shall survive any termination of this Agreement and the resignation or removal of the Administrative Agent) the Administrative Agent, pro rata according to such Lender's proportionate Total Exposure Amount, from and against any and all liabilities, obligations, losses, damages, claims, costs or expenses of any kind or nature whatsoever which may at any time be imposed on, incurred by, or asserted against, the Administrative Agent in any way relating to or arising out of any Loan Document (including attorneys' fees and including the costs and expenses of defending itself against a claim initiated by another party to this Agreement)), and as to which the Administrative Agent is not reimbursed by the Borrower (and without limiting the Borrower's obligation to do so); provided, however, that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, claims, costs or expenses which are determined by a court of competent jurisdiction in a final proceeding to have resulted from the Administrative Agent's gross negligence or willful misconduct. The Administrative Agent shall not be required to take any action under any Loan Document, or to prosecute or defend any suit in respect of any Loan Document, unless it is indemnified hereunder to its satisfaction. If any indemnity in favor of the Administrative Agent shall be or become, in the Administrative Agent's determination, inadequate, the Administrative Agent may call for additional indemnification from the Lenders and cease to do the acts indemnified against hereunder until such additional indemnity is given. Each Lender acknowledges that the Collateral Agent is acting on behalf of the "Third Lien Secured Parties" (as defined in the Subordinated Lien Intercreditor Agreement). To the extent the Collateral Agent takes any action under this Agreement, in addition to the rights, benefits, protections, indemnifications and immunities afforded to it hereunder, it shall be entitled to the rights, benefits, protections,

indemnifications and immunities afforded to it under the Subordinated Lien Intercreditor Agreement.

Section 10.2 Reserved.

Section 10.3 Exculpation; Notice of Default.

(a) Neither the Administrative Agent nor any of its respective directors, officers, employees or agents shall be liable for any action taken or omitted to be taken by it under any Loan Document, or in connection herewith or therewith, except for its own willful misconduct or gross negligence, nor responsible for any recitals or warranties herein or therein, nor for the effectiveness, enforceability, validity or due execution of any Loan Document, nor for the creation, perfection or priority of any Liens purported to be created by any of the Loan Documents, or the validity, genuineness, enforceability, existence, value or sufficiency of any Collateral, nor to make any inquiry respecting the performance by any Obligor of its Obligations. Any such inquiry which may be made by the Administrative Agent shall not obligate it to make any further inquiry or to take any action. The Administrative Agent shall be entitled to rely upon advice of counsel concerning legal matters and upon any notice, consent, certificate, statement or writing which the Administrative Agent believe to be genuine and to have been presented by a proper Person. Unless instructed by the Required Lenders (with respect to filing continuation statements only and subject to receipt of a satisfactory indemnity as provided herein), the Administrative Agent shall not have any duty to (i) file or prepare any financing or continuation statements or record any documents or instruments in any public office for purposes of creating, perfecting or maintaining any Lien or security interest created under the Loan Documents; (ii) take any necessary steps to preserve rights against any parties with respect to any Collateral; (iii) take any action to protect against any diminution in value of the Collateral; or (iv) for monitoring or confirming the Borrower's compliance with any of its covenants, including but not limited to, covenants regarding the granting, perfection or maintenance of any security interest.

(b) The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default hereunder unless the Administrative Agent shall have received a written notice from a Lender or the Borrower referring to this Agreement, describing such Default and stating that such notice is a "notice of default." In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give prompt notice thereof to the Lenders. The Administrative Agent shall (subject to the Administrative Agent's receipt of satisfactory indemnity and subject to Section 12.1) take such action with respect to such Default as shall be directed by the Required 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 as it shall deem advisable in the best interest of the Credit Parties.

(c) Phrases such as "satisfactory to the Administrative Agent", "approved by the Administrative Agent", "acceptable to the Administrative Agent", "as determined by the Administrative Agent", "in the Administrative Agent's discretion", "selected by the Administrative Agent", and phrases of similar import authorize and permit the Administrative Agent to approve, disapprove, determine, act or decline to act in its discretion, it being understood that the Administrative Agent in exercising such discretion under the Loan

Documents shall be acting on the instructions of the Required Lenders (or Lenders holding such other percentage of the Total Exposure Amount required by Section 12.1) and shall be fully protected in, and shall incur no liability in connection with, acting (or failing to act) pursuant to such instructions. With regards to any action or refusal to act that involves discretion, the Administrative Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take any action) hereunder or under any of the Loan Documents or from the exercise of any power, discretion or authority vested in it hereunder of thereunder unless and until the Administrative Agent shall have received instructions from the Required Lenders and shall not be liable for any such delay in acting (or failing to act), other than such delay caused by the Administrative Agent's gross negligence or willful misconduct.

(d) The Administrative Agent shall never be required to use, risk or advance its own funds or otherwise incur financial liability in the performance of any of its duties or the exercise of any of its rights and powers hereunder (including, but not limited to, no obligation to grant any Credit Extension). In no event shall the Administrative Agent be liable, directly or indirectly, for any special, indirect or consequential damages, even if the Administrative Agent has been advised of the possibility of such damages and regardless of the form of action. The Administrative Agent shall not be responsible for delays or failures in performance resulting from acts beyond its control. Such acts shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, computer viruses, power failures, earthquakes, terrorist attacks or other disasters.

Section 10.4 Successor. The Administrative Agent may resign as such at any time upon at least 30 days' prior notice to the Borrower and all Lenders, and the Required Lenders may remove the Administrative Agent at any time with or without cause by giving at least 15 days' prior written notice to that effect to the Administrative Agent and the Borrower. Upon any such resignation or removal of the Administrative Agent (the resigning or removed Administrative Agent being referred to herein as the "Retiring Administrative Agent"), the Required Lenders may appoint a successor Administrative Agent, which shall thereupon become the Administrative Agent hereunder, with the consent of the Borrower (other than following the occurrence and continuance of an Event of Default), not to be unreasonably withheld or delayed. If no successor Administrative Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within 30 days after (i) the Retiring Administrative Agent gives notice of its resignation or (ii) the Required Lenders give notice of their request to remove the Retiring Administrative Agent, then the Retiring Administrative Agent may, on behalf of the Lenders, with the consent of the Borrower (other than following the occurrence and continuance of an Event of Default), not to be unreasonably withheld or delayed, appoint a successor Administrative Agent, which shall be one of the Lenders or a commercial banking institution organized under the laws of the United States (or any state thereof) or a U.S. branch or agency of a commercial banking institution, and having a combined capital and surplus of at least $100,000,000; provided that, if the Retiring Administrative Agent is unable to find a commercial banking institution which is willing to accept such appointment and which meets the qualifications set forth above, the Retiring Administrative Agent's resignation or removal 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 as provided for above. Upon the acceptance of any appointment as

Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall be entitled to receive from the Retiring Administrative Agent such documents of transfer and assignment as such successor Administrative Agent may reasonably request, and shall thereupon succeed to and become vested with all rights, powers, privileges and duties of the Retiring Administrative Agent, and the Retiring Administrative Agent shall be discharged from its duties and obligations under the Loan Documents. After the Retiring Administrative Agent's resignation or removal hereunder as the Administrative Agent, the provisions of this Article X shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrative Agent under the Loan Documents, and Sections 12.3 and 12.4 shall continue to inure to its benefit.

Section 10.5 Credit Extensions by the Administrative Agent. The Administrative Agent, in its individual capacity as a Lender, shall have the same rights and powers with respect to (a) in the case of the Administrative Agent, the Credit Extensions made by it or any of its Affiliates, and (b) the Notes held by it or any of its Affiliates as any other Lender and may exercise the same as if it were not the Administrative Agent. The Administrative Agent and each of their its Affiliates, in each case, in its individual capacity, may accept deposits from, lend money to, and generally engage in any kind of business with the Obligors or Affiliates of the Obligors as if the Administrative Agent were not the Administrative Agent hereunder. The Administrative Agent shall be under no obligation of any kind to make Credit Extensions or otherwise advance funds to the Borrower.

Section 10.6 Credit Decisions. Each Lender acknowledges that it has, independently of the Administrative Agent and each other Lender, and based on such Lender's review of the financial information of each Obligor, the Loan Documents (including the Intercreditor Agreements) (the terms and provisions of which being satisfactory to such Lender) and such other documents, information and investigations as such Lender has deemed appropriate, made its own credit decision to make Credit Extensions. Each Lender also acknowledges that it will, independently of the Administrative Agent and each other Lender, and based on such other documents, information and investigations as it shall deem appropriate at any time, continue to make its own credit decisions as to exercising or not exercising from time to time any rights and privileges available to it under the Loan Documents.

Section 10.7 Copies, etc. The Administrative Agent shall give prompt notice to each Lender of each written notice or request required or permitted to be given to the Administrative Agent by the Borrower pursuant to the terms of the Loan Documents (unless concurrently delivered to the Lenders by the Borrower). The Administrative Agent will distribute to each Lender each document or instrument received for its account and copies of all other written communications received by the Administrative Agent from the Borrower for distribution to the Lenders by the Administrative Agent in accordance with the terms of the Loan Documents.

Section 10.8 Reliance by the Administrative Agent. The Administrative Agent shall be entitled to rely upon any certification, notice or other communication (including any thereof by telephone, telecopy, telegram or cable) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person and the Administrative Agent shall not be required to inquire into contents of any certificate, report or other document delivered hereunder. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower

or any other Credit Party), independent accountants and other experts selected by it and shall not be liable for any action taken or not taken by it in good faith upon the advice and statements of legal counsel, independent accountants or other experts selected by it. As to any matters not expressly provided for by the Loan Documents, the Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder or thereunder in accordance with instructions given by the Required Lenders or all of the Lenders as is required in such circumstance, and such instructions of such Lenders and any action taken or failure to act pursuant thereto shall be binding on all Credit Parties. If at any time the Administrative Agent is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Collateral (including, but not limited to, orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of the Collateral), the Administrative Agent (a) shall furnish to the Borrower prompt written notice thereof and (b) is authorized to comply therewith in any manner as it or its legal counsel of its own choosing deems appropriate; and if the Administrative Agent complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, the Administrative Agent shall not be liable to any of the parties hereto or to any other person or entity even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

Section 10.9 The Administrative Agent. Notwithstanding anything else to the contrary contained in any Loan Document, the Administrative Agent, in its capacity as such, shall have no duties or responsibilities except for those that are explicitly set forth under any Loan Document to which the Administrative Agent is a party and the Administrative Agent shall not have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into any Loan Document or otherwise exist against the Administrative Agent, in such capacity.

Section 10.10 Appointment of Supplemental Agent, Sub-Agent; etc.

(a) In the event that the Administrative Agent reasonably deems it necessary to comply with applicable law or, with the consent of the Borrower (such consent not to be unreasonably withheld or delayed), desirable, it may, in respect of the Collateral, appoint (with written notice thereof to the Administrative Agent) an additional individual or institution as a separate trustee, co-trustee, agent or collateral co-agent (any such additional individual or institution being referred to herein individually as a "Supplemental Agent"). Such Supplemental Agent shall have and shall be subject to, in respect of the Collateral, each and every right, power, privilege or duty expressed or intended by this Agreement or any of the other Loan Documents to be exercised by or vested in or conveyed to the Administrative Agent with respect to the Collateral, to the extent necessary to enable such Supplemental Agent to exercise such rights, powers and privileges with respect to the Collateral and to perform such duties with respect to the Collateral.

(b) Without limiting the provisions of the foregoing clause (a), the Administrative Agent may perform any and all of their duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents or designees appointed by the Administrative Agent and the Administrative Agent shall not be

responsible for the misconduct or negligence of any such sub-agent or designee appointed with due-care. The Administrative Agent and any such sub-agent or designee may perform any and all of its duties and exercise its rights and powers by or through their respective officers, directors, employees and agents.

(c) Should any instrument in writing from any Obligor be required by any Supplemental Agent or sub-agent so appointed by the Administrative Agent to more fully and certainly vest in and confirm to it such rights, powers, privileges and duties, such Obligor shall execute, acknowledge and deliver any and all such instruments promptly upon request by the Administrative Agent. In case any Supplemental Agent or sub-agent, or a successor thereto, shall die, become incapable of acting, resign or be removed, all the rights, powers, privileges and duties of such Supplemental Agent or sub-agent, to the extent permitted by law, shall vest in and be exercised by the Administrative Agent until the appointment of a new Supplemental Agent or sub-agent. The provisions of Section 10.1, 10.3 and Section 12.4 that refer to the Administrative Agent shall inure to the benefit of each Supplemental Agent and each sub-agent and all references therein to the Administrative Agent shall be deemed to be references to the Administrative Agent and/or each Supplemental Agent and/or sub-agent, as the context may require.

Section 10.11 Reserved.

Section 10.12 Posting of Approved Electronic Communications.

(a) Each Obligor hereby agrees, unless directed otherwise by the Administrative Agent or unless the electronic mail address referred to below has not been provided by the Administrative Agent to the Obligors, that each will provide to the Administrative Agent all information, documents and other materials that each is obligated to furnish to the Administrative Agent pursuant to the Loan Documents or to the Lenders under Section 7.1, including all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) is or relates to a Borrowing Request, (ii) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, (iii) provides notice of any Default under this Agreement or any other Loan Document or (iv) is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement and/or any Borrowing or other extension of credit hereunder (all such non-excluded communications being referred to herein collectively as "Communications"), by transmitting the Communications in an electronic/soft medium that is properly identified in a format acceptable to the Administrative Agent to an electronic mail address as directed by the Administrative Agent. In addition, each Obligor agrees to continue to provide the Communications to the Administrative Agent or the Lenders, as the case may be, in the manner specified in the Loan Documents but only to the extent requested by the Administrative Agent.

(b) Each Obligor further agrees that the Administrative Agent may make the Communications available to the Lenders by posting the Communications on Intralinks or a substantially similar electronic transmission system (the "Platform").

(c) THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE ADMINISTRATIVE AGENT DOES 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 THE ADMINISTRATIVE AGENT IN CONNECTION WITH THE COMMUNICATIONS OR THE PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT HAVE ANY LIABILITY TO ANY OBLIGOR, ANY LENDER OR ANY OTHER PERSON FOR DAMAGES OF ANY KIND, WHETHER OR NOT BASED ON STRICT LIABILITY AND INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF ANY OBLIGOR'S OR THE ADMINISTRATIVE AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET.

(d) The Administrative Agent agrees that the receipt of the Communications by the Administrative Agent at its e-mail address set forth above shall constitute effective delivery of the Communications to the Administrative Agent for purposes of the Loan Documents. Each Lender agrees that receipt of notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender agrees to notify the Administrative Agent in writing (including by electronic communication) from time to time of such Lender's e-mail address to which the foregoing notice may be sent by electronic transmission and that the foregoing notice may be sent to such e-mail address.

(e) Nothing herein shall prejudice the right of the Administrative Agent or any Lender to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

Section 10.13 Withholding Tax. To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Credit Party an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other Governmental Authority asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Credit Party because the appropriate form was not delivered or was not properly executed or because such Credit Party failed to notify the Administrative Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding Tax ineffective or for any other reason, such Credit Party shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred.

Section 10.14 The Collateral Agent. The rights, privileges, protections, immunities and benefits given to the Administrative Agent, including its right to be indemnified by the

Borrowers and the Lenders, are extended to, and shall be enforceable by the Collateral Agent hereunder and under each Loan Document.

ARTICLE XI

GUARANTY

Section 11.1 Guaranty. Each Subsidiary Guarantor hereby absolutely, unconditionally and irrevocably and jointly and severally, guarantees the due, prompt and faithful performance of, and compliance with, all obligations, covenants, terms, conditions and agreements of the Borrower and each other Obligor now or hereafter existing under this Agreement and each other Loan Document, including the full and punctual payment when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, of all Obligations of the Borrower and each other Obligor now or hereafter existing under this Agreement and each other Loan Document, whether for principal, interest, early termination payments, fees, expenses or otherwise (including all such amounts which would become due but for the operation of the automatic stay under Section 362(a) of the United States Bankruptcy Code, 11 U.S.C. §362(a), and the operation of Sections 502(b) and 506(b) of the United States Bankruptcy Code, 11 U.S.C. §502(b) and §506(b)), and indemnifies and holds harmless each Credit Party and each holder of Loans for any and all costs and expenses (including reasonable attorney's fees and expenses) incurred by such Credit Party or such holder, as the case may be, in enforcing any rights under this Article XI.

This Article XI constitutes a guaranty of payment when due and not of collection, and each Subsidiary Guarantor specifically agrees that it shall not be necessary or required that any Credit Party or any holder of any Note exercise any right, assert any claim or demand or enforce any remedy whatsoever against the Borrower or any other Obligor (or any other Person) before or as a condition to the obligations of the Subsidiary Guarantors hereunder.

Section 11.2 Acceleration of Obligations Hereunder. Each Subsidiary Guarantor agrees that, in the case of an Event of Default described in Section 9.1.9, and if such Event of Default shall occur at a time when any of the Obligations of the Borrower or any other Obligor may not then be due and payable, it will pay to the Lenders forthwith the full amount which would be payable hereunder by such Subsidiary Guarantor if all such Obligations were then due and payable.

Section 11.3 Obligations Hereunder Absolute, etc. The obligations of each Subsidiary Guarantor under this Article XI shall in all respects be a continuing, absolute, unconditional and irrevocable and joint and several guaranty of performance and payment and shall remain in full force and effect until all Obligations of the Borrower and each other Obligor have been paid in full in cash and all obligations of each Subsidiary Guarantor hereunder shall have been paid in full in cash. Each Subsidiary Guarantor guarantees that the Obligations of the Borrower and each other Obligor will be paid strictly in accordance with the terms of this Agreement and each other Loan Document under which they arise, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of any Credit Party or any holder of any Note with respect thereto. The liability of each Subsidiary Guarantor under this Article XI shall be absolute, unconditional, irrevocable and joint and several irrespective of:

(a) any lack of validity, legality or enforceability of the other provisions of this Agreement, any Note or any other Loan Document;

(b) the failure of any Credit Party or any holder of any Note:

(i) to assert any claim or demand or to enforce any right or remedy against the Borrower, any other Obligor or any other Person (including any other Subsidiary Guarantor (including the Subsidiary Guarantors)) under the provisions of this Agreement, any Note, any other Loan Document, any Specified Commodity Hedge Agreement or otherwise, or

(ii) to exercise any right or remedy against any other Subsidiary Guarantor (including the Subsidiary Guarantors) of, or the Collateral securing, any Obligations of the Borrower or any other Obligor;

(c) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations of the Borrower or any other Obligor, or any other extension, compromise or renewal of any Obligation of the Borrower or any other Obligor;

(d) any reduction, limitation, impairment or termination of any Obligation of the Borrower or any other Obligor for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to (and each Subsidiary Guarantor hereby waives any right to or claim of) any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality, non-genuineness, irregularity, compromise, unenforceability of, or any other event or occurrence affecting, any Obligation of the Borrower, any other Obligor or otherwise;

(e) any amendment to, rescission, waiver, or other modification of, or any consent to departure from, any of the terms of this Agreement, any Note or any other Loan Document;

(f) any addition, exchange, release, surrender or non-perfection of any Collateral, or any amendment to or waiver or release or addition of, or consent to departure from, any other guaranty, held by any Credit Party or any holder of any Note securing any of the Obligations of the Borrower or any other Obligor; or

(g) any other circumstance which might otherwise constitute a defense available to, or a legal or equitable discharge of, the Borrower, any other Obligor, any surety or any Subsidiary Guarantor.

Section 11.4 Reinstatement, etc. Each Subsidiary Guarantor agrees that this Article XI shall continue to be effective or be reinstated, as the case may be, if at any time any payment (in whole or in part) of any of the Obligations is rescinded or must otherwise be restored by any Credit Party or any holder of any Note, upon the insolvency, bankruptcy or reorganization of the Borrower or any other Obligor or otherwise, all as though such payment had not been made.

Section 11.5 Waiver, etc. Each Subsidiary Guarantor hereby waives promptness, diligence, notice of acceptance and any other notice with respect to any of the Obligations of the

Borrower or any other Obligor and this Article XI and any requirement that the Administrative Agent, any other Credit Party or any holder of any Note protect, secure, perfect or insure any security interest or Lien, or any property subject thereto, or exhaust any right or take any action against the Borrower, any other Obligor or any other Person (including any other Subsidiary Guarantor) or any Collateral, as the case may be.

Section 11.6 Postponement of Subrogation. Each Subsidiary Guarantor agrees that it will not exercise any rights which it may acquire by way of rights of subrogation under this Article XI by any payment made hereunder or otherwise, until the prior payment in full in cash of all Obligations of the Borrower and each other Obligor. Any amount paid to a Subsidiary Guarantor on account of any such subrogation rights prior to the payment in full in cash of all Obligations of the Borrower and each other Obligor shall be held in trust for the benefit of the Credit Parties and each holder of a Note and shall forthwith be paid to the Administrative Agent for the benefit of the Credit Parties and each holder of a Note and credited and applied against the Obligations of the Borrower and each other Obligor, whether matured or unmatured, in accordance with the terms of this Agreement or to be held as collateral for the Obligations.

In furtherance of the foregoing, for so long as any Obligations remain outstanding, each Subsidiary Guarantor shall refrain from taking any action or commencing any proceeding against the Borrower or any other Obligor (or its successors or assigns, whether in connection with a bankruptcy proceeding or otherwise) to recover any amounts in respect of payments made under this Article XI to any Credit Party or any holder of a Note.

Section 11.7 Successors, Transferees and Assigns; Transfers of Notes, etc. This Article XI shall:

(a) be binding upon each Subsidiary Guarantor, and its successors, transferees and assigns; and

(b) inure to the benefit of and be enforceable by the Administrative Agent and each other Credit Party.

Without limiting the generality of Section 12.11 and subject to the limitations set forth therein, any Lender may assign or otherwise transfer (in whole or in part) any Note or Loan held by it to any other Person, and such other Person shall thereupon become vested with all rights and benefits in respect thereof granted to such Lender under any Loan Document (including this Article XI) or otherwise, subject, however, to any contrary provisions in such assignment or transfer, and to the provisions of Section 12.11 and this Article XI.

Section 11.8 Contribution by Subsidiary Guarantors. All Subsidiary Guarantors desire to allocate among themselves (collectively, the "Contributing Guarantors"), in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Subsidiary Guarantor (a "Funding Guarantor") under this Guaranty such that its Aggregate Payments exceeds its Fair Share as of such date, such Funding Guarantor shall be entitled to a contribution from each of the other Contributing Guarantors in an amount sufficient to cause each Contributing Guarantor's Aggregate Payments to equal its Fair Share as of such date. "Fair Share" means, with respect to a Contributing

Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Contributing Guarantor to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Contributing Guarantors multiplied by (b) the aggregate amount paid or distributed on or before such date by all Funding Guarantors under this Guaranty in respect of the obligations Guaranteed. "Fair Share Contribution Amount" means, with respect to a Contributing Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Contributing Guarantor under this Guaranty that would not render its obligations hereunder or thereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; provided that, solely for purposes of calculating the "Fair Share Contribution Amount" with respect to any Contributing Guarantor for purposes of this Section 11.8, any assets or liabilities of such Contributing Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Contributing Guarantor. "Aggregate Payments" means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (1) the aggregate amount of all payments and distributions made on or before such date by such Contributing Guarantor in respect of this Guaranty (including in respect of this Section 11.8), minus (2) the aggregate amount of all payments received on or before such date by such Contributing Guarantor from the other Contributing Guarantors as contributions under this Section 11.8. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Guarantor. The allocation among Contributing Guarantors of their obligations as set forth in this Section 11.8 shall not be construed in any way to limit the liability of any Contributing Guarantor hereunder. Each Subsidiary Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 11.8.

ARTICLE XII

MISCELLANEOUS PROVISIONS

Section 12.1 Waivers, Amendments, etc. The provisions of each Loan Document may from time to time be amended, modified or waived, if such amendment, modification or waiver (i) in the case of this Agreement, is pursuant to an agreement or agreements in writing entered into by the Subsidiary Guarantors, the Borrower and the Administrative Agent and consented to by the Required Lenders and (ii) in the case of any such other Loan Document, is pursuant to an agreement or agreements in writing entered into by each party thereto and the Administrative Agent and consented to by the Required Lenders; provided, however, that no such amendment, modification or waiver shall:

(a) modify the pro rata or ratable distribution or sharing requirements of Section 3.1.2, Section 4.4 or Section 4.5, in each case, without the consent of each Lender adversely affected thereby;

(b) increase the aggregate amount of any Credit Extensions required to be made (or deemed made) by any Lender pursuant to hereto, extend the Maturity Date for any Lender's Loan, extend the maturity of any scheduled principal payment date, in each case without the consent of such Lender (it being agreed, however, that any vote to rescind any

acceleration made pursuant to Section 9.2 and Section 9.3 of amounts owing with respect to the Loans and other Obligations shall only require the vote of the Required Lenders);

(c) reduce or forgive the principal amount of or reduce the rate of interest on any Lender's Loan or extend the date on which interest are payable to any Lender; provided that, the vote of Required Lenders shall be sufficient to waive the payment, or reduce the increased portion, of interest accruing under Section 3.2.1;

(d) modify this Section 12.1, reduce the percentage set forth in the definition of "Required Lenders" or modify any requirement hereunder that any particular action be taken by all Lenders without the consent of all Lenders; provided that, clauses (e), (g) and (j) of this Section may be modified with the consent of the Super-Majority Lenders;

(e) modify Section 8.10 (including, for the avoidance of doubt, the definition of Affiliate as it relates to Section 8.10) without the consent of the Super-Majority Lenders;

(f) except as otherwise expressly provided in a Loan Document, release an Obligor from its Obligations under the Loan Documents or any Subsidiary Guarantor from its obligations under a Guaranty without the consent of all Lenders;

(g) except as otherwise expressly provided in a Loan Document, release any Collateral with a fair market value in excess of $20,000,000 without the consent of the Super-Majority Lenders;

(h) release all of substantially all of the Collateral without the consent of all Lenders (unless otherwise permitted by the Loan Documents);

(i) amend, modify or waive Section 4.1 of the Subordinated Lien Intercreditor Agreement in a manner that would alter the priority of payments as set forth therein without the consent of all Lenders;

(j) amend, modify or waive Section 3.1.1 or 3.1.2 hereof or Section 4.7 of the Subordinated Lien Intercreditor Agreement in a manner that would decrease the percentage share of any prepayment made to the Lenders without the consent of the Super-Majority Lenders;

(k) affect adversely the interests, rights or obligations of the Administrative Agent or Collateral Agent (in its capacity as the Administrative Agent or Collateral Agent), unless consented to by the Administrative Agent or Collateral Agent, as applicable.

Notwithstanding the foregoing provisions of this Section 12.1, the Administrative Agent and the Borrower may, without the consent of any Lender, enter into any amendment, supplement or other modification to any Loan Document, in form and substance reasonably satisfactory to the Administrative Agent, to cure any ambiguity or to correct or supplement any provision in such agreement that may be inconsistent with any other provision of the Loan Documents or to further the intended purposes thereof or to make any change that would provide any additional rights or benefits to the Lenders or make, complete or confirm any grant of collateral permitted or required by this Agreement or any of the Security Documents or any release of any Collateral that becomes effective as set forth in this Agreement or any of the Security Documents; provided

that, prior to executing any such amendment without the consent of any Lender, the Administrative Agent shall be entitled to receive a certification from the Borrower that such amendment is permitted under, and is being entered into in compliance with, this Section 12.1; and provided further that, a copy of any such amendment, supplement or other modification shall be furnished to the Lenders in accordance with the notice provisions hereof not later than three Business Days prior to the execution thereof by the Administrative Agent.

No failure or delay on the part of any Credit Party in exercising any power or right under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such power or right preclude any other or further exercise thereof or the exercise of any other power or right. No notice to or demand on any Obligor in any case shall entitle it to any notice or demand in similar or other circumstances. No waiver or approval by any Credit Party under any Loan Document shall, except as may be otherwise stated in such waiver or approval, be applicable to subsequent transactions. No waiver or approval hereunder shall require any similar or dissimilar waiver or approval thereafter to be granted hereunder.

Section 12.2 Notices; Time. All notices and other communications provided under each Loan Document shall be in writing or by facsimile and addressed, delivered or transmitted, if to an Obligor or the Administrative Agent, at its address or facsimile number set forth on Schedule III hereto, and if to a Lender to the applicable Person at its address or facsimile number set forth on Schedule III hereto or set forth in the Lender Assignment Agreement pursuant to which such Lender became a Lender hereunder, or, in any case, at such other address or facsimile number as may be designated by any such party in a notice to the other parties. Any notice, if mailed and properly addressed with postage prepaid or if properly addressed and sent by pre-paid courier service, shall be deemed given when received; any notice, if transmitted by facsimile, shall be deemed given when the confirmation of transmission thereof is received by the transmitter. Electronic mail and Internet and intranet websites may, at the discretion of the Administrative Agent, be used to distribute routine communications, such as financial statements and other information as provided in Section 7.1, to distribute Loan Documents for execution by the parties thereto and distribute executed Loan Documents and may not be used for any other purpose.

The Administrative Agent agrees to accept and act upon instructions or directions pursuant to this Agreement sent by unsecured e-mail, pdf, facsimile transmission or other similar unsecured electronic methods, provided, however, that the Administrative Agent shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. The Administrative Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Administrative Agent's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction received after such reliance and/or compliance. The Borrower and Lenders agree to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Administrative Agent, including without limitation the risk of the Administrative Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 12.3 Payment of Costs and Expenses. The Borrower agrees to pay (a) all fees and expenses of the Administrative Agent and Lenders (including the reasonable fees and out-of-pocket expenses of (i) Perkins Coie LLP, or such other counsel to the Administrative Agent and of any special or local counsel who may be retained by or on behalf of the Administrative Agent or the Lenders, (ii) the Independent Engineer, (iii) the Market Consultant and (iv) the Insurance Consultant and (b) Skadden, Arps, Slate, Meagher & Flom LLP, in each case, within ten days of written demand therefor (except in the case of such fees and expenses arising from the consummation of the Transactions, which shall be payable on the Effective Date) in connection with:

(i) the negotiation, preparation, execution, delivery and administration of each Loan Document, including schedules and exhibits, and any amendments, waivers, consents, supplements or other modifications to any Loan Document as may from time to time hereafter be required, whether or not the transactions contemplated hereby are consummated;

(ii) the filing, recording, refiling or rerecording of any Loan Document (including the Filing Statements) and all amendments, supplements, amendment and restatements and other modifications to any thereof, searches made following the Effective Date in jurisdictions where Filing Statements (or other documents evidencing Liens in favor of the Secured Parties) have been filed or recorded (and other reasonable actions taken by the Administrative Agent to satisfy themselves that the Liens granted pursuant to the Security Documents have been perfected and are of third priority (subject to Permitted Liens)) and any and all other documents or instruments of further assurance required to be filed or recorded, or refiled or rerecorded by the terms of any Loan Document; and

(iii) the preparation and review of the form of any calculation, certificate, document or instrument relevant to any Loan Document.

The Borrower further agrees to pay, and to save each Credit Party harmless from all liability for, any stamp or other Taxes which may be payable in connection with the execution or delivery of each Loan Document, the Credit Extensions or the issuance of the Notes. The Borrower also agrees to reimburse each Credit Party upon demand for all out-of-pocket expenses (including attorneys' fees and legal expenses of counsel to each Credit Party, including reasonable fees and out-of-pocket expenses of (i) Perkins Coie LLP, or such other counsel to the Administrative Agent and of any special or local counsel who may be retained by or on behalf of the Administrative Agent or the Lenders, and (ii) Skadden, Arps, Slate, Meagher & Flom LLP) incurred by such Credit Party in connection with (x) the negotiation of any restructuring or "work-out" with the Borrower, whether or not consummated, of any Obligations and (y) the enforcement of any Obligations or protection of any rights under the Loan Documents.

Section 12.4 Indemnification. In consideration of the execution and delivery of this Agreement by each Credit Party, each Obligor hereby indemnifies, exonerates and holds each Credit Party and each of their respective officers, directors, trustees, employees, advisors and agents (collectively, the "Indemnified Parties") free and harmless from and against any and all actions, causes of action, suits, losses, costs, liabilities and damages, and expenses incurred in

connection therewith (irrespective of whether any such Indemnified Party or indemnifying party is a party to the action for which indemnification hereunder is sought), including reasonable attorneys' fees and disbursements, whether incurred in connection with actions between or among the parties hereto or the parties hereto and third parties (collectively, the "Indemnified Liabilities"), incurred by the Indemnified Parties or any of them as a result of, or arising out of, or relating to:

(a) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of any Credit Extension, including all Indemnified Liabilities arising in connection with the Transactions;

(b) the entering into and performance of this Agreement or any Loan Document, or any agreement or instrument contemplated hereby or thereby, by any of the Indemnified Parties;

(c) any investigation, litigation or proceeding (including any threatened investigation, litigation or proceeding) related to any environmental cleanup, audit, compliance or other matter relating to any Obligor or any Subsidiary with respect to the protection of the environment or relating to the Release by any Obligor of any Hazardous Material;

(d) the presence on or under, or the Release from, any real property owned or operated by any Obligor of any Hazardous Material (including any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Law), regardless of whether caused by, or within the control of, such Obligor or such Subsidiary; or

(e) each Lender's Environmental Liability (the indemnification herein shall survive repayment of the Obligations and any transfer of the property of any Obligor by foreclosure or by a deed in lieu of foreclosure for any Lender's Environmental Liability, regardless of whether caused by, or within the control of, such Obligor or such Subsidiary);

except for Indemnified Liabilities (x) determined in the final judgment of a court of competent jurisdiction to have arisen for the account of a particular Indemnified Party by reason of the relevant Indemnified Party's gross negligence or willful misconduct, (y) arising out of or in connection with any claim, litigation, investigation or proceeding that does not involve an act or omission by the Borrower or any of their Affiliates and that is brought by an Indemnified Party against another Indemnified Party (other than, in the case of this clause (y), any Indemnified Liabilities incurred by the Administrative Agent or the Collateral Agent), or (z) that result from the material breach by such Indemnified Party of this Agreement or any other Loan Document, as determined in the final judgment of a court of competent jurisdiction (other than, in the case of this clause (z), any Indemnified Liabilities incurred by the Administrative Agent or the Collateral Agent). Except with respect to such gross negligence or willful misconduct, each Obligor and its successors and assigns hereby waive, release and agree not to make any claim or bring any cost recovery action against, any Indemnified Party under CERCLA or any state equivalent, or any similar law now existing or hereafter enacted. It is expressly understood and agreed that to the extent that any Indemnified Party is strictly liable under any Environmental Laws, each Obligor's obligation to such Indemnified Party under this indemnity shall likewise be without regard to fault on the part of any Obligor with respect to the violation or condition which results

in liability of an Indemnified Party. If and to the extent that the foregoing undertaking may be unenforceable for any reason, each Obligor agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law.

To the extent permitted by applicable law, no Obligor shall assert, and each Obligor hereby waives, any claim against each Credit Party and their respective Affiliates, directors, employees, attorneys, 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 Loan or the use of the proceeds thereof 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 or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

Section 12.5 Survival. The obligations of the Obligors under Sections 4.1, 4.2, 4.3, 12.3 and 12.4, and the obligations of the Lenders under Section 10.1, shall in each case survive any assignment from one Lender to another (in the case of Sections 12.3 and 12.4) the occurrence of the Termination Date and the resignation or removal of the Administrative Agent and/or Collateral Agent.. The representations and warranties made by each Obligor in each Loan Document shall survive the execution and delivery of such Loan Document.

Section 12.6 Severability. Any provision of any Loan Document which is prohibited or unenforceable in any jurisdiction shall, as to such provision and such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of such Loan Document or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 12.7 Headings. The various headings of each Loan Document are inserted for convenience only and shall not affect the meaning or interpretation of such Loan Document or any provisions thereof.

Section 12.8 Execution in Counterparts, Effectiveness, etc. This Agreement may be executed by the parties hereto in several counterparts, each of which shall be an original (whether such counterpart is originally executed or an electronic copy of an original and each party hereto expressly waives its rights to receive originally executed documents other than with respect to any Notes) and all of which shall constitute together but one and the same agreement. This Agreement shall become effective on the date (the "Effective Date") on which (a) counterparts hereof executed on behalf of each Obligor, the Administrative Agent and each Lender (or notice thereof satisfactory to the Administrative Agent) shall have been received by the Administrative Agent and (b) each of the conditions precedent set forth in Section 5.1 shall be been satisfied. For the avoidance of doubt, the Effective Date is the first date written above.

Section 12.9 Governing Law; Entire Agreement. EACH LOAN DOCUMENT (EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN A LOAN DOCUMENT) SHALL

BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO PRINCIPLES OF CONFLICT OF LAWS. The Loan Documents constitute the entire understanding among the parties hereto with respect to the subject matter thereof and supersede any prior agreements, written or oral, with respect thereto.

Section 12.10 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that no Obligor may assign or transfer its rights or obligations hereunder without the consent of all of the Lenders.

Section 12.11 Sale and Transfer of Credit Extensions; Participations in Credit Extensions; Notes. Each Lender may (and, in the case such Lender is replaced pursuant to Section 4.8, shall) assign, or sell participations in its Loans, to one or more Eligible Assignees in accordance with the terms set forth below:

(a) Any Lender may, without the consent of the Borrower or the Administrative Agent, assign to one or more Eligible Assignee all or a portion of its rights and obligations under this Agreement; provided that:

(i) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans assigned; and

(ii) the parties to each assignment shall manually execute and deliver to the Administrative Agent a Lender Assignment Agreement and shall pay to the Administrative Agent a processing and recordation fee of $3500 (which fee may be reduced in the sole discretion of the Administrative Agent), and if such Eligible Assignee is not a Lender, administrative details information with respect to such Eligible Assignee and applicable tax forms.

(b) Subject to acceptance and recording thereof by the Administrative Agent pursuant to clause (c) below, from and after the effective date specified in each Lender Assignment Agreement, (i) the Eligible Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Lender Assignment Agreement, have the rights and obligations of a Lender under this Agreement and (ii) the assigning Lender thereunder shall, to the extent of the interest assigned by such Lender Assignment Agreement, subject to Section 12.5, be released from its obligations under this Agreement (and, in the case of a Lender Assignment Agreement 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 any provisions of this Agreement which by their terms survive the termination of this Agreement including the indemnification provisions hereof. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with clause (a) above, this clause(b) or clause (g) below 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 clause (d) below.

(c) The Administrative Agent shall record each assignment made in accordance with this Section 12.11 in the Register pursuant to Section 2.3(b). The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Any Lender may, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement; provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) 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 or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver with respect to any of the items set forth in Sections 12.1(a) through (d) or (f), in each case except as otherwise specifically provided in a Loan Document. Subject to clause (e) below, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 4.1, 4.2, 4.3, 7.1, 12.3 and 12.4 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (b) above; provided that, such participant agrees to be subject to the provisions of Section 4.7 and 4.8 as if it were an assignee under clause (b) of this Section 12.11. To the extent permitted by law, each Participant shall also be entitled to the benefits of Section 4.6 as though it were a Lender; provided that, such Participant agrees to be subject to Section 4.5 as though it were a Lender.

(e) Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under this Agreement (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 Loans or other obligations under this Agreement) to any Person except to the extent that such disclosure is necessary to establish that such Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(f) A Participant shall not be entitled to receive any greater payment under Sections 4.1, 4.2, 4.3, 12.3 and 12.4 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant. A Participant that would be a Non-Domestic Credit Party if it were a Lender shall not be entitled to the benefits of Section 4.3 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with the requirements set forth in Section 4.3 as though it were a Lender and had acquired its interest by assignment pursuant to clause (b) of

this Section 12.11. Thus, if at the time of the sale of such participation, any greater Taxes subject to payment under Section 4.3 would apply to the Participant than applied to the applicable Lender, then such Participant shall not be entitled to any payment under Section 4.3 with respect to the portion of such Taxes as exceeds the Taxes applicable to the Lender at the time of the sale of the participation.

(g) Any Lender may, without the consent of, or notice to, the Borrower or the Administrative Agent, 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; 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.

Section 12.12 Other Transactions. Nothing contained herein shall preclude the Administrative Agent, the Collateral Agent or any Lender from engaging in any transaction, in addition to those contemplated by the Loan Documents, with the Obligors or any of their respective Affiliates in which such Obligor or such Affiliate is not restricted hereby from engaging with any other Person.

Section 12.13 Independence of Covenants and Default Provisions. All covenants and default provisions contained in this Agreement or any other Loan Document shall be given independent effect such that, in the event a particular action or condition is not permitted by any of such covenants or default provisions, the fact that it would be permitted by an exception to, or be otherwise within the limitations of, another covenant or default provision shall not, unless expressly so provided in such first covenant or default provision, avoid the occurrence of a Default if such action is taken or such condition exists.

Section 12.14 Confidentiality.

(a) Subject to the provisions of clause (b) of this Section 12.14, each Lender agrees that it will not disclose without the prior consent of the Borrower (other than to its employees, auditors, advisors, trustees or counsel, or to another Lender if the Lender or such Lender's holding or parent company in its reasonable discretion determines that any such party should have access to such information, provided that such Persons shall be subject to the provisions of this Section 12.14 to the same extent as such Lender) any non-public information which is now or in the future furnished pursuant to this Agreement or any other Loan Document, provided further that any Lender may disclose any such information (i) as has become generally available to the public other than by virtue of a breach of this clause by the respective Lender or any other Person to whom such Lender has provided such information as permitted by this Section 12.14, (ii) as may be required or requested in any report, statement or testimony submitted to any municipal, state or federal regulatory body having or claiming to have jurisdiction over such Lender or to the Board of Governors of the Federal Reserve System of the United States or the Federal Deposit Insurance Corporation or similar organizations (whether in the United States or elsewhere) or their successors, (iii) as may be required or requested in respect to any summons or subpoena or in connection with any litigation relating to its rights under any Loan Document, (iv) in order to comply with any law, order, regulation or ruling applicable to such Lender, (v) to the Administrative Agent, (vi) to any pledgee referred to in

Section 12.11(g) or any prospective or actual transferee or participant in connection with any contemplated transfer or participation of any of the Notes or Loans or any interest therein by such Lender, provided that such prospective transferee agrees to be bound by the confidentiality provisions contained in, or provisions no less restrictive than, this Section 12.14, (vii) to any direct or indirect contractual counterparty in swap agreements or such contractual counterparty's professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of, or provisions no less restrictive than, this Section 12.14) and (viii) to the NAIC 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.

(b) Each Obligor hereby acknowledges and agrees that each Lender may share with any of its Affiliates, and such Affiliates may share with such Lender, any information related to any Obligor, provided that such Persons shall be subject to the provisions of this Section 12.14 to the same extent as such Lender.

Notwithstanding the foregoing clauses (a) and (b) of this Section 12.14, any party to this Agreement (and each Affiliate, director, officer, employee, agent or representative of the foregoing or such Affiliate) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated herein and all materials of any kind (including opinions or other tax analyses) that are provided to such party relating to such tax treatment or tax structure. The foregoing language is not intended to waive any confidentiality obligations otherwise applicable under this Agreement except with respect to the information and materials specifically referenced in the preceding sentence. This authorization does not extend to disclosure of any other information, including (i) the identity of participants or potential participants in the transactions contemplated herein (and no party shall disclose any information relating to such tax treatment and tax structure to the extent nondisclosure is reasonably necessary in order to comply with applicable securities laws (it is being understood that, for such purpose, the tax treatment of the transactions contemplated by this Agreement is the purported or claimed U.S. federal income tax treatment of such transactions and the tax structure of such transaction is any fact that may be relevant to understanding the purported or claimed U.S. federal income tax treatment of such transactions), (ii) the existence or status of any negotiations, or (iii) any financial, business, legal or personal information of or regarding a party or its affiliates, or of or regarding any participants or potential participants in the transactions contemplated herein (or any of their respective affiliates), in each case to the extent such other information is not related to the tax treatment or tax structure of the transactions contemplated herein.

Section 12.15 FORUM SELECTION AND CONSENT TO JURISDICTION. ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, ANY LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE ADMINISTRATIVE AGENT, THE LENDERS AND THE OBLIGORS IN CONNECTION HEREWITH OR THEREWITH SHALL BE BROUGHT AND MAINTAINED IN THE COURTS OF THE BOROUGH OF MANHATTAN OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; PROVIDED THAT, ANY SUIT SEEKING ENFORCEMENT AGAINST ANY

COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT THE ADMINISTRATIVE AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH OBLIGOR IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK AT THE ADDRESS FOR NOTICES SPECIFIED IN SECTION 12.2 OR TO ITS AGENT DESIGNATED FOR SUCH PURPOSE. EACH OBLIGOR HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY HAVE OR HEREAFTER MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY OBLIGOR HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, EACH OBLIGOR HEREBY IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THE LOAN DOCUMENTS.

Section 12.16 WAIVER OF JURY TRIAL. THE ADMINISTRATIVE AGENT, EACH LENDER AND EACH OBLIGOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW 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, EACH LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE ADMINISTRATIVE AGENT, SUCH LENDER OR SUCH OBLIGOR IN CONNECTION THEREWITH. EACH OBLIGOR ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION (AND EACH OTHER PROVISION OF EACH OTHER LOAN DOCUMENT TO WHICH IT IS A PARTY) AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE ADMINISTRATIVE AGENT AND EACH LENDER ENTERING INTO THE LOAN DOCUMENTS.

Section 12.17 Counsel Representation. Each Obligor acknowledges and agrees that it has been represented by competent counsel in the negotiation of this Agreement, and that any rule or construction of law enabling an Obligor to assert that any ambiguities or inconsistencies in the drafting or preparation of the terms of this Agreement should diminish any rights or remedies of the Administrative Agent or the other Credit Parties are hereby waived by each Obligor.

Section 12.18 PATRIOT Act. Each Lender hereby notifies the Obligors that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies the Obligors, which information includes the name and address of the Obligors and other information that will allow such Lender to identify the Obligors in accordance with the PATRIOT Act.

Section 12.19 Intercreditor Agreements. Notwithstanding anything to the contrary in this Agreement or in any other Loan Document:

(a) the Liens granted to the Collateral Agent in favor of the Secured Parties pursuant to this Agreement and the other Loan Documents and the exercise of any right related to any Collateral shall be subject, in each case, to the terms of the Intercreditor Agreements;

(b) in the event of any conflict between the express terms and provisions of this Agreement or any other Loan Document, on the one hand, and of the Intercreditor Agreements, on the other hand, the terms and provisions of the Intercreditor Agreements shall control; and

(c) each Lender authorizes the Administrative Agent to execute each Intercreditor Agreement on behalf of such Lender, and such Lender agrees to be bound by the terms thereof.

Section 12.20 Scope of Liability. Notwithstanding anything to the contrary in this Agreement, any other Loan Document, or any other document, certificate or instrument executed by any Obligor pursuant hereto or thereto, none of the Secured Parties shall have any claims with respect to the transactions contemplated by the Loan Documents against any past, present or future holder (whether direct or indirect) of any equity interests in Borrower and its Affiliates (other than the Borrower and its Subsidiaries), shareholders, officers, directors, employees' representatives, Controlling persons, executives or agents (collectively, the "Non-Recourse Persons"), such claims against such Non-Recourse Persons (including as may arise by operation of law) being expressly waived hereby; provided that the foregoing provision of this Section 12.20 shall not (a) constitute a waiver, release or discharge (or otherwise impair the enforceability) of any of the Obligations, or of any of the terms, covenants, conditions or provisions of this Agreement or any other Loan Document and the same shall continue (but without personal liability to the Non-Recourse Persons) until fully paid, discharged, observed or performed; (b) constitute a waiver, release or discharge of any lien or security interest purported to be created pursuant to the Security Documents (or otherwise impair the ability of any Secured Party to realize or foreclose upon any Collateral); (c) limit or restrict the right of the Administrative Agent, the Collateral Agent or any other Secured Party (or any assignee, beneficiary or successor to any of them) to name the Borrower 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 Loan 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 Section 12.20; (d) in any way limit or restrict any right or remedy of the Administrative Agent, the Collateral Agent or any other Secured 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 (which shall not include innocent or negligent misrepresentation) or willful misconduct, or (e) affect or diminish or constitute a waiver, release or discharge of any specific written obligation, covenant or agreement made by any of the Non-Recourse Persons (or any security granted by the Non-Recourse Persons in support of the obligations of any person) under or in connection with any Security Document (or as security for the Obligations). The limitations on recourse set forth in

this Section 12.20 shall survive the termination of this Agreement and the termination of all Hedge Agreements to which any Secured Party is a party and the full payment and performance of the Obligations hereunder and under the other Loan Documents.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have cause this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

ENTEGRA TC LLC,
as Borrower

By:_____
Name:
Title:

EPG LLC,
as a Subsidiary Guarantor

By:_____
Name:
Title:

UNION POWER PARTNERS, L.P.,
as a Subsidiary Guarantor

By: Union Power LLC,
its General Partner

By:_____
Name:
Title:

TRANS-UNION INTERSTATE PIPELINE, L.P.,
as a Subsidiary Guarantor

By: Trans-Union Pipeline LLC,
its General Partner

By:_____
Name:
Title:

UPP FINANCE CO, LLC,
as a Subsidiary Guarantor

By:_____
Name:
Title:

UNION POWER LLC,
as a Subsidiary Guarantor

By:_____
Name:
Title:

TRANS-UNION PIPELINE LLC,
as a Subsidiary Guarantor

By:_____
Name:
Title:

ENTEGRA POWER SERVICES LLC,
as a Subsidiary Guarantor

By:_____
Name:
Title:

[CORPORATE CO-ISSUER],
as a Subsidiary Guarantor

By:_____
Name:
Title:

GILA RIVER ENERGY HOLDCO LLC,
as a Subsidiary Guarantor

By:_____
Name:
Title:

WELLS FARGO BANK NATIONAL ASSOCIATION,
as Administrative Agent and Collateral Agent

By:_____
Name:
Title:

[●],
as a Lender

By:_____
Name:
Title:

Exhibit F

Officers of the Reorganized Debtors[1]

Position	**Name**
President and Chief Executive Officer	Michael R. Schuyler
Chief Financial Officer	Michael Danielson
General Counsel	Jerry F. Coffey
Vice President, Marketing and Origination	Eric Bronner
Vice President, Risk Control, Analysis and Credit	Vincent P. Crane
Vice President, Asset Trading	John Heisey
Vice President, Engineering and Operations	William O'Brien
Vice President, Regulatory Affairs and Contract Services	Rebecca E. Turner
Controller and CAO	Craig Cameron
Director - Engineering	James Sellers
Director - Finance	Susan Allgoever
UPP Plant Manager	Thomas Burger
Gila Plant Manager	Robert Stone

[1] The members of the Board of Directors of the Reorganized Debtors will be disclosed prior to the Combined Hearing.

Exhibit G

Disclosure of Insider Compensation

In accordance with section 1129(a)(5) of the Bankruptcy Code, the base salary of any insider that will be employed or retained by the Reorganized Debtors is set forth below:

Employee	**Current Position**	**Base Salary**
Michael R. Schuyler	CEO	$500,000.00
Michael Danielson	CFO	$250,000.00
Jerry F. Coffey	General Counsel	$250,000.00
Eric Bronner	VP - Strategy and Origination	$195,000.00
Rebecca E. Turner	VP - Regulatory and Contract Services	$165,500.00
John Heisey	VP - Asset Trading	$160,000.00
William O'Brien	VP – Operations	$188,000.00
Vincent P. Crane	VP - Risk Control	$159,000.00
Craig Cameron	Controller and CAO	$160,000.00
James Sellers	Director- Engineering	$141,500.00
Susan Allgoever	Director - Finance	$115,000.00
Thomas Burger	UPP Plant Manager	$141,245.00
Robert Stone	Gila Plant Manager	$130,000.00

In addition, on or as soon as practicable after the Effective Date, the Board of the Reorganized Debtors will adopt and implement a long term incentive program, short term incentive program, and other compensation policies in accordance with the Incentive Compensation Term Sheet. Additionally, as set forth in the Incentive Compensation Term Sheet, certain employees may receive a supplemental award in connection with the completion of the Debtors' restructuring; the aggregate amount of such awards shall not exceed $375,000.00.

Exhibit H

Contracts to be Assumed Pursuant to Section 8.5 of the Plan

- Service Agreement dated October 25, 2013, by and among Employer's Alliance LLC d/b/a Fortune Business Solutions and Union Power Employee Co. LLC

- Service Agreement dated October 25, 2013, by and among Employer's Alliance LLC d/b/a Fortune Business Solutions and Entegra Power Services LLC