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

FORM 10-Q

☑ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended **March 31, 2019**
OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from ____ to ____

Commission file number **001-37386**

FORTRESS TRANSPORTATION AND INFRASTRUCTURE INVESTORS LLC

(Exact name of registrant as specified in its charter)

Delaware	**32-0434238**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
1345 Avenue of the Americas, 45th Floor, New York, NY	**10105**
(Address of principal executive offices)	(Zip Code)

(Registrant's telephone number, including area code) **(212) 798-6100**

(Former name, former address and former fiscal year, if changed since last report) **N/A**

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☑ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☑ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☑	Accelerated filer ☐
Non-accelerated filer ☐	Smaller reporting company ☐
Emerging growth company ☐	

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☑

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

Title of each class:	Trading Symbol:	Name of exchange on which registered:
Class A common shares, $0.01 par value per share	FTAI	New York Stock Exchange (NYSE)

There were 84,671,632 common shares representing limited liability company interests outstanding at April 30, 2019.

FORWARD-LOOKING STATEMENTS

This report contains “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements are not statements of historical fact but instead are based on our present beliefs and assumptions and on information currently available to us. You can identify these forward-looking statements by the use of forward-looking words such as “outlook,” “believes,” “expects,” “potential,” “continues,” “may,” “will,” “should,” “could,” “seeks,” “approximately,” “predicts,” “intends,” “plans,” “estimates,” “anticipates,” “target,” “projects,” “contemplates” or the negative version of those words or other comparable words. Any forward-looking statements contained in this report are based upon our historical performance and on our current plans, estimates and expectations in light of information currently available to us. The inclusion of this forward-looking information should not be regarded as a representation by us, that the future plans, estimates or expectations contemplated by us will be achieved. Such forward-looking statements are subject to various risks and uncertainties and assumptions relating to our operations, financial results, financial condition, business, prospects, growth strategy and liquidity. Accordingly, there are or will be important factors that could cause our actual results to differ materially from those indicated in these statements. We believe that these factors include, but are not limited to:

- changes in economic conditions generally and specifically in our industry sectors, and other risks relating to the global economy;
- reductions in cash flows received from our assets, as well as contractual limitations on the use of our aviation assets to secure debt for borrowed money;
- our ability to take advantage of acquisition opportunities at favorable prices;
- a lack of liquidity surrounding our assets, which could impede our ability to vary our portfolio in an appropriate manner;
- the relative spreads between the yield on the assets we acquire and the cost of financing;
- adverse changes in the financing markets we access affecting our ability to finance our acquisitions;
- customer defaults on their obligations;
- our ability to renew existing contracts and enter into new contracts with existing or potential customers;
- the availability and cost of capital for future acquisitions;
- concentration of a particular type of asset or in a particular sector;
- competition within the aviation, energy, intermodal transport and rail sectors;
- the competitive market for acquisition opportunities;
- risks related to operating through joint ventures or partnerships or through consortium arrangements;
- obsolescence of our assets or our ability to sell, re-lease or re-charter our assets;
- exposure to uninsurable losses and force majeure events;
- infrastructure operations may require substantial capital expenditures;
- the legislative/regulatory environment and exposure to increased economic regulation;
- exposure to the oil and gas industry’s volatile oil and gas prices;
- difficulties in obtaining effective legal redress in jurisdictions in which we operate with less developed legal systems;
- our ability to maintain our exemption from registration under the Investment Company Act of 1940 and the fact that maintaining such exemption imposes limits on our operations;
- our ability to successfully utilize leverage in connection with our investments;
- foreign currency risk and risk management activities;
- effectiveness of our internal control over financial reporting;
- exposure to environmental risks, including increasing environmental legislation and the broader impacts of climate change;
- changes in interest rates and/or credit spreads, as well as the success of any hedging strategy we may undertake in relation to such changes;
- actions taken by national, state, or provincial governments, including nationalization, or the imposition of new taxes, could materially impact the financial performance or value of our assets;
- our dependence on our Manager and its professionals and actual, potential or perceived conflicts of interest in our relationship with our Manager;
- effects of the merger of Fortress Investment Group LLC with affiliates of SoftBank Group Corp.;
- volatility in the market price of our common shares;
- the inability to pay dividends to our shareholders in the future; and
- other risks described in the “Risk Factors” section of this report.

These factors should not be construed as exhaustive and should be read in conjunction with the other cautionary statements that are included in this report. The forward-looking statements made in this report relate only to events as of the date on which the statements are made. We do not undertake any obligation to publicly update or review any forward-looking statement except as required by law, whether as a result of new information, future developments or otherwise.

If one or more of these or other risks or uncertainties materialize, or if our underlying assumptions prove to be incorrect, our actual results may vary materially from what we may have expressed or implied by these forward-looking statements. We caution that you should not place undue reliance on any of our forward-looking statements. Furthermore, new risks and uncertainties arise from time to time, and it is impossible for us to predict those events or how they may affect us.

FORTRESS TRANSPORTATION AND INFRASTRUCTURE INVESTORS LLC
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PART I—FINANCIAL INFORMATION

Item 1. Financial Statements

FORTRESS TRANSPORTATION AND INFRASTRUCTURE INVESTORS LLC
CONSOLIDATED BALANCE SHEETS

(Dollars in thousands, except share and per share data)

	Notes	(Unaudited) March 31, 2019	December 31, 2018
Assets			
Cash and cash equivalents	2	**$ 120,515**	$ 99,601
Restricted cash	2	**108,058**	21,236
Accounts receivable, net		**50,586**	53,789
Leasing equipment, net	3	**1,471,794**	1,432,210
Operating lease right-of-use assets, net	12	**44,241**	—
Finance leases, net	4	**21,158**	18,623
Property, plant, and equipment, net	5	**788,668**	708,853
Investments	6	**39,778**	40,560
Intangible assets, net	7	**35,604**	38,513
Goodwill		**116,584**	116,584
Other assets	2	**150,714**	108,809
Total assets		**$ 2,947,700**	$ 2,638,778
Liabilities			
Accounts payable and accrued liabilities		**$ 97,415**	$ 112,188
Debt, net	8	**1,540,017**	1,237,347
Maintenance deposits		**166,749**	158,163
Security deposits		**38,638**	38,539
Operating lease liabilities	12	**44,719**	—
Other liabilities		**87,108**	38,759
Total liabilities		**$ 1,974,646**	$ 1,584,996
Commitments and contingencies	18		
Equity			
Common shares ($0.01 par value per share; 2,000,000,000 shares authorized; 84,477,791 and 84,050,889 shares issued and outstanding as of March 31, 2019 and December 31, 2018, respectively)		**$ 845**	$ 840
Additional paid in capital		**1,001,223**	1,029,376
Accumulated deficit		**(39,197)**	(32,817)
Accumulated other comprehensive loss		**(43,012)**	—
Shareholders' equity		**919,859**	997,399
Non-controlling interest in equity of consolidated subsidiaries		**53,195**	56,383
Total equity		**973,054**	1,053,782
Total liabilities and equity		**$ 2,947,700**	$ 2,638,778

See accompanying notes to consolidated financial statements.

FORTRESS TRANSPORTATION AND INFRASTRUCTURE INVESTORS LLC
CONSOLIDATED STATEMENTS OF OPERATIONS *(unaudited)*
(Dollars in thousands, except share and per share data)

	Notes	Three Months Ended March 31, 2019	2018
Revenues			
Equipment leasing revenues		**$ 72,452**	$ 55,784
Infrastructure revenues		**52,175**	13,060
Total revenues	11	**124,627**	68,844
Expenses			
Operating expenses		**61,918**	27,579
General and administrative		**4,732**	3,586
Acquisition and transaction expenses		**1,474**	1,766
Management fees and incentive allocation to affiliate	15	**3,838**	3,739
Depreciation and amortization	3, 5, 7	**39,533**	29,587
Interest expense		**21,303**	11,871
Total expenses		**132,798**	78,128
Other income (expense)			
Equity in (losses) earnings of unconsolidated entities	6	**(384)**	95
Gain (loss) on sale of equipment, net		**1,725**	(5)
Interest income		**91**	176
Other (expense) income		**(2,604)**	180
Total other (expense) income		**(1,172)**	446
Loss before income taxes		**(9,343)**	(8,838)
Provision for income taxes	14	**453**	495
Net loss		**(9,796)**	(9,333)
Less: Net loss attributable to non-controlling interests in consolidated subsidiaries		**(3,416)**	(8,761)
Net loss attributable to shareholders		**$ (6,380)**	$ (572)
Loss per share	17		
Basic		**$ (0.07)**	$ (0.01)
Diluted		**$ (0.07)**	$ (0.01)
Weighted Average Shares Outstanding:			
Basic		**85,986,453**	81,534,454
Diluted		**85,986,453**	81,534,454

See accompanying notes to consolidated financial statements.

FORTRESS TRANSPORTATION AND INFRASTRUCTURE INVESTORS LLC
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS) *(unaudited)*
(Dollars in thousands)

	Three Months Ended March 31,	
	2019	**2018**
Net loss	**$ (9,796)**	$ (9,333)
Other comprehensive loss:		
Change in fair value of cash flow hedge	**(43,012)**	—
Comprehensive loss	**(52,808)**	(9,333)
Comprehensive loss attributable to non-controlling interest	**(3,416)**	(8,761)
Comprehensive loss attributable to shareholders	**$ (49,392)**	$ (572)

See accompanying notes to consolidated financial statements.

FORTRESS TRANSPORTATION AND INFRASTRUCTURE INVESTORS LLC
CONSOLIDATED STATEMENT OF CHANGES IN EQUITY *(unaudited)*
(Dollars in thousands)

	Three Months Ended March 31, 2019					
	Common Shares	Additional Paid In Capital	Accumulated Deficit	Accumulated Other Comprehensive Income	Non-Controlling Interest in Equity of Consolidated Subsidiaries	Total Equity
Equity - December 31, 2018	$ 840	$ 1,029,376	$ (32,817)	$ —	$ 56,383	$ 1,053,782
Comprehensive loss:						
Net loss for the period			**(6,380)**		**(3,416)**	**(9,796)**
Other comprehensive loss			**—**	**(43,012)**	**—**	**(43,012)**
Total comprehensive loss			**(6,380)**	**(43,012)**	**(3,416)**	**(52,808)**
Issuance of common shares	**5**	**230**				**235**
Dividends declared		**(28,383)**				**(28,383)**
Equity-based compensation		**—**			**228**	**228**
Equity - March 31, 2019	**$ 845**	**$ 1,001,223**	**$ (39,197)**	**$ (43,012)**	**$ 53,195**	**$ 973,054**

	Three Months Ended March 31, 2018					
	Common Shares	Additional Paid In Capital	Accumulated Deficit	Accumulated Other Comprehensive Income	Non-Controlling Interest in Equity of Consolidated Subsidiaries	Total Equity
Equity - December 31, 2017	$ 758	$ 985,009	$ (38,699)	$ —	$ 88,007	$ 1,035,075
Comprehensive loss:						
Net loss for the period			(572)		(8,761)	(9,333)
Other comprehensive income			—	—	—	—
Total comprehensive loss			(572)	—	(8,761)	(9,333)
Issuance of common shares	70	127,807			—	127,877
Dividends declared		(27,333)			—	(27,333)
Equity-based compensation		9			199	208
Equity - March 31, 2018	$ 828	$ 1,085,492	$ (39,271)	$ —	$ 79,445	$ 1,126,494

See accompanying notes to consolidated financial statements.

FORTRESS TRANSPORTATION AND INFRASTRUCTURE INVESTORS LLC
CONSOLIDATED STATEMENTS OF CASH FLOWS *(unaudited)*
(Dollars in thousands)

	Three Months Ended March 31,	
	2019	**2018**
Cash flows from operating activities:		
Net loss	**$ (9,796)**	$ (9,333)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Equity in losses (earnings) of unconsolidated entities	**384**	(95)
(Gain) loss on sale of equipment, net	**(1,725)**	5
Security deposits and maintenance claims included in earnings	**(2,953)**	(383)
Equity-based compensation	**228**	208
Depreciation and amortization	**39,533**	29,587
Change in current and deferred income taxes	**338**	504
Change in fair value of non-hedge derivative	**3,220**	(624)
Amortization of lease intangibles and incentives	**8,334**	7,226
Amortization of deferred financing costs	**2,025**	1,151
Bad debt expense	**2,950**	1,441
Other	**221**	9
Change in:		
Accounts receivable	**(1,127)**	(7,387)
Other assets	**(5,295)**	1,176
Accounts payable and accrued liabilities	**(14,348)**	(9,768)
Management fees payable to affiliate	**(1,158)**	(1,300)
Other liabilities	**(561)**	(947)
Net cash provided by operating activities	**20,270**	11,470
Cash flows from investing activities:		
Investment in notes receivable	**—**	(912)
Investment in unconsolidated entities and available for sale securities	**—**	(1,115)
Principal collections on finance leases	**1,289**	129
Acquisition of leasing equipment	**(108,919)**	(86,043)
Acquisition of property, plant and equipment	**(81,241)**	(23,641)
Acquisition of lease intangibles	**(589)**	(1,029)
Purchase deposits for acquisitions	**(4,625)**	(6,886)
Proceeds from sale of leasing equipment	**27,292**	6,136
Proceeds from sale of property, plant and equipment	**7**	38
Return of capital distributions from unconsolidated entities	**398**	—
Return of purchase deposit for aircraft and aircraft engines	**—**	240
Return of deposit on sale of engine	**—**	(400)
Net cash used in investing activities	**$ (166,388)**	$ (113,483)

See accompanying notes to consolidated financial statements.

FORTRESS TRANSPORTATION AND INFRASTRUCTURE INVESTORS LLC
CONSOLIDATED STATEMENTS OF CASH FLOWS *(unaudited)*
(Dollars in thousands)

	Three Months Ended March 31,	
	2019	**2018**
Cash flows from financing activities:		
Proceeds from debt	**$ 352,680**	$ 18,600
Repayment of debt	**(47,222)**	(12,612)
Payment of deferred financing costs	**(28,611)**	(71)
Receipt of security deposits	**1,935**	1,864
Return of security deposits	**(233)**	(700)
Receipt of maintenance deposits	**13,495**	9,720
Release of maintenance deposits	**(9,807)**	(1,840)
Proceeds from issuance of common shares, net of underwriter's discount	**—**	128,450
Common shares issuance costs	**—**	(132)
Cash dividends	**(28,383)**	(27,333)
Net cash provided by financing activities	**$ 253,854**	$ 115,946
Net increase in cash and cash equivalents and restricted cash	**107,736**	13,933
Cash and cash equivalents and restricted cash, beginning of period	**120,837**	92,806
Cash and cash equivalents and restricted cash, end of period	**$ 228,573**	$ 106,739
Supplemental disclosure of non-cash investing and financing activities:		
Proceeds from borrowings of debt	**$ —**	$ 511
Acquisition of leasing equipment	**(2,128)**	(2,938)
Acquisition of property, plant and equipment	**(11,210)**	(5,849)
Settled and assumed security deposits	**(1,604)**	500
Billed, assumed and settled maintenance deposits	**5,405**	(3,517)
Change in fair value of cash flow hedge	**(43,012)**	—
Issuance of common shares	**235**	150
Common share issuance costs	**—**	(591)

See accompanying notes to consolidated financial statements.

1. ORGANIZATION

Fortress Transportation and Infrastructure Investors LLC (the "Company," "we," "our" or "us") is a Delaware limited liability company which, through its subsidiary, Fortress Worldwide Transportation and Infrastructure General Partnership (the "Partnership"), owns and leases aviation equipment and also owns and operates a short line railroad in North America, Central Maine and Québec Railway ("CMQR"), a multi-modal crude oil and refined products terminal in Beaumont, Texas ("Jefferson Terminal"), a deep-water port located along the Delaware River with an underground storage cavern and multiple industrial development opportunities ("Repauno"), and a multi-modal terminal located along the Ohio River with multiple industrial development opportunities, including a power plant under construction ("Long Ridge"). Additionally, we own and lease offshore energy equipment and shipping containers. We have four reportable segments, (i) Aviation Leasing, (ii) Jefferson Terminal, (iii) Railroad, and (iv) Ports and Terminals, which operate in two primary businesses, Equipment Leasing and Infrastructure (Note 16).

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Accounting—The accompanying consolidated financial statements are prepared in accordance with U.S. generally accepted accounting principles ("GAAP") and include the accounts of us and our subsidiaries.

Principles of Consolidation—We consolidate all entities in which we have a controlling financial interest and control over significant operating decisions, as well as variable interest entities ("VIEs") in which we are the primary beneficiary. All significant intercompany transactions and balances have been eliminated. All adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation have been included. The ownership interest of other investors in consolidated subsidiaries is recorded as non-controlling interest.

We use the equity method of accounting for investments in entities in which we exercise significant influence but which do not meet the requirements for consolidation. Under the equity method, we record our proportionate share of the underlying net income (loss) of these entities.

Use of Estimates—The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Risks and Uncertainties—In the normal course of business, we encounter several significant types of economic risk including credit, market, and capital market risks. Credit risk is the risk of the inability or unwillingness of a lessee, customer, or derivative counterparty to make contractually required payments or to fulfill its other contractual obligations. Market risk reflects the risk of a downturn or volatility in the underlying industry segments in which we operate, which could adversely impact the pricing of the services offered by us or a lessee's or customer's ability to make payments, increase the risk of unscheduled lease terminations and depress lease rates and the value of our leasing equipment or operating assets. Capital market risk is the risk that we are unable to obtain capital at reasonable rates to fund the growth of our business or to refinance existing debt facilities. We, through our subsidiaries, also conduct operations outside of the United States; such international operations are subject to the same risks as those associated with our United States operations as well as additional risks, including unexpected changes in regulatory requirements, heightened risk of political and economic instability, potentially adverse tax consequences and the burden of complying with foreign laws. We do not have significant exposure to foreign currency risk as all of our leasing arrangements and the majority of terminal services revenue and freight rail revenue are denominated in U.S. dollars.

Variable Interest Entities—The assessment of whether an entity is a VIE and the determination of whether to consolidate a VIE requires judgment. VIEs are defined as entities in which equity investors do not have the characteristics of a controlling financial interest or do not have sufficient equity at risk for the entity to finance its activities without additional subordinated financial support from other parties. A VIE is required to be consolidated by its primary beneficiary, and only by its primary beneficiary, which is defined as the party who has the power to direct the activities of a VIE that most significantly impact its economic performance and who has the obligation to absorb losses or the right to receive benefits from the VIE that could potentially be significant to the VIE.

JGP Energy Partners LLC

During the quarter ended September 30, 2016, we initiated activities in our 50% owned joint venture, JGP Energy Partners LLC ("JGP"). The other 50% member to the joint venture is a third party ethanol producer. The purpose of the venture is to build storage capacity with capabilities to receive and/or distribute ethanol via water, rail or truck. Each member contributed up to $27 million (for a total of $54 million) for the development and construction of the ethanol terminal facilities. JGP is governed by a designated operating committee selected by the members in proportion to their equity interests. JGP is solely reliant on its members to finance its activities and therefore is a VIE. We concluded that we are not the primary beneficiary of JGP as the members share equally in the risks and rewards and decision making authority of the entity; therefore, we do not consolidate JGP and account for this investment in accordance with the equity method. Refer to Note 6 for details.

Delaware River Partners LLC

On July 1, 2016, we, through Delaware River Partners LLC ("DRP"), a consolidated subsidiary, purchased the assets of Repauno, which consisted primarily of land, a storage cavern, and riparian rights for the acquired land, site improvements and rights. Upon acquisition there were no operational processes that could be applied to these assets that would result in outputs without significant green field development. We currently hold a 90% economic interest and a 100% voting interest in DRP. DRP is solely reliant on us to finance its activities and therefore is a VIE. We concluded that we were the primary beneficiary; and accordingly, DRP has been presented on a consolidated basis in the accompanying financial statements.

Ohio River Partners LLC

On June 16, 2017, we, through Ohio River Partners Shareholder LLC ("ORP"), a consolidated subsidiary, purchased the assets of Long Ridge which consisted primarily of land, buildings, railroad track, docks, water rights, site improvements and other rights. We purchased 100% of the interests in these assets. ORP is solely reliant on us to finance its activities and therefore is a VIE. We concluded that we were the primary beneficiary; accordingly, ORP has been presented on a consolidated basis in the accompanying financial statements.

Cash and Cash Equivalents—We consider all highly liquid short-term investments with a maturity of 90 days or less when purchased to be cash equivalents.

Restricted Cash—Restricted cash consists of prepaid interest and principal pursuant to the requirements of certain of our debt agreements (see Note 8), and funds set aside for the power plant construction at Long Ridge (see Note 5) and other qualifying construction projects at Jefferson Terminal.

Inventory—Commodities inventory is carried at the lower of cost or net realizable value on our balance sheet. Commodities are removed from inventory based on the average cost at the time of sale. As of March 31, 2019 and December 31, 2018, we had commodities inventory of $11.0 million and $10.4 million, respectively, which is included in Other assets in the Consolidated Balance Sheets.

Deferred Financing Costs—Costs incurred in connection with obtaining long term financing are capitalized and amortized to interest expense over the term of the underlying loans. Unamortized deferred financing costs of $17.5 million and $14.5 million as of March 31, 2019 and December 31, 2018, respectively, are recorded as a component of debt in the Consolidated Balance Sheets.

We also have unamortized deferred revolver fees related to our revolving debt of $25.6 million and $2.4 million as of March 31, 2019 and December 31, 2018, respectively, which are included in Other assets in the Consolidated Balance Sheets.

Amortization expense was $2.0 million and $1.2 million for the three months ended March 31, 2019 and 2018, respectively, and is included in interest expense in the Consolidated Statements of Operations.

Revenue Recognition

Equipment Leasing Revenues

Operating Leases—We lease equipment pursuant to net operating leases. Operating leases with fixed rentals and step rentals are recognized on a straight-line basis over the term of the lease, assuming no renewals. Revenue is not recognized when collection is not reasonably assured. When collectability is not reasonably assured, the customer is placed on non-accrual status and revenue is recognized when cash payments are received.

Generally, under our aircraft lease and engine agreements, the lessee is required to make periodic maintenance payments calculated based on the lessee's utilization of the leased asset or at the end of the lease. Typically, under our aircraft lease agreements, the lessee is responsible for maintenance, repairs and other operating expenses throughout the term of the lease. These periodic maintenance payments accumulate over the term of the lease to fund major maintenance events, and we are contractually obligated to return maintenance payments to the lessee up to the amount paid by the lessee. In the event the total cost of maintenance events over the term of a lease is less than the cumulative maintenance payments, we are not required to return any unused or excess maintenance payments to the lessee.

Maintenance payments received for which we expect to repay to the lessee are presented as Maintenance Deposits in our Consolidated Balance Sheets. All excess maintenance payments received that we do not expect to repay to the lessee are recorded as Maintenance revenues.

Finance Leases—From time to time we enter into finance lease arrangements that include a lessee obligation to purchase the leased equipment at the end of the lease term, a bargain purchase option, or provides for minimum lease payments with a present value of 90% or more of the fair value of the leased equipment at the date of lease inception. Net investment in finance lease represents the minimum lease payments due from lessee, net of unearned income. The lease payments are segregated into principal and interest components similar to a loan. Unearned income is recognized on an effective interest method over the lease term and is recorded as finance lease income. The principal component of the lease payment is reflected as a reduction to the net investment in finance leases. Revenue is not recognized when collection is not reasonably assured. When collectability is not reasonably assured, the customer is placed on non-accrual status and revenue is recognized when cash payments are received.

Infrastructure Revenues

Rail Revenues—Rail revenues generally consist of the following performance obligations: freight movement, demurrage, unloading and switching. Freight movement revenues are recognized proportionally based on distance as freight is transported from origin to destination. Accordingly, freight movement revenue is recognized over time with progress measured based on distance transpired, i.e., as the services are rendered and the customer simultaneously receives and consumes the benefit over time. Demurrage, unloading and switching are recognized in other miscellaneous rail revenues, for which demurrage progress is measured over time, and unloading and switching revenues are measured at a point in time as the service is rendered.

Terminal Services Revenues—Terminal services are provided to customers for the receipt and redelivery of various commodities. These revenues are recognized over time, i.e., as the services are rendered and the customer simultaneously receives and consumes the benefit over time.

Lease Income—Lease income consists of rental income from tenants for storage space. Lease income is recognized on a straight-line basis over the terms of the relevant lease agreement.

Crude Marketing Revenues—Crude marketing revenues consists of marketing revenue related to Canadian crude oil. The revenues are recognized over time, i.e., as the services are rendered and the customer simultaneously receives and consumes the benefit over time.

Other Revenue—Other revenue primarily consists of revenue related to the handling, storage and sale of raw materials. Other revenue consists of two performance obligations: handling and storage of raw materials. The revenues are recognized over time, i.e., as the services are rendered and the customer simultaneously receives and consumes the benefit over time.

Payment terms for Infrastructure Revenues are generally short term in nature.

Leasing Arrangements—At contract inception, we evaluate whether an arrangement is or contains a lease for which we are the lessee (that is, arrangements which provide us with the right to control a physical asset for a period of time). Operating lease right-of-use ("ROU") assets and lease liabilities are recognized in Operating lease right-of-use assets, net and Operating lease liabilities in our Consolidated Balance Sheets, respectively. Finance lease ROU assets are recognized in Property, plant and equipment, net and lease liabilities are recognized in Other liabilities in our Consolidated Balance Sheets.

All lease liabilities are measured at the present value of the unpaid lease payments, discounted using our incremental borrowing rate based on the information available at commencement date of the lease. ROU assets, for both operating and finance leases, are initially measured based on the lease liability, adjusted for prepaid rent and lease incentives. ROU assets are subsequently measured at the carrying amount of the lease liability adjusted for prepaid or accrued lease payments and lease incentives. The finance lease ROU assets are subsequently amortized using the straight-line method.

Operating lease expenses are recognized on a straight-line basis over the lease term. With respect to finance leases, amortization of the ROU asset is presented separately from interest expense related to the finance lease liability. Variable lease payments, which are primarily based on usage, are recognized when the associated activity occurs.

We have elected to combine lease and non-lease components for all lease contracts where we are the lessee. Additionally, for arrangements with lease terms of 12 months or less, we do not recognize ROU assets, and lease liabilities and lease payments are recognized on a straight-line basis over the lease term with variable lease payments recognized in the period in which the obligation is incurred.

Concentration of Credit Risk—We are subject to concentrations of credit risk with respect to amounts due from customers on our finance leases and operating leases. We attempt to limit our credit risk by performing ongoing credit evaluations. During the three months ended March 31, 2019, one customer in the Jefferson Terminal segment accounted for approximately 22% of total revenue. There were no customers with a revenue concentration over 10% of total revenue during the three months ended March 31, 2018.

As of March 31, 2019, accounts receivable from one customer in the Jefferson Terminal segment represented 13% of total accounts receivable, net. As of December 31, 2018, accounts receivable from two customers in the Jefferson Terminal segment each represented 17% and 15% of total accounts receivable, net.

We maintain cash and restricted cash balances, which generally exceed federally insured limits, and subject us to credit risk, in high credit quality financial institutions. We monitor the financial condition of these institutions and have not experienced any losses associated with these accounts.

Provision for Doubtful Accounts—We determine the provision for doubtful accounts based on our assessment of the collectability of our receivables on a customer-by-customer basis. The provision for doubtful accounts at March 31, 2019 and December 31, 2018 was $1.2 million and $1.1 million, respectively. Bad debt expense was $3.0 million and $1.4 million for the three months ended March 31, 2019 and 2018, respectively, and is included in operating expenses in the Consolidated Statements of Operations.

Comprehensive Income (Loss)—Comprehensive income (loss) is defined as the change in equity of a business enterprise during a period from transactions and other events and circumstances, excluding those resulting from investments by and distributions to owners. Our comprehensive income (loss) represents net income (loss), as presented in the Consolidated Statements of Operations, adjusted for fair value changes related to derivatives accounted for as cash flow hedges.

Derivative Financial Instruments

Electricity Derivatives—We enter into derivative contracts as part of a risk management program to mitigate price risk associated with certain electricity price exposures. We primarily use swap derivative contracts, which are agreements to buy or sell a quantity of electricity at a predetermined future date and at a predetermined price.

Cash Flow Hedges

Certain of these derivative instruments are designated and qualify as cash flow hedges. The derivative's gain or loss is reported as a component of Other comprehensive income (loss) and recorded in Accumulated other comprehensive income in our Consolidated Balance Sheets. The gain or loss is subsequently reclassified into the income statement line item that is impacted by the forecasted transaction when the forecasted transaction affects net earnings.

Derivatives Not Designated As Hedging Instruments

Certain of these derivative instruments are not designated as hedging instruments for accounting purposes. The change in fair value of these contracts is recognized in Other income (expense) in the Consolidated Statements of Operations. The cash flow impact of derivative contracts that are not designated as hedging instruments is recognized in Change in fair value of non-hedge derivatives in our Consolidated Statements of Cash Flows.

Commodity Derivatives—We also enter into short-term and long-term crude forward contracts. Gains and losses related to our crude sales and purchase derivatives are recorded on a gross basis and are included in Crude marketing revenues and Operating expenses, respectively, in our Consolidated Statements of Operations. See Note 11 for additional details. The cash flow impact of these derivatives is recognized in Change in fair value of non-hedge derivatives in our Consolidated Statements of Cash Flows.

All of our outstanding derivatives are not used for speculative purposes. We record all derivative assets and liabilities on a gross basis at fair value and are included in Other assets and Other liabilities, respectively, in our Consolidated Balance Sheets.

Other Assets—Other assets is primarily comprised of commodities inventory of $11.0 million and $10.4 million, purchase deposits for acquisitions of $7.1 million and $10.2 million, lease incentives of $57.7 million and $51.0 million, deferred revolver fees, net of amortization of $25.6 million and $2.4 million, prepaid expenses of $12.9 million and $8.2 million and derivative assets of $7.6 million and $7.5 million as of March 31, 2019 and December 31, 2018, respectively.

Dividends—Dividends are recorded if and when declared by the Board of Directors. For both the three months ended March 31, 2019 and 2018, the Board of Directors declared a cash dividend of $0.33 per share.

Recent Accounting Pronouncements—In February 2016, the FASB issued Accounting Standards Update (“ASU”) 2016-02, *Leases* (and subsequently issued ASU 2018-01, ASU 2018-10, ASU 2018-11, ASU 2018-20 and ASU 2019-01, collectively, “ASU 2016-02”). ASU 2016-02 amends the existing accounting standards for lease accounting, including requiring lessees to recognize most leases on their balance sheets and making targeted changes to lessor accounting.

On January 1, 2019, we adopted ASU 2016-02 using the modified retrospective approach. We utilized the effective date transition method and accordingly are not required to adjust our comparative period financial information for effects of ASU 2016-02. We have elected to adopt the ‘package of practical expedients’ which permits us not to reassess under the new standard our prior conclusions about lease identification (including land easements), lease classification and initial direct costs.

The adoption of ASU 2016-02 resulted in the recognition of ROU assets and lease liabilities of approximately $46 million in our Consolidated Balance Sheets as of January 1, 2019.

In August 2017, the FASB issued ASU 2017-12, *Derivatives and Hedging: Targeted Improvements to Accounting for Hedging Activities*, which improves the financial reporting of hedging relationships to better represent the economic results of an entity’s risk management activities in its financial statements and make certain improvements to simplify the application of the hedge accounting guidance. The amendments will make more financial and nonfinancial hedging strategies eligible for hedge accounting, amend the presentation and disclosure requirements and change how entities assess effectiveness. Entities are required to apply the amendments as a cumulative-effect adjustment to retained earnings as of the beginning of the first reporting period after adoption. On January 1, 2019, we adopted this standard and it did not have an impact on our consolidated financial statements as we did not have any hedging relationships prior to adoption.

In June 2018, the FASB, issued ASU 2018-07, *Improvements to Nonemployee Share-Based Payment Accounting* to simplify the accounting for share-based payments to nonemployees by aligning it with the accounting for share-based payments to employees, with certain exceptions. The new guidance expands the scope of Accounting Standards Codification (“ASC”) 718 to include share-based payments granted to nonemployees in exchange for goods or services used or consumed in an entity’s own operations and supersedes the guidance in ASC 505-50. On January 1, 2019, we adopted this standard and it did not have an impact on our consolidated financial statements.

Unadopted Accounting Pronouncements—In January 2017, the FASB issued ASU 2017-04, *Intangibles—Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment (“ASU 2017-04”).* ASU 2017-04 addresses concerns over the cost and complexity of the two-step goodwill impairment test by removing the second step of the test. An entity will apply a one-step quantitative test and record the amount of goodwill impairment as the excess of a reporting unit's carrying amount over its fair value, not to exceed the total amount of goodwill allocated to the reporting unit. The new guidance does not amend the optional qualitative assessment of goodwill impairment. ASU 2017-01 will be effective for fiscal years beginning after December 15, 2019, and interim periods within those fiscal years. We are currently evaluating the impact of adopting this new guidance on our consolidated financial statements.

In August 2018, the FASB issued ASU 2018-13, *Fair Value Measurement (Topic 820): Disclosure Framework - Changes to the Disclosure Requirements for Fair Value Measurement*. This ASU eliminates, adds and modifies certain disclosure requirements for fair value measurements as part of its disclosure framework project. The guidance is effective for all entities in fiscal years beginning after December 15, 2019, and interim periods within those fiscal years, and early adoption is permitted. We are currently evaluating the impact of adopting this new guidance on our consolidated financial statements.

3. LEASING EQUIPMENT, NET

Leasing equipment, net is summarized as follows:

	March 31, 2019	December 31, 2018
Leasing equipment	**$ 1,727,864**	$ 1,672,156
Less: accumulated depreciation	**(256,070)**	(239,946)
Leasing equipment, net	**$ 1,471,794**	$ 1,432,210

During the three months ended March 31, 2019, we acquired five aircraft and eight commercial engines, and sold nine commercial engines.

Depreciation expense for leasing equipment is summarized as follows:

	Three Months Ended March 31,	
	2019	2018
Depreciation expense for leasing equipment	**$ 31,896**	$ 23,691

4. FINANCE LEASES, NET

Finance leases, net are summarized as follows:

	March 31, 2019	December 31, 2018
Finance leases	**$ 30,299**	$ 28,476
Unearned revenue	**(9,141)**	(9,853)
Finance leases, net	**$ 21,158**	$ 18,623

We entered into two one-year sales-type lease agreements for the sale of two of our aircraft during the three months ended March 31, 2019.

5. PROPERTY, PLANT AND EQUIPMENT, NET

Property, plant and equipment, net is summarized as follows:

	March 31, 2019	December 31, 2018
Land, site improvements and rights	**$ 75,046**	$ 75,028
Construction in progress [1]	**309,366**	253,239
Buildings and improvements	**14,597**	14,514
Terminal machinery and equipment	**376,814**	349,227
Proved oil and gas properties	**22,305**	20,099
Track and track related assets	**42,358**	42,349
Railroad equipment	**5,754**	5,383
Railcars and locomotives	**4,592**	4,513
Computer hardware and software	**3,806**	3,806
Furniture and fixtures	**599**	572
Vehicles	**1,691**	1,636
	856,928	770,366
Less: accumulated depreciation	**(69,779)**	(63,032)
Spare parts	**1,519**	1,519
Property, plant and equipment, net	**$ 788,668**	$ 708,853

[1] Includes unproved oil and gas properties of $60,320 and $59,930 as of March 31, 2019 and December 31, 2018, respectively.

During the three months ended March 31, 2019, we added property, plant and equipment of $86.6 million, which primarily consists of terminal machinery and equipment placed in service or under development at Jefferson Terminal and Repauno, and assets under development at Jefferson Terminal and Long Ridge, including a power plant under construction.

Depreciation expense for property, plant and equipment is summarized as follows:

	Three Months Ended March 31,	
	2019	2018
Depreciation expense for property, plant and equipment	**$ 6,737**	$ 4,996

Construction of Power Plant at Long Ridge

Construction Agreements

On February 15, 2019, our subsidiary, Long Ridge Energy Generation LLC (“LREG”), entered into an engineering, procurement and construction agreement (the “EPC Agreement”) with Kiewit Power Constructors Co. to construct a 485 megawatt natural gas fired, combined cycle power plant at Long Ridge Energy Terminal.

Additionally, on February 15, 2019, LREG entered into an agreement for the purchase of power generation equipment and related services (the “PIE Agreement”) with General Electric Company (“GE”) to acquire equipment and related services to be utilized at the power plant, including one combustion turbine, one condensing steam turbine, one hydrogen-cooled generator, one heat-recovery steam generator and related items.

The aggregate value of the EPC Agreement and the PIE Agreement is approximately $430 million.

Credit Agreements

On February 15, 2019, LREG and two other subsidiaries (collectively, "Co-Borrowers") entered into certain credit agreements establishing (i) a $445 million construction loan and term loan, (ii) a $154 million letter of credit facility and (iii) a $143 million construction loan and term loan, all of which will be used for the purposes of funding the development, construction and completion of the power plant. The interest costs incurred under these credit agreements for qualifying expenditures under construction are capitalized and included in the cost of the asset. Interest capitalization ceases once the asset is substantially complete or no longer undergoing activities to prepare it for its intended use.

See Note 8 for additional information related to the credit agreements.

Fixed Price Power Agreements

In connection with the construction of the power plant, LREG entered into fixed price power agreements for 457 megawatts of electric power. The agreements become effective on February 1, 2022, with 207 megawatts having a term of ten years and 250 megawatts having a term of seven years. Under the terms of the agreements, which are accounted for as derivatives, LREG receives a weighted average fixed price of $27.30 per megawatt hour and pays a variable price equal to the ELECTRICITY-PJM-AEP/DAYTON HUB-DAY AHEAD price. See Note 10 for additional information related to the fixed price power agreements.

6. INVESTMENTS

The following table presents the ownership interests and carrying values of our investments:

	Investment	Ownership Percentage	Carrying Value	
			March 31, 2019	**December 31, 2018**
Advanced Engine Repair JV	Equity method	25%	**$ 12,780**	$ 12,981
JGP Energy Partners LLC	Equity method	50%	**25,241**	25,461
Intermodal Finance I, Ltd.	Equity method	51%	**1,757**	2,118
Investments			**$ 39,778**	$ 40,560

We did not recognize any other-than-temporary impairments for the three months ended March 31, 2019 and 2018.

Equity Method Investments

The following table presents our proportionate share of equity in income (losses):

	Three Months Ended March 31,	
	2019	**2018**
Advanced Engine Repair JV	**$ (201)**	$ (224)
JGP Energy Partners LLC	**(220)**	148
Intermodal Finance I, Ltd.	**37**	171
Total	**$ (384)**	$ 95

Advanced Engine Repair JV

In December 2016, we invested $15 million for 25% interest in an advanced engine repair joint venture. We focus on developing new costs savings programs for engine repairs. We exercise significant influence over this investment and account for this investment as an equity method investment.

JGP

In 2016, we initiated activities in a 50% non-controlling interest in JGP, a joint venture. JGP is governed by a designated operating committee selected by the members in proportion to their equity interests. JGP is solely reliant on its members to finance its activities and therefore is a variable interest entity. We concluded that we are not the primary beneficiary of JGP as the members share equally in the risks and rewards and decision making authority of the entity; therefore, we do not consolidate JGP and instead account for this investment in accordance with the equity method.

Intermodal Finance I, Ltd.

In 2012, we acquired a 51% non-controlling interest in Intermodal Finance I, Ltd. (“Intermodal”), a joint venture. Intermodal is governed by a board of directors, and its shareholders have voting rights through their equity interests. As such, Intermodal is not within the scope of ASC 810-20 and should be evaluated for consolidation under the voting interest model. Due to the existence of substantive participating rights of the 49% equity investor, including the joint approval of material operating and capital decisions, such as material contracts and capital expenditures consistent with ASC 810-10-25-11, we do not have unilateral rights over this investment; therefore, we do not consolidate Intermodal but account for this investment in accordance with the equity method. We do not have a variable interest in this investment as none of the criteria of ASC 810-10-15-14 were met.

As of March 31, 2019, Intermodal owns a portfolio of leases, representing one finance lease customer and comprises approximately 3,000 shipping containers, as well as a portfolio of approximately 5,000 shipping containers subject to multiple operating leases.

7. INTANGIBLE ASSETS AND LIABILITIES, NET

Intangible assets and liabilities, net are summarized as follows:

	March 31, 2019			
	Aviation Leasing	**Jefferson Terminal**	**Railroad**	**Total**
Intangible assets				
Acquired favorable lease intangibles	**$ 48,731**	**$ —**	**$ —**	**$ 48,731**
Less: Accumulated amortization	**(32,378)**	**—**	**—**	**(32,378)**
Acquired favorable lease intangibles, net	**16,353**	**—**	**—**	**16,353**
Customer relationships	**—**	**35,513**	**225**	**35,738**
Less: Accumulated amortization	**—**	**(16,266)**	**(221)**	**(16,487)**
Acquired customer relationships, net	**—**	**19,247**	**4**	**19,251**
Total intangible assets, net	**$ 16,353**	**$ 19,247**	**$ 4**	**$ 35,604**
Intangible liabilities				
Acquired unfavorable lease intangibles	**$ 3,736**	**$ —**	**$ —**	**$ 3,736**
Less: Accumulated amortization	**(2,249)**	**—**	**—**	**(2,249)**
Acquired unfavorable lease intangibles, net	**$ 1,487**	**$ —**	**$ —**	**$ 1,487**

	December 31, 2018			
	Aviation Leasing	**Jefferson Terminal**	**Railroad**	**Total**
Intangible assets				
Acquired favorable lease intangibles	$ 48,143	$ —	$ —	$ 48,143
Less: Accumulated amortization	(29,780)	—	—	(29,780)
Acquired favorable lease intangibles, net	18,363	—	—	18,363
Customer relationships	—	35,513	225	35,738
Less: Accumulated amortization	—	(15,378)	(210)	(15,588)
Acquired customer relationships, net	—	20,135	15	20,150
Total intangible assets, net	$ 18,363	$ 20,135	$ 15	$ 38,513
Intangible liabilities				
Acquired unfavorable lease intangibles	$ 3,736	$ —	$ —	$ 3,736
Less: Accumulated amortization	(2,114)	—	—	(2,114)
Acquired unfavorable lease intangibles, net	$ 1,622	$ —	$ —	$ 1,622

Intangible liabilities relate to unfavorable lease intangibles and are included as a component of other liabilities in the Consolidated Balance Sheets.

Amortization of intangible assets and liabilities is as follows:

		Three Months Ended March 31,	
	Classification in Consolidated Statements of Operations	**2019**	**2018**
Lease intangibles	Equipment leasing revenues	**$ 2,462**	$ 1,992
Customer relationships	Depreciation and amortization	**900**	900
Total		**$ 3,362**	$ 2,892

As of March 31, 2019, estimated net annual amortization of intangibles is as follows:

2019	$ 8,463
2020	8,759
2021	5,317
2022	5,600
2023	3,600
Thereafter	2,378
Total	**$ 34,117**

8. DEBT, NET

Our debt, net is summarized as follows:

	March 31, 2019			December 31, 2018
	Outstanding Borrowings	Stated Interest Rate	Maturity Date	Outstanding Borrowings
Loans payable				
FTAI Pride Credit Agreement [1]	**$ 46,181**	LIBOR + 4.50%	9/15/2019	$ 47,743
CMQR Credit Agreement	**22,540**	(i) Adjusted LIBOR + 2.50% or 4.50%; or (ii) U.S. or Canadian Base Rate + 1.50% or 3.50%; or (iii) Canadian Fixed Rate + 2.50% or 4.50%	9/18/2019	22,265
Revolving Credit Facility [2]	**165,000**	(i) Base Rate + 2.00%; or (ii) Adjusted Eurodollar Rate + 3.00%	1/31/2022	100,000
Jefferson Revolver [2]	**63,000**	(i) Base Rate + 1.50%; or (ii) Base Rate + 2.50% (Eurodollar)	3/7/2021	49,805
DRP Revolver [3]	**9,300**	(i) Base Rate + 1.50%; or (ii) Base Rate + 2.50% (Eurodollar)	11/5/2021	—
LREG Credit Agreement [4]	**71,500**	First Lien Credit Agreement: 7.30% LC Facility: Base Rate + 2.50% to 3.50% Second Lien Credit Agreement: 7.50%	2/15/2022 to 6/30/2028	—
Total loans payable	**377,521**			219,813
Bonds payable				
Series 2012 Bonds [5]	**42,781**	8.25%	7/1/2032	42,797
Series 2016 Bonds [6]	**144,200**	7.25%	2/1/2036	144,200
Senior Notes due 2022 [7]	**697,265**	6.75%	3/15/2022	549,405
Senior Notes due 2025 [8]	**295,770**	6.50%	10/1/2025	295,642
Total bonds payable	**1,180,016**			1,032,044
Debt	**1,557,537**			1,251,857
Less: Debt issuance costs	**(17,520)**			(14,510)
Total debt, net	**$ 1,540,017**			$ 1,237,347
Total debt due within one year	**$ 227,591**			$ 71,678

[1] Secured on a first priority basis by the offshore vessel.

[2] Requires a quarterly commitment fee at a rate of 0.50% on the average daily unused portion, as well as customary letter of credit fees and agency fees.

[3] Requires a quarterly commitment fee at a rate of 0.875% on the average daily unused portion, as well as customary letter of credit fees and agency fees.

[4] Requires a quarterly commitment fee on the average daily unused portion at a rate of 1.50% for the First Lien Credit Agreement and LC Facility and 1.00% for the Second Lien Credit Agreement, as well as customary letter of credit fees and agency fees.

[5] Includes unamortized premium of $1,561 and $1,577 at March 31, 2019 and December 31, 2018, respectively.

[6] These bonds have a stated maturity of February 1, 2036 but are subject to mandatory tender for purchase at par, by our subsidiary, on February 13, 2020 if they have not been repurchased from proceeds of a remarketing of the bonds or redeemed prior to such date.

[7] Includes unamortized discount of $6,972 and $5,154 at March 31, 2019 and December 31, 2018, respectively, and an unamortized premium of $4,237 and $4,559 at March 31, 2019 and December 31, 2018, respectively.

[8] Includes unamortized discount of $4,230 and $4,358 at March 31, 2019 and December 31, 2018, respectively.

Jefferson Revolver—On December 20, 2018, our subsidiary entered into an amendment to the Jefferson Revolver which temporarily increases the aggregate revolving commitments by $25 million from $50 million to $75 million, until August 1, 2019, after which the aggregate revolving commitment will revert back to $50 million.

Senior Notes due 2022—On February 8, 2019, we issued an additional $150 million of Senior Notes (“2022 Notes”) at an offering price of 98.5% of the principal amount plus accrued interest from September 15, 2018.

Revolving Credit Facility—On February 8, 2019, we entered into an amendment to the revolving credit facility (the “Revolving Credit Facility”). The amendment, among other things, (i) increases the aggregate revolving commitments by $125 million from $125 million to $250 million, (ii) extends the maturity date of the revolving loans and commitments to January 31, 2022 and (iii) makes certain modifications to the financial covenants, including an increase in the maximum ratio of debt to total equity from 1.65 to 1.00 to 2.00 to 1.00.

LREG Credit Agreement—On February 15, 2019, LREG and two other subsidiaries, Ohio Gasco LLC, (“GasCo” and, together with LREG, the “Co-Borrowers”), and Ohio PP Holdco LLC (“Holdings”), entered into a First Lien Credit Agreement establishing (i) a $445 million construction loan (the “First Lien Construction Loans”) and term loan (the “First Lien Term Loans” and, together with the First Lien Construction Loans, the “First Lien Loan Facility”) credit facility for the purposes of funding the development, construction and completion of the power plant and the associated development, production and drilling of hydrocarbon interests (cumulatively, the “Project”), and (ii) a $154 million letter of credit facility, which is available to the Co-Borrowers solely to support any collateral posting obligations of the Co-Borrowers under certain fixed price power agreements related to the Project (the “LC Facility”). The LC Facility may be increased up to $179 million under certain circumstances as set forth in the First Lien Credit Agreement, with such additional amounts of letters of credit available to LREG solely in support of any collateral posting obligations in connection with a bid in the PJM capacity auction. As of March 31, 2019, $128 million letters of credit have been provided to counterparties in accordance with the provisions of the LC Facility, leaving $26 million of remaining initial letter of credit capacity.

The First Lien Construction Loans are available until the date on which, among other things, substantial completion of the Project is achieved (which is required to occur on or prior to June 1, 2022), at which point the First Lien Construction Loans then outstanding shall automatically convert to Term Loans (“Term Conversion”). Following Term Conversion, the First Lien Term Loans will commence amortization on a quarterly basis and will mature on December 31, 2027. The LC Facility will mature upon the earlier of (a) February 15, 2022, (b) the date the loans under the First Lien Loan Facility are accelerated or (c) the date of Term Conversion.

Also on February 15, 2019, the Co-Borrowers and Holdings entered into a Second Lien Credit Agreement (the “Second Lien Credit Agreement” and, together with the First Lien Credit Agreement, the “Credit Agreements”) establishing a $143 million construction loan (the “Second Lien Construction Loans”) and term loan (the “Second Lien Term Loans” and, together with the Second Lien Construction Loans, the “Second Lien Loan Facility”) credit facility for the purposes of funding the development, construction and completion of the Project.

The Co-Borrowers were required to borrow $71.5 million in Second Lien Construction Loans on February 15, 2019, with the remaining Second Lien Construction Loans required to be borrowed no later than February 15, 2020. Following Term Conversion, the Second Lien Construction Loans then outstanding will automatically convert to Second Lien Term Loans and will commence amortization on a quarterly basis and mature on June 30, 2028.

The Co-Borrowers’ obligations under the First Lien Credit Agreement and the Second Lien Credit Agreement are guaranteed by the Co-Borrowers and Holdings and are secured by first priority security interests and second priority security interests, respectively, in all of the assets of the Co-Borrowers and Holdings. The borrowings under the Credit Agreements are not guaranteed by us and are non-recourse to us.

We were in compliance with all debt covenants as of March 31, 2019.

9. FAIR VALUE MEASUREMENTS

Fair value measurements and disclosures require the use of valuation techniques to measure fair value that maximize the use of observable inputs and minimize use of unobservable inputs. These inputs are prioritized as follows:

- Level 1: Observable inputs such as quoted prices in active markets for identical assets or liabilities.
- Level 2: Inputs other than quoted prices included within Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities or market corroborated inputs.
- Level 3: Unobservable inputs for which there is little or no market data and which require us to develop our own assumptions about how market participants price the asset or liability.

The valuation techniques that may be used to measure fair value are as follows:

- Market approach—Uses prices and other relevant information generated by market transactions involving identical or comparable assets or liabilities.
- Income approach—Uses valuation techniques to convert future amounts to a single present amount based on current market expectations about those future amounts.
- Cost approach—Based on the amount that currently would be required to replace the service capacity of an asset (replacement cost).

The following tables set forth our financial assets measured at fair value on a recurring basis as of March 31, 2019 and December 31, 2018, by level within the fair value hierarchy. Assets measured at fair value are classified in their entirety based on the lowest level of input that is significant to their fair value measurement.

	Fair Value as of March 31, 2019	Fair Value Measurements Using Fair Value Hierarchy as of March 31, 2019			
	Total	**Level 1**	**Level 2**	**Level 3**	**Valuation Technique**
Assets					
Cash and cash equivalents	$ **120,515**	$ **120,515**	$ **—**	$ **—**	Market
Restricted cash	**108,058**	**108,058**	**—**	**—**	Market
Derivative assets	**7,590**	**—**	**—**	**7,590**	Income
Total assets	$ **236,163**	$ **228,573**	$ **—**	$ **7,590**	
Liabilities					
Derivative liabilities	$ **(47,277)**	$ **—**	$ **—**	$ **(47,277)**	Income
Total liabilities	$ **(47,277)**	$ **—**	$ **—**	$ **(47,277)**	

	Fair Value as of December 31, 2018	Fair Value Measurements Using Fair Value Hierarchy as of December 31, 2018			
	Total	**Level 1**	**Level 2**	**Level 3**	**Valuation Technique**
Assets					
Cash and cash equivalents	$ 99,601	$ 99,601	$ —	$ —	Market
Restricted cash	21,236	21,236	—	—	Market
Derivative assets	7,470	—	—	7,470	Income
Total	$ 128,307	$ 120,837	$ —	$ 7,470	
Liabilities					
Derivative liabilities	$ (925)	$ —	$ —	$ (925)	Income
Total liabilities	$ (925)	$ —	$ —	$ (925)	

The fair value of our electricity derivative liabilities and commodity derivative assets and liabilities classified as Level 3 measurements are estimated by applying the income approach, which is based on discounted projected future cash flows. The valuation of our electricity derivatives is based on management's best estimate of certain key assumptions, which include extrapolated power forward curves for periods with unobservable market pricing, credit valuation adjustments utilizing estimated cash flows, estimated price volatility and probability of default, and the discount rate. The valuation of our commodity derivatives is based on management's best estimate of certain key assumptions, which include an estimated differential factor for varying quality of commodity and the discount rate.

Our cash and cash equivalents and restricted cash consist largely of demand deposit accounts with maturities of 90 days or less when purchased that are considered to be highly liquid. These instruments are valued using inputs observable in active markets for identical instruments and are therefore classified as Level 1 within the fair value hierarchy.

Except as discussed below, our financial instruments other than cash and cash equivalents and restricted cash consist principally of accounts receivable, accounts payable and accrued liabilities, loans payable, bonds payable, security deposits, maintenance deposits and management fees payable, whose fair value approximates their carrying value based on an evaluation of pricing data, vendor quotes, and historical trading activity or due to their short maturity profiles.

The fair value of our bonds and notes payable reported as debt, net in the Consolidated Balance Sheets are presented in the table below:

	March 31, 2019	December 31, 2018
Series 2012 Bonds [(1)]	**$ 43,141**	$ 42,633
Series 2016 Bonds [(1)]	**148,683**	149,582
Senior Notes due 2022	**712,705**	551,144
Senior Notes due 2025	**296,235**	283,965

[(1)] Fair value is based upon market prices for similar municipal securities.

The fair value of all other items reported as debt, net in the Consolidated Balance Sheet approximate their carrying values due to their bearing market rates of interest, and are classified as Level 2 within the fair value hierarchy.

We measure the fair value of certain assets and liabilities on a non-recurring basis when GAAP requires the application of fair value, including events or changes in circumstances that indicate that the carrying amounts of assets may not be recoverable. Assets subject to these measurements include goodwill, intangible assets, property, plant and equipment and leasing equipment. We record such assets at fair value when it is determined the carrying value may not be recoverable. Fair value measurements for assets subject to impairment tests are based on an income approach which uses Level 3 inputs, which include our assumptions as to future cash flows from operation of the underlying businesses and the leasing and eventual sale of assets.

10. DERIVATIVE FINANCIAL INSTRUMENTS

Electricity Derivatives

We are subject to electricity price volatility stemming from the anticipated sales of electricity from our Long Ridge power generation plant under construction. From time to time, we enter into electricity swap agreements to manage our exposure to electricity price fluctuations. Certain derivatives are designated as hedging instruments within cash flow hedging relationships and certain other derivatives are not designated as hedging instruments.

Commodity Derivatives

Depending on market conditions, we source crude oil from producers in Canada, arranging logistics to Jefferson Terminal and marketing crude oil to third parties. These crude oil forward purchase and sales contracts are not designated in hedging relationships.

The following table presents information related to our outstanding derivative contracts:

	Notional Amount	Fair Value of Assets [(1)]	Fair Value of Liabilities [(1)]	Term
March 31, 2019				
Derivatives Designated in Cash Flow Hedges:				
Electricity swaps	**$ 29,278**	**$ —**	**$ (43,012)**	**7 to 10 years**
Non-hedge Derivative Instruments:				
Electricity swaps	**$ 4,207**	**$ —**	**$ (2,370)**	**7 to 10 years**
Crude oil forwards	**2,687**	**7,590**	**(1,895)**	**1 to 9 months**
December 31, 2018				
Derivatives Designated in Cash Flow Hedges:				
Electricity swaps	$ —	$ —	$ —	N/A
Non-hedge Derivative Instruments:				
Electricity swaps	$ —	$ —	$ —	N/A
Crude oil forwards	3,225	7,470	(925)	1 to 12 months

[(1)] Included in Other assets and Other liabilities, respectively, in our Consolidated Balance Sheets.

The following table presents pretax gains and losses on our derivative contracts:

	Three Months Ended March 31,	
	2019	2018
Electricity Swaps:		
Losses recognized in other comprehensive loss before reclassifications	$ (43,012)	$ —
Gains (losses) reclassified from accumulated other comprehensive income	—	—
Losses recognized in earnings	(2,370)	—
Crude Oil Forwards:		
(Losses) gains recognized in earnings	$ (850)	$ 624

As of March 31, 2019, we do not expect any gains or losses on our electricity swaps to be reclassified into revenue in the next 12 months. As of March 31, 2019, the maximum length of time over which we are hedging forecasted electricity sales is 13 years.

11. REVENUES

We disaggregate our revenue from contracts with customers by products and services provided for each of our segments, as we believe it best depicts the nature, amount, timing and uncertainty of our revenue. Revenues attributed to our Equipment Leasing business unit are within the scope of ASC 840 prior to January 1, 2019 and ASC 842 after January 1, 2019, while revenues attributed to our Infrastructure business unit are within the scope of ASC 606, unless otherwise noted. Under the provisions of ASC 842, we have elected to exclude sales and other similar taxes from lease payments in arrangements where we are a lessor.

	Three Months Ended March 31, 2019					
	Equipment Leasing	Infrastructure				
	Aviation Leasing	Jefferson Terminal	Railroad	Ports and Terminals	Corporate and Other	Total
Equipment leasing revenues						
Lease income	$ 47,303	$ —	$ —	$ —	$ 1,933	$ 49,236
Maintenance revenue	21,777	—	—	—	—	21,777
Finance lease income	826	—	—	—	—	826
Other revenue	505	—	—	—	108	613
Total equipment leasing revenues	70,411	—	—	—	2,041	72,452
Infrastructure revenues						
Lease income	—	308	—	355	—	663
Rail revenues	—	—	10,507	—	—	10,507
Terminal services revenues	—	4,867	—	1,818	—	6,685
Crude marketing revenues	—	30,779	—	—	—	30,779
Other revenue	—	—	—	3,541	—	3,541
Total infrastructure revenues	—	35,954	10,507	5,714	—	52,175
Total revenues	$ 70,411	$ 35,954	$ 10,507	$ 5,714	$ 2,041	$ 124,627

	Three Months Ended March 31, 2018					
	Equipment Leasing	Infrastructure				
	Aviation Leasing	Jefferson Terminal	Railroad	Ports and Terminals	Corporate and Other	Total
Equipment leasing revenues						
Lease income	$ 33,250	$ —	$ —	$ —	$ 2,249	$ 35,499
Maintenance revenue	19,485	—	—	—	—	19,485
Finance lease income	—	—	—	—	367	367
Other revenue	—	—	—	—	433	433
Total equipment leasing revenues	52,735	—	—	—	3,049	55,784
Infrastructure revenues						
Lease income	—	—	—	382	—	382
Rail revenues	—	—	11,047	—	—	11,047
Terminal services revenues	—	1,253	—	—	—	1,253
Crude marketing revenues	—	—	—	—	—	—
Other revenue	—	—	—	378	—	378
Total infrastructure revenues	—	1,253	11,047	760	—	13,060
Total revenues	$ 52,735	$ 1,253	$ 11,047	$ 760	$ 3,049	$ 68,844

Presented below are the contracted minimum future annual revenues to be received under existing operating and finance leases across several market sectors as of March 31, 2019:

	Operating Leases	Finance Leases [(1)]
2019	$ 135,843	$ 2,435
2020	123,572	1,386
2021	86,212	—
2022	52,696	—
2023	31,791	—
Thereafter	19,466	—
Total	**$ 449,580**	**$ 3,821**

[(1)] Excludes future revenues that are currently on nonaccrual status due to a recent casualty event on one of our vessels under a finance lease, for which we have insurance. In the case we may not collect future interest or principal, we expect that our insurance proceeds will exceed the current carrying value of this lease.

12. LEASES

We have commitments as lessees under lease arrangements primarily for real estate, equipment and vehicles. Our leases have remaining lease terms ranging from 3 months to 46 years.

The following table presents lease related costs for the three months ended March 31, 2019:

Finance Leases	
Amortization of right-of-use assets	$ 49
Interest on lease liabilities	30
Finance lease expense	**79**
Operating lease expense	**2,529**
Short-term lease expense	**1,060**
Variable lease expense	**292**
Total lease expense	**$ 3,960**

The following table presents information related to our operating leases as of and for the three months ended March 31, 2019:

Right-of-use assets, net	$	44,241
Lease liabilities		44,719
Weighted average remaining lease term		35.1 years
Weighted average incremental borrowing rate		7.0%
Cash paid for amounts included in the measurement of operating lease liabilities		
Operating cash flows	$	2,529

The following table presents future minimum lease payments under non-cancellable operating leases as of March 31, 2019:

Remainder of 2019	$	6,832
2020		5,549
2021		4,144
2022		3,502
2023		2,662
Thereafter		95,202
Total undiscounted lease payments		**117,891**
Less: Imputed interest		73,172
Total lease liabilities	**$**	**44,719**

As of March 31, 2019, we have an agreement for an office lease that has not yet commenced which we estimate will have a right-of-use asset value of $0.8 million. The lease is expected to commence in the fourth quarter of 2019 and has a lease term of seven years.

13. EQUITY-BASED COMPENSATION

In 2015, we established a Nonqualified Stock Option and Incentive Award Plan ("Incentive Plan") which provides for the ability to award equity compensation awards in the form of stock options, stock appreciation rights, restricted stock, and performance awards to eligible employees, consultants, directors, and other individuals who provide services to us, each as determined by the Compensation Committee of the Board of Directors.

As of March 31, 2019, the Incentive Plan provides for the issuance of up to 30 million shares. We account for equity-based compensation expense in accordance with ASC 718 *Compensation-Stock Compensation* and is reported within operating expenses and general and administrative in the Consolidated Statements of Operations.

The Consolidated Statements of Operations includes the following expense related to our stock-based compensation arrangements:

	Three Months Ended March 31,		Remaining Expense To Be Recognized, If All Vesting Conditions Are Met	Weighted Average Remaining Contractual Term, (in years)
	2019	**2018**		
Stock Options	**$ —**	$ 9	**$ —**	**8.9**
Restricted Shares	**90**	90	**552**	**0.9**
Common Units	**138**	109	**636**	**0.8**
Total	**$ 228**	$ 208	**$ 1,188**	

During the three months ended March 31, 2019, the Manager transferred 165,268 of its options to certain of the Manager's employees.

14. INCOME TAXES

The current and deferred components of the income tax provision included in the Consolidated Statements of Operations are as follows:

	Three Months Ended March 31,	
	2019	**2018**
Current:		
Federal	**$ 19**	$ 129
State and local	**65**	19
Foreign	**52**	17
Total current provision	**136**	165
Deferred:		
Federal	**103**	288
State and local	**29**	42
Foreign	**185**	—
Total deferred provision	**317**	330
Total provision for income taxes	**$ 453**	$ 495

We are taxed as a flow-through entity for U.S. income tax purposes and our taxable income or loss generated is the responsibility of our owners. Taxable income or loss generated by our corporate subsidiaries is subject to U.S. federal, state and foreign corporate income tax in locations where they conduct business.

Our effective tax rate differs from the U.S. federal tax rate of 21% primarily due to a significant portion of our income not being subject to U.S. corporate tax rates, or being deemed to be foreign sourced and thus either not taxable or taxable at effectively lower tax rates.

As of and for the three months ended March 31, 2019, we had not established a liability for uncertain tax positions as no such positions existed. In general, our tax returns and the tax returns of our corporate subsidiaries are subject to U.S. federal, state, local and foreign income tax examinations by tax authorities. Generally, we are not subject to examination by taxing authorities for tax years prior to 2015. We do not believe that it is reasonably possible that the total amount of unrecognized tax benefits will significantly change within 12 months of the reporting date of March 31, 2019.

15. MANAGEMENT AGREEMENT AND AFFILIATE TRANSACTIONS

The Manager is paid annual fees in exchange for advising us on various aspects of our business, formulating our investment strategies, arranging for the acquisition and disposition of assets, arranging for financing, monitoring performance, and managing our day-to-day operations, inclusive of all costs incidental thereto. In addition, the Manager may be reimbursed for various expenses incurred by the Manager on our behalf, including the costs of legal, accounting and other administrative activities. Additionally, we have entered into certain incentive allocation arrangements with Master GP, which owns 0.05% of the Partnership and is the general partner of the Partnership.

The Manager is entitled to a management fee, incentive allocations (comprised of income incentive allocation and capital gains incentive allocation, defined below) and reimbursement of certain expenses. The management fee is determined by taking the average value of total equity (excluding non-controlling interests) determined on a consolidated basis in accordance with GAAP at the end of the two most recently completed months multiplied by an annual rate of 1.50%, and is payable monthly in arrears in cash.

The income incentive allocation is calculated and distributable quarterly in arrears based on the pre-incentive allocation net income for the immediately preceding calendar quarter (the “Income Incentive Allocation”). For this purpose, pre-incentive allocation net income means, with respect to a calendar quarter, net income attributable to shareholders during such quarter calculated in accordance with GAAP excluding our pro rata share of (1) realized or unrealized gains and losses, and (2) certain non-cash or one-time items, and (3) any other adjustments as may be approved by our independent directors. Pre-incentive allocation net income does not include any Income Incentive Allocation or Capital Gains Incentive Allocation (described below) paid to the Master GP during the relevant quarter.

A subsidiary of ours allocates and distributes to the Master GP an Income Incentive Allocation with respect to its pre-incentive allocation net income in each calendar quarter as follows: (1) no Income Incentive Allocation in any calendar quarter in which pre-incentive allocation net income, expressed as a rate of return on the average value of our net equity capital (excluding non-controlling interests) at the end of the two most recently completed calendar quarters, does not exceed 2% for such quarter (8% annualized); (2) 100% of pre-incentive allocation net income with respect to that portion of such pre-incentive allocation net income, if any, that is equal to or exceeds 2% but does not exceed 2.2223% for such quarter; and (3) 10% of the amount of pre-incentive allocation net income, if any, that exceeds 2.2223% for such quarter. These calculations will be prorated for any period of less than three months.

Capital Gains Incentive Allocation is calculated and distributable in arrears as of the end of each calendar year and is equal to 10% of our pro rata share of cumulative realized gains from the date of the IPO through the end of the applicable calendar year, net of our pro rata share of cumulative realized or unrealized losses, the cumulative non-cash portion of equity-based compensation expenses and all realized gains upon which prior performance-based Capital Gains Incentive Allocation payments were made to the Master GP.

The following table summarizes the management fees, income incentive allocation and capital gains incentive allocation:

	Three Months Ended March 31,	
	2019	**2018**
Management fees	**$ 3,676**	$ 3,739
Income incentive allocation	**—**	—
Capital gains incentive allocation	**162**	—
Total	**$ 3,838**	$ 3,739

We will pay all of our operating expenses, except those specifically required to be borne by the Manager under the Management Agreement. The expenses required to be paid by us include, but are not limited to, issuance and transaction costs incident to the acquisition, disposition and financing of our assets, legal and auditing fees and expenses, the compensation and expenses of our independent directors, the costs associated with the establishment and maintenance of any credit facilities and other indebtedness of ours (including commitment fees, legal fees, closing costs, etc.), expenses associated with other securities offerings of ours, costs and expenses incurred in contracting with third parties (including affiliates of the Manager), the costs of printing and mailing proxies and reports to our shareholders, costs incurred by the Manager or its affiliates for travel on our behalf, costs associated with any computer software or hardware that is used for us, costs to obtain liability insurance to indemnify our directors and officers and the compensation and expenses of our transfer agent.

We will pay or reimburse the Manager and its affiliates for performing certain legal, accounting, due diligence tasks and other services that outside professionals or outside consultants otherwise would perform, provided that such costs and reimbursements are no greater than those which would be paid to outside professionals or consultants. The Manager is responsible for all of its other costs incident to the performance of its duties under the Management Agreement, including compensation of the Manager's employees, rent for facilities and other "overhead" expenses; we will not reimburse the Manager for these expenses.

The following table summarizes our reimbursements to the Manager:

	Three Months Ended March 31,	
	2019	**2018**
Classification in the Consolidated Statements of Operations:		
General and administrative expenses	**$ 2,543**	$ 2,181
Acquisition and transaction expenses	**1,461**	1,604
Total	**$ 4,004**	$ 3,785

If we terminate the Management Agreement, we will generally be required to pay the Manager a termination fee. The termination fee is equal to the amount of the management fee during the 12 months immediately preceding the date of the termination. In addition, an Incentive Allocation Fair Value Amount will be distributable to the Master GP if the Master GP is removed due to the termination of the Management Agreement in certain specified circumstances. The Incentive Allocation Fair Value Amount is an amount equal to the Income Incentive Allocation and the Capital Gains Incentive Allocation that would be paid to the Master GP if our assets were sold for cash at their then current fair market value (as determined by an appraisal, taking into account, among other things, the expected future value of the underlying investments).

Upon the successful completion of a post-IPO offering of our common shares or other equity securities (including securities issued as consideration in an acquisition), we will grant the Manager options to purchase common shares in an amount equal to 10% of the number of common shares being sold in the offering (or if the issuance relates to equity securities other than our common shares, options to purchase a number of common shares equal to 10% of the gross capital raised in the equity issuance divided by the fair market value of a common share as of the date of issuance), with an exercise price equal to the offering price per share paid by the public or other ultimate purchaser or attributed to such securities in connection with an acquisition (or the fair market value of a common share as of the date of the equity issuance if it relates to equity securities other than our common shares). Any ultimate purchaser of common shares for which such options are granted may be an affiliate of Fortress.

The following table summarizes amounts due to the Manager, which are included within accounts payable and accrued liabilities in the Consolidated Balance Sheets:

	March 31, 2019	December 31, 2018
Accrued management fees	**$ 1,256**	$ 1,263
Other payables	**3,221**	3,965

As of March 31, 2019 and December 31, 2018, there were no receivables from the Manager.

Other Affiliate Transactions

As of March 31, 2019 and December 31, 2018 an affiliate of our Manager owns an approximately 20% interest in Jefferson Terminal which has been accounted for as a component of non-controlling interest in consolidated subsidiaries in the consolidated financial statements. The carrying amount of this non-controlling interest at March 31, 2019 and December 31, 2018 was $47.7 million and $51.1 million, respectively.

The following table presents the amount of this non-controlling interest share of net loss:

	Three Months Ended March 31,	
	2019	2018
Non-controlling interest share of net loss	**$ 3,296**	$ 4,764

In connection with the Capital Call Agreement related to the Series 2016 Bonds, we, and an affiliate of our Manager, entered into a Fee and Support Agreement. The Fee and Support Agreement provides that the affiliate of the Manager is compensated for its guarantee of a portion of the obligations under the Standby Bond Purchase Agreement. This affiliate of the Manager received fees of $1.7 million, which are amortized as interest expense to the earlier of the redemption date or February 13, 2020.

In connection with the amendment to the Jefferson Revolver (see Note 8), on December 20, 2018, our subsidiary and an affiliate of our Manager entered into an amended and restated Fee and Support Agreement, and our subsidiary issued a $0.3 million promissory note to the affiliate of our Manager, as consideration for the fee payable pursuant to the amended and restated Fee and Support Agreement.

On June 21, 2018, we, through a wholly owned subsidiary, completed a private offering with several third parties (the “Holders”) to tender their approximately 20% stake in Jefferson Terminal. We increased our majority interest in Jefferson Terminal in exchange for Class B Units of another wholly owned subsidiary, which provide the right to convert such Class B Units to a fixed amount of our shares, equivalent to approximately 1.9 million shares, at a Holder’s request. We have the option to satisfy any exchange request by delivering either common shares or cash. The Holders are entitled to receive distributions equivalent to the distributions paid to our shareholders. This transaction resulted in a purchase of non-controlling interest shares. See note 17 for details related to conversions during the period.

16. SEGMENT INFORMATION

Our reportable segments represent strategic business units comprised of investments in different types of transportation and infrastructure assets. We have four reportable segments which operate in the Equipment Leasing and Infrastructure businesses across several market sectors. Our reportable segments are (i) Aviation Leasing, (ii) Jefferson Terminal, (iii) Railroad, and (iv) Ports and Terminals. Aviation Leasing consists of aircraft and aircraft engines held for lease and are typically held long-term. Jefferson Terminal consists of a multi-modal crude oil and refined products terminal and other related assets. Railroad consists of our CMQR railroad operations. Ports and Terminals consists of Repauno, which is a 1,630 acre deep-water port located along the Delaware River with an underground storage cavern and multiple industrial development opportunities, and Long Ridge, which is a 1,660 acre multi-modal port located along the Ohio River with rail, dock, and multiple industrial development opportunities, including a power plant under construction.

Corporate and Other primarily consists of debt, unallocated company level general and administrative expenses, and management fees. Additionally, Corporate and Other includes (i) offshore energy related assets, which consists of vessels and equipment that support offshore oil and gas drilling and production which are typically subject to long-term operating leases and (ii) an investment in an unconsolidated entity engaged in the acquisition and leasing of shipping containers (on both an operating lease and finance lease basis).

During the first quarter of 2019, we updated our segment performance measure from Adjusted Net Income to Adjusted EBITDA (see definition below) as this is the primary performance measure that our Chief Operating Decision Maker (“CODM”) utilizes to assess operational performance, as well as make resource and allocation decisions. In connection with the change in our performance measure, in accordance with ASC 280, we also assessed our reportable segments. We determined that our Offshore Energy and Shipping Containers segments no longer met the requirement as reportable segments and, accordingly, we have presented these operating segments, along with Corporate results, within Corporate and Other effective in the first quarter of 2019. All prior periods have been restated for historical comparison across segments.

The accounting policies of the segments are the same as those described in the summary of significant accounting policies; however, financial information presented by segment includes the impact of intercompany eliminations. We evaluate investment performance for each reportable segment primarily based on net income attributable to shareholders and Adjusted EBITDA.

Adjusted EBITDA is defined as net income (loss) attributable to shareholders, adjusted (a) to exclude the impact of provision for income taxes, equity-based compensation expense, acquisition and transaction expenses, losses on the modification or extinguishment of debt and capital lease obligations, changes in fair value of non-hedge derivative instruments, asset impairment charges, incentive allocations, depreciation and amortization expense, and interest expense, (b) to include the impact of our pro-rata share of Adjusted EBITDA from unconsolidated entities, and (c) to exclude the impact of equity in earnings (losses) of unconsolidated entities and the non-controlling share of Adjusted EBITDA.

We believe that net income attributable to shareholders, as defined by GAAP, is the most appropriate earnings measurement with which to reconcile Adjusted EBITDA. Adjusted EBITDA should not be considered as an alternative to net income attributable to shareholders as determined in accordance with GAAP.

The following tables set forth certain information for each reportable segment:

I. For the Three Months Ended March 31, 2019

	Three Months Ended March 31, 2019					
	Equipment Leasing	Infrastructure				
	Aviation Leasing	Jefferson Terminal	Railroad	Ports and Terminals	Corporate and Other	Total
Revenues						
Equipment leasing revenues	$ 70,411	$ —	$ —	$ —	$ 2,041	$ 72,452
Infrastructure revenues	—	35,954	10,507	5,714	—	52,175
Total revenues	70,411	35,954	10,507	5,714	2,041	124,627
Expenses						
Operating expenses	6,078	39,241	9,266	4,902	2,431	61,918
General and administrative	—	—	—	—	4,732	4,732
Acquisition and transaction expenses	13	—	—	—	1,461	1,474
Management fees and incentive allocation to affiliate	—	—	—	—	3,838	3,838
Depreciation and amortization	30,005	5,156	765	1,993	1,614	39,533
Interest expense	—	3,924	569	296	16,514	21,303
Total expenses	36,096	48,321	10,600	7,191	30,590	132,798
Other income (expense)						
Equity in (losses) earnings of unconsolidated entities	(201)	(220)	—	—	37	(384)
Gain on sale of equipment, net	1,718	—	7	—	—	1,725
Interest income	26	38	—	21	6	91
Other expense	—	(233)	(1)	(2,370)	—	(2,604)
Total other income (expense)	1,543	(415)	6	(2,349)	43	(1,172)
Income (loss) before income taxes	35,858	(12,782)	(87)	(3,826)	(28,506)	(9,343)
Provision for income taxes	180	86	186	—	1	453
Net income (loss)	35,678	(12,868)	(273)	(3,826)	(28,507)	(9,796)
Less: Net loss attributable to non-controlling interests in consolidated subsidiaries	—	(3,296)	(56)	(64)	—	(3,416)
Net income (loss) attributable to shareholders	$ 35,678	$ (9,572)	$ (217)	$ (3,762)	$ (28,507)	$ (6,380)

The following table sets forth a reconciliation of Adjusted EBITDA to net loss attributable to shareholders:

	Three Months Ended March 31, 2019					
	Equipment Leasing	Infrastructure				
	Aviation Leasing	Jefferson Terminal	Railroad	Ports and Terminals	Corporate and Other	Total
Adjusted EBITDA	$ 74,210	$ (1,290)	$ 1,199	$ 926	$ (8,755)	$ 66,290
Add: Non-controlling share of Adjusted EBITDA						2,303
Add: Equity in losses of unconsolidated entities						(384)
Less: Pro-rata share of Adjusted EBITDA from unconsolidated entities						118
Less: Interest expense						(21,303)
Less: Depreciation and amortization expense						(47,867)
Less: Incentive allocations						(162)
Less: Asset impairment charges						—
Less: Changes in fair value of non-hedge derivative instruments						(3,220)
Less: Losses on the modification or extinguishment of debt and capital lease obligations						—
Less: Acquisition and transaction expenses						(1,474)
Less: Equity-based compensation expense						(228)
Less: Provision for income taxes						(453)
Net loss attributable to shareholders						$ (6,380)

Summary information with respect to our geographic sources of revenue, based on location of customer, is as follows:

	Three Months Ended March 31, 2019					
	Equipment Leasing	Infrastructure				
	Aviation Leasing	Jefferson Terminal	Railroad	Ports and Terminals	Corporate and Other	Total
Revenues						
Africa	$ 3,477	$ —	$ —	$ —	$ —	$ 3,477
Asia	22,114	—	—	—	2,041	24,155
Europe	31,885	—	—	—	—	31,885
North America	10,826	35,954	10,507	5,714	—	63,001
South America	2,109	—	—	—	—	2,109
Total	$ 70,411	$ 35,954	$ 10,507	$ 5,714	$ 2,041	$ 124,627

II. For the Three Months Ended March 31, 2018

	Three Months Ended March 31, 2018					
	Equipment Leasing	Infrastructure				
	Aviation Leasing	Jefferson Terminal	Railroad	Ports and Terminals	Corporate and Other	Total
Revenues						
Equipment leasing revenues	$ 52,735	$ —	$ —	$ —	$ 3,049	$ 55,784
Infrastructure revenues	—	1,253	11,047	760	—	13,060
Total revenues	52,735	1,253	11,047	760	3,049	68,844
Expenses						
Operating expenses	3,433	11,959	7,438	2,381	2,368	27,579
General and administrative	—	—	—	—	3,586	3,586
Acquisition and transaction expenses	157	—	—	—	1,609	1,766
Management fees and incentive allocation to affiliate	—	—	—	—	3,739	3,739
Depreciation and amortization	21,813	4,790	573	809	1,602	29,587
Interest expense	—	3,528	345	272	7,726	11,871
Total expenses	25,403	20,277	8,356	3,462	20,630	78,128
Other income (expense)						
Equity in (losses) earnings of unconsolidated entities	(224)	148	—	—	171	95
(Loss) gain on sale of equipment, net	(20)	—	15	—	—	(5)
Interest income	73	100	—	—	3	176
Other income	—	180	—	—	—	180
Total other (expense) income	(171)	428	15	—	174	446
Income (loss) before income taxes	27,161	(18,596)	2,706	(2,702)	(17,407)	(8,838)
Provision for (benefit from) income taxes	483	11	—	(1)	2	495
Net income (loss)	26,678	(18,607)	2,706	(2,701)	(17,409)	(9,333)
Less: Net income (loss) attributable to non-controlling interests in consolidated subsidiaries	(24)	(8,949)	206	6	—	(8,761)
Net income (loss) attributable to shareholders	$ 26,702	$ (9,658)	$ 2,500	$ (2,707)	$ (17,409)	$ (572)

The following table sets forth a reconciliation of Adjusted EBITDA to net loss attributable to shareholders:

	Three Months Ended March 31, 2018					
	Equipment Leasing	Infrastructure				
	Aviation Leasing	Jefferson Terminal	Railroad	Ports and Terminals	Corporate and Other	Total
Adjusted EBITDA	$ 56,210	$ (3,550)	$ 3,406	$ (1,564)	$ (6,381)	$ 48,121
Add: Non-controlling share of Adjusted EBITDA						3,165
Add: Equity in earnings of unconsolidated entities						95
Less: Pro-rata share of Adjusted EBITDA from unconsolidated entities						(175)
Less: Interest expense						(11,871)
Less: Depreciation and amortization expense						(36,814)
Less: Incentive allocations						—
Less: Asset impairment charges						—
Less: Changes in fair value of non-hedge derivative instruments						(624)
Less: Losses on the modification or extinguishment of debt and capital lease obligations						—
Less: Acquisition and transaction expenses						(1,766)
Less: Equity-based compensation expense						(208)
Less: Provision for income taxes						(495)
Net loss attributable to shareholders						$ (572)

Summary information with respect to our geographic sources of revenue, based on location of customer, is as follows:

	Three Months Ended March 31, 2018					
	Equipment Leasing	Infrastructure				
	Aviation Leasing	Jefferson Terminal	Railroad	Ports and Terminals	Corporate and Other	Total
Revenues						
Africa	$ 1,385	$ —	$ —	$ —	$ —	$ 1,385
Asia	9,209	—	—	—	2,683	11,892
Europe	34,918	—	—	—	—	34,918
North America	7,133	1,253	11,047	760	366	20,559
South America	90	—	—	—	—	90
Total	$ 52,735	$ 1,253	$ 11,047	$ 760	$ 3,049	$ 68,844

V. Balance Sheet and location of long-lived assets

The following tables sets forth summarized balance sheet information and the geographic location of property, plant and equipment and leasing equipment, net as of March 31, 2019 and December 31, 2018:

	March 31, 2019					
	Equipment Leasing	Infrastructure				
	Aviation Leasing	Jefferson Terminal	Railroad	Ports and Terminals	Corporate and Other	Total
Total assets	**$ 1,428,504**	**$ 717,611**	**$ 72,731**	**$ 445,035**	**$ 283,819**	**$ 2,947,700**
Debt, net	**—**	**248,472**	**22,540**	**80,800**	**1,188,205**	**1,540,017**
Total liabilities	**239,836**	**321,624**	**45,640**	**156,468**	**1,211,078**	**1,974,646**
Non-controlling interests in equity of consolidated subsidiaries	**—**	**48,851**	**3,248**	**572**	**524**	**53,195**
Total equity	**1,188,668**	**395,987**	**27,091**	**288,567**	**(927,259)**	**973,054**
Total liabilities and equity	**$ 1,428,504**	**$ 717,611**	**$ 72,731**	**$ 445,035**	**$ 283,819**	**$ 2,947,700**

	March 31, 2019					
	Equipment Leasing	Infrastructure				
	Aviation Leasing	Jefferson Terminal	Railroad	Ports and Terminals	Corporate and Other	Total
Property, plant and equipment and leasing equipment, net						
Africa	**$ 46,339**	**$ —**	**$ —**	**$ —**	**$ —**	**$ 46,339**
Asia	**419,489**	**—**	**—**	**—**	**34,858**	**454,347**
Europe	**579,317**	**—**	**—**	**—**	**—**	**579,317**
North America	**198,182**	**455,525**	**51,050**	**321,271**	**120,731**	**1,146,759**
South America	**33,700**	**—**	**—**	**—**	**—**	**33,700**
Total	**$ 1,277,027**	**$ 455,525**	**$ 51,050**	**$ 321,271**	**$ 155,589**	**$ 2,260,462**

	December 31, 2018					
	Equipment Leasing	Infrastructure				
	Aviation Leasing	Jefferson Terminal	Railroad	Ports and Terminals	Corporate and Other	Total
Total assets	$ 1,367,074	$ 670,682	$ 64,286	$ 277,160	$ 259,576	$ 2,638,778
Debt, net	—	234,862	22,239	—	980,246	1,237,347
Total liabilities	234,449	288,256	37,207	16,615	1,008,469	1,584,996
Non-controlling interests in equity of consolidated subsidiaries	—	52,058	3,258	544	523	56,383
Total equity	1,132,625	382,426	27,079	260,545	(748,893)	1,053,782
Total liabilities and equity	$ 1,367,074	$ 670,682	$ 64,286	$ 277,160	$ 259,576	$ 2,638,778

	December 31, 2018					
	Equipment Leasing	Infrastructure				
	Aviation Leasing	Jefferson Terminal	Railroad	Ports and Terminals	Corporate and Other	Total
Property, plant and equipment and leasing equipment, net						
Africa	$ 47,353	$ —	$ —	$ —	$ —	$ 47,353
Asia	383,648	—	—	—	34,667	418,315
Europe	592,670	—	—	—	121,950	714,620
North America	177,962	433,404	51,157	263,747	—	926,270
South America	34,505	—	—	—	—	34,505
Total	$ 1,236,138	$ 433,404	$ 51,157	$ 263,747	$ 156,617	$ 2,141,063

17. EARNINGS PER SHARE AND EQUITY

Basic earnings (loss) per share ("EPS") is calculated by dividing net income (loss) attributable to shareholders by the weighted average number of common shares outstanding, plus any participating securities. Diluted EPS is calculated by dividing net income (loss) attributable to shareholders by the weighted average number of common shares outstanding, plus any participating securities and potentially dilutive securities. Potentially dilutive securities are calculated using the treasury stock method.

The calculation of basic and diluted EPS is presented below:

	Three Months Ended March 31,	
(in thousands, except share and per share data)	**2019**	**2018**
Net loss attributable to shareholders	**$ (6,380)**	$ (572)
Weighted Average Shares Outstanding - Basic [(1)]	**85,986,453**	81,534,454
Weighted Average Shares Outstanding - Diluted [(1)]	**85,986,453**	81,534,454
Basic EPS	**$ (0.07)**	$ (0.01)
Diluted EPS	**$ (0.07)**	$ (0.01)

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[(1)] The three months ended March 31, 2019 includes 1.5 million equivalent participating securities which can be converted into a fixed amount of our shares.

For the three months ended March 31, 2019 and 2018, 138,659 and 47,189 shares, respectively, have been excluded from the calculation of Diluted EPS because the impact would be anti-dilutive.

In January 2019, we issued 16,275 common shares to certain directors as compensation.

During the first quarter of 2019, certain holders of Class B Units (see Note 15) converted 554,455 Class B Units in exchange for 410,627 common shares.

18. COMMITMENTS AND CONTINGENCIES

In the normal course of business we, and our subsidiaries, may be involved in various claims, legal proceedings, or may enter into contracts that contain a variety of representations and warranties and which provide general indemnifications. Within our offshore energy business, a lessee did not fulfill their obligation under their charter arrangement, therefore we are pursuing rights afforded to us under the charter and the range of potential losses against the obligation is $0.0 million to $3.3 million. Our maximum exposure under other arrangements is unknown as no additional claims have been made. We believe the risk of loss in connection with such arrangements is remote.

We have also entered into an arrangement with our non-controlling interest holder of Repauno, whereby the non-controlling interest holder may receive additional payments contingent upon the achievement of certain conditions, not to exceed $15.0 million. We will account for such amounts when and if such conditions are achieved.

We have entered into an arrangement with the seller of Long Ridge, whereby the seller may receive additional payments contingent upon the achievement of certain conditions, not to exceed $5.0 million. We will account for such amounts when and if such conditions are achieved.

19. SUBSEQUENT EVENTS

On May 2, 2019 our Board of Directors declared a cash dividend on our common shares and eligible participating securities of $0.33 per share for the quarter ended March 31, 2019, payable on May 28, 2019 to the holders of record on May 17, 2019.

In April 2019, certain holders of Class B Units converted 261,735 Class B Units in exchange for 193,841 common shares.

In April 2019, we exercised our option to purchase an additional 8% economic interest from non-controlling interest holders in Repauno for $4.5 million.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") is intended to help you understand Fortress Transportation and Infrastructure Investors LLC (the "Company," "we," "our" or "us"). Our MD&A should be read in conjunction with our unaudited consolidated financial statements and the accompanying notes, and with Part II, Item 1A, "Risk Factors" included elsewhere in this Quarterly Report on Form 10-Q.

Overview

We own and acquire high quality infrastructure and related equipment that is essential for the transportation of goods and people globally. We target assets that, on a combined basis, generate strong cash flows with potential for earnings growth and asset appreciation. We believe that there are a large number of acquisition opportunities in our markets, and that our Manager's expertise and business and financing relationships, together with our access to capital, will allow us to take advantage of these opportunities. We are externally managed by FIG LLC (the "Manager"), an affiliate of Fortress Investment Group LLC ("Fortress"), which has a dedicated team of experienced professionals focused on the acquisition of transportation and infrastructure assets since 2002. As of March 31, 2019, we had total consolidated assets of $2.9 billion and total equity of $1.0 billion.

Operating Segments

Our operations consist of two primary strategic business units – Infrastructure and Equipment Leasing. Our Infrastructure Business acquires long-lived assets that provide mission-critical services or functions to transportation networks and typically have high barriers to entry. We target or develop operating businesses with strong margins, stable cash flows and upside from earnings growth and asset appreciation driven by increased use and inflation. Our Equipment Leasing Business acquires assets that are designed to carry cargo or people. Transportation equipment assets are typically long-lived, moveable and leased by us on either operating leases or finance leases to companies that provide transportation services. Our leases generally provide for long-term contractual cash flow with high cash-on-cash yields and include structural protections to mitigate credit risk.

Our reportable segments are comprised of interests in different types of infrastructure and equipment leasing assets. We currently conduct our business through the following four reportable segments: (i) Aviation Leasing, which is within the Equipment Leasing Business, and (ii) Jefferson Terminal, (iii) Railroad and (iv) Ports and Terminals, which together comprise our Infrastructure Business. The Aviation Leasing segment consists of aircraft and aircraft engines held for lease and are typically held long-term. The Jefferson Terminal segment consists of a multi-modal crude and refined products terminal and other related assets which were acquired in 2014. The Railroad segment consists of our Central Maine and Quebec Railway ("CMQR") short line railroad operations also acquired in 2014. The Ports and Terminals segment consists of Repauno, acquired in 2016, a 1,630 acre deep-water port located along the Delaware River with an underground storage cavern and multiple industrial development opportunities, and Long Ridge, acquired in June 2017, a 1,660 acre multi-modal port located along the Ohio River with rail, dock, and multiple industrial development opportunities, including a power plant under construction.

Corporate and Other primarily consists of debt, unallocated corporate general and administrative expenses, and management fees. Additionally, Corporate and Other also includes the former Offshore Energy and Shipping Containers segments composed of (i) offshore energy related assets which consists of vessels and equipment that support offshore oil and gas activities and are typically subject to long-term operating leases and (ii) an investment in an unconsolidated entity engaged in the leasing of shipping containers on both an operating lease and finance lease basis.

During the first quarter of 2019, we updated our segment performance measure from Adjusted Net Income to Adjusted EBITDA (see definition below) as this is the primary performance measure that our Chief Operating Decision Maker ("CODM") utilizes to assess operational performance, as well as make resource and allocation decisions. In connection with the change in our performance measure, in accordance with ASC 280, we also assessed our reportable segments. We determined that our Offshore Energy and Shipping Containers segments no longer met the requirement as reportable segments and, accordingly, we have presented these operating segments, along with Corporate results, within Corporate and Other effective in the first quarter of 2019. All prior periods have been restated for historical comparison across segments.

Our reportable segments are comprised of investments in different types of transportation infrastructure and equipment. Each segment requires different investment strategies. The accounting policies of the segments are the same as those described in the summary of significant accounting policies; however, financial information presented by segment includes the impact of intercompany eliminations.

Our Manager

On December 27, 2017, SoftBank Group Corp. ("SoftBank") announced that it completed its previously announced acquisition of Fortress (the "SoftBank Merger"). In connection with the Merger, Fortress operates within SoftBank as an independent business headquartered in New York.

Results of Operations

Adjusted EBITDA (Non-GAAP)

The CODM utilizes Adjusted EBITDA as the key performance measure. This performance measure provides the CODM with the information necessary to assess operational performance, as well as make resource and allocation decisions.

Adjusted EBITDA is defined as net income (loss) attributable to shareholders, adjusted (a) to exclude the impact of provision for income taxes, equity-based compensation expense, acquisition and transaction expenses, losses on the modification or extinguishment of debt and capital lease obligations, changes in fair value of non-hedge derivative instruments, asset impairment charges, incentive allocations, depreciation and amortization expense, and interest expense, (b) to include the impact of our pro-rata share of Adjusted EBITDA from unconsolidated entities, and (c) to exclude the impact of equity in earnings (losses) of unconsolidated entities and the non-controlling share of Adjusted EBITDA.

Comparison of the three months ended March 31, 2019 and 2018

The following table presents our consolidated results of operations:

	Three Months Ended March 31,		
(in thousands)	**2019**	**2018**	**Change**
Revenues			
Equipment leasing revenues			
Lease income	**$ 49,236**	$ 35,499	$ 13,737
Maintenance revenue	**21,777**	19,485	2,292
Finance lease income	**826**	367	459
Other revenue	**613**	433	180
Total equipment leasing revenues	**72,452**	55,784	16,668
Infrastructure revenues			
Lease income	**663**	382	281
Rail revenues	**10,507**	11,047	(540)
Terminal services revenues	**6,685**	1,253	5,432
Crude marketing revenues	**30,779**	—	30,779
Other revenue	**3,541**	378	3,163
Total infrastructure revenues	**52,175**	13,060	39,115
Total revenues	**124,627**	68,844	55,783
Expenses			
Operating expenses	**61,918**	27,579	34,339
General and administrative	**4,732**	3,586	1,146
Acquisition and transaction expenses	**1,474**	1,766	(292)
Management fees and incentive allocation to affiliate	**3,838**	3,739	99
Depreciation and amortization	**39,533**	29,587	9,946
Interest expense	**21,303**	11,871	9,432
Total expenses	**132,798**	78,128	54,670
Other income (expense)			
Equity in (losses) earnings of unconsolidated entities	**(384)**	95	(479)
Gain (loss) on sale of equipment, net	**1,725**	(5)	1,730
Interest income	**91**	176	(85)
Other (expense) income	**(2,604)**	180	(2,784)
Total other (expense) income	**(1,172)**	446	(1,618)
Loss before income taxes	**(9,343)**	(8,838)	(505)
Provision for income taxes	**453**	495	(42)
Net loss	**(9,796)**	(9,333)	(463)
Less: Net loss attributable to non-controlling interest in consolidated subsidiaries	**(3,416)**	(8,761)	5,345
Net loss attributable to shareholders	**$ (6,380)**	$ (572)	$ (5,808)

The following table sets forth a reconciliation of net loss attributable to shareholders to Adjusted EBITDA:

	Three Months Ended March 31,		
(in thousands)	2019	2018	Change
Net loss attributable to shareholders	**$ (6,380)**	$ (572)	$ (5,808)
Add: Provision for income taxes	**453**	495	(42)
Add: Equity-based compensation expense	**228**	208	20
Add: Acquisition and transaction expenses	**1,474**	1,766	(292)
Add: Losses on the modification or extinguishment of debt and capital lease obligations	**—**	—	—
Add: Changes in fair value of non-hedge derivative instruments	**3,220**	624	2,596
Add: Asset impairment charges	**—**	—	—
Add: Incentive allocations	**162**	—	162
Add: Depreciation and amortization expense [(1)]	**47,867**	36,814	11,053
Add: Interest expense	**21,303**	11,871	9,432
Add: Pro-rata share of Adjusted EBITDA from unconsolidated entities [(2)]	**(118)**	175	(293)
Less: Equity in losses (earnings) of unconsolidated entities	**384**	(95)	479
Less: Non-controlling share of Adjusted EBITDA [(3)]	**(2,303)**	(3,165)	862
Adjusted EBITDA (non-GAAP)	**$ 66,290**	$ 48,121	$ 18,169

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[(1)] Includes the following items for the three months ended March 31, 2019 and 2018: (i) $39,533 and $29,587 of depreciation and amortization expense, (ii) $2,462 and $1,992 of lease intangible amortization, and (iii) $5,872 and $5,235 of amortization for lease incentives, respectively.

[(2)] Includes the following items for the three months ended March 31, 2019 and 2018: (i) net (loss) income of $(420) and $48, (ii) interest expense of $36 and $112, and (iii) depreciation and amortization expense of $266 and $15, respectively.

[(3)] Includes the following items for the three months ended March 31, 2019 and 2018: (i) equity based compensation of $25 and $37, (ii) provision for income taxes of $36 and $4, (iii) interest expense of $899 and $1,292, (iv) depreciation and amortization expense of $1,164 and $2,076, and (v) changes in fair value of non-hedge derivative instruments of $179 and $(244), respectively.

Revenues

Total revenues increased $55.8 million, primarily due to higher revenues in the Jefferson Terminal, Aviation Leasing and Ports and Terminals segments.

In Equipment Leasing, lease income increased $13.7 million, primarily driven by an increase in acquired assets on lease in the Aviation Leasing segment. Maintenance revenue increased $2.3 million due to an increase in the number of aircraft and engines on lease.

In Infrastructure, crude marketing revenue increased $30.8 million. During the third quarter of 2018, Jefferson Terminal initiated a strategy in Canada sourcing crude from producers, arranging logistics to Jefferson Terminal and marketing crude to third parties. Terminal services revenue increased $5.4 million primarily due to increased activity at Jefferson and Long Ridge. Other revenue increased $3.2 million primarily due to (i) higher oil and gas related activity of $2.0 million at Long Ridge and (ii) higher butane sales of $1.4 million at Repauno.

Expenses

Total expenses increased $54.7 million, primarily due to higher (i) operating expenses, (ii) depreciation and amortization and (iii) interest expense.

Operating expenses increased $34.3 million, primarily due to increases in:

- cost of sales of $29.0 million primarily due to costs associated with crude marketing at Jefferson Terminal;
- facility operations of $1.9 million primarily due to higher equipment shipping and storage costs in the Aviation Leasing and Jefferson Terminal segments and higher project-related costs for our offshore vessels;
- bad debt expense of $1.5 million in the Aviation Leasing segment; and
- compensation and benefits of $1.4 million primarily due to an increase in headcount at Jefferson Terminal.

Depreciation and amortization increased $9.9 million, primarily due to additional assets acquired in the Aviation Leasing segment and assets placed into service at Long Ridge.

Interest expense increased $9.4 million due to an increase in our average outstanding debt of approximately $709.2 million, which primarily consists of the (i) 2025 Notes of $300.0 million, (ii) 2022 Notes of $194.4 million, (iii) Revolving Credit Facility of $108.3 million and (iv) Jefferson Revolver of $55.0 million.

Other Income (Expense)

Total other income decreased $1.6 million primarily due to a loss of $2.4 million on our electricity derivatives, partially offset by a gain on sale of equipment of $1.7 million.

Net Loss Attributable to Shareholders

Net loss attributable to shareholders increased $5.8 million primarily due to the changes discussed above.

Adjusted EBITDA (Non-GAAP)

Adjusted EBITDA increased $18.2 million primarily due to the changes noted above and increases in (i) depreciation and amortization and (ii) interest expense.

Aviation Leasing Segment

As of March 31, 2019, in our Aviation Leasing segment, we own and manage 219 aviation assets, consisting of 73 commercial aircraft and 146 engines.

As of March 31, 2019, 69 of our commercial aircraft and 111 of our engines were leased to operators or other third parties. Aviation assets currently off lease are either undergoing repair and/or maintenance, being prepared to go on lease or held in short term storage awaiting a future lease. Our aviation equipment was approximately 88% utilized as of March 31, 2019, based on the equity value of our on-hire leasing equipment as a percentage of the total equity value of our aviation leasing equipment. Our aircraft currently have a weighted average remaining lease term of 32 months, and our engines currently on-lease have an average remaining lease term of 13 months. The table below provides additional information on the assets in our Aviation Leasing segment:

Aviation Assets	Widebody	Narrowbody	Total
Aircraft			
Assets at January 1, 2019	**14**	**56**	**70**
Purchases	1	4	5
Sales	—	—	—
Transfers	(1)	(1)	(2)
Assets at March 31, 2019	**14**	**59**	**73**
Engines			
Assets at January 1, 2019	**78**	**64**	**142**
Purchases	4	4	8
Sales	(2)	(7)	(9)
Transfers	3	2	5
Assets at March 31, 2019	**83**	**63**	**146**

The following table presents our results of operations:

(in thousands)	Three Months Ended March 31,		
	2019	2018	Change
Revenues			
Equipment leasing revenues			
Lease income	**$ 47,303**	$ 33,250	$ 14,053
Maintenance revenue	**21,777**	19,485	2,292
Finance lease income	**826**	—	826
Other revenue	**505**	—	505
Total revenues	**70,411**	52,735	17,676
Expenses			
Operating expenses	**6,078**	3,433	2,645
Acquisition and transaction expenses	**13**	157	(144)
Depreciation and amortization	**30,005**	21,813	8,192
Total expenses	**36,096**	25,403	10,693
Other (expense) income			
Equity in losses of unconsolidated entities	**(201)**	(224)	23
Gain (loss) on sale of equipment, net	**1,718**	(20)	1,738
Interest income	**26**	73	(47)
Total other income (expense)	**1,543**	(171)	1,714
Income before income taxes	**35,858**	27,161	8,697
Provision for income taxes	**180**	483	(303)
Net income	**35,678**	26,678	9,000
Less: Net loss attributable to non-controlling interest in consolidated subsidiaries	**—**	(24)	24
Net income attributable to shareholders	**$ 35,678**	$ 26,702	$ 8,976

The following table sets forth a reconciliation of net income attributable to shareholders to Adjusted EBITDA:

	Three Months Ended March 31,		
(in thousands)	**2019**	**2018**	**Change**
Net income attributable to shareholders	**$ 35,678**	$ 26,702	$ 8,976
Add: Provision for income taxes	**180**	483	(303)
Add: Equity-based compensation expense	**—**	—	—
Add: Acquisition and transaction expenses	**13**	157	(144)
Add: Losses on the modification or extinguishment of debt and capital lease obligations	**—**	—	—
Add: Changes in fair value of non-hedge derivative instruments	**—**	—	—
Add: Asset impairment charges	**—**	—	—
Add: Incentive allocations	**—**	—	—
Add: Depreciation and amortization expense [(1)]	**38,339**	29,040	9,299
Add: Interest expense	**—**	—	—
Add: Pro-rata share of Adjusted EBITDA from unconsolidated entities [(2)]	**(201)**	(224)	23
Less: Equity in losses of unconsolidated entities	**201**	224	(23)
Less: Non-controlling share of Adjusted EBITDA [(3)]	**—**	(172)	172
Adjusted EBITDA (non-GAAP)	**$ 74,210**	$ 56,210	$ 18,000

[(1)] Includes (i) $30,005 and $21,813 of depreciation expense, (ii) $2,462 and $1,992 of lease intangible amortization, and (iii) $5,872 and $5,235 of amortization for lease incentives during the three months ended March 31, 2019 and 2018, respectively.

[(2)] Includes Aviation Leasing's proportionate share of the unconsolidated entities' net income adjusted for the excluded and included items detailed in the table above, for which there were no adjustments.

[(3)] Includes $0 and $172 of depreciation expense during the three months ended March 31, 2019 and 2018, respectively.

Revenues

Total revenue increased $17.7 million driven by higher lease income and maintenance revenue during the three months ended March 31, 2019 compared to the three months ended March 31, 2018.

- Lease income increased $14.1 million mainly due to an increase in (i) aircraft lease income of $9.8 million primarily driven by the addition of 26 aircraft on lease and (ii) engine lease income of $4.3 million primarily driven by an additional 31 revenue generating engines.
- Maintenance revenue increased $2.3 million due to an increase in the number of aircraft and engines on lease.
- Finance lease income increased $0.8 million due to income earned from aircraft classified as a finance lease.

Expenses

Total expenses increased $10.7 million primarily due to an increase in depreciation and amortization expense and operating expenses in the three months ended March 31, 2019 compared to the three months ended March 31, 2018.

- Depreciation and amortization expense increased $8.2 million driven by additional aircraft and engines owned and on lease.
- Operating expenses increased $2.6 million primarily as a result of an increase in bad debt expense of $1.5 million relating to an engine loss receivable deemed uncollectible due to bankruptcy, shipping and storage fees of $0.7 million due to the positioning of our assets for lease and other operating expenses of $0.4 million.

Other Income

Total other income increased $1.7 million primarily driven by higher gain on sale of leasing equipment in the three months ended March 31, 2019 compared to the three months ended March 31, 2018.

Adjusted EBITDA (Non-GAAP)

Adjusted EBITDA increased $18.0 million primarily due to the changes in net income attributable to shareholders noted above, and higher depreciation and amortization expense for the additional aircraft and engines owned and on lease.

Jefferson Terminal Segment

The following table presents our results of operations:

(in thousands)	Three Months Ended March 31,		
	2019	**2018**	**Change**
Revenues			
Infrastructure revenues			
Lease income	**$ 308**	$ —	$ 308
Terminal services revenues	**4,867**	1,253	3,614
Crude marketing revenues	**30,779**	—	30,779
Total revenues	**35,954**	1,253	34,701
Expenses			
Operating expenses	**39,241**	11,959	27,282
Depreciation and amortization	**5,156**	4,790	366
Interest expense	**3,924**	3,528	396
Total expenses	**48,321**	20,277	28,044
Other income			
Equity in (losses) earnings of unconsolidated entities	**(220)**	148	(368)
Interest income	**38**	100	(62)
Other (expense) income	**(233)**	180	(413)
Total other (expense) income	**(415)**	428	(843)
Loss before income taxes	**(12,782)**	(18,596)	5,814
Provision for income taxes	**86**	11	75
Net loss	**(12,868)**	(18,607)	5,739
Less: Net loss attributable to non-controlling interest in consolidated subsidiaries	**(3,296)**	(8,949)	5,653
Net loss attributable to shareholders	**$ (9,572)**	$ (9,658)	$ 86

The following table sets forth a reconciliation of net loss attributable to shareholders to Adjusted EBITDA:

	Three Months Ended March 31,		
(in thousands)	**2019**	**2018**	**Change**
Net loss attributable to shareholders	**$ (9,572)**	$ (9,658)	$ 86
Add: Provision for income taxes	**86**	11	75
Add: Equity-based compensation expense	**90**	90	—
Add: Acquisition and transaction expenses	**—**	—	—
Add: Losses on the modification or extinguishment of debt and capital lease obligations	**—**	—	—
Add: Changes in fair value of non-hedge derivative instruments	**850**	624	226
Add: Asset impairment charges	**—**	—	—
Add: Incentive allocations	**—**	—	—
Add: Depreciation and amortization expense	**5,156**	4,790	366
Add: Interest expense	**3,924**	3,528	396
Add: Pro-rata share of Adjusted EBITDA from unconsolidated entities [1]	**46**	148	(102)
Less: Equity in losses (earnings) of unconsolidated entities	**220**	(148)	368
Less: Non-controlling share of Adjusted EBITDA [2]	**(2,090)**	(2,935)	845
Adjusted EBITDA (non-GAAP)	**$ (1,290)**	$ (3,550)	$ 2,260

[1] Includes the following items for the three months ended March 31, 2019 and 2018: (i) net (loss) income of $(220) and $148 and (ii) depreciation and amortization expense of $266 and $0, respectively.

[2] Includes the following items for the three months ended March 31, 2019 and 2018: (i) equity-based compensation of $19 and $34, (ii) provision for income taxes of $18 and $4, (iii) interest expense of $791 and $1,271, (iv) changes in fair value of non-hedge derivative instruments of $179 and $(244) and (v) depreciation and amortization expense of $1,083 and $1,870, respectively.

Revenues

Total revenues increased $34.7 million primarily due to crude marketing revenue of $30.8 million. During the third quarter of 2018, Jefferson Terminal initiated a strategy in Canada sourcing crude from producers, arranging logistics to Jefferson Terminal and marketing crude to third parties. Additionally, terminal services revenue increased $3.6 million primarily due to increased activity.

Expenses

Total expenses increased $28.0 million primarily due to higher operating expenses of $27.3 million, which reflected higher costs associated with crude marketing.

Other (Expense) Income

Total other income decreased $0.8 million primarily due to a gain on our commodity derivatives in 2018 compared to a loss in 2019.

Adjusted EBITDA (Non-GAAP)

Adjusted EBITDA increased $2.3 million primarily due to the changes noted above, as well as a lower adjustment for non-controlling share of Adjusted EBITDA.

Railroad Segment

The following table presents our results of operations:

(in thousands)	Three Months Ended March 31, 2019	Three Months Ended March 31, 2018	Change
Revenues			
Infrastructure revenues			
Rail revenues	**$ 10,507**	$ 11,047	$ (540)
Total revenues	**10,507**	11,047	(540)
Expenses			
Operating expenses	**9,266**	7,438	1,828
Depreciation and amortization	**765**	573	192
Interest expense	**569**	345	224
Total expenses	**10,600**	8,356	2,244
Other income (expense)			
Gain on sale of equipment, net	**7**	15	(8)
Other income	(1)	—	(1)
Total other income	**6**	15	(9)
(Loss) income before income taxes	**(87)**	2,706	(2,793)
Provision for income taxes	**186**	—	186
Net (loss) income	**(273)**	2,706	(2,979)
Less: Net (loss) income attributable to non-controlling interest in consolidated subsidiaries	**(56)**	206	(262)
Net (loss) income attributable to shareholders	**$ (217)**	$ 2,500	$ (2,717)

The following table sets forth a reconciliation of net income (loss) attributable to shareholders to Adjusted EBITDA:

(in thousands)	Three Months Ended March 31, 2019	Three Months Ended March 31, 2018	Change
Net (loss) income attributable to shareholders	**$ (217)**	$ 2,500	$ (2,717)
Add: Provision for income taxes	**186**	—	186
Add: Equity-based compensation expense	**46**	46	—
Add: Acquisition and transaction expenses	**—**	—	—
Add: Losses on the modification or extinguishment of debt and capital lease obligations	**—**	—	—
Add: Changes in fair value of non-hedge derivative instruments	**—**	—	—
Add: Asset impairment charges	**—**	—	—
Add: Incentive allocations	**—**	—	—
Add: Depreciation and amortization expense	**765**	573	192
Add: Interest expense	**569**	345	224
Add: Pro-rata share of Adjusted EBITDA from unconsolidated entities	**—**	—	—
Less: Equity in earnings of unconsolidated entities	**—**	—	—
Less: Non-controlling share of Adjusted EBITDA [1]	**(150)**	(58)	(92)
Adjusted EBITDA (non-GAAP)	**$ 1,199**	$ 3,406	$ (2,207)

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[1] Includes the following items for the three months ended March 31, 2019 and 2018: (i) equity-based compensation of $4 and $3, (ii) interest expense of $54 and $21, (iii) provision for income taxes of $18 and $0 and (iv) depreciation and amortization expense of $74 and $34, respectively.

Revenues

Total revenues decreased $0.5 million primarily due to a decrease in freight transportation revenue of $1.7 million as a detour led to higher traffic on our tracks in 2018. This decrease was partially offset by an increase in non-freight revenue of $1.2 million driven by increased contract repair revenue.

Expenses

Total expenses increased $2.2 million primarily due to higher operating expenses and interest expense. The increase in operating expenses of $1.8 million primarily reflects a credit for certain tax benefits taken in 2018 which were not repeated in 2019. The increase in interest expense primarily reflects a higher average outstanding debt balance of approximately $3.6 million.

Adjusted EBITDA (Non-GAAP)

Adjusted EBITDA decreased $2.2 million primarily due to the changes noted above.

Ports and Terminals

The following table presents our results of operations:

	Three Months Ended March 31,		
(in thousands)	**2019**	**2018**	**Change**
Revenues			
Infrastructure revenues			
Lease income	**$ 355**	$ 382	$ (27)
Terminal services revenues	**1,818**	—	1,818
Other revenue	**3,541**	378	3,163
Total revenues	**5,714**	760	4,954
Expenses			
Operating expenses	**4,902**	2,381	2,521
Depreciation and amortization	**1,993**	809	1,184
Interest expense	**296**	272	24
Total expenses	**7,191**	3,462	3,729
Other income (expense)			
Interest income	**21**	—	21
Other expense	**(2,370)**	—	(2,370)
Total other expense	**(2,349)**	—	(2,349)
Loss before income taxes	**(3,826)**	(2,702)	(1,124)
Benefit from income taxes	**—**	(1)	1
Net loss	**(3,826)**	(2,701)	(1,125)
Less: Net loss attributable to non-controlling interest in consolidated subsidiaries	**(64)**	6	(70)
Net loss attributable to shareholders	**$ (3,762)**	$ (2,707)	$ (1,055)

The following table sets forth a reconciliation of net loss attributable to shareholders to Adjusted EBITDA:

	Three Months Ended March 31,		
(in thousands)	**2019**	**2018**	**Change**
Net loss attributable to shareholders	**$ (3,762)**	$ (2,707)	$ (1,055)
Add: Provision for (benefit from) income taxes	**—**	(1)	1
Add: Equity-based compensation expense	**92**	63	29
Add: Acquisition and transaction expenses	**—**	—	—
Add: Losses on the modification or extinguishment of debt and capital lease obligations	**—**	—	—
Add: Changes in fair value of non-hedge derivative instruments	**2,370**	—	2,370
Add: Asset impairment charges	**—**	—	—
Add: Incentive allocations	**—**	—	—
Add: Depreciation and amortization expense	**1,993**	809	1,184
Add: Interest expense	**296**	272	24
Add: Pro-rata share of Adjusted EBITDA from unconsolidated entities	**—**	—	—
Less: Equity in earnings of unconsolidated entities	**—**	—	—
Less: Non-controlling share of Adjusted EBITDA [(1)]	**(63)**	—	(63)
Adjusted EBITDA (non-GAAP)	**$ 926**	$ (1,564)	$ 2,490

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[(1)] Includes the following items for the three months ended March 31, 2019 and 2018: (i) equity-based compensation of $2 and $0, (ii) interest expense of $54 and $0 and (iii) depreciation and amortization expense of $7 and $0, respectively.

Revenues

Total revenue increased $5.0 million primarily due to other revenue of $3.2 million and terminal services revenues of $1.8 million.

The increase in other revenue is primarily due to (i) higher oil and gas related activity of $2.0 million at Long Ridge and (ii) higher butane sales of $1.4 million at Repauno.

The increase in terminal services revenue primarily reflects higher transloading revenue of $1.8 million at Long Ridge.

Expenses

Total expenses increased $3.7 million primarily due to higher operating expenses of $2.5 million and depreciation and amortization of $1.2 million.

The increase in operating expenses primarily reflects higher (i) cost of sales of $1.4 million related to the sale of butane and (ii) facility operations of $0.6 million due to increased activity.

The increase in depreciation and amortization is primarily due to assets placed into service at Long Ridge.

Other Expense

Total other expense decreased $2.3 million primarily due to a loss of $2.4 million on our electricity derivatives.

Adjusted EBITDA (Non-GAAP)

Adjusted EBITDA increased $2.5 million primarily due to the changes noted above and (i) changes in fair value of non-hedge derivative instruments and (ii) an increase in depreciation and amortization.

Corporate and Other

The following table presents our results of operations:

	Three Months Ended March 31,		
(in thousands)	**2019**	**2018**	**Change**
Revenues			
Equipment leasing revenues			
Lease income	**$ 1,933**	$ 2,249	$ (316)
Finance lease income	**—**	367	(367)
Other revenue	**108**	433	(325)
Total revenues	**2,041**	3,049	**(1,008)**
Expenses			
Operating expenses	**2,431**	2,368	63
General and administrative	**4,732**	3,586	1,146
Acquisition and transaction expenses	**1,461**	1,609	(148)
Management fees and incentive allocation to affiliate	**3,838**	3,739	99
Depreciation and amortization	**1,614**	1,602	12
Interest expense	**16,514**	7,726	8,788
Total expenses	**30,590**	20,630	9,960
Other income			
Equity in earnings of unconsolidated entities	**37**	171	(134)
Interest income	**6**	3	3
Total other income	**43**	174	(131)
Loss before income taxes	**(28,506)**	(17,407)	(11,099)
Provision for income taxes	**1**	2	(1)
Net loss	**(28,507)**	(17,409)	(11,098)
Less: Net loss attributable to non-controlling interest in consolidated subsidiaries	**—**	—	—
Net loss attributable to shareholders	**$ (28,507)**	$ (17,409)	$ (11,098)

The following table sets forth a reconciliation of net loss attributable to shareholders to Adjusted EBITDA:

	Three Months Ended March 31,		
(in thousands)	**2019**	**2018**	**Change**
Net loss attributable to shareholders	**$ (28,507)**	$ (17,409)	$ (11,098)
Add: Provision for income taxes	**1**	2	(1)
Add: Equity-based compensation expense	**—**	9	(9)
Add: Acquisition and transaction expenses	**1,461**	1,609	(148)
Add: Losses on the modification or extinguishment of debt and capital lease obligations	**—**	—	—
Add: Changes in fair value of non-hedge derivative instruments	**—**	—	—
Add: Asset impairment charges	**—**	—	—
Add: Incentive allocations	**162**	—	162
Add: Depreciation and amortization expense	**1,614**	1,602	12
Add: Interest expense	**16,514**	7,726	8,788
Add: Pro-rata share of Adjusted EBITDA from unconsolidated entities [(1)]	**37**	251	(214)
Less: Equity in earnings of unconsolidated entities	**(37)**	(171)	134
Less: Non-controlling share of Adjusted EBITDA	**—**	—	—
Adjusted EBITDA (non-GAAP)	**$ (8,755)**	$ (6,381)	$ (2,374)

[(1)] Includes the following items for the three months ended March 31, 2019 and 2018: (i) net income of $1 and $124, (ii) interest expense of $36 and $112, and (iii) depreciation and amortization expense of $0 and $15, respectively.

Revenues

Total revenues decreased $1.0 million which reflects decreases in (i) finance lease income of $0.4 million due to a vessel that is currently off hire, (ii) lease income of $0.3 million due to our vessels on hire being on longer-term lease arrangements in 2018 compared to 2019 and (iii) other revenue of $0.3 million due to a decrease in crew provisions reimbursement income.

Expenses

Total expenses increased $10.0 million primarily due to interest expense of $8.8 million and general and administrative expense of $1.1 million.

The increase in interest expense reflects an increase in our average outstanding debt of approximately $596.5 million, which primarily consists of the (i) 2025 Notes of $300.0 million, (ii) 2022 Notes of $194.4 million and (iii) Revolving Credit Facility of $108.3 million.

The increase in general and administrative expense is primarily due to (i) higher professional fees of $0.7 million related to legal, audit and SOX compliance and (ii) a higher reimbursement to the Manager of $0.4 million related to an increase in headcount.

Adjusted EBITDA (Non-GAAP)

Adjusted EBITDA decreased $2.4 million, primarily due to the changes noted above, partially offset by higher interest expense.

Liquidity and Capital Resources

Our principal uses of liquidity have been and continue to be (i) acquisitions of transportation infrastructure and equipment, (ii) dividends to our shareholders and holders of eligible participating securities, (iii) expenses associated with our operating activities, and (iv) debt service obligations associated with our investments.

- Cash used for the purpose of making investments was $195.4 million and $119.6 million during the three months ended March 31, 2019 and 2018, respectively.
- Dividends to shareholders and holders of eligible participating securities were $28.4 million and $27.3 million during the three months ended March 31, 2019 and 2018, respectively.
- Uses of liquidity associated with our operating expenses are captured on a net basis in our cash flows from operating activities. Uses of liquidity associated with our debt obligations are captured in our cash flows from financing activities.

Our principal sources of liquidity to fund these uses have been and continue to be (i) revenues from our transportation infrastructure and equipment assets (including finance lease collections and maintenance reserve collections) net of operating expenses, (ii) proceeds from borrowings or the issuance of securities and (iii) proceeds from asset sales.

- Cash flows from operating activities, plus the principal collections on finance leases and maintenance reserve collections were $35.1 million and $21.3 million during the three months ended March 31, 2019 and 2018, respectively.

- During the three months ended March 31, 2019, additional borrowings were obtained in connection with the 2022 Notes of $147.8 million, Revolving Credit Facility of $105.0 million, LREG Credit Agreement of $71.5 million, Jefferson Revolver of $13.0 million, DRP Revolver of $9.3 million, and CMQR Credit Agreement of $5.9 million. We made total principal repayments of $47.2 million, primarily relating to the Revolving Credit Facility and CMQR Credit Agreement. During the three months ended March 31, 2018, additional borrowings were obtained in connection with the Jefferson Revolver of $13.0 million, net of financing costs, and the CMQR Credit Agreement of $5.6 million. We made total principal repayments of $12.6 million, primarily relating to the FTAI Pride Credit Agreement and the CMQR Credit Agreement.
- Proceeds from the sale of assets were $27.3 million and $6.2 million during the three months ended March 31, 2019 and 2018, respectively.
- Proceeds from the issuance of common shares was $128.5 million, net of issuance costs of $2.1 million, during the three months ended March 31, 2018. There were no issuances of common shares in 2019.

We are currently evaluating several potential Infrastructure and Equipment Leasing transactions, which could occur within the next 12 months. However, as of the date of this filing, none of these pipeline transactions or negotiations are definitive or included within our planned liquidity needs. We cannot assure if or when any such transaction will be consummated or the terms of any such transaction.

We have a dividend reinvestment plan in place which allows shareholders to automatically reinvest dividends in our common shares. The plan became effective on February 24, 2017.

Historical Cash Flow

Comparison of the three months ended March 31, 2019 and 2018

The following table compares the historical cash flow for the three months ended March 31, 2019 and 2018:

	Three Months Ended March 31,	
(in thousands)	**2019**	**2018**
Cash Flow Data:		
Net cash provided by operating activities	**$ 20,270**	$ 11,470
Net cash used in investing activities	**(166,388)**	(113,483)
Net cash provided by financing activities	**253,854**	115,946

Net cash provided by operating activities increased $8.8 million primarily due to adjustments to reconcile net income which include increases in (i) depreciation and amortization of $9.9 million, (ii) change in fair value of non-hedge derivatives of $3.8 million, (iii) bad debt expense of $1.5 million and (iv) amortization of lease intangibles and incentives of $1.1 million . The overall increase was offset by changes in (i) security deposits and maintenance claims include in earnings of $2.6 million, (ii) gain on sale of equipment of $1.7 million and (iii) changes in accounts receivable, other assets, and other liabilities due to the continued expansion of operations across all business segments.

Net cash used in investing activities increased $52.9 million primarily due to (i) the acquisition of property, plant and equipment of $57.6 million and (ii) the acquisition of leasing equipment of $22.9 million, partially offset by (iii) proceeds from sale of leasing equipment of $21.2 million.

Net cash provided by financing activities increased $137.9 million primarily due to an increase in proceeds from debt of $334.1 million, partially offset by (i) proceeds from the issuance of common stock net of issuance costs of $128.3 million, (ii) repayment of debt of $34.6 million and (iii) payment of deferred financing costs of $28.5 million.

Funds Available for Distribution (Non-GAAP)

We use Funds Available for Distribution (“FAD”) in evaluating our ability to meet our stated dividend policy. FAD is not a financial measure in accordance with GAAP. The GAAP measure most directly comparable to FAD is net cash provided by operating activities. We believe FAD is a useful metric for investors and analysts for similar purposes.

We define FAD as: net cash provided by operating activities plus principal collections on finance leases, proceeds from sale of assets, and return of capital distributions from unconsolidated entities, less required payments on debt obligations and capital distributions to non-controlling interest, and excludes changes in working capital. The following table sets forth a reconciliation of Net Cash Provided by Operating Activities to FAD:

	Three Months Ended March 31,	
(in thousands)	**2019**	**2018**
Net Cash Provided by Operating Activities	**$ 20,270**	$ 11,470
Add: Principal Collections on Finance Leases	**1,289**	129
Add: Proceeds from Sale of Assets	**27,299**	6,174
Add: Return of Capital Distributions from Unconsolidated Entities	**398**	—
Less: Required Payments on Debt Obligations [1]	**(1,562)**	(1,562)
Less: Capital Distributions to Non-Controlling Interest	**—**	—
Exclude: Changes in Working Capital	**22,489**	18,226
Funds Available for Distribution (FAD)	**$ 70,183**	$ 34,437

[1] Required payments on debt obligations for the three months ended March 31, 2019 exclude repayments of $40,000 for the Revolving Credit Facility and $5,660 for the CMQR Credit Agreement, and for the three months ended March 31, 2018 exclude repayment of $11,050 for the CMQR Credit Agreement, all of which were voluntary refinancings as repayments of these amounts were not required at such time.

Limitations

FAD is subject to a number of limitations and assumptions and there can be no assurance that we will generate FAD sufficient to meet our intended dividends. FAD has material limitations as a liquidity measure because such measure excludes items that are required elements of our net cash provided by operating activities as described below. FAD should not be considered in isolation nor as a substitute for analysis of our results of operations under GAAP, and it is not the only metric that should be considered in evaluating our ability to meet our stated dividend policy. Specifically:

- FAD does not include equity capital called from our existing limited partners, proceeds from any debt issuance or future equity offering, historical cash and cash equivalents and expected investments in our operations.
- FAD does not give pro forma effect to prior acquisitions, certain of which cannot be quantified.
- While FAD reflects the cash inflows from sale of certain assets, FAD does not reflect the cash outflows to acquire assets as we rely on alternative sources of liquidity to fund such purchases.
- FAD does not reflect expenditures related to capital expenditures, acquisitions and other investments as we have multiple sources of liquidity and intends to fund these expenditures with future incurrences of indebtedness, additional capital contributions and/or future issuances of equity.
- FAD does not reflect any maintenance capital expenditures necessary to maintain the same level of cash generation from our capital investments.
- FAD does not reflect changes in working capital balances as management believes that changes in working capital are primarily driven by short term timing differences, which are not meaningful to our distribution decisions.
- Management has significant discretion to make distributions, and we are not bound by any contractual provision that requires us to use cash for distributions.

If such factors were included in FAD, there can be no assurance that the results would be consistent with our presentation of FAD.

Debt Obligations

Refer to Note 8 of the Consolidated Financial Statements for additional information.

Contractual Obligations

The following table summarizes our future obligations, by period due, as of March 31, 2019, under our various contractual obligations and commitments. We had no off-balance sheet arrangements as of March 31, 2019.

(in thousands)	2019	2020	2021	2022	2023	Thereafter	Total
FTAI Pride Credit Agreement	$ 46,181	$ —	$ —	$ —	$ —	$ —	$ 46,181
CMQR Credit Agreement	22,540	—	—	—	—	—	22,540
Revolving Credit Facility	—	—	—	165,000	—	—	165,000
Jefferson Revolver	13,000	—	50,000	—	—	—	63,000
DRP Revolver	—	—	9,300	—	—	—	9,300
LREG Credit Agreement	—	—	—	—	—	71,500	71,500
Series 2012 Bonds	1,670	1,810	1,960	2,120	2,295	31,365	41,220
Series 2016 Bonds	—	144,200	—	—	—	—	144,200
Senior Notes due 2022	—	—	—	700,000	—	—	700,000
Senior Notes due 2025	—	—	—	—	—	300,000	300,000
Total principal payments on loans and bonds payable	83,391	146,010	61,260	867,120	2,295	402,865	1,562,941
Total estimated interest payments [1]	77,779	87,120	83,490	38,516	27,545	70,661	385,111
Obligation to third-party	27,214	2,198	—	—	—	—	29,412
Operating lease obligations	6,832	5,549	4,144	3,502	2,662	95,202	117,891
Capital lease obligations	315	405	271	146	31	—	1,168
	112,140	95,272	87,905	42,164	30,238	165,863	533,582
Total contractual obligations [2]	**$ 195,531**	**$ 241,282**	**$ 149,165**	**$ 909,284**	**$ 32,533**	**$ 568,728**	**$ 2,096,523**

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[1] Estimated interest rates as of March 31, 2019.

[2] If we terminate the PIE Agreement (see Note 5), as of March 31, 2019 we would be obligated to pay a termination fee of $11.5 million, which is not included in the total contractual obligations.

We expect to meet our future short-term liquidity requirements through cash on hand or future financings and net cash provided by our current operations. We expect that our operating subsidiaries will generate sufficient cash flow to cover operating expenses and the payment of principal and interest on our indebtedness as they become due. We may elect to meet certain long-term liquidity requirements or to continue to pursue strategic opportunities through utilizing cash on hand, cash generated from our current operations and the issuance of securities in the future. Management believes adequate capital and borrowings are available from various sources to fund our commitments to the extent required.

Application of Critical Accounting Policies

Goodwill—Goodwill includes the excess of the purchase price over the fair value of the net tangible and intangible assets associated with the acquisitions of CMQR and Jefferson Terminal. The carrying amount of goodwill is approximately $116.6 million as of both March 31, 2019 and December 31, 2018.

We review the carrying values of goodwill at least annually to assess impairment since these assets are not amortized. An annual impairment review is conducted as of October 1st of each year. Additionally, we review the carrying value of goodwill whenever events or changes in circumstances indicate that its carrying amount may not be recoverable. The determination of fair value involves significant management judgment.

For an annual goodwill impairment assessment, an optional qualitative analysis may be performed. If the option is not elected or if it is more likely than not that the fair value of a reporting unit is less than its carrying amount, then a two-step goodwill impairment test is performed to identify potential goodwill impairment and measure an impairment loss. A qualitative analysis was not elected for the year ended December 31, 2018.

The first step of an impairment assessment compares the fair value of a respective reporting unit with its carrying amount, including goodwill. The estimate of fair value of the respective reporting unit is based on the best information available as of the date of assessment, which primarily incorporates certain factors including our assumptions about operating results, business plans, income projections, anticipated future cash flows and market data. If the estimated fair value of the reporting unit is less than the carrying amount, a second step must be completed in order to determine the amount of goodwill impairment that should be recorded, if any.

In performing the annual analysis, our two reporting units subject to the test are the Jefferson Terminal and Railroad reporting units. We estimate the fair value of the reporting units using an income approach, specifically a discounted cash flow analysis. This analysis requires us to make significant assumptions and estimates about the extent and timing of future cash flows, discount rates and growth rates. The estimates and assumptions used consider historical performance if indicative of future performance, and are consistent with the assumptions used in determining future profit plans for the reporting units. We also utilize market valuation models and other financial ratios, which require us to make certain assumptions and estimates regarding the applicability of those models to our assets and businesses.

Although we believe the estimates of fair value are reasonable, the determination of certain valuation inputs is subject to management's judgment. Changes in these inputs, including as a result of events beyond our control, could materially affect the results of the impairment review. If the forecasted cash flows of the Jefferson Terminal and Railroad reporting units or other key inputs are negatively revised in the future, the estimated fair value of the Jefferson Terminal and Railroad reporting units could be adversely impacted, potentially leading to an impairment in the future that could materially affect our operating results. Specifically, as it relates to the Jefferson Terminal segment, forecasted revenue is dependent on the ramp up of volumes under current contracts and the acquisition of additional storage contracts for the heavy and light crude and refined products during 2019 subject to obtaining rail capacity for crude, permits for pipeline and movements in future oil spreads. Jefferson Terminal was designed to reach a storage capacity of 21.7 million barrels, and 2.1 million of storage, or approximately 10% of capacity, is currently operational. If the Company strategy changes from planned capacity downward due to an inability to source contracts or expand volumes, the fair value of the reporting units would be negatively affected, which could lead to an impairment. The expansion of refineries in the Beaumont/Port Arthur area, as well as growing crude oil production in the U.S. and Canada, are expected to result in increased demand for storage on the U.S. Gulf Coast. Other assumptions utilized in our annual impairment analysis that are significant in determination of the fair value of the reporting unit include the discount rate utilized in our discounted cash flow analysis of 14% and our terminal growth rate of 3%.

Furthermore, development of both inbound and outbound pipelines to and from the Jefferson Terminal over the next two to three years will affect our forecasted growth and therefore our estimated fair value. We continue to expect the Jefferson Terminal segment to generate positive Adjusted EBITDA during 2019. Although certain of our anticipated contracts or expected volumes from existing contracts for Jefferson Terminal have been delayed, we continue to believe our projected revenues are achievable and have not yet modified those projections based on ongoing negotiations with our customers and discussions with major pipeline companies. Further delays in executing these contracts or achieving our projections could adversely affect the fair value of the reporting unit. However, strengthening macroeconomic conditions such as increased oil prices and the increasing spread between Western Canadian Crude and Western Texas Intermediate are better than we anticipated, and we remain positive for the outlook of Jefferson Terminal's earnings potential.

For the year ended December 31, 2018, there was no impairment of goodwill.

Recent Accounting Pronouncements

See Note 2 to our Consolidated Financial Statements for recent accounting pronouncements.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Market risk represents the risk of changes in value of a financial instrument, caused by fluctuations in interest rates and foreign exchange rates. Changes in these factors could cause fluctuations in our results of operations and cash flows. We are exposed to the market risks described below.

Interest Rate Risk

Interest rate risk is the exposure to loss resulting from changes in the level of interest rates and the spread between different interest rates. Interest rate risk is highly sensitive to many factors, including the U.S. government's monetary and tax policies, global economic factors and other factors beyond our control. We are exposed to changes in the level of interest rates and to changes in the relationship or spread between interest rates. Our primary interest rate exposure relates to our term loan arrangements.

Our borrowing agreements generally require payments based on a variable interest rate index, such as LIBOR. Therefore, to the extent our borrowing costs are not fixed, increases in interest rates may reduce our net income by increasing the cost of our debt without any corresponding increase in rents or cash flow from our finance leases. We manage our exposure to interest rate movements through the use of interest rate derivatives (interest rate swaps and caps). As a result, when market rates of interest change, there is generally not a material impact on our interest expense, future earnings or cash flows.

The following discussion about the potential effects of changes in interest rates is based on a sensitivity analysis, which models the effects of hypothetical interest rate shifts on our financial condition and results of operations. Although we believe a sensitivity analysis provides the most meaningful analysis permitted by the rules and regulations of the SEC, it is constrained by several factors, including the necessity to conduct the analysis based on a single point in time and by the inability to include the extraordinarily complex market reactions that normally would arise from the market shifts modeled. Although the following results of a sensitivity analysis for changes in interest rates may have some limited use as a benchmark, they should not be viewed as a forecast. This forward-looking disclosure also is selective in nature and addresses only the potential interest expense impacts on our financial instruments and, in particular, does not address the mark-to-market impact on our interest rate derivatives. It also does not include a variety of other potential factors that could affect our business as a result of changes in interest rates.

As of March 31, 2019, assuming we do not hedge our exposure to interest rate fluctuations related to our outstanding floating rate debt, a hypothetical 100-basis point increase/decrease in our variable interest rate on our borrowings would result in an increase/decrease in interest expense of approximately $3.5 million over the next 12 months before the impact of interest rate derivatives.

Foreign Currency Exchange Risk

Our functional currency is U.S. dollars. All of our leasing arrangements are denominated in U.S. dollars. Currently, the majority of freight rail revenue is also denominated in U.S. dollars, but a portion is denominated in Canadian dollars. Although foreign exchange risk could arise from our operations in multiple jurisdictions, we do not have significant exposure to foreign currency risk as our leasing arrangements are denominated in U.S. dollars. All of our purchase agreements are negotiated in U.S. dollars, and we currently receive the majority of revenue in U.S. dollars. We pay substantially all of our expenses in U.S. dollars; however we pay some expenses in Canadian dollars. Because we currently receive the majority of our revenues in U.S. dollars and pay substantially all of our expenses in U.S. dollars, we do not expect a change in foreign exchange rates would have a significant impact on our results of operations or cash flows.

Item 4. Controls and Procedures

Disclosure Controls and Procedures

As of the end of the period covered by this report, an evaluation was carried out under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934 (the "Exchange Act")). Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of and for the period covered by this report.

Internal Control over Financial Reporting

There have not been any changes in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the fiscal quarter to which this report relates that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II—OTHER INFORMATION

Item 1. Legal Proceedings

We are and may become involved in legal proceedings, including but not limited to regulatory investigations and inquiries, in the ordinary course of our business. Although we are unable to predict with certainty the eventual outcome of any litigation, regulatory investigation or inquiry, in the opinion of management, we do not expect our current and any threatened legal proceedings to have a material adverse effect on our business, financial position or results of operations. Given the inherent unpredictability of these types of proceedings, however, it is possible that future adverse outcomes could have a material adverse effect on our financial results.

Item 1A. Risk Factors

You should carefully consider the following risks and other information in this Form 10-Q in evaluating us and our common shares. Any of the following risks, as well as additional risks and uncertainties not currently known to us or that we currently deem immaterial, could materially and adversely affect our results of operations or financial condition. The risk factors generally have been separated into the following categories: risks related to our business, risks related to our Manager, risks related to taxation and risks related to our common shares. However, these categories do overlap and should not be considered exclusive.

Risks Related to Our Business

Uncertainty relating to macroeconomic conditions may reduce the demand for our assets, result in non-performance of contracts by our lessees or charterers, limit our ability to obtain additional capital to finance new investments, or have other unforeseen negative effects.

Uncertainty and negative trends in general economic conditions in the United States and abroad, including significant tightening of credit markets and commodity price volatility, historically have created difficult operating environments for owners and operators in the transportation industry. Many factors, including factors that are beyond our control, may impact our operating results or financial condition and/or affect the lessees and charterers that form our customer base. For some years, the world has experienced weakened economic conditions and volatility following adverse changes in global capital markets. Excess supply in oil and gas markets can put significant downward pressure on prices for these commodities, and may affect demand for assets used in production, refining and transportation of oil and gas. In the past, a significant decline in oil prices has led to lower offshore exploration and production budgets worldwide. These conditions have resulted in significant contraction, deleveraging and reduced liquidity in the credit markets. A number of governments have implemented, or are considering implementing, a broad variety of governmental actions or new regulations for the financial markets. In addition, limitations on the availability of capital, higher costs of capital for financing expenditures or the desire to preserve liquidity, may cause our current or prospective customers to make reductions in future capital budgets and spending.

Further, demand for our assets is related to passenger and cargo traffic growth, which in turn is dependent on general business and economic conditions. Global economic downturns could have an adverse impact on passenger and cargo traffic levels and consequently our lessees' and charterers' business, which may in turn result in a significant reduction in revenues, earnings and cash flows, difficulties accessing capital and a deterioration in the value of our assets. We may also become exposed to increased credit risk from our customers and third parties who have obligations to us, which could result in increased non-performance of contracts by our lessees or charterers and adversely impact our business, prospects, financial condition, results of operations and cash flows.

The industries in which we operate have experienced periods of oversupply during which lease rates and asset values have declined, particularly during the most recent economic downturn, and any future oversupply could materially adversely affect our results of operations and cash flows.

The oversupply of a specific asset is likely to depress the lease or charter rates for and the value of that type of asset and result in decreased utilization of our assets, and the industries in which we operate have experienced periods of oversupply during which rates and asset values have declined, particularly during the most recent economic downturn. Factors that could lead to such oversupply include, without limitation:

- general demand for the type of assets that we purchase;
- general macroeconomic conditions, including market prices for commodities that our assets may serve;
- geopolitical events, including war, prolonged armed conflict and acts of terrorism;
- outbreaks of communicable diseases and natural disasters;
- governmental regulation;
- interest rates;
- the availability of credit;
- restructurings and bankruptcies of companies in the industries in which we operate, including our customers;
- manufacturer production levels and technological innovation;
- manufacturers merging or exiting the industry or ceasing to produce certain asset types;
- retirement and obsolescence of the assets that we own;

- our railroad infrastructure may be damaged, including by flooding and railroad derailments;
- increases in supply levels of assets in the market due to the sale or merging of operating lessors; and
- reintroduction of previously unused or dormant assets into the industries in which we operate.

These and other related factors are generally outside of our control and could lead to persistence of, or increase in, the oversupply of the types of assets that we acquire or decreased utilization of our assets, either of which could materially adversely affect our results of operations and cash flow. In addition, lessees may redeliver our assets to locations where there is oversupply, which may lead to additional repositioning costs for us if we move them to areas with higher demand. Positioning expenses vary depending on geographic location, distance, freight rates and other factors, and may not be fully covered by drop-off charges collected from the last lessees of the equipment or pick-up charges paid by the new lessees. Positioning expenses can be significant if a large portion of our assets are returned to locations with weak demand, which could materially adversely affect our business, prospects, financial condition, results of operations and cash flow.

There can be no assurance that any target returns will be achieved.

Our target returns for assets are targets only and are not forecasts of future profits. We develop target returns based on our Manager’s assessment of appropriate expectations for returns on assets and the ability of our Manager to enhance the return generated by those assets through active management. There can be no assurance that these assessments and expectations will be achieved and failure to achieve any or all of them may materially adversely impact our ability to achieve any target return with respect to any or all of our assets.

In addition, our target returns are based on estimates and assumptions regarding a number of other factors, including, without limitation, holding periods, the absence of material adverse events affecting specific investments (which could include, without limitation, natural disasters, terrorism, social unrest or civil disturbances), general and local economic and market conditions, changes in law, taxation, regulation or governmental policies and changes in the political approach to transportation investment, either generally or in specific countries in which we may invest or seek to invest. Many of these factors, as well as the other risks described elsewhere in this report, are beyond our control and all could adversely affect our ability to achieve a target return with respect to an asset. Further, target returns are targets for the return generated by specific assets and not by us. Numerous factors could prevent us from achieving similar returns, notwithstanding the performance of individual assets, including, without limitation, taxation and fees payable by us or our operating subsidiaries, including fees and incentive allocation payable to our Manager.

There can be no assurance that the returns generated by any of our assets will meet our target returns, or any other level of return, or that we will achieve or successfully implement our asset acquisition objectives, and failure to achieve the target return in respect of any of our assets could, among other things, have a material adverse effect on our business, prospects, financial condition, results of operations and cash flow. Further, even if the returns generated by individual assets meet target returns, there can be no assurance that the returns generated by other existing or future assets would do so, and the historical performance of the assets in our existing portfolio should not be considered as indicative of future results with respect to any assets.

Contractual defaults may adversely affect our business, prospects, financial condition, results of operations and cash flows by decreasing revenues and increasing storage, positioning, collection, recovery and lost equipment expenses.

The success of our business depends in large part on the success of the operators in the sectors in which we participate. Cash flows from our assets are substantially impacted by our ability to collect compensation and other amounts to be paid in respect of such assets from the customers with whom we enter into leases, charters or other contractual arrangements. Inherent in the nature of the leases, charters and other arrangements for the use of such assets is the risk that we may not receive, or may experience delay in realizing, such amounts to be paid. While we target the entry into contracts with credit-worthy counterparties, no assurance can be given that such counterparties will perform their obligations during the term of the leases, charters or other contractual arrangements. In addition, when counterparties default, we may fail to recover all of our assets, and the assets we do recover may be returned in damaged condition or to locations where we will not be able to efficiently lease, charter or sell them. In most cases, we maintain, or require our lessees to maintain, certain insurances to cover the risk of damages or loss of our assets. However, these insurance policies may not be sufficient to protect us against a loss.

Depending on the specific sector, the risk of contractual defaults may be elevated due to excess capacity as a result of oversupply during the most recent economic downturn. We lease assets to our customers pursuant to fixed-price contracts, and our customers then seek to utilize those assets to transport goods and provide services. If the price at which our customers receive for their transportation services decreases as a result of an oversupply in the marketplace, then our customers may be forced to reduce their prices in order to attract business (which may have an adverse effect on their ability to meet their contractual lease obligations to us), or may seek to renegotiate or terminate their contractual lease arrangements with us to pursue a lower-priced opportunity with another lessor, which may have a direct, adverse effect on us. See "-The industries in which we operate have experienced periods of oversupply during which lease rates and asset values have declined, particularly during the most recent economic downturn, and any future oversupply could materially adversely affect our results of operations and cash flows." Any default by a material customer would have a significant impact on our profitability at the time the customer defaulted, which could materially adversely affect our operating results and growth prospects. In addition, some of our counterparties may reside in jurisdictions with legal and regulatory regimes that make it difficult and costly to enforce such counterparties' obligations.

We may not be able to renew or obtain new or favorable charters or leases, which could adversely affect our business, prospects, financial condition, results of operations and cash flows.

Our operating leases are subject to greater residual risk than direct finance leases because we will own the assets at the expiration of an operating lease term and we may be unable to renew existing charters or leases at favorable rates, or at all, or sell the leased or chartered assets, and the residual value of the asset may be lower than anticipated. In addition, our ability to renew existing charters or leases or obtain new charters or leases will also depend on prevailing market conditions, and upon expiration of the contracts governing the leasing or charter of the applicable assets, we may be exposed to increased volatility in terms of rates and contract provisions. For example, we do not currently have long-term charters for our construction support vessel and our ROV support vessel. Likewise, our customers may reduce their activity levels or seek to terminate or renegotiate their charters or leases with us. If we are not able to renew or obtain new charters or leases in direct continuation, or if new charters or leases are entered into at rates substantially below the existing rates or on terms otherwise less favorable compared to existing contractual terms, or if we are unable to sell assets for which we are unable to obtain new contracts or leases, our business, prospects, financial condition, results of operations and cash flows could be materially adversely affected.

If we acquire a high concentration of a particular type of asset, or concentrate our investments in a particular sector, our business, prospects, financial condition, results of operations and cash flows could be adversely affected by changes in market demand or problems specific to that asset or sector.

If we acquire a high concentration of a particular asset, or concentrate our investments in a particular sector, our business and financial results could be adversely affected by sector-specific or asset-specific factors. For example, if a particular sector experiences difficulties such as increased competition or oversupply, the operators we rely on as a lessor may be adversely affected and consequently our business and financial results may be similarly affected. If we acquire a high concentration of a particular asset and the market demand for a particular asset declines, it is redesigned or replaced by its manufacturer or it experiences design or technical problems, the value and rates relating to such asset may decline, and we may be unable to lease or charter such asset on favorable terms, if at all. Any decrease in the value and rates of our assets may have a material adverse effect on our business, prospects, financial condition, results of operations and cash flows.

We operate in highly competitive markets.

The business of acquiring transportation and transportation-related infrastructure assets is highly competitive. Market competition for opportunities includes traditional transportation and infrastructure companies, commercial and investment banks, as well as a growing number of non-traditional participants, such as hedge funds, private equity funds and other private investors, including Fortress-related entities. Some of these competitors may have access to greater amounts of capital and/or to capital that may be committed for longer periods of time or may have different return thresholds than us, and thus these competitors may have certain advantages not shared by us. In addition, competitors may have incurred, or may in the future incur, leverage to finance their debt investments at levels or on terms more favorable than those available to us. Strong competition for investment opportunities could result in fewer such opportunities for us, as certain of these competitors have established and are establishing investment vehicles that target the same types of assets that we intend to purchase.

In addition, some of our competitors may have longer operating histories, greater financial resources and lower costs of capital than us, and consequently, may be able to compete more effectively in one or more of our target markets. We likely will not always be able to compete successfully with our competitors and competitive pressures or other factors may also result in significant price competition, particularly during industry downturns, which could have a material adverse effect on our business, prospects, financial condition, results of operations and cash flows.

Litigation to enforce our contracts and recover our assets has inherent uncertainties that are increased by the location of our assets in jurisdictions that have less developed legal systems.

While some of our contractual arrangements are governed by New York law and provide for the non-exclusive jurisdiction of the courts located in the state of New York, our ability to enforce our counterparties' obligations under such contractual arrangements is subject to applicable laws in the jurisdiction in which enforcement is sought. While some of our existing assets are used in specific jurisdictions, transportation and transportation-related infrastructure assets by their nature generally move throughout multiple jurisdictions in the ordinary course of business. As a result, it is not possible to predict, with any degree of certainty, the jurisdictions in which enforcement proceedings may be commenced. Litigation and enforcement proceedings have inherent uncertainties in any jurisdiction and are expensive. These uncertainties are enhanced in countries that have less developed legal systems where the interpretation of laws and regulations is not consistent, may be influenced by factors other than legal merits and may be cumbersome, time-consuming and even more expensive. For example, repossession from defaulting lessees may be difficult and more expensive in jurisdictions whose laws do not confer the same security interests and rights to creditors and lessors as those in the United States and where the legal system is not as well developed. As a result, the remedies available and the relative success and expedience of collection and enforcement proceedings with respect to the owned assets in various jurisdictions cannot be predicted. To the extent more of our business shifts to areas outside of the United States and Europe, such as Asia and the Middle East, it may become more difficult and expensive to enforce our rights and recover our assets.

Certain liens may arise on our assets.

Certain of our assets are currently subject to liens under separate financing arrangements entered into by certain subsidiaries in connection with acquisitions of assets. In the event of a default under such arrangements by the applicable subsidiary, the lenders thereunder would be permitted to take possession of or sell such assets. See "Management's Discussion and Analysis of Financial Condition and Results of Operations-Liquidity and Capital Resources." In addition, our currently owned assets and assets that we purchase in the future may be subject to other liens based on the industry practices relating to such assets. Until they are discharged, these liens could impair our ability to repossess, re-lease or sell our assets, and to the extent our lessees or charterers do not comply with their obligations to discharge any liens on the applicable assets, we may find it necessary to pay the claims secured by such liens in order to repossess such assets. Such payments could materially adversely affect our operating results and growth prospects.

The values of our assets may fluctuate due to various factors.

The fair market values of our assets may decrease or increase depending on a number of factors, including the prevailing level of charter or lease rates from time to time, general economic and market conditions affecting our target markets, type and age of assets, supply and demand for assets, competition, new governmental or other regulations and technological advances, all of which could impact our profitability and our ability to lease, charter, develop, operate, or sell such assets. In addition, our assets depreciate as they age and may generate lower revenues and cash flows. We must be able to replace such older, depreciated assets with newer assets, or our ability to maintain or increase our revenues and cash flows will decline. In addition, if we dispose of an asset for a price that is less than the depreciated book value of the asset on our balance sheet or if we determine that an asset's value has been impaired, we will recognize a related charge in our consolidated statement of operations and such charge could be material.

We may not generate a sufficient amount of cash or generate sufficient free cash flow to fund our operations or repay our indebtedness.

Our ability to make payments on our indebtedness as required depends on our ability to generate cash flow in the future. This ability, to a certain extent, is subject to general economic, financial, competitive, legislative, regulatory and other factors that are beyond our control. If we do not generate sufficient free cash flow to satisfy our debt obligations, including interest payments and the payment of principal at maturity, we may have to undertake alternative financing plans, such as refinancing or restructuring our debt, selling assets, reducing or delaying capital investments or seeking to raise additional capital. We cannot provide assurance that any refinancing would be possible, that any assets could be sold, or, if sold, of the timeliness and amount of proceeds realized from those sales, that additional financing could be obtained on acceptable terms, if at all, or that additional financing would be permitted under the terms of our various debt instruments then in effect. Furthermore, our ability to refinance would depend upon the condition of the finance and credit markets. Our inability to generate sufficient free cash flow to satisfy our debt obligations, or to refinance our obligations on commercially reasonable terms or on a timely basis, would materially affect our business, financial condition and results of operations.

We may acquire operating businesses, including businesses whose operations are not fully matured and stabilized. These businesses may be subject to significant operating and development risks, including increased competition, cost overruns and delays, and difficulties in obtaining approvals or financing. These factors could materially affect our business, financial condition, liquidity and results of operations.

We have acquired, and may in the future acquire, operating businesses, including businesses whose operations are not fully matured and stabilized (including, but not limited to, our businesses within the Jefferson Terminal and Ports and Terminals segments). While we have deep experience in the construction and operation of these companies, we are nevertheless subject to significant risks and contingencies of an operating business, and these risks are greater where the operations of such businesses are not fully matured and stabilized. Key factors that may affect our operating businesses include, but are not limited to:

- competition from market participants;
- general economic and/or industry trends, including pricing for the products or services offered by our operating businesses;

- the issuance and/or continued availability of necessary permits, licenses, approvals and agreements from governmental agencies and third parties as are required to construct and operate such businesses;
- changes or deficiencies in the design or construction of development projects;
- unforeseen engineering, environmental or geological problems;
- potential increases in construction and operating costs due to changes in the cost and availability of fuel, power, materials and supplies;
- the availability and cost of skilled labor and equipment;
- our ability to enter into additional satisfactory agreements with contractors and to maintain good relationships with these contractors in order to construct development projects within our expected cost parameters and time frame, and the ability of those contractors to perform their obligations under the contracts and to maintain their creditworthiness;
- potential liability for injury or casualty losses which are not covered by insurance;
- potential opposition from non-governmental organizations, environmental groups, local or other groups which may delay or prevent development activities;
- local and economic conditions;
- changes in legal requirements; and
- force majeure events, including catastrophes and adverse weather conditions.

Any of these factors could materially affect our business, financial condition, liquidity and results of operations.

Our use of joint ventures or partnerships, and our Manager's outsourcing of certain functions, may present unforeseen obstacles or costs.

We have acquired and may in the future acquire interests in certain assets in cooperation with third-party partners or co-investors through jointly-owned acquisition vehicles, joint ventures or other structures. In these co-investment situations, our ability to control the management of such assets depends upon the nature and terms of the joint arrangements with such partners and our relative ownership stake in the asset, each of which will be determined by negotiation at the time of the investment and the determination of which is subject to the discretion of our Manager. Depending on our Manager's perception of the relative risks and rewards of a particular asset, our Manager may elect to acquire interests in structures that afford relatively little or no operational and/or management control to us. Such arrangements present risks not present with wholly-owned assets, such as the possibility that a co-investor becomes bankrupt, develops business interests or goals that conflict with our interests and goals in respect of the assets, all of which could materially adversely affect our business, prospects, financial condition, results of operations and cash flows.

In addition, our Manager expects to utilize third party contractors to perform services and functions related to the operation and leasing of our assets. These functions may include billing, collections, recovery and asset monitoring. Because we and our Manager do not directly control these third parties, there can be no assurance that the services they provide will be delivered at a level commensurate with our expectations, or at all. The failure of any such third party contractors to perform in accordance with our expectations could materially adversely affect our business, prospects, financial condition, results of operations and cash flows.

We are subject to the risks and costs of obsolescence of our assets.

Technological and other improvements expose us to the risk that certain of our assets may become technologically or commercially obsolete. For example, in our Aviation Leasing segment, as manufacturers introduce technological innovations and new types of aircraft, some of our assets could become less desirable to potential lessees. Such technological innovations may increase the rate of obsolescence of existing aircraft faster than currently anticipated by us. In addition, the imposition of increased regulation regarding stringent noise or emissions restrictions may make some of our aircraft less desirable and less valuable in the marketplace. In our offshore energy business, development and construction of new, sophisticated, high-specification assets could cause our assets to become less desirable to potential charterers, and insurance rates may also increase with the age of a vessel, making older vessels less desirable to potential charterers. Any of these risks may adversely affect our ability to lease, charter or sell our assets on favorable terms, if at all, which could materially adversely affect our operating results and growth prospects.

The North American rail sector is a highly regulated industry and increased costs of compliance with, or liability for violation of, existing or future laws, regulations and other requirements could significantly increase our costs of doing business, thereby adversely affecting our profitability.

The rail sector is subject to extensive laws, regulations and other requirements including, but not limited to, those relating to the environment, safety, rates and charges, service obligations, employment, labor, immigration, minimum wages and overtime pay, health care and benefits, working conditions, public accessibility and other requirements. These laws and regulations are enforced by U.S. and Canadian federal agencies including the U.S. and Canadian Environmental Protection Agencies, the U.S. and Canadian Departments of Transportation (DOT or Transport Canada), the Occupational Safety and Health Act (OSHA or Canadian provincial equivalents), the U.S. Federal Railroad Administration (FRA), and the U.S. Surface Transportation Board (STB), as well as numerous other state, provincial, local and federal agencies. Ongoing compliance with, or a violation of, these laws, regulations and other requirements could have a material adverse effect on our business, financial condition and results of operations.

We believe that our rail operations are in substantial compliance with applicable laws and regulations. However, these laws and regulations, and the interpretation or enforcement thereof, are subject to frequent change and varying interpretation by regulatory authorities, and we are unable to predict the ongoing cost to us of complying with these laws and regulations or the future impact of these laws and regulations on our operations. In addition, from time to time we are subject to inspections and investigations by various regulators. Violation of environmental or other laws, regulations and permits can result in the imposition of significant administrative, civil and criminal penalties, injunctions and construction bans or delays.

Legislation passed by the U.S. Congress or Canadian Parliament or new regulations issued by federal agencies can significantly affect the revenues, costs and profitability of our business. For instance, more recently proposed bills such as the “Rail Shipper Fairness Act of 2017,” or competitive access proposals under consideration by the STB, if adopted, could increase government involvement in railroad pricing, service and operations and significantly change the federal regulatory framework of the railroad industry. Several of the changes under consideration could have a significant negative impact on FTAI’s ability to determine prices for rail services, meet service standards and could force a reduction in capital spending. Statutes imposing price constraints or affecting rail-to-rail competition could adversely affect FTAI’s profitability.

Under various U.S. and Canadian federal, state, provincial and local environmental requirements, as the owner or operator of terminals or other facilities, we may be liable for the costs of removal or remediation of contamination at or from our existing locations, whether we knew of, or were responsible for, the presence of such contamination. The failure to timely report and properly remediate contamination may subject us to liability to third parties and may adversely affect our ability to sell or rent our property or to borrow money using our property as collateral. Additionally, we may be liable for the costs of remediating third-party sites where hazardous substances from our operations have been transported for treatment or disposal, regardless of whether we own or operate that site. In the future, we may incur substantial expenditures for investigation or remediation of contamination that has not yet been discovered at our current or former locations or locations that we may acquire.

A discharge of hydrocarbons or hazardous substances into the environment associated with operating our rail assets could subject us to substantial expense, including the cost to recover the materials spilled, restore the affected natural resources, pay fines and penalties, and natural resource damages and claims made by employees, neighboring landowners, government authorities and other third parties, including for personal injury and property damage. We may experience future catastrophic sudden or gradual releases into the environment from our facilities or discover historical releases that were previously unidentified or not assessed. Although our inspection and testing programs are designed to prevent, detect and address any such releases promptly, the liabilities incurred due to any future releases into the environment from our assets, have the potential to substantially affect our business. Such events could also subject us to media and public scrutiny that could have a negative effect on our operations and also on the value of our common shares.

Our business could be adversely affected if service on the railroads is interrupted or if more stringent regulations are adopted regarding railcar design or the transportation of crude oil by rail.

As a result of hydraulic fracturing and other improvements in extraction technologies, there has been a substantial increase in the volume of crude oil and liquid hydrocarbons produced and transported in North America, and a geographic shift in that production versus historical production. The increase in volume and shift in geography has resulted in a growing percentage of crude oil being transported by rail. High-profile accidents involving crude-oil-carrying trains in Quebec, North Dakota and Virginia, and more recently in West Virginia and Illinois, have raised concerns about the environmental and safety risks associated with crude oil transport by rail and the associated risks arising from railcar design.

In May 2015, the DOT issued new production standards and operational controls for rail tank cars used in “High-Hazard Flammable Trains” (i.e., trains carrying commodities such as ethanol, crude oil and other flammable liquids). Similar standards have been adopted in Canada. The new standard applies for all cars manufactured after October 1, 2015, and existing tank cars must be retrofitted within the next three to eight years. The applicable operational controls include reduced speed restrictions, and maximum lengths on trains carrying these materials. Retrofitting our tank cars will be required under these new standards to the extent we elect to move certain flammable liquids in the future. While we may be able to pass some of these costs on to our customers, there may be costs that we cannot pass on to them. We continue to monitor the railcar regulatory landscape and remain in close contact with railcar suppliers and other industry stakeholders to stay informed of railcar regulation rulemaking developments. It is unclear how these regulations will impact the crude-by-rail industry, and any such impact would depend on a number of factors that are outside of our control. If, for example, overall volume of crude-by-rail decreases, or if we do not have access to a sufficient number of compliant cars to transport required volumes under our existing contracts, our operations may be negatively affected. This may lead to a decrease in revenues and other consequences.

The adoption of additional federal, state, provincial or local laws or regulations, including any voluntary measures by the rail industry regarding railcar design or crude oil and liquid hydrocarbon rail transport activities, or efforts by local communities to restrict or limit rail traffic involving crude oil, could affect our business by increasing compliance costs and decreasing demand for our services, which could adversely affect our financial position and cash flows. Moreover, any disruptions in the operations of railroads, including those due to shortages of railcars, weather-related problems, flooding, drought, accidents, mechanical difficulties, strikes, lockouts or bottlenecks, could adversely impact our customers’ ability to move their product and, as a result, could affect our business.

Our assets are exposed to unplanned interruptions caused by catastrophic events outside of our control which may disrupt our business and cause damage or losses that may not be adequately covered by insurance.

The operations of transportation and infrastructure projects are exposed to unplanned interruptions caused by significant catastrophic events, such as hurricanes, cyclones, earthquakes, landslides, floods, explosions, fires, major plant breakdowns, pipeline or electricity line ruptures or other disasters. Operational disruption, as well as supply disruption, could adversely impact the cash flows available from these assets. In addition, the cost of repairing or replacing damaged assets could be considerable. Repeated or prolonged interruption may result in temporary or permanent loss of customers, substantial litigation or penalties for regulatory or contractual non-compliance, and any loss from such events may not be recoverable under relevant insurance policies. Although we believe that we are adequately insured against these types of events, either indirectly through our lessees or charterers or through our own insurance policies, no assurance can be given that the occurrence of any such event will not materially adversely affect us. In addition, if a lessee or charterer is not obligated to maintain sufficient insurance, we may incur the costs of additional insurance coverage during the related lease or charter. We can give no assurance that such insurance will be available at commercially reasonable rates, if at all.

Our assets generally require routine maintenance, and we may be exposed to unforeseen maintenance costs.

We may be exposed to unforeseen maintenance costs for our assets associated with a lessee’s or charterer’s failure to properly maintain the asset. We enter into leases and charters with respect to some of our assets pursuant to which the lessees are primarily responsible for many obligations, which generally include complying with all governmental requirements applicable to the lessee or charterer, including operational, maintenance, government agency oversight, registration requirements and other applicable directives. Failure of a lessee or charterer to perform required maintenance during the term of a lease or charter could result in a decrease in value of an asset, an inability to re-lease or charter an asset at favorable rates, if at all, or a potential inability to utilize an asset. Maintenance failures would also likely require us to incur maintenance and modification costs upon the termination of the applicable lease or charter; such costs to restore the asset to an acceptable condition prior to re-leasing, charter or sale could be substantial. Any failure by our lessees or charterers to meet their obligations to perform required scheduled maintenance or our inability to maintain our assets could materially adversely affect our business, prospects, financial condition, results of operations and cash flows.

Some of our customers operate in highly regulated industries and changes in laws or regulations, including laws with respect to international trade, may adversely affect our ability to lease, charter or sell our assets.

Some of our customers operate in highly regulated industries such as aviation and offshore energy. A number of our contractual arrangements-for example, our leasing aircraft engines or offshore energy equipment to third-party operators-require the operator (our customer) to obtain specific governmental or regulatory licenses, consents or approvals. These include consents for certain payments under such arrangements and for the export, import or re-export of the related assets. Failure by our customers or, in certain circumstances, by us, to obtain certain licenses and approvals could negatively affect our ability to conduct our business. In addition, the shipment of goods, services and technology across international borders subjects the operation of our assets to international trade laws and regulations. Moreover, many countries, including the United States, control the export and re-export of certain goods, services and technology and impose related export recordkeeping and reporting obligations. Governments also may impose economic sanctions against certain countries, persons and other entities that may restrict or prohibit transactions involving such countries, persons and entities. If any such regulations or sanctions affect the asset operators that are our customers, our business, prospects, financial condition, results of operations and cash flows may be materially adversely affected.

Certain of our assets are subject to purchase options held by the charterer or lessee of the asset which, if exercised, could reduce the size of our asset base and our future revenues.

We have granted purchase options to the charterers and lessees of certain of our assets. The market values of these assets may change from time to time depending on a number of factors, such as general economic and market conditions affecting the industries in which we operate, competition, cost of construction, governmental or other regulations, technological changes and prevailing levels of charter or lease rates from time to time. The purchase price under a purchase option may be less than the asset’s market value at the time the option may be exercised. In addition, we may not be able to obtain a replacement asset for the price at which the asset is sold. In such cases, our business, prospects, financial condition, results of operations and cash flows may be materially adversely affected.

The profitability of our offshore energy assets may be impacted by the profitability of the offshore oil and gas industry generally, which is significantly affected by, among other things, volatile oil and gas prices.

Demand for assets in the offshore energy business and our ability to secure charter contracts for our assets at favorable charter rates following expiry or termination of existing charters will depend, among other things, on the level of activity in the offshore oil and gas industry. The offshore oil and gas industry is cyclical and volatile, and demand for oil-service assets depends on, among other things, the level of development and activity in oil and gas exploration, as well as the identification and development of oil and gas reserves and production in offshore areas worldwide. The availability of high quality oil and gas prospects, exploration success, relative production costs, the stage of reservoir development, political concerns and regulatory requirements all affect the level of activity for charterers of oil-service vessels. Accordingly, oil and gas prices and market expectations of potential changes in these prices significantly affect the level of activity and demand for oil-service assets. Oil and gas prices can be extremely volatile and are affected by numerous factors beyond our control, such as: worldwide demand for oil and gas; costs of exploring, developing, producing and delivering oil and gas; expectations regarding future energy prices; the ability of the Organization of Petroleum Exporting Countries ("OPEC") to set and maintain production levels and impact pricing; the level of production in non-OPEC countries; governmental regulations and policies regarding development of oil and gas reserves; local and international political, economic and weather conditions; domestic and foreign tax or trade policies; political and military conflicts in oil-producing and other countries; and the development and exploration of alternative fuels. Any reduction in the demand for our assets due to these or other factors could materially adversely affect our operating results and growth prospects.

Our international operations involve additional risks, which could adversely affect our business, prospects, financial condition, results of operations and cash flows.

We and our customers operate in various regions throughout the world. As a result, we may, directly or indirectly, be exposed to political and other uncertainties, including risks of:

- terrorist acts, armed hostilities, war and civil disturbances;
- acts of piracy;
- potential cybersecurity attacks;
- significant governmental influence over many aspects of local economies;
- seizure, nationalization or expropriation of property or equipment;
- repudiation, nullification, modification or renegotiation of contracts;
- limitations on insurance coverage, such as war risk coverage, in certain areas;
- political unrest;
- foreign and U.S. monetary policy and foreign currency fluctuations and devaluations;
- the inability to repatriate income or capital;
- complications associated with repairing and replacing equipment in remote locations;
- import-export quotas, wage and price controls, imposition of trade barriers;
- U.S. and foreign sanctions or trade embargoes;
- restrictions on the transfer of funds into or out of countries in which we operate;
- compliance with U.S. Treasury sanctions regulations restricting doing business with certain nations or specially designated nationals;
- regulatory or financial requirements to comply with foreign bureaucratic actions;
- compliance with applicable anti-corruption laws and regulations;
- changing taxation policies, including confiscatory taxation;
- other forms of government regulation and economic conditions that are beyond our control; and
- governmental corruption.

Any of these or other risks could adversely impact our customers' international operations which could materially adversely impact our operating results and growth opportunities.

We may make acquisitions in emerging markets throughout the world, and investments in emerging markets are subject to greater risks than developed markets and could adversely affect our business, prospects, financial condition, results of operations and cash flows.

To the extent that we acquire assets in emerging markets-which we may do throughout the world-additional risks may be encountered that could adversely affect our business. Emerging market countries have less developed economies and infrastructure and are often more vulnerable to economic and geopolitical challenges and may experience significant fluctuations in gross domestic product, interest rates and currency exchange rates, as well as civil disturbances, government instability, nationalization and expropriation of private assets and the imposition of taxes or other charges by government authorities. In addition, the currencies in which investments are denominated may be unstable, may be subject to significant depreciation and may not be freely convertible or may be subject to the imposition of other monetary or fiscal controls and restrictions.

Emerging markets are still in relatively early stages of their development and accordingly may not be highly or efficiently regulated. Moreover, emerging markets tend to be shallower and less liquid than more established markets which may adversely affect our ability to realize profits from our assets in emerging markets when we desire to do so or receive what we perceive to be their fair value in the event of a realization. In some cases, a market for realizing profits from an investment may not exist locally. In addition, issuers based in emerging markets are not generally subject to uniform accounting and financial reporting standards, practices and requirements comparable to those applicable to issuers based in more developed countries, thereby potentially increasing the risk of fraud and other deceptive practices. Settlement of transactions may be subject to greater delay and administrative uncertainties than in developed markets and less complete and reliable financial and other information may be available to investors in emerging markets than in developed markets. In addition, economic instability in emerging markets could adversely affect the value of our assets subject to leases or charters in such countries, or the ability of our lessees or charters, which operate in these markets, to meet their contractual obligations. As a result, lessees or charterers that operate in emerging market countries may be more likely to default under their contractual obligations than those that operate in developed countries. Liquidity and volatility limitations in these markets may also adversely affect our ability to dispose of our assets at the best price available or in a timely manner.

As we have and may continue to acquire assets located in emerging markets throughout the world, we may be exposed to any one or a combination of these risks, which could adversely affect our operating results.

We are actively evaluating potential acquisitions of assets and operating companies in other transportation and infrastructure sectors which could result in additional risks and uncertainties for our business and unexpected regulatory compliance costs.

While our existing portfolio consists of assets in the aviation, energy, intermodal transport and rail sectors, we are actively evaluating potential acquisitions of assets and operating companies in other sectors of the transportation and transportation-related infrastructure and equipment markets and we plan to be flexible as other attractive opportunities arise over time. To the extent we make acquisitions in other sectors, we will face numerous risks and uncertainties, including risks associated with the required investment of capital and other resources and with combining or integrating operational and management systems and controls. Entry into certain lines of business may subject us to new laws and regulations and may lead to increased litigation and regulatory risk. Many types of transportation assets, including certain rail, airport and seaport assets, are subject to registration requirements by U.S. governmental agencies, as well as foreign governments if such assets are to be used outside of the United States. Failing to register the assets, or losing such registration, could result in substantial penalties, forced liquidation of the assets and/or the inability to operate and, if applicable, lease the assets. We may need to incur significant costs to comply with the laws and regulations applicable to any such new acquisition. The failure to comply with these laws and regulations could cause us to incur significant costs, fines or penalties or require the assets to be removed from service for a period of time resulting in reduced income from these assets. In addition, if our acquisitions in other sectors produce insufficient revenues, or produce investment losses, or if we are unable to efficiently manage our expanded operations, our results of operations will be adversely affected, and our reputation and business may be harmed.

The agreements governing our indebtedness place restrictions on us and our subsidiaries, reducing operational flexibility and creating default risks.

The agreements governing our indebtedness, including, but not limited to, the indenture governing our Senior Notes and the revolving credit facility entered into on June 16, 2017 ("Revolving Credit Facility"), contain covenants that place restrictions on us and our subsidiaries. The indentures governing our Senior Notes and the Revolving Credit Facility restrict among other things, our and certain of our subsidiaries' ability to:

- merge, consolidate or transfer all, or substantially all, of our assets;
- incur additional debt or issue preferred shares;
- make certain investments or acquisitions;
- create liens on our or our subsidiaries' assets;
- sell assets;
- make distributions on or repurchase our shares;
- enter into transactions with affiliates; and
- create dividend restrictions and other payment restrictions that affect our subsidiaries.

These covenants could impair our ability to grow our business, take advantage of attractive business opportunities or successfully compete. A breach of any of these covenants could result in an event of default. Cross-default provisions in our debt agreements could cause an event of default under one debt agreement to trigger an event of default under our other debt agreements. Upon the occurrence of an event of default under any of our debt agreements, the lenders or holders thereof could elect to declare all outstanding debt under such agreements to be immediately due and payable.

Terrorist attacks could negatively impact our operations and our profitability and may expose us to liability and reputational damage.

Terrorist attacks may negatively affect our operations. Such attacks have contributed to economic instability in the United States and elsewhere, and further acts of terrorism, violence or war could similarly affect world trade and the industries in which we and our customers operate. In addition, terrorist attacks or hostilities may directly impact airports or aircraft, ports where our containers and vessels travel, or our physical facilities or those of our customers. In addition, it is also possible that our assets could be involved in a terrorist attack. The consequences of any terrorist attacks or hostilities are unpredictable, and we may not be able to foresee events that could have a material adverse effect on our operations. Although our lease and charter agreements generally require the counterparties to indemnify us against all damages arising out of the use of our assets, and we carry insurance to potentially offset any costs in the event that our customer indemnifications prove to be insufficient, our insurance does not cover certain types of terrorist attacks, and we may not be fully protected from liability or the reputational damage that could arise from a terrorist attack which utilizes our assets.

Because we have a limited operating history, our historical financial and operating data may not be representative of our future results.

We are a limited liability company with a limited operating history. Our results of operations, financial condition and cash flows reflected in our consolidated financial statements may not be indicative of the results we would have achieved if we were a public company or results that may be achieved in future periods. Consequently, there can be no assurance that we will be able to generate sufficient income to pay our operating expenses and make satisfactory distributions to our shareholders, or any distributions at all. Further, we only make acquisitions identified by our Manager. As a result of this concentration of assets, our financial performance depends on the performance of our Manager in identifying target assets, the availability of opportunities falling within our asset acquisition strategy and the performance of those underlying assets.

Our leases and charters require payments in U.S. dollars, but many of our customers operate in other currencies; if foreign currencies devalue against the U.S. dollar, our lessees or charterers may be unable to meet their payment obligations to us in a timely manner.

Our current leases and charters require that payments be made in U.S. dollars. If the currency that our lessees or charterers typically use in operating their businesses devalues against the U.S. dollar, our lessees or charterers could encounter difficulties in making payments to us in U.S. dollars. Furthermore, many foreign countries have currency and exchange laws regulating international payments that may impede or prevent payments from being paid to us in U.S. dollars. Future leases or charters may provide for payments to be made in euros or other foreign currencies. Any change in the currency exchange rate that reduces the amount of U.S. dollars obtained by us upon conversion of future lease payments denominated in euros or other foreign currencies, may, if not appropriately hedged by us, have a material adverse effect on us and increase the volatility of our earnings.

Our inability to obtain sufficient capital would constrain our ability to grow our portfolio and to increase our revenues.

Our business is capital intensive, and we have used and may continue to employ leverage to finance our operations. Accordingly, our ability to successfully execute our business strategy and maintain our operations depends on the availability and cost of debt and equity capital. Additionally, our ability to borrow against our assets is dependent, in part, on the appraised value of such assets. If the appraised value of such assets declines, we may be required to reduce the principal outstanding under our debt facilities or otherwise be unable to incur new borrowings.

We can give no assurance that the capital we need will be available to us on favorable terms, or at all. Our inability to obtain sufficient capital, or to renew or expand our credit facilities, could result in increased funding costs and would limit our ability to:

- meet the terms and maturities of our existing and future debt facilities;
- purchase new assets or refinance existing assets;
- fund our working capital needs and maintain adequate liquidity; and
- finance other growth initiatives.

In addition, we conduct our operations so that neither we nor any of our subsidiaries are required to register as an investment company under the Investment Company Act of 1940 (the "Investment Company Act"). As such, certain forms of financing such as finance leases may not be available to us. Please see "- If we are deemed an investment company under the Investment Company Act, it could have a material adverse effect on our business, prospects, financial condition, results of operations and cash flows."

The effects of various environmental regulations may negatively affect the industries in which we operate which could have a material adverse effect on our financial condition, results of operations and cash flows.

We are subject to federal, state, local and foreign laws and regulations relating to the protection of the environment, including those governing the discharge of pollutants to air and water, the management and disposal of hazardous substances and wastes, the cleanup of contaminated sites and noise and emission levels. Under some environmental laws in the United States and certain other countries, strict liability may be imposed on the owners or operators of assets, which could render us liable for environmental and natural resource damages without regard to negligence or fault on our part. We could incur substantial costs, including cleanup costs, fines and third-party claims for property or natural resource damage and personal injury, as a result of violations of or liabilities under environmental laws and regulations in connection with our or our lessee's or charterer's current or historical operations, any of which could have a material adverse effect on our results of operations and financial condition. While we typically maintain liability insurance coverage and typically require our lessees to provide us with indemnity against certain losses, the insurance coverage is subject to large deductibles, limits on maximum coverage and significant exclusions and may not be sufficient or available to protect against any or all liabilities and such indemnities may not cover or be sufficient to protect us against losses arising from environmental damage. In addition, changes to environmental standards or regulations in the industries in which we operate could limit the economic life of the assets we acquire or reduce their value, and also require us to make significant additional investments in order to maintain compliance, which would negatively impact our cash flows and results of operations.

Our Repauno site and Long Ridge property are subject to environmental laws and regulations that may expose us to significant costs and liabilities.

Our Repauno site is subject to ongoing environmental investigation and remediation by the former owner of the property related to historic industrial operations. The former owner is responsible for completion of this work, and we benefit from a related indemnity and insurance policy. If the former owner fails to fulfill its investigation and remediation, or indemnity obligations and the related insurance, which are subject to limits and conditions, fail to cover our costs, we could incur losses. Redevelopment of the property in those areas undergoing investigation and remediation must await state environmental agency confirmation that no further investigation or remediation is required before redevelopment activities can occur in such areas of the property. Therefore, any delay in the former owner's completion of the environmental work or receipt of related approvals in an area of the property could delay our redevelopment activities. In addition, once received, permits and approvals may be subject to litigation, and projects may be delayed or approvals reversed or modified in litigation. If there is a delay in obtaining any required regulatory approval, it could delay projects and cause us to incur costs.

In connection with our acquisition of Long Ridge, the former owner of the property is obligated to perform certain post-closing demolition activities, remove specified containers, equipment and structures and conduct investigation, removal, cleanup and decontamination related thereto. In addition, the former owner is responsible for ongoing environmental remediation related to historic industrial operations on and off Long Ridge. Pursuant to an order issued by the Ohio Environmental Protection Agency ("Ohio EPA"), the former owner is responsible for completing the removal and off-site disposal of electrolytic pots associated with the former use of Long Ridge as an aluminum reduction plant. In addition, Long Ridge is located adjacent to the former Ormet Corporation Superfund site (the "Ormet site"), which is owned and operated by the former owner of Long Ridge. Pursuant to an order with the United States Environmental Protection Agency ("U.S. EPA"), the former owner is obligated to pump groundwater that has been impacted by the adjacent Ormet site beneath our site and discharge it to the Ohio River and monitor the groundwater annually. Long Ridge is also subject to an environmental covenant related to the adjacent Ormet site that, inter alia, restricts the use of groundwater beneath our site and requires U.S. EPA consent for activities on Long Ridge that could disrupt the groundwater monitoring or pumping. The former owner is contractually obligated to complete its regulatory obligations on Long Ridge and we benefit from a related indemnity and insurance policy. If the former owner fails to fulfill its demolition, removal, investigation, remediation, monitoring, or indemnity obligations, and if the related insurance, which is subject to limits and conditions, fails to cover our costs, we could incur losses. Redevelopment of the property in those areas undergoing investigation and remediation pursuant to the Ohio EPA order must await state environmental agency confirmation that no further investigation or remediation is required before redevelopment activities can occur in such area of the property. Therefore, any delay in the former owner's completion of the environmental work or receipt of related approvals or consents from Ohio EPA or U.S. EPA could delay our redevelopment activities.

In addition, a portion of Long Ridge is proposed for redevelopment as a combined cycle gas-fired electric generating facility. Although environmental investigations in that portion of the property have not identified material impacts to soils or groundwater that reasonably would be expected to prevent or delay redevelopment, impacted materials could be encountered during construction that require special handling and/or result in delays to the project. In addition, the construction of an electric generating plant will require environmental permits and approvals from federal, state and local environmental agencies. Once received, permits and approvals may be subject to litigation, and projects may be delayed or approvals reversed or modified in litigation. If there is a delay in obtaining any required regulatory approval, it could delay projects and cause us to incur costs.

Moreover, new, stricter environmental laws, regulations or enforcement policies, including those imposed in response to climate change, could be implemented that significantly increase our compliance costs, or require us to adopt more costly methods of operation. If we are not able to transform Repauno or Long Ridge into hubs for industrial and energy development in a timely manner, their future prospects could be materially and adversely affected, which may have a material adverse effect on our business, operating results and financial condition.

It is impossible to predict whether third parties will allege liability related to our purchase of the Montreal, Maine and Atlantic Railway ("MM&A") assets out of bankruptcy, including possible claims related to the July 6, 2013 train derailment near Lac-Mégantic, Quebec.

On July 6, 2013, prior to our ownership, a train carrying crude oil on the MM&A line derailed near Lac-Mégantic, Quebec which resulted in fires that claimed the lives of 47 individuals (the "Incident"). Approximately two million gallons of crude oil were either burned or released into the environment, including into the nearby Chaudière River. Prior to our acquisition of the MM&A assets in May and June 2014, we received written assurance from the Quebec Ministry of Sustainable Development, Environment, Wildlife and Parks that it would take full responsibility for the environmental clean-up and that it would not hold CMQR liable for any environmental damages or costs relating to clean-up or restoration of the affected area as a result of the Incident. While we do not anticipate any liability relating to the Incident, including liability for claims alleging personal injury, property damage or natural resource damages, there can be no assurance that such claims relating to the Incident will not arise in the future. No claims have been made or threatened against us as of March 31, 2019 and we do not anticipate any expenditures relating to environmental clean-up (including impacts to the Chaudière River) as a result of the Incident.

If we are deemed an "investment company" under the Investment Company Act, it could have a material adverse effect on our business, prospects, financial condition, results of operations and cash flows.

We conduct our operations so that neither we nor any of our subsidiaries are required to register as an investment company under the Investment Company Act. Section 3(a)(1)(A) of the Investment Company Act defines an investment company as any issuer that is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities. Section 3(a)(1)(C) of the Investment Company Act defines an investment company as any issuer that is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities and owns or proposes to acquire investment securities having a value exceeding 40% of the value of the issuer's total assets (exclusive of U.S. government securities and cash items) on an unconsolidated basis. Excluded from the term "investment securities," among other things, are U.S. government securities and securities issued by majority-owned subsidiaries that are not themselves investment companies and are not relying on the exception from the definition of investment company for certain privately-offered investment vehicles set forth in Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act.

We are a holding company that is not an investment company because we are engaged in the business of holding securities of our wholly-owned and majority-owned subsidiaries, which are engaged in transportation and related businesses which lease assets pursuant to operating leases and finance leases. The Investment Company Act may limit our and our subsidiaries' ability to enter into financing leases and engage in other types of financial activity because less than 40% of the value of our and our subsidiaries' total assets (exclusive of U.S. government securities and cash items) on an unconsolidated basis can consist of "investment securities."

If we or any of our subsidiaries were required to register as an investment company under the Investment Company Act, the registered entity would become subject to substantial regulation that would significantly change our operations, and we would not be able to conduct our business as described in this report. We have not obtained a formal determination from the SEC as to our status under the Investment Company Act and, consequently, any violation of the Investment Company Act would subject us to material adverse consequences.

Risks Related to Our Manager

We are dependent on our Manager and other key personnel at Fortress and may not find suitable replacements if our Manager terminates the Management Agreement or if other key personnel depart.

Our officers and other individuals who perform services for us (other than Jefferson and CMQR employees) are employees of our Manager or other Fortress entities. We are completely reliant on our Manager, which has significant discretion as to the implementation of our operating policies and strategies, to conduct our business. We are subject to the risk that our Manager will terminate the Management Agreement and that we will not be able to find a suitable replacement for our Manager in a timely manner, at a reasonable cost, or at all. Furthermore, we are dependent on the services of certain key employees of our Manager and certain key employees of Fortress entities whose compensation is partially or entirely dependent upon the amount of management fees earned by our Manager or the incentive allocations distributed to the General Partner and whose continued service is not guaranteed, and the loss of such personnel or services could materially adversely affect our operations. We do not have key man insurance for any of the personnel of the Manager or other Fortress entities that are key to us. An inability to find a suitable replacement for any departing employee of our Manager or Fortress entities on a timely basis could materially adversely affect our ability to operate and grow our business.

In addition, our Manager may assign our Management Agreement to an entity whose business and operations are managed or supervised by Mr. Wesley R. Edens, who is a principal, Co-Chief Executive Officer and a member of the board of directors of Fortress, an affiliate of our Manager, and a member of the management committee of Fortress since co-founding Fortress in May 1998. In the event of any such assignment to a non-affiliate of Fortress, the functions currently performed by our Manager’s current personnel may be performed by others. We can give you no assurance that such personnel would manage our operations in the same manner as our Manager currently does, and the failure by the personnel of any such entity to acquire assets generating attractive risk-adjusted returns could have a material adverse effect on our business, financial condition, results of operations and cash flows.

On December 27, 2017, SoftBank announced that it completed the SoftBank Merger. In connection with the SoftBank Merger, Fortress operates within SoftBank as an independent business headquartered in New York. There can be no assurance that the SoftBank Merger will not have an impact on us or our relationship with the Manager.

There are conflicts of interest in our relationship with our Manager.

Our Management Agreement, the Partnership Agreement and our operating agreement were negotiated prior to our IPO and among affiliated parties, and their terms, including fees payable, may not be as favorable to us as if they had been negotiated after our IPO with an unaffiliated third-party.

There are conflicts of interest inherent in our relationship with our Manager insofar as our Manager and its affiliates - including investment funds, private investment funds, or businesses managed by our Manager, including Seacastle Ships Holdings Inc., Trac Intermodal and Florida East Coast Industries - invest in transportation and transportation-related infrastructure assets and whose investment objectives overlap with our asset acquisition objectives. Certain opportunities appropriate for us may also be appropriate for one or more of these other investment vehicles. Certain members of our board of directors and employees of our Manager who are our officers also serve as officers and/or directors of these other entities. For example, we have some of the same directors and officers as Seacastle Ships Holdings Inc. and Trac Intermodal. Although we have the same Manager, we may compete with entities affiliated with our Manager or Fortress, including Seacastle Ships Holdings Inc. and Trac Intermodal, for certain target assets. From time to time, affiliates of Fortress focus on investments in assets with a similar profile as our target assets that we may seek to acquire. These affiliates may have meaningful purchasing capacity, which may change over time depending upon a variety of factors, including, but not limited to, available equity capital and debt financing, market conditions and cash on hand. Fortress has multiple existing and planned funds focused on investing in one or more of our target sectors, each with significant current or expected capital commitments. We may co-invest with these funds in transportation and transportation-related infrastructure assets. Fortress funds generally have a fee structure similar to ours, but the fees actually paid will vary depending on the size, terms and performance of each fund.

Our Management Agreement generally does not limit or restrict our Manager or its affiliates from engaging in any business or managing other pooled investment vehicles that invest in assets that meet our asset acquisition objectives. Our Manager intends to engage in additional transportation and infrastructure related management and other investment opportunities in the future, which may compete with us for investments or result in a change in our current investment strategy. In addition, our operating agreement provides that if Fortress or an affiliate or any of their officers, directors or employees acquire knowledge of a potential transaction that could be a corporate opportunity, they have no duty, to the fullest extent permitted by law, to offer such corporate opportunity to us, our shareholders or our affiliates. In the event that any of our directors and officers who is also a director, officer or employee of Fortress or its affiliates acquires knowledge of a corporate opportunity or is offered a corporate opportunity, provided that this knowledge was not acquired solely in such person's capacity as a director or officer of FTAI and such person acts in good faith, then to the fullest extent permitted by law such person is deemed to have fully satisfied such person's fiduciary duties owed to us and is not liable to us if Fortress or its affiliates pursues or acquires the corporate opportunity or if such person did not present the corporate opportunity to us.

The ability of our Manager and its officers and employees to engage in other business activities, subject to the terms of our Management Agreement, may reduce the amount of time our Manager, its officers or other employees spend managing us. In addition, we may engage (subject to our strategy) in material transactions with our Manager or another entity managed by our Manager or one of its affiliates, including Seacastle Ships Holdings Inc., Trac Intermodal and Florida East Coast Industries, which may include, but are not limited to, certain acquisitions, financing arrangements, purchases of debt, co-investments, consumer loans, servicing advances and other assets that present an actual, potential or perceived conflict of interest. Our board of directors adopted a policy regarding the approval of any "related person transactions" pursuant to which certain of the material transactions described above may require disclosure to, and approval by, the independent members of our board of directors. Actual, potential or perceived conflicts have given, and may in the future give, rise to investor dissatisfaction, litigation or regulatory inquiries or enforcement actions. Appropriately dealing with conflicts of interest is complex and difficult, and our reputation could be damaged if we fail, or appear to fail, to deal appropriately with one or more potential, actual or perceived conflicts of interest. Regulatory scrutiny of, or litigation in connection with, conflicts of interest could have a material adverse effect on our reputation, which could materially adversely affect our business in a number of ways, including causing an inability to raise additional funds, a reluctance of counterparties to do business with us, a decrease in the prices of our equity securities and a resulting increased risk of litigation and regulatory enforcement actions.

The structure of our Manager's and the General Partner's compensation arrangements may have unintended consequences for us. We have agreed to pay our Manager a management fee and the General Partner is entitled to receive incentive allocations from Holdco that are each based on different measures of performance. Consequently, there may be conflicts in the incentives of our Manager to generate attractive risk-adjusted returns for us. In addition, because the General Partner and our Manager are both affiliates of Fortress, the Income Incentive Allocation paid to the General Partner may cause our Manager to place undue emphasis on the maximization of earnings, including through the use of leverage, at the expense of other objectives, such as preservation of capital, to achieve higher incentive allocations. Investments with higher yield potential are generally riskier or more speculative than investments with lower yield potential. This could result in increased risk to the value of our portfolio of assets and our common shares.

Our directors have approved a broad asset acquisition strategy for our Manager and do not approve each acquisition we make at the direction of our Manager. In addition, we may change our strategy without a shareholder vote, which may result in our acquiring assets that are different, riskier or less profitable than our current assets.

Our Manager is authorized to follow a broad asset acquisition strategy. We may pursue other types of acquisitions as market conditions evolve. Our Manager makes decisions about our investments in accordance with broad investment guidelines adopted by our board of directors. Accordingly, we may, without a shareholder vote, change our target sectors and acquire a variety of assets that differ from, and are possibly riskier than, our current asset portfolio. Consequently, our Manager has great latitude in determining the types and categories of assets it may decide are proper investments for us, including the latitude to invest in types and categories of assets that may differ from those in our existing portfolio. Our directors will periodically review our strategy and our portfolio of assets. However, our board does not review or pre-approve each proposed acquisition or our related financing arrangements. In addition, in conducting periodic reviews, the directors rely primarily on information provided to them by our Manager. Furthermore, transactions entered into by our Manager may be difficult or impossible to reverse by the time they are reviewed by the directors even if the transactions contravene the terms of the Management Agreement. In addition, we may change our asset acquisition strategy, including our target asset classes, without a shareholder vote.

Our asset acquisition strategy may evolve in light of existing market conditions and investment opportunities, and this evolution may involve additional risks depending upon the nature of the assets we target and our ability to finance such assets on a short or long-term basis. Opportunities that present unattractive risk-return profiles relative to other available opportunities under particular market conditions may become relatively attractive under changed market conditions and changes in market conditions may therefore result in changes in the assets we target. Decisions to make acquisitions in new asset categories present risks that may be difficult for us to adequately assess and could therefore reduce or eliminate our ability to pay dividends on our common shares or have adverse effects on our liquidity or financial condition. A change in our asset acquisition strategy may also increase our exposure to interest rate, foreign currency or credit market fluctuations. In addition, a change in our asset acquisition strategy may increase our use of non-match-funded financing, increase the guarantee obligations we agree to incur or increase the number of transactions we enter into with affiliates. Our failure to accurately assess the risks inherent in new asset categories or the financing risks associated with such assets could adversely affect our results of operations and our financial condition.

Our Manager will not be liable to us for any acts or omissions performed in accordance with the Management Agreement, including with respect to the performance of our assets.

Pursuant to our Management Agreement, our Manager will not assume any responsibility other than to render the services called for thereunder in good faith and will not be responsible for any action of our board of directors in following or declining to follow its advice or recommendations. Our Manager, its members, managers, officers, employees, sub-advisers and any other person controlling or Manager, will not be liable to us or any of our subsidiaries, to our board of directors, or our or any subsidiary's shareholders or partners for any acts or omissions by our Manager, its members, managers, officers, employees, sub-advisers and any other person controlling or Manager, except liability to us, our shareholders, directors, officers and employees and persons controlling us, by reason of acts constituting bad faith, willful misconduct, gross negligence or reckless disregard of our Manager's duties under our Management Agreement. We will, to the full extent lawful, reimburse, indemnify and hold our Manager, its members, managers, officers and employees, sub-advisers and each other person, if any, controlling our Manager harmless of and from any and all expenses, losses, damages, liabilities, demands, charges and claims of any nature whatsoever (including attorneys' fees) in respect of or arising from any acts or omissions of an indemnified party made in good faith in the performance of our Manager's duties under our Management Agreement and not constituting such indemnified party's bad faith, willful misconduct, gross negligence or reckless disregard of our Manager's duties under our Management Agreement.

Our Manager's due diligence of potential asset acquisitions or other transactions may not identify all pertinent risks, which could materially affect our business, financial condition, liquidity and results of operations.

Our Manager intends to conduct due diligence with respect to each asset acquisition opportunity or other transaction it pursues. It is possible, however, that our Manager's due diligence processes will not uncover all relevant facts, particularly with respect to any assets we acquire from third parties. In these cases, our Manager may be given limited access to information about the asset and will rely on information provided by the seller of the asset. In addition, if asset acquisition opportunities are scarce, the process for selecting bidders is competitive, or the timeframe in which we are required to complete diligence is short, our ability to conduct a due diligence investigation may be limited, and we would be required to make decisions based upon a less thorough diligence process than would otherwise be the case. Accordingly, transactions that initially appear to be viable may prove not to be over time, due to the limitations of the due diligence process or other factors.

Risks Related to Taxation

Shareholders may be subject to U.S. federal income tax on their share of our taxable income, regardless of whether they receive any cash dividends from us.

So long as we would not be required to register as an investment company under the Investment Company Act of 1940 if we were a U.S. Corporation and 90% of our gross income for each taxable year constitutes "qualifying income" within the meaning of the Internal Revenue Code of 1986, as amended (the "Code"), on a continuing basis, FTAI will be treated, for U.S. federal income tax purposes, as a partnership and not as an association or publicly traded partnership taxable as a corporation. Shareholders may be subject to U.S. federal, state, local and possibly, in some cases, non-U.S. income taxation on their allocable share of our items of income, gain, loss, deduction and credit (including our allocable share of those items of Holdco or any other entity in which we invest that is treated as a partnership or is otherwise subject to tax on a flow through basis) for each of our taxable years ending with or within their taxable year, regardless of whether they receive cash dividends from us. Shareholders may not receive cash dividends equal to their allocable share of our net taxable income or even the tax liability that results from that income.

In addition, certain of our holdings, including holdings, if any, in a controlled foreign corporation (as defined in the Code) (a "CFC") may produce taxable income prior to our receipt of cash relating to such income, and shareholders subject to U.S. federal income tax will be required to take such income into account in determining their taxable income.

U.S. tax reform could adversely affect us and our shareholders.

On December 22, 2017, legislation referred to as the "Tax Cuts and Jobs Act" (the "TCJA") was signed into law. The TCJA is generally effective for taxable years beginning after December 31, 2017. The TCJA includes significant amendments to the Code, including amendments that significantly change the taxation of individuals and business entities, including the taxation of offshore earnings and the deductibility of interest. Some of the amendments could adversely affect our business and financial condition and the value of our common shares. In some cases, there is uncertainty around the scope and application of the new legislation that may be addressed in future guidance issued by the U.S. Department of Treasury and the IRS.

Prospective investors should consult their tax advisors about the TCJA and its potential impact before investing in our common shares.

Under the TCJA, shareholders that are Non-U.S. Holders (defined below) could be subject to U.S. federal income tax, including a 10% withholding tax, on the disposition of our common shares.

If the Internal Revenue Service (the "IRS") were to determine that we, Holdco, or any other entity in which we invest that is subject to tax on a flow-through basis, is engaged in a U.S. trade or business for U.S. federal income tax purposes, any gain recognized by a foreign transferor on the sale, exchange or other disposition of our common shares would generally be treated as "effectively connected" with such trade or business to the extent it does not exceed the effectively connected gain that would be allocable to the transferor if we sold all of our assets at their fair market value as of the date of the transferor's disposition. Under the TCJA, any such gain that is treated as effectively connected will generally be subject to U.S. federal income tax. In addition, the transferee of the common shares or the applicable withholding agent would be required to deduct and withhold a tax equal to 10% of the amount realized by the transferor on the disposition, which would include an allocable portion of our liabilities and would therefore generally exceed the amount of transferred cash received by transferor in the disposition, unless the transferor provides an IRS Form W-9 or an affidavit stating the transferor's taxpayer identification number and that the transferor is not a foreign person. If the transferee fails to properly withhold such tax, we would be required to deduct and withhold from distributions to the transferee a tax in an amount equal to the amount the transferee failed to withhold, plus interest. Although we do not believe that we are currently directly engaged in a U.S. trade or business, we are not required to manage our operations in a manner that is intended to avoid the conduct of a U.S. trade or business.

The withholding requirements with respect to the disposition of an interest in a publicly traded partnership are currently suspended and will remain suspended until Treasury regulations are promulgated or other relevant authoritative guidance is issued. Future guidance on the implementation of these requirements will be applicable on a prospective basis.

Tax gain or loss on a sale or other disposition of our common shares could be more or less than expected.

If a sale of our common shares by a shareholder is taxable in the United States, the shareholder will recognize gain or loss equal to the difference between the amount realized by such shareholder in the sale and such shareholder's adjusted tax basis in those shares. A shareholder's adjusted tax basis in the shares at the time of sale will generally be lower than the shareholder's original tax basis in the shares to the extent that prior distributions to such shareholder exceed the total taxable income allocated to such shareholder. A shareholder may therefore recognize a gain in a sale of our common shares if the shares are sold at a price that is less than their original cost. A portion of the amount realized, whether or not representing gain, may be treated as ordinary income to such shareholder.

Our ability to make distributions depends on our receiving sufficient cash distributions from our subsidiaries, and we cannot assure our shareholders that we will be able to make cash distributions to them in amounts that are sufficient to fund their tax liabilities.

Our subsidiaries may be subject to local taxes in each of the relevant territories and jurisdictions in which they operate, including taxes on income, profits or gains and withholding taxes. As a result, our funds available for distribution are indirectly reduced by such taxes, and the post-tax return to our shareholders is similarly reduced by such taxes.

In general, a shareholder that is subject to U.S. federal income tax must include in income its allocable share of FTAI's items of income, gain, loss, deduction, and credit (including, so long as FTAI is treated as a partnership for U.S. federal income tax purposes, FTAI's allocable share of those items of Holdco and any pass-through subsidiaries of Holdco) for each of our taxable years ending with or within such shareholder's taxable year. However, the cash distributed to a shareholder may not be sufficient to pay the full amount of such shareholder's tax liability in respect of its investment in us, because each shareholder's tax liability depends on such shareholder's particular tax situation and the tax treatment of our underlying activities or assets.

If we are treated as a corporation for U.S. federal income tax purposes, the value of the shares could be adversely affected.

We have not requested, and do not plan to request, a ruling from the IRS on our treatment as a partnership for U.S. federal income tax purposes, or on any other matter affecting us. As of the date of the consummation of our initial public offering, under then current law and assuming full compliance with the terms of our operating agreement (and other relevant documents) and based upon factual statements and representations made by us, our outside counsel opined that we will be treated as a partnership, and not as an association or a publicly traded partnership taxable as a corporation for U.S. federal income tax purposes. However, opinions of counsel are not binding upon the IRS or any court, and the IRS may challenge this conclusion and a court may sustain such a challenge. The factual representations made by us upon which our outside counsel relied relate to our organization, operation, assets, activities, income, and present and future conduct of our operations. In general, if an entity that would otherwise be classified as a partnership for U.S. federal income tax purposes is a "publicly traded partnership" (as defined in the Code) it will be nonetheless treated as a corporation for U.S. federal income tax purposes, unless the exception described below, and upon which we intend to rely, applies. A publicly traded partnership will, however, be treated as a partnership, and not as a corporation for U.S. federal income tax purposes, so long as 90% or more of its gross income for each taxable year constitutes "qualifying income" within the meaning of the Code and it is not required to register as an investment company under the Investment Company Act of 1940. We refer to this exception as the "Qualifying Income Exception."

Qualifying income generally includes dividends, interest, capital gains from the sale or other disposition of stocks and securities and certain other forms of investment income. A substantial portion of our income consists of "Subpart F" income (which includes rent and other types of passive income) derived from CFCs. While we believe that such income constitutes qualifying income, no assurance can be given that the IRS will agree with such position. We also believe that our return from investments will include interest, dividends, capital gains and other types of qualifying income, but no assurance can be given as to the types of income that will be earned in any given year.

If we fail to satisfy the Qualifying Income Exception, we would be required to pay U.S. federal income tax at regular corporate rates on our income. Although the TCJA reduced regular corporate rates from 35% to 21%, our failure to qualify as a partnership for U.S. federal income tax purposes could nevertheless adversely affect our business, operating results and financial condition. In addition, we would likely be liable for state and local income and/or franchise taxes on our income. Finally, distributions of cash to shareholders would constitute qualified dividend income taxable to such shareholders to the extent of our earnings and profits and would not be deductible by us. Taxation of us as a publicly traded partnership taxable as a corporation could result in a material adverse effect on our cash flow and the after-tax returns for shareholders and thus could result in a substantial reduction in the value of our common shares.

Shareholders that are not U.S. persons should also anticipate being required to file U.S. tax returns and may be required to pay U.S. tax solely on account of owning our common shares.

In light of our intended investment activities, we may be, or may become, engaged in a U.S. trade or business for U.S. federal income tax purposes, in which case some portion of our income would be treated as effectively connected income with respect to non-U.S. persons. Moreover, we anticipate that, in the future, we will sell interests in U.S. real holding property corporations (each a "USRPHC") and therefore be deemed to be engaged in a U.S. trade or business at such time. If we were to realize gain from the sale or other disposition of a U.S. real property interest (including a USRPHC) or were otherwise engaged in a U.S. trade or business, non-U.S. persons generally would be required to file U.S. federal income tax returns and would be subject to U.S. federal withholding tax on their allocable share of the effectively connected income on gain at the highest marginal U.S. federal income tax rates applicable to ordinary income. Non-U.S. persons that are corporations may also be subject to a branch profits tax on their allocable share of such income. Non-U.S. persons should anticipate being required to file U.S. tax returns and may be required to pay U.S. tax solely on account of owning our common shares.

Non-U.S. persons that hold (or are deemed to hold) more than 5% of our common shares (or held, or were deemed to hold, more than 5% of our common shares) may be subject to U.S. federal income tax upon the disposition of some or all their common shares.

If a non-U.S. person held more than 5% of our common shares at any time during the 5-year period preceding such non-U.S. person's disposition of our common shares, and we were considered a USRPHC (determined as if we were a U.S. corporation) at any time during such 5-year period because of our current or previous ownership of U.S. real property interests above a certain threshold, such non-U.S. person may be subject to U.S. tax on such disposition of our common shares (and may have a U.S. tax return filing obligation).

Tax-exempt shareholders may face certain adverse U.S. tax consequences from owning our common shares.

We are not required to manage our operations in a manner that would minimize the likelihood of generating income that would constitute "unrelated business taxable income" ("UBTI") to the extent allocated to a tax-exempt shareholder. Although we expect to invest through subsidiaries that are treated as corporations for U.S. federal income tax purposes and such corporate investments would generally not result in an allocation of UBTI to a shareholder on account of the activities of those subsidiaries, we may not invest through corporate subsidiaries in all cases. Moreover, UBTI also includes income attributable to debt-financed property and we are not prohibited from incurring debt to finance our investments, including investments in subsidiaries. Furthermore, we are not prohibited from being (or causing a subsidiary to be) a guarantor of loans made to a subsidiary. If we (or certain of our subsidiaries) were treated as the borrower for U.S. tax purposes on account of those guarantees, some or all of our investments could be considered debt-financed property. The potential for income to be characterized as UBTI could make our common shares an unsuitable investment for a tax-exempt entity. Tax-exempt shareholders are urged to consult their tax advisors regarding the tax consequences of an investment in common shares.

We may hold or acquire certain investments through an entity classified as a CFC for U.S. federal income tax purposes.

Many of our investments are in non-U.S. corporations or are held through a non-U.S. subsidiary that is classified as a corporation for U.S. federal income tax purposes. Many of these entities are CFCs for U.S. federal income tax purposes. U.S. Holders indirectly owning an interest in a CFC may experience adverse U.S. tax consequences.

If substantially all of the U.S. source rental income derived from aircraft or ships used to transport passengers or cargo in international traffic ("U.S. source international transport rental income") of any of our non-U.S. corporate subsidiaries is attributable to activities of personnel based in the United States, such subsidiary could be subject to U.S. federal income tax on a net income basis at regular tax rates, rather than at a rate of 4% on gross income, which would adversely affect our business and result in decreased funds available for distribution to our shareholders.

We believe that the U.S. source international transport rental income of our non-U.S. subsidiaries generally will be subject to U.S. federal income tax, on a gross-income basis at a rate not in excess of 4%. If any of our non-U.S. subsidiaries that is treated as a corporation for U.S. federal income tax purposes did not comply with certain administrative guidelines of the IRS, such that 90% or more of such subsidiary's U.S. source international transport rental income were attributable to the activities of personnel based in the United States (in the case of bareboat leases) or from "regularly scheduled transportation" as defined in such administrative guidelines (in the case of time-charter leases), such subsidiary's U.S. source rental income would be treated as income effectively connected with a trade or business in the United States. In such case, such subsidiary's U.S. source international transport rental income would be subject to U.S. federal income tax at a maximum rate of 21% for taxable years beginning after December 31, 2017. In addition, such subsidiary would be subject to the U.S. federal branch profits tax on its effectively connected earnings and profits at a rate of 30%. The imposition of such taxes would adversely affect our business and would result in decreased funds available for distribution to our shareholders.

The ability of our corporate subsidiaries to utilize net operating losses ("NOLs") to offset their future taxable income may become limited.

Certain of our corporate subsidiaries have significant NOLs, and any limitation on their use could materially affect our profitability. Such a limitation could occur if our corporate subsidiaries were to experience an "ownership change" as defined under Section 382 of the Code. The rules for determining ownership changes are complex, and changes in the ownership of our common shares could cause an ownership change in one or more of our corporate subsidiaries. Sales of our common shares by our shareholders, as well as future issuances of our common shares, could contribute to a potential ownership change in our corporate subsidiaries.

Our subsidiaries may become subject to unanticipated tax liabilities that may have a material adverse effect on our results of operations.

Some of our subsidiaries are subject to income, withholding or other taxes in certain non-U.S. jurisdictions by reason of their jurisdiction of incorporation, activities and operations, where their assets are used or where the lessees of their assets (or others in possession of their assets) are located, and it is also possible that taxing authorities in any such jurisdictions could assert that our subsidiaries are subject to greater taxation than we currently anticipate. Further, the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("BEPS") recently entered into force among the jurisdictions that ratified it. The implementation of BEPS prevention measures could result in a higher effective tax rate on our worldwide earnings by, for example, reducing the tax deductions or otherwise increasing the taxable income of our subsidiaries. In addition, a portion of certain of our non-U.S. corporate subsidiaries' income is treated as effectively connected with a U.S. trade or business and is accordingly subject to U.S. federal income tax. It is possible that the IRS could assert that a greater portion of any such non-U.S. subsidiaries' income is effectively connected income that should be subject to U.S. federal income tax.

Our structure involves complex provisions of U.S. federal income tax law for which no clear precedent or authority may be available. Our structure also is subject to potential legislative, judicial or administrative change and differing interpretations, possibly on a retroactive basis.

The U.S. federal income tax treatment of our shareholders depends in some instances on determinations of fact and interpretations of complex provisions of U.S. federal income tax law for which no clear precedent or authority may be available. The U.S. federal income tax treatment of our common shareholders may also be modified by administrative, legislative or judicial interpretation at any time, possibly on a retroactive basis, and any such action may affect our investments and commitments that were previously made, and could adversely affect the value of our shares or cause us to change the way we conduct our business.

Our organizational documents and agreements permit the board of directors to modify our operating agreement from time to time, without the consent of shareholders, in order to address certain changes in Treasury regulations, legislation or interpretation. In some circumstances, such revisions could have a material adverse impact on some or all shareholders. Moreover, we will apply certain assumptions and conventions in an attempt to comply with applicable rules and to report income, gain, deduction, loss and credit to shareholders in a manner that reflects such shareholders' beneficial ownership of partnership items, taking into account variation in ownership interests during each taxable year because of trading activity. However, these assumptions and conventions may not be in compliance with all aspects of applicable tax requirements. It is possible that the IRS will assert successfully that the conventions and assumptions used by us do not satisfy the technical requirements of the Code and/or Treasury regulations and could require that items of income, gain, deduction, loss or credit, including interest deductions, be adjusted, reallocated, or disallowed, in a manner that adversely affects shareholders.

We could incur a significant tax liability if the IRS successfully asserts that the "anti-stapling" rules apply to our investments in our non-U.S. and U.S. subsidiaries, which would adversely affect our business and result in decreased funds available for distribution to our shareholders.

If we were subject to the "anti-stapling" rules of Section 269B of the Code, we would incur a significant tax liability as a result of owning more than 50% of the value of both U.S. and non-U.S. corporate subsidiaries, whose equity interests constitute "stapled interests" that may only be transferred together. If the "anti-stapling" rules applied, our non-U.S. corporate subsidiaries that are treated as corporations for U.S. federal income tax purposes would be treated as U.S. corporations, which would cause those entities to be subject to U.S. federal corporate income tax on their worldwide income. Because we intend to separately manage and operate our non-U.S. and U.S. corporate subsidiaries and structure their business activities in a manner that would allow us to dispose of such subsidiaries separately, we do not expect that the "anti-stapling" rules will apply. However, there can be no assurance that the IRS would not successfully assert a contrary position, which would adversely affect our business and result in decreased funds available for distribution to our shareholders.

Because we cannot match transferors and transferees of our shares, we have therefore adopted certain income tax accounting positions that may not conform with all aspects of applicable tax requirements. The IRS may challenge this treatment, which could adversely affect the value of our shares.

Because we cannot match transferors and transferees of our shares, we have adopted depreciation, amortization and other tax accounting positions that may not conform with all aspects of existing Treasury regulations. A successful IRS challenge to those positions could adversely affect the amount of tax benefits available to our shareholders. It also could affect the timing of these tax benefits or the amount of gain on the sale of our common shares and could have a negative impact on the value of our common shares or result in audits of and adjustments to our shareholders' tax returns.

We generally allocate items of income, gain, loss and deduction using a monthly or other convention, whereby any such items we recognize in a given month are allocated to our shareholders as of a specified date of such month. As a result, if a shareholder transfers its common shares, it might be allocated income, gain, loss and deduction realized by us after the date of the transfer. Similarly, if a shareholder acquires additional common shares, it might be allocated income, gain, loss, and deduction realized by us prior to its ownership of such common shares. Consequently, our shareholders may recognize income in excess of cash distributions received from us, and any income so included by a shareholder would increase the basis such shareholder has in its common shares and would offset any gain (or increase the amount of loss) realized by such shareholder on a subsequent disposition of its common shares.

New legislation regarding U.S. federal income tax liability arising from IRS audits could adversely affect our shareholders.

For taxable years beginning on or after January 1, 2018, we will be liable for U.S. federal income tax liability arising from an IRS audit, unless certain alternative methods are available and we elect to use them. Under the new rules, it is possible that certain shareholders or we may be liable for taxes attributable to adjustments to our taxable income with respect to tax years that closed before such shareholders owned our shares. Accordingly, this new legislation may adversely affect certain shareholders in certain cases. This differs from the prior rules, which generally provided that tax adjustments only affect the persons who were shareholders in the tax year in which the item was reported on our tax return. The changes created by the new legislation are uncertain and in many respects depend on the promulgation of future regulations or other guidance by the U.S. Treasury Department or the IRS.

Risks Related to Our Common Shares

The market price and trading volume of our common shares may be volatile, which could result in rapid and substantial losses for our shareholders.

The market price of our common shares may be highly volatile and could be subject to wide fluctuations. In addition, the trading volume in our common shares may fluctuate and cause significant price variations to occur. If the market price of our common shares declines significantly, you may be unable to resell your shares at or above your purchase price, if at all. The market price of our common shares may fluctuate or decline significantly in the future. Some of the factors that could negatively affect our share price or result in fluctuations in the price or trading volume of our common shares include:

- a shift in our investor base;
- our quarterly or annual earnings, or those of other comparable companies;
- actual or anticipated fluctuations in our operating results;
- changes in accounting standards, policies, guidance, interpretations or principles;
- announcements by us or our competitors of significant investments, acquisitions or dispositions;
- the failure of securities analysts to cover our common shares;
- changes in earnings estimates by securities analysts or our ability to meet those estimates;
- the operating and share price performance of other comparable companies;
- overall market fluctuations;
- general economic conditions; and
- developments in the markets and market sectors in which we participate.

Stock markets in the United States have experienced extreme price and volume fluctuations. Market fluctuations, as well as general political and economic conditions, such as acts of terrorism, prolonged economic uncertainty, a recession or interest rate or currency rate fluctuations, could adversely affect the market price of our common shares.

We are required by Section 404 of the Sarbanes-Oxley Act to evaluate the effectiveness of our internal controls, and the outcome of that effort may adversely affect our results of operations, financial condition and liquidity. Because we are no longer an emerging growth company, we are subject to heightened disclosure obligations, which may impact our share price.

As a public company, we are required to comply with Section 404 ("Section 404") of the Sarbanes-Oxley Act. Section 404 requires that we evaluate the effectiveness of our internal control over financial reporting at the end of each fiscal year and to include a management report assessing the effectiveness of our internal controls over financial reporting in our Annual Report on Form 10-K for that fiscal year. Section 404 also requires an independent registered public accounting firm to attest to, and report on, management's assessment of our internal controls over financial reporting. Because we ceased to be an emerging growth company at the end of 2017, we were required to have our independent registered public accounting firm attest to the effectiveness of our internal controls in our Annual Report on Form 10-K for the fiscal year ended December 31, 2018, and will be required to do so going forward. The outcome of our review and the report of our independent registered public accounting firm may adversely affect our results of operations, financial condition and liquidity. During the course of our review, we may identify control deficiencies of varying degrees of severity, and we may incur significant costs to remediate those deficiencies or otherwise improve our internal controls. As a public company, we are required to report control deficiencies that constitute a "material weakness" in our internal control over financial reporting. If we discover a material weakness in our internal control over financial reporting, our share price could decline and our ability to raise capital could be impaired.

Your percentage ownership in us may be diluted in the future.

Your percentage ownership in FTAI may be diluted in the future because of equity awards granted and may be granted to our Manager pursuant to the Management Agreement and the Incentive Plan. In early 2018, we granted our Manager an option to acquire 700,000 common shares are part of the equity offering discussed in Note 15 in our Annual Report on Form 10-K. In the future, upon the successful completion of additional offerings of our common shares or other equity securities (including securities issued as consideration in an acquisition), we will grant to our Manager options to purchase common shares in an amount equal to 10% of the number of common shares being sold in such offerings (or if the issuance relates to equity securities other than our common shares, options to purchase a number of common shares equal to 10% of the gross capital raised in the equity issuance divided by the fair market value of a common share as of the date of the issuance), with an exercise price equal to the offering price per share paid by the public or other ultimate purchaser or attributed to such securities in connection with an acquisition (or the fair market value of a common share as of the date of the equity issuance if it relates to equity securities other than our common shares), and any such offering or the exercise of the option in connection with such offering would cause dilution.

Our board of directors has adopted the Incentive Plan, which provides for the grant of equity-based awards, including restricted shares, stock options, stock appreciation rights, performance awards, restricted share units, tandem awards and other equity-based and non-equity based awards, in each case to our Manager, to the directors, officers, employees, service providers, consultants and advisors of our Manager who perform services for us, and to our directors, officers, employees, service providers, consultants and advisors. We have initially reserved 30,000,000 common shares for issuance under the Incentive Plan. As of March 31, 2019, rights relating to 851,642 of our common shares were outstanding under the Incentive Plan. In connection with offerings that closed on January 16, 2018 and December 4, 2018, the number of shares reserved for issuance under the Incentive Plan will be increased in an amount equal to 826,342 common shares, which amount corresponds to the common shares subject to the option described above. In the future on the date of any equity issuance by us during the ten-year term of the Incentive Plan (including in respect of securities issued as consideration in an acquisition), the maximum number of shares available for issuance under the Plan will be increased to include an additional number of common shares equal to ten percent (10%) of either (i) the total number of common shares newly issued by us in such equity issuance or (ii) if such equity issuance relates to equity securities other than our common shares, a number of our common shares equal to 10% of (A) the gross capital raised in an equity issuance of equity securities other than common shares during the ten-year term of the Incentive Plan, divided by (B) the fair market value of a common share as of the date of such equity issuance.

Sales or issuances of our common shares could adversely affect the market price of our common shares.

Sales of substantial amounts of our common shares in the public market, or the perception that such sales might occur, could adversely affect the market price of our common shares. The issuance of our common shares in connection with property, portfolio or business acquisitions or the exercise of outstanding options or otherwise could also have an adverse effect on the market price of our common shares.

The incurrence or issuance of debt, which ranks senior to our common shares upon our liquidation, and future issuances of equity or equity-related securities, which would dilute the holdings of our existing common shareholders and may be senior to our common shares for the purposes of making distributions, periodically or upon liquidation, may negatively affect the market price of our common shares.

We have incurred and may in the future incur or issue debt or issue equity or equity-related securities to finance our operations, acquisitions or investments. Upon our liquidation, lenders and holders of our debt and holders of our preferred shares (if any) would receive a distribution of our available assets before common shareholders. Any future incurrence or issuance of debt would increase our interest cost and could adversely affect our results of operations and cash flows. We are not required to offer any additional equity securities to existing common shareholders on a preemptive basis. Therefore, additional issuances of common shares, directly or through convertible or exchangeable securities (including limited partnership interests in our operating partnership), warrants or options, will dilute the holdings of our existing common shareholders and such issuances, or the perception of such issuances, may reduce the market price of our common shares. Any preferred shares issued by us would likely have a preference on distribution payments, periodically or upon liquidation, which could eliminate or otherwise limit our ability to make distributions to common shareholders. Because our decision to incur or issue debt or issue equity or equity-related securities in the future will depend on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing, nature or success of our future capital raising efforts. Thus, common shareholders bear the risk that our future incurrence or issuance of debt or issuance of equity or equity-related securities will adversely affect the market price of our common shares.

Our determination of how much leverage to use to finance our acquisitions may adversely affect our return on our assets and may reduce funds available for distribution.

We utilize leverage to finance many of our asset acquisitions, which entitles certain lenders to cash flows prior to retaining a return on our assets. While our Manager targets using only what we believe to be reasonable leverage, our strategy does not limit the amount of leverage we may incur with respect to any specific asset. The return we are able to earn on our assets and funds available for distribution to our shareholders may be significantly reduced due to changes in market conditions, which may cause the cost of our financing to increase relative to the income that can be derived from our assets.

While we currently intend to pay regular quarterly dividends to our shareholders, we may change our dividend policy at any time.

Although we currently intend to pay regular quarterly dividends to holders of our common shares, we may change our dividend policy at any time. Our net cash provided by operating activities has been less than the amount of distributions to our shareholders. The declaration and payment of dividends to holders of our common shares will be at the discretion of our board of directors in accordance with applicable law after taking into account various factors, including actual results of operations, liquidity and financial condition, net cash provided by operating activities, restrictions imposed by applicable law, our taxable income, our operating expenses and other factors our board of directors deem relevant. Our long term goal is to maintain a payout ratio of between 50-60% of funds available for distribution, with remaining amounts used primarily to fund our future acquisitions and opportunities. There can be no assurance that we will continue to pay dividends in amounts or on a basis consistent with prior distributions to our investors, if at all. Because we are a holding company and have no direct operations, we will only be able to pay dividends from our available cash on hand and any funds we receive from our subsidiaries and our ability to receive distributions from our subsidiaries may be limited by the financing agreements to which they are subject. In addition, pursuant to the Partnership Agreement, the General Partner will be entitled to receive incentive allocations before any amounts are distributed by us based both on our consolidated net income and capital gains income in each fiscal quarter and for each fiscal year, respectively.

Anti-takeover provisions in our operating agreement and Delaware law could delay or prevent a change in control.

Provisions in our operating agreement may make it more difficult and expensive for a third party to acquire control of us even if a change of control would be beneficial to the interests of our shareholders. For example, our operating agreement provides for a staggered board, requires advance notice for proposals by shareholders and nominations, places limitations on convening shareholder meetings, and authorizes the issuance of preferred shares that could be issued by our board of directors to thwart a takeover attempt. In addition, certain provisions of Delaware law may delay or prevent a transaction that could cause a change in our control. The market price of our shares could be adversely affected to the extent that provisions of our operating agreement discourage potential takeover attempts that our shareholders may favor.

There are certain provisions in our operating agreement regarding exculpation and indemnification of our officers and directors that differ from the Delaware General Corporation Law (the "DGCL") in a manner that may be less protective of the interests of our shareholders.

Our operating agreement provides that to the fullest extent permitted by applicable law our directors or officers will not be liable to us. Under the DGCL, a director or officer would be liable to us for (i) breach of duty of loyalty to us or our shareholders, (ii) intentional misconduct or knowing violations of the law that are not done in good faith, (iii) improper redemption of shares or declaration of dividend, or (iv) a transaction from which the director derived an improper personal benefit. In addition, our operating agreement provides that we indemnify our directors and officers for acts or omissions to the fullest extent provided by law. Under the DGCL, a corporation can only indemnify directors and officers for acts or omissions if the director or officer acted in good faith, in a manner he reasonably believed to be in the best interests of the corporation, and, in criminal action, if the officer or director had no reasonable cause to believe his conduct was unlawful. Accordingly, our operating agreement may be less protective of the interests of our shareholders, when compared to the DGCL, insofar as it relates to the exculpation and indemnification of our officers and directors.

As a public company, we will incur additional costs and face increased demands on our management.

As a relatively new public company with shares listed on the NYSE, we need to comply with an extensive body of regulations that did not apply to us previously, including certain provisions of the Sarbanes-Oxley Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act, regulations of the SEC and requirements of the NYSE. These rules and regulations increase our legal and financial compliance costs and make some activities more time-consuming and costly. For example, as a result of becoming a public company, we have independent directors and board committees. In addition, we may continue to incur additional costs associated with maintaining directors' and officers' liability insurance and with the termination of our status as an emerging growth company as of the end of 2017. Because we are no longer an emerging growth company, we are subject to the independent auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act and enhanced disclosure obligations regarding executive compensation in our periodic reports and proxy statements. We are currently evaluating and monitoring developments with respect to these rules, which may impose additional costs on us and have a material adverse effect on our business, prospects, financial condition, results of operations and cash flows.

If securities or industry analysts do not publish research or reports about our business, or if they downgrade their recommendations regarding our common shares, our share price and trading volume could decline.

The trading market for our common shares are influenced by the research and reports that industry or securities analysts publish about us or our business. If any of the analysts who cover us downgrades our common units or publishes inaccurate or unfavorable research about our business, our common share price may decline. If analysts cease coverage of us or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause our common share price or trading volume to decline and our common shares to be less liquid.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

None.

Item 6. Exhibits

	Exhibit No.	Description
	3.1	Certificate of Formation (incorporated by reference to Exhibit 3.1 of Amendment No. 4 to the Company's Registration Statement on Form S-1, filed on April 30, 2015).
	3.2	Amended and Restated Limited Liability Company Agreement of Fortress Transportation and Infrastructure Investors LLC (incorporated by reference to Exhibit 3.2 of the Company's Current Report on Form 8-K, filed on May 21, 2015).
	3.3	First Amendment to Amended and Restated Limited Liability Company Agreement of Fortress Transportation and Infrastructure Investors LLC (incorporated by reference to Exhibit 3.3 of the Company's Annual Report on Form 10-K, filed on March 10, 2016).
	4.1	Indenture, dated March 15, 2017, between Fortress Transportation and Infrastructure Investors LLC and U.S. Bank National Association, as trustee, relating to the Company’s 6.75% senior unsecured notes due 2022 (incorporated by reference to Exhibit 4.1 of the Company’s Current Report on Form 8-K, filed on March 15, 2017).
	4.2	Form of global note representing the Company’s 6.75% senior unsecured notes due 2022 (included in Exhibit 4.1).
	4.3	First Supplemental Indenture, dated June 8, 2017, between Fortress Transportation and Infrastructure Investors LLC and U.S. Bank National Association, as trustee, relating to the Company’s 6.75% senior unsecured notes due 2022 (incorporated by reference to Exhibit 4.3 of the Company’s Annual Report on Form 10-K, filed on March 1, 2018.
	4.4	Second Supplemental Indenture, dated August 23, 2017, between Fortress Transportation and Infrastructure Investors LLC and U.S. Bank National Association, as trustee, relating to the Company’s 6.75% senior unsecured notes due 2022 (incorporated by reference to Exhibit 4.1 of the Company’s Current Report on Form 8-K, filed on August 23, 2017).
	4.5	Third Supplemental Indenture, dated December 20, 2017, between Fortress Transportation and Infrastructure LLC and U.S. Bank National Association, as trustee, relating to the Company’s 6.75% senior unsecured notes due 2022 (incorporated by reference to Exhibit 4.1 of the Company’s Current Report on Form 8-K filed on December 20, 2017).
	4.6	Fourth Supplemental Indenture, dated May 31, 2018, between Fortress Transportation and Infrastructure Investors LLC and U.S. Bank National Association, as trustee, relating to the Company’s 6.75% senior unsecured notes due 2022 (incorporated by reference to Exhibit 4.1 of the Company’s Current Report on Form 8-K, filed May 31, 2018).
	4.7	Fifth Supplemental Indenture, dated February 8, 2019, between Fortress Transportation and Infrastructure Investors LLC and U.S. Bank National Association, as trustee, relating to the Company’s 6.75% senior unsecured notes due 2022 (incorporated by reference to Exhibit 4.1 of the Company’s Current Report on Form 8-K, filed February 8, 2019).
	4.8	Indenture, dated September 18, 2018, between Fortress Transportation and Infrastructure Investors LLC and U.S. Bank National Association, as trustee, relating to the Company’s 6.50% senior unsecured notes due 2025 (incorporated by reference to Exhibit 4.1 of the Company’s Current Report on Form 8-K, filed on September 18, 2018).
	4.9	Form of global note representing the Company’s 6.50% senior unsecured notes due 2025 (included in Exhibit 4.8).
	10.1	Fourth Amended and Restated Partnership Agreement of Fortress Worldwide Transportation and Infrastructure General Partnership (incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K, filed on May 21, 2015).
†	10.2	Management and Advisory Agreement, dated as of May 20, 2015, between Fortress Transportation and Infrastructure Investors LLC and FIG LLC (incorporated by reference to Exhibit 10.2 of the Company's Current Report on Form 8-K, filed on May 21, 2015).
†	10.3	Registration Rights Agreement, dated as of May 20, 2015, among Fortress Transportation and Infrastructure Investors LLC, FIG LLC and Fortress Transportation and Infrastructure Master GP LLC (incorporated by reference to Exhibit 10.3 of the Company's Current Report on Form 8-K, filed on May 21, 2015).
†	10.4	Fortress Transportation and Infrastructure Investors LLC Nonqualified Stock Option and Incentive Award Plan (incorporated by reference to Exhibit 10.4 of the Company's Current Report on Form 8-K, filed on May 21, 2015).
	10.5	Form of director and officer indemnification agreement of Fortress Transportation and Infrastructure Investors LLC (incorporated by reference to Exhibit 10.5 of Amendment No. 4 to the Company's Registration Statement on Form S-1, filed April 30, 2015).
	10.6	Credit Agreement, dated as of August 27, 2014, among Morgan Stanley Senior Funding, Inc., as administrative agent, Jefferson Gulf Coast Energy Partners LLC and the other lenders party thereto (incorporated by reference to Exhibit 10.6 of Amendment No. 4 to the Company's Registration Statement on Form S-1, filed April 30, 2015).
	10.7	Trust Indenture and Security Agreement between the District and The Bank of New York Mellon Trust Company, National Association, dated as of February 1, 2016 (incorporated by reference to Exhibit 10.7 of the Company's Annual Report on Form 10-K, filed on March 10, 2016).
	10.8	Standby Bond Purchase Agreement among the Port of Beaumont Navigation District of Jefferson County, Texas, The Bank of New York Mellon Trust Company, National Association, Jefferson Railport Terminal II Holdings LLC and Jefferson Railport Terminal II LLC dated as of February 1, 2016 (incorporated by reference to Exhibit 10.8 of the Company's Annual Report on Form 10-K, filed on March 10, 2016).
	10.9	Capital Call Agreement, by and among Fortress Transportation and Infrastructure Investors LLC, FTAI Energy Holdings LLC, FTAI Partner Holdings LLC, FTAI Midstream GP Holdings LLC, FTAI Midstream GP LLC, FTAI Midstream Holdings LLC, FTAI Energy Partners LLC and Jefferson Railport Terminal II Holdings LLC, dated as of February 1, 2016 (incorporated by reference to Exhibit 10.9 of the Company's Annual Report on Form 10-K, filed on March 10, 2016).
	10.10	Fee and Support Agreement, among FTAI Energy Holdings LLC, FEP Terminal Holdings LLC, FTAI Energy Partners LLC and Jefferson Railport Terminal II LLC, dated as of March 7, 2016 (incorporated by reference to Exhibit 10.10 of the Company's Amended Annual Report on Form 10-K/A, filed on April 29, 2016).
	10.11	Lease and Development Agreement (Facilities Lease), dated as of February 1, 2016, by and between the Port of Beaumont Navigation District of Jefferson County, Texas and Jefferson Railport Terminal II LLC (incorporated by reference to Exhibit 10.11 of the Company's Annual Report on Form 10-K, filed on March 10, 2016).
	10.12	Deed of Trust of Jefferson Railport Terminal II LLC, dated as of February 1, 2016 (incorporated by reference to Exhibit 10.12 of the Company's Annual Report on Form 10-K, filed on March 10, 2016).

	Exhibit No.	Description
	10.13	Credit Agreement, dated January 23, 2017, among Fortress Transportation and Infrastructure Investors LLC, as holdings, Fortress Worldwide Transportation and Infrastructure General Partnership, as IntermediateCo, WWTAI Finance Ltd., as Borrower, the Subsidiary Guarantors from time to time party thereto, the lenders from time to time party thereto and Morgan Stanley Senior Funding, Inc., as Administrative Agent (incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K, filed on January 27, 2017).
	10.14	Credit Agreement, dated June 16, 2017, among Fortress Transportation and Infrastructure Investors LLC, as Borrower, the lenders and issuing banks from time to time party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent (incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K, filed on June 22, 2017).
	10.15	Credit Agreement Amendment No. 1, dated as of August 2, 2018, among Fortress Transportation and Infrastructure Investors LLC, as borrower, Fortress Worldwide Transportation and Infrastructure General Partnership, the lenders and issuing banks from time to time party thereto and JPMorgan Chase Bank, N.A., as administrative agent (incorporated by reference to Exhibit 10.15 of the Company's Quarterly Report on Form 10-Q, filed on August 3, 2018).
	10.16	Credit Agreement Amendment No. 2 dated as of February 8, 2019, among Fortress Transportation and Infrastructure Investors LLC, as borrower, Fortress Worldwide Transportation and Infrastructure General Partnership, as grantor, JPMorgan Chase Bank, N.A., Morgan Stanley Senior Funding, Inc. and Barclays Bank PLC, as lenders and issuing banks, and JPMorgan Chase Bank, N.A., as Administrative Agent (incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K, filed February 11, 2019).
*	10.17	Engineering, Procuring and Construction Agreement dated as of February 15, 2019, between Long Ridge Energy Generation LLC and Kiewit Power Constructors Co.
*	10.18	Purchase and Sale of Power Generation Equipment and Related Services Agreement dated as of February 15, 2019, between Long Ridge Energy Generation LLC and General Electric Company
	10.19	First Lien Credit Agreement dated as of February 15, 2019, among Ohio River PP Holdco LLC, Ohio Gasco LLC, Long Ridge Energy Generation LLC, the lenders and issuing banks from time to time party thereto, and Cortland Capital Market Services LLC, as administrative agent
	10.20	Second Lien Credit Agreement dated as of February 15, 2019, among Ohio River PP Holdco LLC, Ohio Gasco LLC, Long Ridge Energy Generation LLC, the lenders from time to time party thereto, and Cortland Capital Market Services LLC, as administrative agent
†	10.21	Form of Award Agreement under the Fortress Transportation and Infrastructure Investors Nonqualified Stock Option and Incentive Award Plan (incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K, filed on January 17, 2018).
	31.1	Certification of Chief Executive Officer pursuant to Rule 13a-14(a)/15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
	31.2	Certification of Chief Financial Officer pursuant to Rule 13a-14(a)/15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
	32.1	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
	32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
	101.INS	XBRL Instance Document.
	101.SCH	XBRL Taxonomy Extension Schema Document.
	101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document.
	101.DEF	XBRL Taxonomy Extension Definition Linkbase Document.
	101.LAB	XBRL Taxonomy Extension Label Linkbase Document.
	101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document.

† *Management contracts and compensatory plans or arrangements.*

* *Portions of this exhibit have been omitted.*

SIGNATURES

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

FORTRESS TRANSPORTATION AND INFRASTRUCTURE INVESTORS LLC

By:	/s/ Joseph P. Adams, Jr. Joseph P. Adams, Jr. Chairman and Chief Executive Officer	Date:	May 3, 2019
By:	/s/ Scott Christopher Scott Christopher Chief Financial Officer	Date:	May 3, 2019
By:	/s/ Eun Nam Eun Nam Chief Accounting Officer	Date:	May 3, 2019

Exhibit 10.17

CERTAIN IDENTIFIED INFORMATION MARKED WITH "[***]" HAS BEEN OMITTED FROM THIS DOCUMENT BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED.

Execution Version

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

BY AND BETWEEN

LONG RIDGE ENERGY GENERATION LLC, AS OWNER

AND

KIEWIT POWER CONSTRUCTORS CO., AS CONTRACTOR

FOR THE HANNIBAL PORT POWER PROJECT

DATED AS OF FEBRUARY 15, 2019

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ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

THIS ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT (hereinafter, together with all Exhibits and amendments hereto, this "**Agreement**") is made and entered into as of the 15th day of February, 2019 (the "**Effective Date**") by and between KIEWIT POWER CONSTRUCTORS CO., a Delaware corporation, with a place of business at 9401 Renner Blvd., Lenexa, KS 66219 ("**Contractor**" or "**EPC Contractor**"), and LONG RIDGE ENERGY GENERATION LLC, a Delaware limited liability company ("**Owner**"). Contractor and Owner are referred to collectively as the "**Parties**" or singularly as a "**Party**".

W I T N E S S E T H

WHEREAS, Contractor and Owner wish to enter into this Agreement, pursuant to which Owner agrees to engage Contractor to design, engineer, procure, construct, pre-commission, commission, start-up and test a nominal 485 megawatt (MW) net power output natural gas-fired combined cycle electric generating facility (the "**Facility**") located at the former Ormet Smelter facility in Hannibal, Ohio and commonly referred to as the Hannibal Port Power Project at the Long Ridge Energy Terminal, on a fixed price, turnkey basis;

WHEREAS, Contractor represents that it is qualified to design, engineer, procure, construct, pre-commission, commission, start-up and test the Facility and Contractor desires to perform all work and services in connection therewith on a fixed price, turnkey basis in accordance with requirements and provisions of this Agreement;

NOW, THEREFORE, in consideration of the foregoing and of the mutual representations, warranties, covenants and agreements contained in this Agreement and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor and Owner, intending to be legally bound, hereby agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Definitions. For purposes of this Agreement, the following terms shall have the following definitions:

"AAA" has the meaning given in Section 18.2.

"Abnormally Severe Weather Conditions" means only those weather conditions related to rain, heat, cold, wind or snow at the Site which are shown to be more severe than the most recent ten (10) year historical mean plus two standard deviations using National Oceanic Atmospheric Administration weather data from the nearest reporting station to the Site.

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with such Person. FIG LLC and Persons who Control, are Controlled by, or are under Common Control with FIG LLC shall be deemed to be Affiliates of Owner.

"Agreed Rate" an annual (365 or 366 Days, as appropriate) rate of interest equal to the lesser of: (i) two percent (2%) in excess of the Prime Rate and (ii) the maximum rate permitted by Applicable Law.

"Agreement" has the meaning given in the Preamble to this Agreement.

"Applicable Codes and Standards" means those codes, requirements, guidelines and standards of design, engineering, construction, operation, workmanship, equipment, and components specified in the Scope Book (as may be amended from time to time); provided, however, if the relevant standard is not so specified or is ambiguous therein, then "Applicable Codes and Standards" shall mean those standards of design, engineering, construction, workmanship, operation, care and diligence prevailing during performance of the Work normally practiced by, and generally acceptable to, the electric power and generation engineering, procurement and construction industry in the United States in performing services of a similar nature to the Work in accordance with Prudent Industry Practices, Applicable Law, applicable Permits, and codes and other standards established for such Work. In the event of an inconsistency or conflict between any of the Applicable Codes and Standards, the highest performance standard as contemplated therein shall govern the Parties' performance under this Agreement, unless otherwise agreed.

"Applicable Law" means any constitution, charter, statute, act, law (including common law), certification, rule, treaty, regulation, standard, code, ordinance, permit, approval, injunction, judgment, ruling, decision, decree, writ, directive, order, guideline, resolution, declaration or the like (including the Permits) applicable to a Party, the performance of the Work or applicable to all or any portion of the Site or the Facility, when issued, enacted, or promulgated by a Governmental Authority having jurisdiction over the matter in question, and the legally binding written interpretations thereof by a Governmental Authority having jurisdiction over the matter in question, as may be applicable and in effect from time to time.

“Application for Payment” has the meaning given in Section 6.3.

“Archeological and Related Findings” has the meaning given in Section 2.28.

“As-Built Drawings” means all drawings and documents identified in Section 01200 "Contract Drawings and Documents" in Exhibit A as “As-Built Drawings,” as modified and updated to accurately show the final actual as-built condition of the Work upon Final Completion.

“Assignment, Assumption and Consent Agreement” means the Assignment, Assumption and Consent Agreement attached hereto as Exhibit W dated as of even date herewith among Owner, Contractor and General Electric.

“Books and Records” has the meaning given in Section 2.21.

“Business Day” means any day other than a Saturday or Sunday or a day on which commercial banks are authorized to be closed in the State of Ohio or New York City.

“CEMS” means Continuous Emissions Monitoring System.

“Certificate of Final Completion” has the meaning given in Section 4.4.

“Certificate of Mechanical Completion” has the meaning given in Section 4.2.

“Certificate of Substantial Completion” has the meaning given in Section 4.3.

“Change in Law” shall mean and refer to the enactment, adoption, promulgation, amendment, modification, repeal or change in interpretation by a Governmental Authority after the Effective Date of any Applicable Law or Applicable Codes and Standards set forth in Applicable Law; it being expressly understood and agreed by the Parties hereto that a change in any Applicable Law relating to net income or franchise Tax or any Applicable Law by which a Tax is levied or assessed on the basis of Contractor’s net income, net profits, revenues or gross receipts (other than the Ohio Commercial Activity Tax or a value added tax imposed by the United States or any state or local jurisdiction within the United States) or Contractor’s presence in any taxing jurisdiction shall not be a Change in Law. Notwithstanding the foregoing, if any such value added tax is imposed in substitution, in whole or in part, for any other Tax applicable to Contractor or the Work (including, without limitation, any Tax levied or assessed on the basis of Contractor’s net income, net profits, revenues or gross receipts), then any such reduction in Tax shall be netted against any equitable adjustment in the Contract Price to which Contractor would otherwise be entitled under Section 2.16 on account of such value added tax with Contractor preparing such computation for review by Owner and an accounting firm mutually agreed by the Parties, which accounting firm shall make the final determination as to any change to the Contract Price to which Contractor may be entitled after taking into account any such netting. Any Change in Law enacted, published in final form or issued in final form before the Effective Date, whether or not such Change in Law becomes effective after the Effective Date, shall not constitute a Change in Law under this Agreement. Notwithstanding the foregoing, solely with respect to the General Electric scope of supply provided pursuant to

Power Island Supply Agreement, only a "Change in Law" under and as defined in the Power Island Supply Agreement shall constitute a Change in Law under this Agreement.

"Change Order" has the meaning given in Section 8.1.

"Claims" means claims, causes of action, proceedings, demands, or suits.

"Completed Performance Test" means the completion of a Performance Test in its entirety under the following conditions: (i) without the use of any auxiliary, standby or temporary equipment or machinery, and (ii) while the Facility is operated in its normal mode of operation, which shall consist of (x) the operation of the Facility as a whole, (y) the concurrent operation of Facility systems, and (z) the operation of all Facility systems within the manufacturers' specifications, and without over-stressing, over-firing or over-pressurizing any such systems.

"Confidential Information" has the meaning given in Section 13.1.

"Construction Aids" means all equipment (including construction equipment), apparatus, tools, supplies, construction tools, support services, field office equipment, supplies, structures, apparatus, form lumber, protective fencing, software used in the execution or management of the Work, and other goods and items that are required to construct, commission, or test the Facility, but which are not either incorporated into the Work or retained by Owner pursuant to this Agreement.

"Consumables" means items such as compressed air or gases, chemicals, oils, lubricants, cleaning materials, construction or demineralized water, valve packing, lamps, light bulbs, gaskets, fuel for construction equipment, fuel filters, and comparable items which, by normal industry practices, are considered consumables and are replaced on a regular basis, required for cleaning, preparing, or completing the Work, or which are required for the proper operation of the Equipment.

"Contract Price" has the meaning given in Section 6.1.

"Contractor" has the meaning set forth in the Preamble to this Agreement.

"Contractor Default" has the meaning given in Section 16.1.

"Contractor Indemnified Party" has the meaning set forth in Section 11.1.

"Contractor Permits" has the meaning given in Section 2.6.

"Control" means, with respect to a Person, (i) the direct or indirect ownership of more than fifty percent (50%) of the outstanding capital stock or other securities or equity interests having ordinary voting power to elect the board of directors, managing general partner or similar managing authority of such Person or (ii) the power to direct the management of such Person, directly or indirectly, whether through the ownership of voting securities, partnership or limited liability company interests, by contract or otherwise.

"Contractor's Senior Personnel" means (i) Contractor's Key Personnel, (ii) Contractor's officers and directors and (iii) Contractor's personnel who are more senior than Contractor's Key Personnel.

"Corrective Work" has the meaning given in Section 9.3.

"Credit Rating" means, for any Person, the rating then assigned to such Person's senior unsecured long-term debt obligations (not supported by third party credit enhancements), or if such Person does not have a rating for its senior unsecured long-term debt, the then current corporate rating assigned to such Person.

"Creditworthy Bank" means a commercial bank having a Credit Rating of (a) A-(minus) or better from Standard & Poor's, (b) A3 or better from Moody's or (c) if such bank has a Credit Rating at such time from both Standard & Poor's and Moody's, A-(minus) or better from Standard & Poor's and A3 or better from Moody's.

"Cure Period" means one hundred eighty (180) Days after the Substantial Completion Date, but in no event later than one hundred eighty (180) Days after the Guaranteed Substantial Completion Date.

"Day" or "day" means a calendar day.

"Default" means either an Owner Default or a Contractor Default.

"Defect" has the meaning given in Section 9.1.

"Defective" has the meaning given in Section 9.1.

"Deliverables" has the meaning set forth in Section 12.1.

"Design Deliverables" has the meaning set forth in Section 2.29.

"Design Documents" has the meaning set forth in Section 2.29.

"Dispute" has the meaning given in Section 18.1.

"Dollars" means the lawful currency of the United States of America.

"EDMS" has the meaning given in Section 2.29.

"Effective Date" has the meaning set forth in the preamble to this Agreement.

"Emissions Tests" means the emissions limits tests described in Exhibit H.

"Environmental Law" means any Applicable Law which relates to environmental quality, health, safety, pollution, contamination, cleanup, or the protection of human health, ambient air, waters (including ground waters) or land; including the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Section 9601 et seq; the Resource

Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq; the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq; the Clean Water Act, as amended, 33 U.S.C. Section 1251 et seq; and the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651 et seq.

"Environmental Reports" has the meaning given in Section 2.27.

"Equipment" means any product that: (i) is to be incorporated into the Facility; (ii) is an assembly of operational or non-operational parts, whether motorized or manually operated; and (iii) requires service connections, such as wiring, piping, or other process connections in order to fulfill its intended purposes, including, without limitation, the GE Equipment.

"Excess Costs of Cover" has the meaning set forth in Section 16.1(b).

"Excusable Events" means the following events or occurrences, solely to the extent any such event or occurrence (a) actually, adversely and demonstrably affects Contractor's actual cost of performance of the Work or actually, adversely and demonstrably delays the critical path of the Work as further set forth in Section 7.1 (which costs and delay shall be adequately documented and supported by Contractor) and (b) is not attributable to any act or omission of Contractor or its Subcontractors (including, without limitation, on account of any default by Contractor in any of the obligations Contractor assumes under the Power Island Supply Agreement pursuant to the Assignment, Assumption and Consent Agreement):

(i) Owner-Caused Delay;

(ii) Changes in the scope of Work made by Owner in accordance with Section 8.2(b);

(iii) Force Majeure Events;

(iv) Suspension of the Work by Owner without cause or by Contractor pursuant to either Section 16.2(b) or Section 17.2;

(v) A Change in Law (subject to compliance with Section 2.16(b));

(vi) Contractor's encountering subsurface or surface conditions at the Site for which Contractor is entitled to seek a Change Order in accordance with Section 2.27 or Pre-Existing Hazardous Substances (or any such material reasonably believed by Contractor to be contaminated or a Pre-Existing Hazardous Substance) for which Contractor is entitled to seek a Change Order in accordance with Section 2.24(b);

(vii) Contractor's discovery of Archeological and Related Findings at the Site for which Contractor is entitled to seek a Change Order in accordance with Section 2.28; or

(viii) Issuance of a Notice to Proceed after the FNTP Deadline for which Contractor is entitled to seek a Change Order in accordance with Section 2.1; or

(ix) Loss or damage to the Work for which Owner chooses not to excuse Contractor's remaining performance under this Agreement pursuant to Section 2.12(e); or

(x) Any unexpected surface conditions at the Project Site identified in Contractor's inspection of the Site performed within thirty (30) days after Owner provides written notice that Owner's demolition contractor has substantially completed its demolition work;

(xi) Owner's failure to complete all pre-mobilization remediation activities described in Exhibit I by March 15, 2019; or

(xii) Owner fails to fulfill a Retained Obligation or, to the extent allocable to Owner, a Shared Obligation for reasons other than a breach by General Electric of the Power Island Supply Agreement or a breach by Contractor of its obligations under the Power Island Supply Agreement or this Agreement.

"Facility" has the meaning given in the Recitals to this Agreement.

"Facility Capability Demonstration Tests" means the Facility capability demonstration tests described in Exhibit H.

"Final Completion" shall be deemed to have occurred when all of the following requirements of the Work have been achieved:

(i) Substantial Completion has been achieved;

(ii) All of the Performance Guarantees have been achieved, or, if not achieved, to the extent applicable Contractor has paid to Owner any Performance Liquidated Damages owed, and Contractor has completed making necessary system adjustments required for the continuous, safe and reliable operation of the Equipment and Facility;

(iii) All As-Built Drawings, test reports, final instruction manuals and other drawings and documents as required under the document submittal list of this Agreement to be delivered to Owner by Final Completion have been so delivered;

(iv) Any Liquidated Damages for which Contractor is liable, and other amounts owed by Contractor to Owner under this Agreement, if any, have been paid to Owner;

(v) Contractor has delivered to Owner all final lien waivers and releases that are required to have been delivered with the final Application for Payment (as provided in Section 6.3), and any and all liens have been released (excluding Permitted Liens);

(vi) All Work, including all Punch List work, has been completed in accordance with this Agreement other than Work and other obligations pursuant to this Agreement that require future performance (e.g., Warranty and indemnification obligations);

(vii) Cleanup and removal from the Site of all of Contractor's and Subcontractors' personnel, supplies, waste, materials, Hazardous Substances, construction equipment and temporary facilities;

(viii) Contractor has delivered to Owner written assignments of Subcontractor warranties that extend beyond the Warranty Period;

(ix) The Project has successfully completed the remaining System Verification Tests required for Final Completion; and

(x) Contractor has delivered a Certificate of Final Completion for the Facility to Owner pursuant to Section 4.4 and Owner has accepted such certificate by signing such certificate.

"Final Completion Date" means the date upon which Final Completion has been achieved.

"Final Performance Testing Protocol" collectively means those final, detailed and complete performance testing procedures, protocol, activities, requirements and criteria for the Facility developed by Contractor on the basis of the Preliminary Performance Testing Protocol; which testing protocol (i) shall be subject to Owner's review and approval, and (ii) shall be deemed to have replaced the Preliminary Performance Testing Protocol once they have been reviewed and approved by Owner (and shall thereafter be deemed part of this Agreement).

"First Completed Minimum Performance Test" has the meaning set forth in Section 5.4.

"Force Majeure Deductible" has the meaning set forth in Section 7.5.

"Force Majeure Event" means any catastrophic storm or flood, typhoon, blizzard, named storm, lightning, tornado, hurricane, earthquake or other act of God, war, civil disturbance, terrorist attack, revolt, insurrection, sabotage, Abnormally Severe Weather Conditions, loss or delay of or damage to long lead items in transit directly caused by an independent Force Majeure Event, actions or inaction of a Governmental Authority that were not requested, promoted or caused by the affected Party and that have been opposed by all reasonable means, cyberattack, commercial embargo, Regional or National Strike, epidemic or fire (excluding any fire started as a result of a malfunction or failure of the Equipment or Facility), or any other similar act or event, provided that such act or event (i) actually and demonstrably delays or renders impossible the affected Party's performance of its obligations under this Agreement, (ii) is beyond the reasonable control of the affected Party and was not due to its or its Subcontractor's fault or negligence, and (iii) (or the effect of such act or event) could not have been prevented or avoided by the affected Party through the exercise of due diligence, including the expenditure of any reasonable sum taking into account the likely impact of the Force Majeure Event. For avoidance of doubt, Force Majeure shall not include any of the following: (a) economic hardship, (b) changes in market conditions, (c) late delivery or failure of construction equipment or Equipment (unless caused by an independent Force Majeure event), (d) strikes, or other similar labor actions (other than a Regional or National Strike), (e) unavailability or shortages of laborers, Subcontractors or sub-subcontractors (unless caused by an independent Force Majeure event); (f) climatic conditions (including rain, snow, wind, temperature and other

weather conditions), tides, and seasons, regardless of the magnitude, severity, duration or frequency of such climatic conditions, tides or seasons (excluding Abnormally Severe Weather Conditions, catastrophic storms or floods, typhoons, blizzards, named storms, lightning, tornadoes, and hurricanes subject to the conditions set forth above); (g) inability or failure to make a payment for any reason; (h) shortages (unless caused by an independent Force Majeure event) or price fluctuations with respect to materials, supplies or components of the Equipment or Work; or (i) flaws in design requiring re-design or re-engineering of any portion of the Equipment or Work.

"FNTP Deadline" has the meaning set forth in Section 2.1.

"GE Equipment" or "Power Island Equipment" means the equipment to be procured from General Electric pursuant to the Power Island Supply Agreement.

"General Electric" or "Power Island Equipment Supplier" means General Electric Company, a New York corporation, or any Affiliate thereof.

"General Electric Triggered Default" means a Contractor Default that is caused by the occurrence of one or more of the matters that constitutes (or would constitute if timely notice thereof to General Electric was provided under the Power Island Supply Agreement) a default by General Electric under Article 16 of the Power Island Supply Agreement.

"Governmental Authority" means any national, federal, state, county, municipal, local or other government or governmental, quasi-governmental, regulatory or administrative agency, commission, court or other governmental authority, or any department, board, bureau or instrumentality thereof.

"Gross Negligence" shall mean any act, omission or failure to act, (whether sole, joint or concurrent) that was in reckless disregard of, or wanton indifference to, the harmful consequences to the affected Party, to the safety or property of another Person or to the environment.

"Guaranteed Emissions" means the emissions guarantees set forth in Section B of Exhibit H.

"Guaranteed Final Completion Date" means March 15, 2022.

"Guaranteed Net Plant Electrical Output" has the meaning set forth in Section 01610.2.1 of Exhibit A.

"Guaranteed Net Plant Heat Rate" has the meaning set forth in Section 01610.2.1 of Exhibit A.

"Guaranteed Noise" means the In-Plant (Near Field) Guaranteed Noise Emissions set forth in Exhibit H.

"Guaranteed SCR Ammonia Consumption" has the meaning set forth in Section 01610.2.5 of Exhibit A.

"Guaranteed Substantial Completion Date" means November 13, 2021.

"Guarantor" means Kiewit Energy Group Inc., a Delaware corporation.

"Hazardous Substance" means (A) any substance which is listed, defined, designated or classified under any Environmental Law as a (i) hazardous material, substance, constituent or waste, (ii) toxic material, substance, constituent or waste, (iii) radioactive material, substance, constituent or waste, (iv) dangerous material, substance, constituent or waste, (v) pollutant, (vi) contaminant or (vii) special waste; (B) any material (including radioactive material), substance, constituent or waste regulated under any Environmental Laws; or (C) petroleum, petroleum products, polychlorinated biphenyl, pesticides, asbestos, or asbestos-containing materials.

"Indemnified Party" means an Owner Indemnified Party or Contractor Indemnified Party, as the context requires.

"Indemnifying Party" means Owner or Contractor, as the context requires.

"Independent Engineer" means an independent engineering firm selected by the Lenders as the independent engineer for the Facility and the successors and permitted assigns of such independent engineering firm.

"Intellectual Property Rights" means all patents, copyrights, trademarks, trade names, trade dress, service marks, trade secrets, software, firmware, mask works, industrial design rights, rights of priority, know-how, design flows, methodologies and any and all other intellectual property rights protected under any Applicable Law.

"Key Personnel" has the meaning set forth in Section 2.13.

"Last Completed Performance Test" has the meaning set forth in Section 5.4.

"Lender(s)" shall mean and refer to lenders and/or equity investors (including any trustee or agent on behalf of such lenders and/or equity investors) providing development, bridge, construction and/or permanent equity and/or debt and/or other financing or refinancing of the development, construction, ownership, leasing, operation or maintenance (including working capital) of the Facility, whether that financing or refinancing takes the form of private or public debt or equity or any other form.

"Letter of Credit" has the meaning set forth in Section 6.9.

"Lien" means, with respect to any property or asset, any mortgage, deed of trust, lien (including a mechanics' or materialmen's lien), pledge, charge, security interest, or encumbrance of any kind in respect of such property or asset, whether or not filed, recorded or otherwise perfected or effective under Applicable Law, as well as the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such property or asset.

"Liquidated Damages" means, collectively, Substantial Completion Liquidated Damages and Performance Liquidated Damages.

"Losses" means losses, fines, penalties, claims, demands, suits, causes of action, legal or administrative proceedings, damages, liabilities, interest, costs, and expenses (including reasonable attorneys' fees and court costs and costs of investigation).

"Major Subcontract" means (i) any Subcontract (including any supply agreement) having an aggregate value in excess of [***] U.S. Dollars (U.S. $[***]), (ii) multiple Subcontracts with one Subcontractor that have an aggregate value in excess of [***] U.S. Dollars (U.S. $[***]); or (iii) any Subcontract entered into with a Subcontractor for Work listed in Exhibit S; provided, however, subcontracts under General Electric with bulk material suppliers or for subcomponents of Major Equipment and Services (as defined in the Power Island Supply Agreement) are excluded from the definition of Major Subcontracts.

"Major Subcontractor" means any Subcontractor with whom Contractor enters into a Major Subcontract and the Subcontractors listed as such in Exhibit S.

"Materials" means any products, supplies, bulks, materials, logic, or software that are to be incorporated into the Facility as part of the Work, whether or not substantially shaped, cut, worked, mixed, finished, refined or otherwise fabricated or processed, and which are not items of Equipment or Consumables.

"Mechanical Completion" shall be deemed to have occurred when all of the following have occurred (excluding Punch List items):

(i) The generating Equipment has been installed with required connections and controls to produce electrical power;

(ii) All other Equipment that is part of the Work has been installed, checked for alignment, lubrication and rotation;

(iii) All remaining electrical systems have been checked out, cold commissioned and are ready for energization and operation;

(iv) Each subsystem of the Project is functionally complete for initial operation and interconnection with the utility;

(v) All electrical continuity and ground fault tests and all mechanical tests and calibrations have been completed:

(vi) All instrumentation (including CEMS) is operational, and has been calibrated in accordance with manufacturers' standards and guidelines and loop checked;

(vii) The applicable Equipment has been pressure tested, flushed and cleaned out as necessary, excluding steam blows;

(viii) Project systems have been turned over from construction to the commissioning group;

(ix) Contractor has completed the Work to cause the equipment and systems to be capable of operating safely in accordance with Applicable Law, Permits, Prudent Industry Practices and good engineering and construction practices for further commissioning and testing;

(x) Contractor has submitted an initial Punch List to Owner; and

(xi) Contractor has delivered a Certificate of Mechanical Completion for the Facility to Owner and Owner has accepted such certificate by signing such certificate.

"Mechanical Completion Date" means the date upon which the Facility has achieved Mechanical Completion.

"Milestone Payment" has the meaning given in Section 6.2.

"Milestone Schedule" shall mean that schedule of Milestones set forth in Exhibit C, as the same may be adjusted from time to time pursuant to the terms of this Agreement. In the event of an adjustment to the Milestone Schedule, the Project Schedule shall be adjusted accordingly.

"Milestones" means those milestones related to the Work to be achieved hereunder by Contractor, as identified on the Milestone Schedule and/or Payment Schedule, including the Target Substantial Completion Date.

"Minimum Performance Criteria" shall mean and refer to those minimum criteria and levels of performance identified on Exhibit G attached hereto, which the Facility must meet during the performance of a Completed Performance Test.

"Moody's" means Moody's Investor Service, Inc.

"Net Plant Electrical Output Minimum Performance" has the meaning set forth in Exhibit G.

"Net Plant Heat Rate Minimum Performance" has the meaning set forth in Exhibit G.

"Noise Test" means the noise emission test described in Exhibit H.

"Notice to Proceed" has the meaning set forth in Section 2.1.

"Ohio Sales & Use Taxes" has the meaning set forth in Section 2.5.

"O&M Manuals" means all vendor operating manuals, integrated and coordinated operation and maintenance manuals and instructions, and training aids, whether created by Contractor or any Subcontractor, that are reasonably necessary to safely and efficiently commission, test, start up, operate, maintain, and shut down the Facility (including those manuals and documents identified in Section 01200 "Contract Drawings and Documents" in Exhibit A) in accordance with the requirements of this Agreement.

"OSHA" means the United States Department of Labor's Occupational Safety and Health Administration, or analogous state or municipal occupational safety agencies.

"Owner" has the meaning set forth in the Preamble to this Agreement.

"Owner-Caused Delay" shall mean a delay in, or material interference with, Contractor's performance of its obligations under this Agreement to the extent actually and demonstrably caused by Owner or its separate contractors (excluding General Electric, Contractor and their respective contractors, subcontractors (including Subcontractors) and parties for whom any of them are responsible) performing work at the Site or due to a failure of Owner to meet its material obligations under this Agreement (including Owner's obligations under the Assignment, Assumption and Consent Agreement), which is not expressly excused pursuant to the provisions of this Agreement or not attributable to an exercise by Owner of its rights under this Agreement, including those in response to Contractor's failure to comply with the terms of this Agreement.

"Owner Default" has the meaning given in Section 16.2.

"Owner Indemnified Party" has the meaning set forth in Section 11.1.

"Owner Permits" means those Permits identified as such in Exhibit A attached hereto and any other Permit required to be in the name of Owner unless included as Contractor's obligation under Section 2.6 or Exhibit A.

"Owner's Engineer" shall mean and refer to Black & Veatch Corporation, or any successor entity designated in writing by Owner to act as a representative of Owner.

"Owner's Manager" has the meaning given in Section 3.1.

"Part(ies)" has the meaning given in the Preamble to this Agreement.

"Parent Guaranty" has the meaning set forth in Section 20.23.

"Payment Schedule" has the meaning given in Section 6.2.

"Performance Guarantees" means those levels of performance and guaranteed values identified on Exhibit H attached hereto, which the Facility must meet during the performance of a Completed Performance Test.

"Performance Liquidated Damages" has the meaning set forth in Section 5.5.

"Performance Tests" collectively means the performance tests conducted and completed, or to be conducted and completed, in accordance with the Final Performance Testing Protocol detailed in Section 1800 "Performance Test Guidelines" of Exhibit A and as is otherwise provided in this Agreement.

"Permits" means any and all waivers, exemptions, variances, franchises, permits, authorizations, approvals, agreements, identification numbers, inspections, certifications, licenses,

clearances, or similar orders, filings, registrations, applications of, from, with or to any Governmental Authority that is required to be obtained or maintained in connection with the Work, or that is necessary for the design, engineering, procurement, construction, pre-commissioning, commissioning, start-up, testing, financing, ownership and operation of the Facility, as may be applicable and in effect from time to time, including those set forth on Exhibit A.

"Permitted Liens" has the meaning set forth in Section 2.20.

"Permitted Purposes" has the meaning set forth in Section 12.2.

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

"PJM" means PJM Interconnection, LLC.

"Power Island Purchase Price" means $109,970,570.00, as may be amended under the Power Island Supply Agreement (subject to Owner's prior written consent in accordance with the Assignment, Assumption and Consent Agreement).

"Power Island Supply Agreement" means the Agreement for the Purchase and Sale of Power Generation Equipment and Related Services between General Electric and Owner dated as of even date herewith attached as Exhibit BB hereto, as amended, modified, restated or supplemented from time to time with Owner's prior written approval.

"Pre-Existing Hazardous Substance" means a Hazardous Substance existing on the Site prior to the Notice to Proceed (that was not introduced to the Site by Contractor, its Subcontractors, or any Person for whom Contractor or its Subcontractors is responsible) which Hazardous Substance is of a nature or exists in an amount that requires special handling or disposal, or remediation under Applicable Law.

"Preliminary Performance Testing Protocol" means the preliminary performance testing procedures, activities, requirements and criteria identified in Exhibit A attached hereto or otherwise mutually developed by Owner and Contractor consistent with the Scope Book.

"Prime Rate" means the per annum (365 or 366 Days, as appropriate) prime rate as published from time-to-time in the "Money Rates" table of The Wall Street Journal; provided, however, if more than one such prime rate is published, the average shall be used for purposes of this Agreement.

"Product Update Information" means update information applicable to the Equipment and details regarding their implementation, if any.

"Project" means the design, engineering, procurement, manufacturing, fabrication, assembly, transportation and delivery of Equipment, construction, pre-commissioning, commissioning, testing and start-up of the Facility and all other Work required to be performed under this Agreement.

"Project Manager" has the meaning given in Section 2.13.

"Project Schedule" means the schedule of dates for Contractor's achievement of certain stages of completion of the Facility, including the Mechanical Completion, Target Substantial Completion Date, Substantial Completion and Final Completion, as more particularly described on Exhibit D.

"Proprietary Calculations" has the meaning set forth in Section 12.3.

"Prudent Industry Practices" means those practices, methods, techniques, skill, care, materials, supplies, equipment, and standards of safety, performance and service that meet the standards of prudence that are commonly used under similar circumstances by the electric power and generation engineering, procurement and construction industry in the United States for power plants similar to the Facility to accomplish the desired result in a manner consistent with reliability, safety, Applicable Law, Applicable Codes and Standards, equipment suppliers' and manufacturers' recommendations, environmental protection and expedition, which in the exercise of reasonable judgment by those experienced in the industry and in light of the facts known at the time a decision was made, are considered good, safe, reliable and prudent practices, methods and standards. Prudent Industry Practices are not intended to be limited to the best or optimum practice or method to the exclusion of all others, but rather to be a spectrum of possible, but reasonable practices and methods, having due regard for, among other things, supplier's and manufacturer's recommendations and warranties, Applicable Law and the requirements of this Agreement.

"Punch List" means a comprehensive list, initially prepared prior to certification of Mechanical Completion that may be supplemented thereafter until Substantial Completion, identifying those minor issues or details of mechanical adjustment which require repair, completion, correction or re-execution, the non-completion of which does not (i) interfere with Owner's occupancy, use and commercial operation of the Facility, or (ii) prevent the continuous operation of the Facility in accordance with Prudent Industry Practices, Applicable Laws and Applicable Codes and Standards. However, the Punch List shall not include any items that could reasonably be expected to prevent the safe, reliable and continuous operation of the Facility.

"Recovery Plan" has the meaning set forth in Section 2.19.

"Regional or National Strike" means any strike or other labor dispute sanctioned, supported or effected by one or more regional, national or international unions representing employees of the party affected by such event that is regional, national or international in scope and not targeted at Contractor or any of its Subcontractors.

"Reliability Run" means the reliability run described in Exhibit H.

"Requirements" has the meaning set forth in Section 2.7.

"Retained Obligations" has the meaning set forth in the Assignment, Assumption and Consent Agreement.

"Retained Rights" has the meaning set forth in the Assignment, Assumption and Consent Agreement.

"Scope Book" means and refers to Exhibit A and the documents specified therein that define the general requirements and the conceptual design, scope, and intent of the Facility.

"SCR Ammonia Consumption" has the meaning set forth in Exhibit H.

"Senior Officer" means the chief executive officer, president, senior vice president or any senior manager or executive of the Parties hereto with settlement authority.

"Shared Information Basis" means a process, pursuant to which: (i) all relevant information developed or received by Contractor relating to the contemplated Change Order will be shared with the Owner in detail (e.g., cost estimates, vendor bids, target prices, optimizations, schedule, and scheduling information, etc.); (ii) Owner will have the right to review and comment on all drawings and specifications developed by or on behalf of Contractor with respect to such contemplated Change Order; (iii) Contractor shall provide cost impact and, to the extent available, information relating to life cycle cost analyses to support Owner's determination of whether and how to proceed with the contemplated Change Order; and (iv) Contractor shall prepare and provide to Owner an analysis of the impact of the contemplated Change Order on the critical path Project Schedule.

"Shared Obligations" has the meaning set forth in the Assignment, Assumption and Consent Agreement.

"Shared Rights" has the meaning set forth in the Assignment, Assumption and Consent Agreement.

"Site" means those parcels of land on which the Facility shall be located as described in Exhibit B attached hereto.

"Spare Parts" means the spare parts, including the startup and commissioning spare parts, as described in Exhibit A, Section 01100.4.

"Special Tools" means tools that are described in the Scope Book that are provided by Contractor or a Subcontractor for the installation, checking, inspection, operation, repair, or maintenance of Equipment.

"Standard & Poor's" means Standard & Poor's Ratings Group, a division of McGraw Hill, Inc.

"Startup Tests" means the startup tests described in Exhibit H.

"Subcontract" means any agreement or subcontract entered into by Contractor or any Subcontractor (of any tier) with a Subcontractor for any portion of the Work.

"Subcontractor" means any subcontractor, vendor or supplier of services or materials to Contractor (in any such case, of any tier) in connection with the performance of the Work, including

Suppliers, and including any Person at any tier with whom any Subcontractor has further subcontracted any part of the Work.

"Substantial Completion" shall be deemed to have occurred when all the following requirements of the Work have been achieved:

(i) Mechanical Completion has occurred;

(ii) The Facility will have passed all Startup Tests, Emissions Tests, near-field Noise Test, Facility Capability Demonstration Tests, System Verification Tests and the Reliability Run and all Minimum Performance Criteria have been achieved;

(iii) In the event that all Performance Guarantees have not been achieved, but all Minimum Performance Criteria have been achieved, Contractor has delivered its corrective work plan and turned over the Work to Owner;

(iv) The Project has been synchronized with the grid and has satisfied the interconnecting utility's and PJM's interconnection requirements;

(v) Contractor has completed making necessary and desirable system adjustments to the Work identified during the start-up and testing process conditional to continuous, safe and reliable operation of the Equipment and Facility;

(vi) Except for Punch List items, the Work is completed and the Project is capable of being operated in a safe, reliable, continuous and proper manner in the normal course of business in compliance with this Agreement, Applicable Law and Permits, Prudent Industry Practices, and Contractor's applicable written procedures and requirements;

(vii) Contractor has submitted and Owner has approved the Punch List for the Work;

(viii) Contractor has provided to Owner two (2) hard copies and one (1) electronic version of the O&M Manual including as-built documentation;

(ix) Contractor has delivered to Owner the Special Tools;

(x) Contractor has provided Owner copies of all Product Update Information applicable to the Equipment and Facility and details regarding their implementation;

(xi) If and to the extent that Contractor has utilized any of Owner's Spare Parts during Contractor's commissioning and Performance Testing, Contractor, at Contractor's sole cost, has either replaced such Spare Parts or placed an order for such Spare Parts (on an expedited basis);

(xii) Contractor has completed all training of Owner's operations and maintenance personnel;

(xiii) All undisputed Substantial Completion Liquidated Damages due and payable through the date of Substantial Completion have been paid to Owner;

(xiv) Contractor has provided Owner with an amended or new Letter of Credit in accordance with the requirements of Section 6.9(b) of this Agreement;

(xv) Contractor has delivered to Owner all lien waivers required to be delivered as of such date;

(xvi) The Facility is available for commercial operation as contemplated by this Agreement at all levels required for Substantial Completion;

(xvii) Contractor has obtained all Permits required of Contractor for the Facility required as of Substantial Completion and Owner has received copies of all Permits; and

(xviii) Contractor has delivered a Substantial Completion certificate for the Facility to Owner pursuant to Section 4.3 and Owner has accepted such certificate by signing such certificate (provided that the Substantial Completion Date for purposes of calculating Substantial Completion Liquidated Damages shall be as provided in Section 4.3(c)).

"Substantial Completion Date" means the date upon which Substantial Completion has been achieved.

"Substantial Completion Guarantees" means the guaranteed performance levels described in Exhibit H, Section B (Substantial Completion Guarantees).

"Substantial Completion Liquidated Damages" has the meaning given in Section 4.3.

"Subsurface Reports" has the meaning given in Section 2.27.

"Suppliers" means and refers to a Person that has a contract, agreement, or other arrangement with Contractor or a Subcontractor to supply any Equipment, Materials, Consumables or Construction Aids in connection with the Work.

"System Verification Tests" means the tests conducted pursuant to the System Turnover Packages described in Section 01100.1.2.4 of Exhibit A.

"Target Substantial Completion Date" means the "Planned Substantial Completion Date" shown on the Project Schedule, as such date may be adjusted in accordance with this Agreement.

"Tax(es)" means any and all governmental taxes, duties, imposts, assessments, charges, levies or tariffs imposed or assessed by the United States, the State of Ohio or any other Governmental Authority (whether domestic or foreign), including, without limitation, all sales, consumer and use taxes, business and occupation taxes, excise taxes and duties, corporation taxes, income taxes, withholding taxes, value added taxes, and customs duties and taxes, and any interests, penalties or fines related to the foregoing.

“Third Party” shall have the meaning set forth in Section 11.3.

“Warranty” has the meaning given in Section 9.1.

“Warranty Period” has the meaning given in Section 9.2.

“Work” means all obligations, duties and responsibilities required to be provided or performed by Contractor pursuant to this Agreement, including all Equipment, construction equipment, Materials, Consumables, Construction Aids, spare parts, design, engineering, procurement, fabrication, erection, installation, manufacture, delivery, transportation, storage, construction, workmanship, labor, pre-commissioning, commissioning, inspection, training, Site preparation, waste disposal, Performance Tests, other tests, start-up and any other services, work or things furnished, performed or used or required to be furnished, performed or used, by Contractor in the performance of this Agreement, including, without limitation, that set forth in the Scope Book and any Corrective Work, and any other services or items that are necessary or appropriate to achieve Final Completion in accordance with this Agreement, as the same may be modified pursuant to a Change Order.

1.2 Interpretation.

(i) As used in this Agreement, the masculine gender shall include the feminine and neuter and the singular number shall include the plural, and vice versa.

(ii) Unless expressly stated otherwise, references in this Agreement to a Person (including the Parties) include its successors and permitted assigns and, in the case of a Governmental Authority, any Person succeeding to its functions and capacities.

(iii) As used in this Agreement, references to “days” shall mean calendar days, unless the term “Business Days” is used. If the time for performing a payment or notice obligation under this Agreement expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day.

(iv) As used in this Agreement, where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings; the words “herein,” “hereunder” and “hereof’ refer to this Agreement, taken as a whole, and not to any particular provision of this Agreement; and “including” means “including, for example and without limitation,” and other forms of the verb “to include” are to be interpreted similarly.

(v) As used in this Agreement, all references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as amended, supplemented, restated or otherwise modified from time to time. Any term defined or provision incorporated in this Agreement by reference to another document, instrument or agreement shall continue to have the meaning or effect ascribed thereto whether or not such other document, instrument or agreement is in effect. In this Agreement, references to Applicable Law (including Permits) and

provisions thereof are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding, or supplementing the Applicable Law (including Permits) or provisions thereof.

(vi) References in this Agreement to Recitals, Articles, Sections and Exhibits are, unless otherwise indicated, to Recitals, Articles, or Sections of, and Exhibits to, this Agreement. All Exhibits attached to this Agreement are incorporated herein by this reference and made a part hereof for all purposes. References in this Agreement to an Exhibit shall mean the referenced Exhibit and any sub-exhibits, sub-parts, components or attachments that form a part thereof.

(vii) Each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

(viii) In the event of a conflict or inconsistency between the terms of the body of this Agreement and those of the Exhibits attached hereto, the following order of precedence shall govern the interpretation of such documents:

(a) amendments to the terms and provisions of the body of his Agreement (i.e., excluding the Exhibits);

(b) The terms and provisions of the body of this Agreement (i.e., excluding the Exhibits);

(c) The terms and provisions of Exhibits G and H;

(d) The Scope Book;

(e) The Project Schedule; and

(f) The terms and provisions of any Exhibits (or select portions thereof) which are not identified in the preceding clauses of this Section 1.2(viii).

ARTICLE 2

DUTIES AND OBLIGATIONS OF CONTRACTOR

2.1 Notice to Proceed. (a) If Owner provides to Contractor on or before February 15, 2019 (the "**FNTP Deadline**") a written notice stating that Contractor should proceed with the Work (the "**Notice to Proceed**"), then Owner shall make a payment to Contractor of the corresponding amount indicated on the Payment Schedule within five (5) Business Days after Owner's delivery of the Notice to Proceed to Contractor, and Contractor shall proceed with the Work and this Agreement shall remain in full force and effect. In the event Owner fails to provide a Notice to Proceed to Contractor on or before the FNTP Deadline, (i) the Contract Price shall be subject to a mutually agreeable equitable adjustment reflecting the economic impact of the delay in the issuance of the Notice to Proceed and (ii) Contractor shall be entitled to an equitable extension of the Milestone

Schedule, including the Guaranteed Substantial Completion Date. The Contract Price and Guaranteed Substantial Completion Date may only be adjusted in connection with a Change Order pursuant to the terms and conditions of this Agreement. In the event Owner fails to issue the Notice to Proceed by the date that is 180 Days after the FNTP Deadline, this Agreement shall thereupon automatically terminate and be of no further force or effect, Owner shall have no obligation to pay Contractor for all or any portion of the Contract Price, and the Parties hereto shall have no further rights, duties or obligations hereunder.

(b) Upon receipt of the Notice to Proceed, Contractor shall commence full performance of the Work on an unrestricted basis and shall continuously and diligently fulfill its obligations under this Agreement. Contractor shall perform the Work in accordance with the Project Schedule with the objective of achieving Substantial Completion by a date no later than the Guaranteed Substantial Completion Date. Unless otherwise agreed by the Parties, Owner shall give Contractor at least seven (7) days' written notice before the date it anticipates issuing the Notice to Proceed. Prior to the issuance of the Notice to Proceed, Contractor shall provide Owner with insurance certificates in respect of all insurance required to be obtained by Contractor in accordance with Exhibit L, and Owner is not obligated to issue the Notice to Proceed until these Contractor deliverables are received. Within ten (10) Business Days after the issuance of the Notice to Proceed, Contractor shall provide Owner with the Letter of Credit. Within seven (7) days after Owner has given Contractor written notice of the date it anticipates issuing the Notice to Proceed, Contractor shall advise Owner in writing that, as of the date of such notice from Contractor, Contractor has no knowledge of any grounds for a Change Order except as already disclosed by Contractor to Owner in writing.

2.2 Performance of the Work. Contractor hereby covenants and agrees that it shall design, engineer, procure, construct, pre-commission, commission, start-up and test the Facility in accordance with the terms and provisions of this Agreement, and perform and/or provide all Work, services, equipment, materials, consumables and other items necessary to properly and timely complete the same on a turnkey basis, including, as more specifically identified in the Scope Book. It is the intent of the Parties that this Agreement be a fixed price, turnkey contract with a fixed Contract Price and Project Schedule which will not be lengthened, except in accordance with Article 8. Contractor shall bear the risk for all costs in excess of the Contract Price (as modified by any Change Orders). Contractor hereby covenants and agrees that it shall continuously and diligently provide, perform, install, and complete the Work and its other obligations hereunder in accordance with the Requirements and the Project Schedule, as applicable. The Work shall be performed in a professional manner and in accordance with the quality control and assurance program described in Section 2.14. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, INCLUDING CONTRACTOR'S OR ITS SUBCONTRACTORS' OBLIGATIONS TO COMPLY WITH ALL APPLICABLE LAW (INCLUDING PERMITS), CONTRACTOR'S SOLE OBLIGATIONS WITH RESPECT TO EMISSIONS AND NOISE LEVELS OF THE FACILITY ARE LIMITED TO ACHIEVING THE GUARANTEED EMISSIONS AND THE GUARANTEED NOISE LEVELS SET FORTH IN THE PERFORMANCE GUARANTEES. Owner and the Independent Engineer shall have access to the Work in all places that Work is being performed and have the right to observe the testing of the Facility and all Equipment. Where this Agreement describes the Work in general terms, but not in complete detail, it is understood and

agreed that the Work includes any incidental work customarily required to complete the Facility and consistent with the Scope Book.

2.3 Power Island Supply Agreement. (a) Owner has directly entered into the Power Island Supply Agreement to acquire the GE Equipment, and title to the GE Equipment and the warranties of title with respect thereto shall pass directly to Owner. Contemporaneously herewith, Owner has assigned its rights and obligations (other than the Retained Obligations, Retained Rights and, to the extent allocable to Owner, the Shared Obligations and Shared Rights) under the Power Island Supply Agreement to Contractor, Contractor has accepted and assumed such rights and obligations, and Owner has been released from such assumed obligations, as provided in the Assignment, Assumption and Consent Agreement. Owner covenants to pay and perform the Retained Obligations and, to the extent allocable to Owner, the Shared Obligations in accordance with the terms and conditions of the Power Island Supply Agreement, as modified by the Assignment, Assumption and Consent Agreement. Contractor covenants to pay and perform all obligations of the "Owner" assumed by Contractor under the Assignment, Assumption and Consent Agreement (which assumed obligations expressly exclude the Retained Obligations and, to the extent allocable to Owner, the Shared Obligations) in accordance with the terms and conditions of the Power Island Supply Agreement, as modified by the Assignment, Assumption and Consent Agreement. Contractor shall administer the Power Island Supply Agreement and cause General Electric's performance of its obligations thereunder. Any recovery by Contractor of liquidated damages owed by General Electric under the Power Island Supply Agreement, or recovery by Contractor under any letters of credit posted by General Electric under the Power Island Supply Agreement, shall be for Contractor's exclusive benefit. If Contractor fails to timely administer and enforce the Power Island Supply Agreement, Owner shall, after providing written notice and a reasonable opportunity to Contractor to cure, have the right, but not obligation, to cure such breach by Contractor, in which case Contractor will cooperate with Owner's efforts to cure, including, if applicable, assigning the applicable Claim under the Power Island Supply Agreement to Owner, if so requested by Owner (provided that Contractor shall have not be required to assign any Claim to the extent it relates to any matter for which Contractor is responsible for General Electric's performance under this Agreement). The Power Island Supply Agreement shall be deemed a Major Subcontract and General Electric shall be deemed a Major Subcontractor hereunder except Contractor shall have no obligation to revise the terms of the Power Island Supply Agreement for purposes of meeting any flow down obligations of Contractor under this Agreement applicable to such Major Subcontract. Contractor shall be fully liable and responsible to Owner for the performance by General Electric of General Electric's obligations under the Power Island Supply Agreement to the extent the Power Island Supply Agreement is assigned to Contractor pursuant to the Assignment, Assumption and Consent Agreement.

(b) Contemporaneously herewith, Contractor shall execute and deliver to General Electric the "Notice to Proceed" under and as defined in the Power Island Supply Agreement. The letters of credit required to be provided by General Electric under the Power Island Supply Agreement shall be issued to Contractor, as beneficiary.

(c) Owner and Contractor shall cooperate and consult with each other to determine whether and the extent to which (i) any invoice submitted by General Electric under the Power

Island Supply Agreement is sufficient in form and substance (and whether any supporting documentation from General Electric is necessary or desirable in connection therewith), (ii) General Electric has earned and is entitled to receive any payments under the Power Island Supply Agreement, (iii) all or any portion of such payments sought or invoiced by General Electric should be disputed, and (iv) any withholding or setoff of all or any portion of such payments is warranted under the Power Island Supply Agreement. Owner shall have the right to exercise any such withholding or setoff rights under the Power Island Supply Agreement in accordance with the Assignment, Assumption and Consent Agreement. So long as Contractor is not in default of its obligations under this Agreement and the Power Island Supply Agreement, except as required by a binding arbitration decision or final court order resolving a payment dispute under the Power Island Supply Agreement, Owner shall not release any payments to General Electric under the Power Island Supply Agreement without the prior written approval by Contractor, such approval not to be unreasonably withheld, conditioned or delayed. Payments of the Power Island Purchase Price shall be paid or shall be caused to be paid by Owner directly to General Electric as and when due under the Power Island Supply Agreement (subject to withholding and setoff rights under the Power Island Supply Agreement), generally in monthly installments based upon the payment schedule included in the Power Island Supply Agreement, in an aggregate amount not to exceed the Power Island Purchase Price, provided that, for each month, the cumulative progress payments shall not exceed the cumulative payments set forth in the payment schedule contained in the Power Island Supply Agreement. Contractor shall submit to Owner each invoice received from General Electric for any portion of the Power Island Purchase Price then due and payable under the Power Island Supply Agreement to the extent such invoice relates to a Retained Obligation or, to the extent allocable to Owner, a Shared Obligation of Owner, and as promptly as possible after receipt of an invoice from General Electric and the consultation described above, shall indicate to Owner that Contractor does not dispute such payment (or indicate to Owner the portion of such payment that is disputed by Contractor, if applicable) and authorizes Owner's payment of such undisputed portion thereof. As to any disputed amounts, Contractor shall (i) provide written direction to Owner of the basis and amount of withholding or offset, if any, which Contractor believes in good faith is warranted under the Power Island Supply Agreement and (ii) notify General Electric of the basis and amount of withholding or offset, if any, which Contractor believes in good faith is warranted under the Power Island Supply Agreement. Owner shall pay as and when due to General Electric any undisputed Purchase Island Purchase Price amounts invoiced by General Electric in accordance with the payment schedule under the Power Island Supply Agreement for which Contractor has so authorized payment; provided, however, Owner shall not be responsible to pay General Electric for any amounts owed to General Electric arising out of any breach by Contractor of its obligations under the Power Island Supply Agreement or this Agreement. General Electric shall not be a third-party beneficiary under this Agreement. If any dispute with General Electric arises out of Owner's exercise any withholding or offset right or General Electric makes a claim or initiates a proceeding against Owner that relates to a dispute between Contractor and General Electric under the Power Island Supply Agreement, Contractor agrees that it will take the primary role in defending any challenge, claim or proceeding by General Electric relating thereto or pursuing a satisfactory resolution of such dispute, recognizing that Contractor is expected to have the most relevant information relating to such dispute, and Contractor shall consult and cooperate with, and provide reasonable support to, Owner with respect to such dispute (including as to any claims that General

Electric may raise against Owner on account of any withholding or offset of payments Owner may have made at the direction of Contractor).

(d) Contractor acknowledges, covenants and agrees that, without the prior written consent of Owner in its sole and absolute discretion, (Y) neither the Power Island Supply Agreement nor any of Contractor's rights or obligations thereunder shall be amended, assigned or transferred, nor shall any change order be made under the Power Island Supply Agreement which change order would either (i) when aggregated with any other change orders, exceed $100,000 in the aggregate or (ii) adversely affect any of the Retained Rights or Retained Obligations or, to the extent allocable to Owner, the Shared Obligations or Shared Rights and (Z) Contractor shall not consent to any assignment or transfer by General Electric of its rights or obligations under the Power Island Supply Agreement (to the extent Contractor has any such consent rights).

(e) Contractor and Owner shall cooperate reasonably with each other if either believes that General Electric has wrongfully suspended or terminated the Power Island Supply Agreement or improperly declared an "Owner Default" thereunder. If Owner's alleged failure to perform the Retained Obligations or, to the extent allocable to Owner, the Shared Obligations is General Electric's purported basis for its suspension or termination or declaration of an "Owner Default" under the Power Island Supply Agreement, Contractor shall consult with Owner and raise appropriate challenges, defenses and counterclaims to General Electric's claims if Owner in good faith disputes such alleged failure.

(f) So long as no Owner Default under this Agreement then exists, Contractor shall only have the right to terminate the Power Island Supply Contract for convenience with the prior written consent of Owner in its sole and absolute discretion.

(g) Upon Owner's request, Contractor shall provide Owner with a duplicate copy of any Document Packages (as defined in the Power Island Supply Agreement) provided by General Electric under the Power Island Supply Agreement.

(h) Contractor shall notify and consult in good faith with Owner if it believes that General Electric has materially defaulted under the Power Island Supply Agreement or if an event, circumstance or default by General Electric thereunder exists which would give rise to a right of Contractor to terminate the Power Island Supply Agreement or suspend General Electric's performance thereunder. Contractor shall deliver duplicates or copies of all notices of default, suspension, termination and/or assignment under the Power Island Supply Agreement (i) delivered by Contractor to General Electric, simultaneously with delivery thereof to General Electric or (ii) received by Contractor from General Electric, immediately upon receipt thereof from General Electric.

2.4 Sufficient Personnel. Contractor shall, at all times during the term of this Agreement, keep sufficient personnel employed so that the Work is completed in accordance with the terms and provisions of this Agreement.

2.5 Taxes. (a) Subject to the terms of Section 2.5(b) and 3.10), Contractor shall pay (or cause its Subcontractors to pay) all existing and future Taxes relating to, or incurred in connection

with, or imposed on Contractor or its Subcontractors under Applicable Laws with respect to, the Equipment, Materials, Consumables, Construction Aids, labor, services, or Intellectual Property Rights provided under this Agreement or otherwise imposed as a consequence of performance of the Work or Contractor's other obligations under this Agreement, including, without limitation, (i) all sales, consumer, use, excise, value added and similar taxes related to, or incurred in connection with, the Equipment, the performance of the Work, and/or Contractor's purchase or use of equipment, tools, supplies, materials and services used by Contractor in connection with Facility, including services, Consumables, Construction Aids and tools acquired and used by Contractor in performing Work at the Site or supporting Contractor in such activities when the items are not incorporated into the Work and are not transferred to Owner upon completion, and including any state and federal gasoline and fuel taxes, (ii) all duties, tariffs, customs, charges, levies and taxes (whether foreign or otherwise) related to the import or export of Equipment, tools, supplies or materials, (iii) all of Contractor's or its Subcontractors' income, net worth, gross receipts and franchise, business, and professional taxes duties, customs, charges, levies or tariffs (whether foreign or United States federal, state, local or other), including any state Tax which is in lieu of, or in substitution of, a state income tax, (iv) any withholding obligations, employment insurance and similar contributions and benefits required in relation to the employees of Contractor and its Subcontractors and any payroll or employment compensation taxes, social security tax, health care, pension and retirement contributions, FICA, accrued time off, or similar taxes or contributions for employees of Contractor and its Subcontractors and (v) any Tax imposed on Contractor or its Subcontractors by a taxing authority outside of the State of Ohio. The Contract Price includes the Taxes described in this Section 2.5(a) and, except as expressly provided in Section 2.16 with respect to a Change in Law, will not be increased with respect to any such Taxes, including any increase of any such Taxes, or with respect to any withholdings that Owner may be required to make in respect of any such Taxes.

(b) Contractor represents and warrants that the Contract Price does not include or otherwise reflect any Ohio state or local sales or use taxes on Contractor's or any Subcontractor's purchase, sale, use, or consumption of Equipment, Materials, Spare Parts, or any services rendered by Contractor in the performance of the Work (such taxes being collectively referred to as the "**Ohio Sales & Use Taxes**").To implement such exclusion of Ohio Sales & Use Taxes, Owner has certified by written notification to Contractor that the Equipment, Materials and Spare Parts sold to Owner and installed or incorporated into the Work or Facility for transfer to Owner will retain the status of tangible personal property for Ohio tax purposes after transfer to Owner is completed. Owner has certified by written notification to Contractor that all such items of tangible personal property sold to Owner and installed or incorporated into the Work or Facility will be exempt from Ohio Sales & Use Taxes. As of the Effective Date, Owner has issued written certificates in accordance with the requirements of Ohio Revised Code Section 5739.03(B) and (C) (copies of which are attached hereto as Exhibit Q). Accordingly, it is the intent of Owner that no Ohio Sales & Use Taxes will be paid by Contractor or its Subcontractors on their purchase of the Equipment, Materials and Spare Parts that remains part of the Work or Facility upon completion and that Contractor will not charge or seek reimbursement of Ohio Sales & Use Taxes from Owner on sales of the tangible personal property and services to Owner unless a Change in Law eliminates or restricts Contractor's ability to rely on Owner's claim of entitlement to an exemption for Ohio Sales & Use Taxes exemption. Contractor agrees that Owner's Exhibit Q sales tax certifications conform with Ohio Revised Code § 5739.03(B) and (C) and acknowledges prior receipt of the documents by executing

this Agreement. Contractor shall use commercially reasonable efforts to implement and effectuate the sales and use tax plan memorialized herein and within the certificates referenced by providing copies of the certificates and sharing relevant information to its Subcontractors and Suppliers and vendors of Equipment, Materials and Spare Parts to effectuate Owner's Ohio Sales & Use Taxes exclusion from the Contract Price. If Owner's exemption statement were deemed to be incorrect or challenged by the applicable taxing authority, any Ohio Sales & Use Taxes and any related interest and penalties assessed and determined to be due and payable under Applicable Law shall be Owner's responsibility and Owner shall reimburse, indemnify, defend and hold Contractor and its Subcontractors harmless from all such Ohio Sales & Use Taxes and related interest and penalties. Reimbursement and indemnification of tax by Owner under this Section 2.5(b) shall require written notice to Owner that a tax audit is on-going and that the taxing authority intends to reject Owner's certificate and assess tax against Contractor or a Subcontractor. Notice must be given by Contractor in a commercially reasonably time to allow Owner to participate in that part of the tax audit and to defend against any assessment threatened or formally issued.

(c) Each Application for Payment shall break down in detail the aggregate amount reflected on such Contractor's Applications for Payment by separately listing and identifying each major piece of Equipment and each other major portion of the Work and the amount of the charges related thereto. Owner shall request and Contractor shall make commercially reasonable efforts to provide additional information regarding each such Application for Payment to allow Owner to satisfy its obligations to pay Ohio Sales & Use Taxes as required under Ohio law and this Agreement.

(d) Owner and Contractor shall cooperate in good faith with each other, and shall use their commercially reasonable efforts, to minimize, eliminate, reduce and defer the payment of Ohio Sales & Use Taxes and other Taxes relating to this Agreement and the Work, including taking advantage of applicable exemptions and consulting and cooperating in good faith with each other in order to effectively handle and contest any audit, examination, investigation, or administrative, court or other proceeding. In connection therewith, to the extent permitted under Applicable Laws, Contractor hereby assigns to Owner its rights to any refund of Ohio Sales & Use Taxes which have been paid or reimbursed by Owner to Contractor in order to enable Owner to contest the determination of taxability and recover any overpayment of such Ohio Sales & Use Taxes, and hereby agrees that it will execute any document reasonably requested by Owner to evidence the foregoing provided Contractor's execution of any such document is not in conflict with Applicable Laws. Contractor shall grant or cause to be granted to, and shall cause its Affiliates and Subcontractors to grant to, Owner or Owner's representatives access at all reasonable times during the course of the Work and the applicable statute of limitations to all of the information, books, and records relating to tax matters (including Ohio Sales & Use Taxes matters) pertaining to the Work within their possession or control but only to the extent such information, books and records are needed to establish Owner's entitlement to exemptions, refunds or rebates (including, without limitation, with respect to Ohio Sales & Use Taxes) or rebates of Taxes paid by Contractor, or Contractor's Affiliates or Subcontractors (but only to the extent that such Taxes would be Owner's responsibility if such exemptions, refunds or rebates did not apply). Contractor shall also furnish or cause to be furnished to Owner or Owner's representatives the assistance and cooperation of personnel of Contractor, its Affiliates, and Subcontractors, as Owner may reasonably request in connection with such tax matters. Contractor agrees to assist Owner in maintaining records

necessary to comply with all recordkeeping and reporting requirements related to the Work of applicable economic development incentive agreements entered into by Owner with respect to the Facility.

(e) Notwithstanding anything to the contrary in this Agreement, in consideration of General Electric's covenants under Section 2.5 of the Power Island Supply Agreement and General Electric's indemnification obligations under Section 11.1(a)(vi) of the Power Island Supply Agreement being Retained Rights of Owner pursuant to the Assignment, Assumption and Consent Agreement, Contractor shall have no liability to Owner under Sections 2.5 or 11.1(a)(v) of this Agreement due to General Electric's nonpayment of any Taxes (or General Electric's failure to withhold any Taxes) for which General Electric is contractually liable to Owner under the Power Island Supply Agreement.

2.6 Permits. (a) Exhibit A sets forth the allocation of responsibility for obtaining Permits required for the Project and the respective obligations of the Parties with respect to compliance with Permit requirements. Contractor shall secure and pay for any and all Permits necessary for the proper execution and completion of the Work identified as a Contractor Permit in Exhibit A, and if a Permit is not listed therein, Contractor shall also obtain such Permit if it qualifies as one of the following types of permits: (i) building permits required for the construction of the Facility or occupancy of any portion thereof; (ii) labor or health standard permits and approvals reasonably related to construction of the Facility; (iii) business permits necessary for the conduct of the operations of Contractor and all Subcontractors in any location where such permits may be required (including all contractors' licenses and related documents); (vi) permits, approvals, consents or agreements from or with any Person necessary for the performance by Contractor of the Work or its warranty obligations hereunder, for the transportation or importation of Equipment, Materials, Consumables supplied (or required to be supplied) by Contractor hereunder and Construction Aids or for the transportation or importation of equipment, tools, machinery and other items used by Contractor in performance of the Work; (v) permits, visas, approvals and certifications necessary for Contractor's employees to legally perform the Work in any location where performed (including documentation of citizenship or legal residency in the United States); or (vi) is required to be in the name of Contractor and is of the kind and nature customarily obtained by a contractor and not an owner in projects similar to the Facility (collectively with the Contractor Permits identified on Exhibit A, the "Contractor Permits"). Contractor shall maintain and comply with, and shall cause its Subcontractors to comply with, all Contractor Permits and monitor and keep accurate records of the status of all Contractor Permits. Permits obtained by Contractor shall be maintained on the Site and copies shall be made available to Owner and the Independent Engineer on request. Contractor shall comply with all Owner Permits to the extent relating to the Work or the Facility. Contractor acknowledges and agrees that, among other Permits, it has been provided with Owner's Project application and filing with the Ohio Power Siting Board and the Ohio Power Siting Board staff report recommending approval of the Project with conditions (collectively attached hereto as Exhibit A, Appendix P), and that Contractor will be required to comply with such approval and conditions (including, without limitation, as to the development of an emergency response plan, traffic management plan and unanticipated archaeological/cultural resources discoveries plan and implementation of construction noise mitigation recommendations and noise complaint resolution requirements and procedures).

(b) Contractor shall assist Owner in Owner's endeavors to secure the Owner Permits and cooperate with Owner by providing information and support during any hearings in the process of obtaining such permits. In undertaking such assistance, Contractor shall not be obligated to incur any material out-of-pocket costs and expenses without reimbursement from Owner.

2.7 Requirements. Contractor shall, and shall cause each Subcontractor to, perform the Work in a good and workmanlike and professional manner, using new materials, and in compliance with Prudent Industry Practices, the Scope Book, all Applicable Law (including Permits), Applicable Codes and Standards, the requirements of insurers providing insurance pursuant to Article 10, the O&M Manuals, and all other terms, provisions and requirements of this Agreement (collectively, the "Requirements"); provided that any breach of the Warranty shall be subject to Article 9. If there are any conflicts between or among the standards of performance derived from the Requirements, Contractor shall comply with the most stringent standard or, if there is no clear most stringent standard, Contractor shall comply with the most detailed standard or, if there is no clear most detailed standard, Contractor shall promptly notify Owner of the conflict, in which case the Parties shall cooperate and negotiate in good faith such modifications to this Agreement as are necessary to resolve the conflict. Notwithstanding the above, Contractor's obligation to cause General Electric to comply with the Requirements shall be no broader than General Electric's obligations to meet the Requirements under and as defined in the Power Island Supply Agreement.

2.8 Subcontractors. Contractor may retain such Subcontractors as in Contractor's reasonable judgment may be necessary to complete Contractor's duties and obligations under this Agreement; provided, however, that (i) Contractor shall ensure that the portion of the Work listed on Exhibit S shall be procured from the corresponding pre-approved Major Subcontractors listed on Exhibit S or those otherwise approved by Owner; (ii) no such engagement shall relieve Contractor of any of its duties, responsibilities, obligations or liabilities under this Agreement; (iii) Contractor may not subcontract all or substantially all of the Work; and (iv) without limitation of Contractor's obligations with respect to Major Subcontracts as set forth in Section 2.9, Contractor shall use commercially reasonable efforts to ensure Subcontracts with first-tier Subcontractors shall contain substantially similar subcontract terms to those of this Agreement, as appropriate to the scope of work for such Subcontractor and be assignable (in the event of any termination of this Agreement or expiration of the Warranty Period) to Owner or its designees or assignees without the prior written consent of the Subcontractor and give Contractor a right, without the consent of such Subcontractor, to assign the relevant subcontract and any or all benefits, interests, rights, and causes of action arising under it to Owner or its Affiliates or Lenders (and such assignment right will be assigned as part of such assignment). Major Subcontractors shall be subject to Owner's prior written approval if such Major Subcontractor is not a pre-approved Subcontractor for the applicable portion of the Work as listed on Exhibit S. As between Owner and Contractor, Contractor shall be solely responsible for the acts, omissions and defaults of its Subcontractors and any other Persons for which Contractor or any of its Subcontractors are responsible. If any Subcontractor fails to perform any portion of the Work as such Work is required to be performed in accordance with this Agreement, Contractor is responsible therefor and hereby binds itself to promptly and diligently correct such failure in accordance with this Agreement, at no cost or expense to Owner. The exercise of the right to subcontract will not in any way increase the cost, expense, or liability of Owner hereunder. Nothing in this Agreement shall be construed to impose on Owner any obligation, liability or duty

to a Subcontractor or any other Persons for which Contractor or any such Subcontractor is responsible, or to create any contractual relationship between any such Persons and Owner (including any obligation to pay or to see to the payment of any moneys due any such Persons). Except as otherwise expressly provided herein, no Subcontractor or any other Person for which Contractor or any such Subcontractor is responsible is intended to be nor shall be deemed a third party beneficiary of this Agreement. Contractor shall pay (or caused to be paid) its Subcontractors in accordance with the terms and conditions of the relevant agreement. Contractor shall promptly notify Owner in writing of any material dispute between Contractor and any Major Subcontractor and provide a reasonable description thereof.

2.9 Major Subcontractors. All Subcontracts with Major Subcontractors shall (i) be submitted to Owner, with pricing information redacted promptly upon execution thereof, (ii) contain, to the best of Contractor's ability, substantially similar subcontract terms to those of this Agreement, as appropriate to the scope of work for such Major Subcontractor, and (iii) shall not be waived by Contractor in any material adverse respect to Owner or amended in any way inconsistent with Contractor's obligations with respect to such subcontract under Sections 2.8 and 2.9 hereof without Owner's prior approval. In addition, all Subcontracts signed by Contractor with a Major Subcontractor must contain the provisions described in clauses (i)–(iii), (vi) and (viii) of the next succeeding sentence in this Section 2.9, and Contractor shall use commercially reasonable efforts to cause all Subcontracts signed by Contractor with a Major Subcontractor to contain the provisions described in clauses (iv), (v), (vii), (ix), (x), and (xi) of the next succeeding sentence in this Section 2.9. Such provisions must reasonably preserve and protect the rights of Owner under this Agreement and to the Work to be performed by such Major Subcontractor so that such rights of Owner will not be prejudiced, including: (i) being assignable (in the event of any termination of this Agreement or expiration of the Warranty Period) to Owner or its designees or assignees without the prior written consent of the Major Subcontractor and giving Contractor a right, without the consent of such Major Subcontractor, to assign the relevant subcontract and any or all benefits, interests, rights, and causes of action arising under it to Owner or its Affiliates or Lenders (and such assignment right will be assigned as part of such assignment); (ii) authorizing either Contractor or Owner, upon such assignment, to enforce guarantees and warranties; (iii) requiring each Major Subcontractor that will perform any portion of the Work on the Project Site to comply with Contractor's health and safety plan; (iv) providing substantially similar indemnities for Owner to the indemnities set forth in Section 11.1; (v) using commercially reasonable efforts to cause each Major Subcontractor of Equipment or Materials, upon the request of Owner, to segregate such Equipment or Materials at its fabrication facilities and identify Owner's property as such in a manner acceptable to Owner; provided, however, that Owner acknowledges that General Electric may not agree to the segregation of Equipment supplied by it; (vi) acknowledging that Owner is a third party beneficiary; (vii) using commercially reasonable efforts to require such Major Subcontractor to obtain and maintain the insurance coverages customarily required by Contractor for such Major Subcontractors, (viii) requiring such Major Subcontractor to provide lien waivers as required by Section 6.3, (ix) using commercially reasonable efforts to minimize termination payments payable to a Major Subcontractor in the event of a termination for convenience, (x) using commercially reasonable efforts to require that all Major Subcontracts include an agreement that each Major Subcontractor shall become a party to any mediation or other dispute resolution proceeding between Owner and Contractor if necessary and (xi) requiring such Major Subcontractor to enter into a new contract

directly with Owner upon Owner's demonstration of reasonably sufficient financial capacity to meet the future payment obligations of Owner under such Major Subcontract, upon notice to such Subcontractor, on the same terms and conditions if any trustee in bankruptcy for Contractor rejects such subcontract as a result of a bankruptcy or insolvency of Contractor. Contractor shall also use its commercially reasonable efforts to secure title transfer provisions substantially similar to Section 2.12. Contractor shall provide Owner with prompt written notice describing the extent to which any of the Major Subcontractors is unwilling, despite Contractor's commercially reasonable efforts, to include any of the provisions described in this Section 2.9 in its subcontract with Contractor. The provisions of this Section 2.9 shall not apply to the Power Island Supply Agreement or to Subcontractors to General Electric except to the extent any such provisions are contained in the Power Island Supply Agreement.

2.10 Independent Contractor; Supervision. In performing its duties and obligations under this Agreement, Contractor shall, at all times, act in the capacity of an independent contractor, and shall not in any respect be deemed (or act as) an agent of Owner for any purpose or reason whatsoever. Contractor shall supervise, coordinate, and direct the Work, using Prudent Industry Practices. Contractor is responsible for the performance of the Work by Persons under its supervision, and is responsible for the performance of the Work by all Subcontractors.

2.11 Cleaning. Prior to the Final Completion Date, Contractor shall remove from the Site all of Contractor's tools, equipment and debris (as well as that of its Subcontractors).

2.12 Transfer of Title & Risk of Loss. (a) Title to all or any portion of the Work (excluding the GE Equipment, as to which title shall pass directly to Owner from General Electric at such time as title thereto passes to Owner under the Power Island Supply Agreement) shall pass to Owner upon the earliest of incorporation of such Work into the Facility or delivery to the Site. Transfer of title to Work shall be without prejudice to Owner's right to reject Defective Work, or any other right in this Agreement.

(b) Subject only to Permitted Liens, Contractor warrants and guarantees that good and legal title to and ownership of the Work and the Facility shall transfer to Owner free and clear of any and all Liens, claims and defects in title when title thereto passes to Owner. The terms and provisions of this Section 2.12 shall survive the expiration or termination of this Agreement.

(c) The passage of title to Owner shall not be deemed an acceptance or approval of any Equipment (or any Work), affect the allocation of risk of loss, or otherwise relieve Contractor of any obligation under this Agreement to provide and pay for transportation and storage in connection with the Work or Owner's right to reject any Defective Work.

(d) Contractor, at its sole cost and expense, shall prepare all required import/export documentation or similar documentation that may be required by Applicable Law prior to title transfer of any Work.

(e) Notwithstanding passage of title as provided in this Section 2.12 of this Agreement, Owner shall bear the risk of physical loss and damage to the Facility and (except as provided in Section 2.11(d) of the Power Island Supply Agreement) all Equipment and Work incorporated or

to be incorporated into the Facility, in each case as to which title has passed to Owner, including, without limitation, to all Equipment (excluding Contractor's equipment), Materials, Consumables supplied (or required to be supplied) by Contractor hereunder, in each case as to which title has passed to Owner, at the Site, outside the Site, in transit to the Site or in storage. Until the Substantial Completion Date, Contractor shall have care, custody and control of the Facility and the Project Site. Care, custody, and control of, the Facility and all Equipment and Work incorporated or to be incorporated into the Facility, including, without limitation, to all Equipment, Materials, Consumables supplied (or required to be supplied) by Contractor as part of the Work will pass to Owner on the Substantial Completion Date. Should any physical loss or damage occur to any Work incorporated or to be incorporated into the Facility for which Owner bears the risk of loss, Owner shall either (i) (a) increase the Contract Price by the amount Contractor demonstrates is necessary to repair or replace the loss or damage (provided that Contractor shall not be entitled to any profit or overhead on such additional Work at a higher rate than that which was applicable to the Work as of the Effective Date) and (b) Owner shall equitably extend the Milestone Schedule to the extent that such loss or damage was not caused by Contractor, its Subcontractors or Suppliers or any other Person for whom they are responsible and demonstrably, actually and adversely delays Contractor's performance of any Work that is on the critical path and causes (or will cause) Contractor to complete the Work beyond the Target Substantial Completion Date, or (ii) excuse Contractor's remaining performance under this Agreement. Should Owner elect to excuse Contractor's remaining performance obligations, such termination shall be handled according to the termination provision of this Agreement.

(f) Subject to the limitations and exceptions set forth in this Section 2.12(f), Owner shall bear the risk of physical loss and damage to the Facility occurring after Substantial Completion. If either (A) any physical loss or damage to the Facility occurs after Substantial Completion, or (B) any physical loss or damage to existing real property, improvements, fixtures or other permanent property that is on the Site but is not part of the Facility occurs, then Contractor shall be liable to Owner and Owner's Affiliate that owns a portion of the Site for such physical loss and damage to the extent such physical loss and damage (i) is caused by the negligence or fault of Contractor, its Subcontractors or Suppliers or any other Person for whom they are responsible or (ii) is caused by a Defect; provided that, Contractor's liability for such physical loss or damage (but not the cost of correcting the Defect) shall be limited to the lesser of the deductible under Owner's or such Affiliate's applicable property insurance and One Million Five Hundred Thousand U.S. Dollars (U.S. $1,500,000) per occurrence and in the aggregate. Under no circumstances shall this Section 2.12(f) be interpreted to relieve Contractor of its other obligations or liabilities under this Agreement, including its Warranty and obligations with respect to Defective Work and Corrective Work. Owner and all of its Affiliates that own any portion of the Site or real property, improvements, fixtures or other permanent property that is on the Site shall include a full and complete waiver of subrogation in favor of Contractor and its Subcontractors consistent with this Section 2.12.

2.13 Key Personnel. Exhibit CC contains a list of the key personnel ("Key Personnel") who will be responsible for supervising the performance of Contractor's and Subcontractors' obligations hereunder. Such list includes the designation of Contractor's principal representative (the "Project Manager"), who will be Contractor's authorized representative having the responsibility and authority to direct and manage the Work, administer this Agreement, serve as

Contractor's primary point of contact from and with Owner, act as Contractor's liaison with Owner and be authorized to make decisions related to the Work and bind Contractor. Such list also includes the designation of the principal full-time on-Site representative. To the extent any Person is not identified on Exhibit CC to fill any Key Personnel position listed thereon, Contractor shall, as soon as practicable after the Effective Date, submit the resumes of the Persons nominated to fill such Key Personnel positions to Owner for Owner's approval prior to their appointment. Contractor recognizes that a good working relationship must exist between its Key Personnel and Owner. Key Personnel shall, unless otherwise expressly stated in Exhibit CC, be devoted full-time to the Work for the entire duration of the Project, and Key Personnel shall not be removed or reassigned without Owner's prior written approval. All requests for the substitution of Key Personnel shall include a detailed explanation and reason for the request and the resumes of professional education and experience for a minimum of two (2) candidates of equal or greater qualifications and experience. Should Owner approve of the replacement of a Key Person, Contractor shall allow for an overlap of two (2) weeks during which both the Key Person to be replaced and the Owner-approved new Key Person shall work together full time. The additional cost of any replacement of such Key Personnel and overlap time shall be entirely at Contractor's expense. Owner has the right, acting reasonably, to require the replacement of any Key Personnel upon reasonable notice after having given Contractor a reasonable opportunity (not to exceed ten (10) days) to rectify the situation leading to such requirement. Upon the expiration of such period, if Owner remains unsatisfied, Contractor shall promptly effect such replacement. Any replacement Key Personnel will be subject to the prior written approval of Owner. The Project Manager shall act as the liaison for Contractor's communications with Owner and shall be responsible for providing all reports due under the Agreement to Owner. The Project Manager shall coordinate all activities of Contractor, including reporting activities, communication activities, and insurance procurement and administration.

2.14 Quality Control Program. No later than thirty (30) days after Owner's issuance of the Notice to Proceed, Contractor shall submit to Owner for its review and approval, a Facility-specific quality control and quality assurance plan and inspection plan, including inspection procedures, Facility quality assurance; management, and control of the design, construction, procurement, and supply services; and management and control of Subcontractors and their Subcontracts. Such plan must be designed to meet the Requirements. Contractor's Facility-specific quality control and quality assurance plan shall include the standards set forth in Exhibit DD. Contractor shall promptly modify such Facility-specific quality control and quality assurance plan and inspection plan to incorporate all reasonable comments provided by Owner, if any. Neither Owner's approval of Contractor's quality control and assurance plan, inspection plan and inspection procedure, nor Contractor's compliance with such plan, shall in any way relieve Contractor of its responsibility for performing the Work in compliance with this Agreement. As part of the quality control and quality assurance plan, inspection plan and inspection procedures, Contractor shall keep a daily log of inspections performed, and Contractor shall make available at the Site for Owner's review a copy of all such inspections. Contractor shall also require Major Subcontractors to establish, implement, and maintain quality control and safety programs that are commensurate with their respective portions of the Work.

2.15 Qualifications. Contractor and each of its Subcontractors shall at all times during performance of the Work be qualified and capable of performing the Work in accordance with the

terms of this Agreement and shall hold all engineering, design, professional and business licenses and certifications required in connection therewith, which such licenses and certifications shall be maintained at Contractor's sole cost and expense.

2.16 Legal Requirements. (a) Contractor shall comply, and shall cause its Subcontractors to comply, with all Permits and all existing and future Applicable Law and all Applicable Codes and Standards which are applicable to the Work, the Facility and/or the Site and shall give all notices pertaining thereto.

(b) Upon the occurrence of a Change in Law, Contractor shall be entitled to an equitable adjustment in the Contract Price and/or Milestone Schedule provided (i) Contractor notifies Owner in writing within twelve (12) Days after Contractor becomes aware of such Change in Law that Contractor in good faith believes would reasonably be expected to have an adverse impact on the Contractor's Milestone Schedule or the cost of performing the Work, (ii) Contractor notifies Owner in writing within twelve (12) Days after Contractor becomes aware of the impacts arising from such Change in Law, (iii) as to a request for an equitable adjustment in the Contract Price, Contractor can demonstrate to the reasonable satisfaction of Owner, that the Change in Law materially increased Contractor's cost of performing the Work, and (iv) as to a request for an equitable adjustment in the Milestone Schedule, Contractor can demonstrate to the reasonable satisfaction of Owner, that the Change in Law adversely delays Contractor's performance of any Work that is on the critical path and causes (or will cause) Contractor to complete the Work beyond the Target Substantial Completion Date. Upon satisfaction by Contractor of the terms and conditions of this Section, Owner and Contractor shall exercise good faith efforts to agree on the extent to which the Work has been delayed and/or Contractor's costs increased on account of any such Change in Law. Once the Parties have mutually agreed as to the extent of such impact, they shall enter into a Change Order reflecting their agreement as to the equitable adjustment in the Milestone Schedule and/or Contract Price. If the Parties are unable to agree upon an equitable adjustment in the Milestone Schedule and/or Contract Price, then such matter shall be resolved in accordance with Article 18. Prior to the Notice to Proceed, Contractor will provide confirmation to Owner (within twelve (12) Business Days of Owner's request therefor) that Contractor has no knowledge after diligent inquiry that there has been no Change in Law that adversely affects the performance by Contractor of its obligations hereunder other than as previously notified to Owner in writing.

2.17 Training. Contractor shall develop and implement a program to adequately instruct and train personnel made available by Owner in accordance with the provisions of Exhibit U and Section 01100.1.26 (Operator Training) of Exhibit A. Contractor grants Owner the right to record all training sessions and replay or otherwise provide such recordings for retraining or training of others; provided, however, Contractor has the right to perform reasonable editing that does not detract from its training value. Contractor shall provide technical assistance to Owner's operating personnel in connection with the development of training procedures. Notwithstanding the foregoing, Contractor shall only be required to provide training for GE Equipment to the extent set forth in the Power Island Supply Agreement.

2.18 Safety Program. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work,

including a fitness for duty policy and other appropriate precautions and programs for areas in and around the Site. On or before thirty (30) days after the issuance of Notice to Proceed, Contractor shall prepare and deliver to Owner a plan designed to ensure proper health, safety, and environmentally sound practices fully in accordance with Applicable Law and that such practices are employed and enforced in the performance of the Work. At a minimum, such plan shall require Contractor to comply, and shall cause all Subcontractors to comply, with those rules, regulations, and procedures set forth in Applicable Law relating to occupational safety and those set forth in Exhibit Z. The efficacy or implementation of such plan will not relieve Contractor of its obligations under this Agreement. If Owner becomes aware of any Work, or the performance of any Work, that it reasonably believes constitutes a threat to the health or safety of persons, property, or the environment, or would result in noncompliance with Applicable Law, then, without limiting any other rights of Owner hereunder, Owner may (but shall not be obligated to) immediately suspend the performance of the affected portion of the Work and thereafter promptly advise Contractor of the cause therefor. Such suspension may be maintained until such cause is removed. All costs related to such suspension and any other adverse impact on Contractor or the Work attributable thereto will be the responsibility of Contractor and no relief under this Agreement will be allowed and such suspension shall not be an Excusable Event. Owner, in its reasonable opinion, may exclude from the Site any individual whose conduct is prejudicial to safety, health, protection of the environment, or is found or suspected to be in violation or in disregard of the requirements of this Section 2.18, this Agreement, or Applicable Law. Contractor shall have sole responsibility for all construction means, methods, techniques, sequences, and safety and security programs in connection with the performance of the Work. Contractor shall promptly report in writing to Owner all accidents whatsoever arising out of or in connection with the performance of the Work, whether on or adjacent to the Site, which result in death, injury, or property damage. In addition, if death, serious injury, or serious damage is caused, Contractor shall immediately report the accident by telephone and email to Owner.

2.19 Periodic Reports & Meetings. (a) Contractor shall prepare and submit to Owner a monthly written status report, which report shall be prepared in a manner and format reasonably satisfactory to Owner, delivered on the tenth (10th) day of each month, and shall include, but shall not be limited to, (i) an executive summary and a detailed description of the progress of the Work, including a critical path chart illustrating the progress which has been made, (ii) the status of the supply of Equipment and Materials necessary for the completion of the Work, (iii) the status of applications for, or other actions taken to obtain, necessary Contractor Permits, (iv) an updated report as to Contractor's adherence to the Milestone Schedule and Project Schedule, and specifically addressing whether the Work is on schedule or behind schedule, and actions being taken to correct schedule delays; (v) an evaluation of any problems or deficiencies and a description of any planned corrective actions with respect thereto; and (vi) quality control and inspection program updates. Additionally, Contractor shall provide safety statistics such as lost time hours, OSHA recordable and OSHA reportable incidents and other safety statistics as may be required by the insurance providers. Contractor shall follow generally accepted accounting principles and keep such full and detailed accounts as necessary for proper financial management under this Agreement. In addition, Contractor shall furnish Owner with such documents reasonably necessary for Owner to review the Work. If Owner so directs, Contractor shall conduct weekly meetings and monthly project meetings at mutually agreeable locations between representatives of Owner and Contractor and any other

parties designated by Owner to review the status of the Work. Contractor shall provide Owner with suitable temporary office space during construction at the Site as specifically detailed in the Scope Book.

(b) If, at any time during the performance of the Work, (a) Contractor determines that it is delayed, or reasonably anticipates that it will be delayed, so that Substantial Completion is then reasonably projected to be delayed fourteen (14) or more Days beyond the Guaranteed Substantial Completion Date or (b) Owner, by written notice, informs Contractor of Owner's reasonable determination, setting forth the basis for such determination, that Contractor is delayed or will be delayed so that Substantial Completion is then reasonably projected to be delayed fourteen (14) or more Days beyond the Guaranteed Substantial Completion Date, then Contractor shall within fifteen (15) Business Days of such Contractor determination or notice from Owner either (x) demonstrate to Owner's reasonable satisfaction that a delay has not been experienced or that a delay is not reasonably anticipated to be experienced, (y) demonstrate to Owner's reasonable satisfaction that such delay has been recovered, or (z) prepare and deliver to Owner a plan of recovery (the "Recovery Plan"). A Recovery Plan will explain and demonstrate how Contractor intends for the applicable Milestones to be achieved such that Substantial Completion will be achieved by the Guaranteed Substantial Completion Date, if practicable, or as soon thereafter as possible, if not practicable. Unless the delay is due to an Excusable Event, the cost of preparing the Recovery Plan shall be for Contractor's account, and the cost of executing under the Recovery Plan shall be at Contractor's sole cost and expense.

2.20 No Liens. (a) Contractor shall not assume, create or suffer to exist or be created any Lien on (i) the Site, the Facility, or any portion thereof (including the Equipment after title to the same has transferred to Owner), by, through or under Contractor, any Subcontractor, or any of their respective employees, or (ii) any other property of Owner by, through or under Contractor, any Subcontractor, or any of their respective employees; provided, however, the foregoing shall not apply to Liens (including mechanics' liens, Contractors' liens, materialmen's liens or other similar liens) filed, recorded or asserted by or through Contractor, its Subcontractors, or any of their respective employees due to Owner's non-payment of undisputed amounts properly due and payable to Contractor under this Agreement (the "Permitted Liens").

(b) If there arises a Lien by, through or under Contractor, any Subcontractor or any of their respective employees that violates Contractor's obligations under Section 2.20(a), then Contractor shall:

(i) promptly, following receipt of written notice of such Lien or of Contractor's becoming aware of the assertion of such Lien, provide written notice thereof to Owner; and

(ii) as soon as reasonably practicable, but in no event later than fifteen (15) Business Days after the date that Contractor receives written notice that such Lien was filed, recorded or asserted, or otherwise becomes aware of such Lien, either (x) pay or discharge, and discharge of record, any such Lien, (y) pay the appropriate amount into a court of competent jurisdiction in order to have the Lien vacated of record, or (z) provide, at Contractor's option, either a bond or letter of credit from a surety or

commercial bank reasonably acceptable to Owner to protect against such Lien (which bond or letter of credit shall be in form, substance and amount sufficient (after satisfying all procedural and substantive requirements therefor under Applicable Law) to discharge such Lien such that it is neither enforceable against Owner nor any asset of Owner and to permit Owner to obtain title insurance with no exceptions for such Lien), and provided that Owner shall have the right to withhold from any payment due to Contractor under this Agreement an amount sufficient to protect Owner from the Lien(s) filed, recorded or asserted in writing (not to exceed 200% of the face amount of the Lien) until the payment, discharge or bonding over of such Lien. Notwithstanding the foregoing, Contractor shall in any event discharge, release and remove of record any such Lien no later than the date that is the earliest to occur of: (a) twelve (12) Business Days prior to the date the existence of such Lien would give rise to a default under any financing documents or similar agreements Owner or, with respect to the Facility, any of its Affiliates has entered into with any Lenders, as determined by Owner and communicated to Contractor no less than fifteen (15) days prior to the date such default would otherwise arise; (b) seven (7) Business Days following the date that the claimant under any such Lien commences procedures to foreclose upon such Lien; (c) twelve (12) Business Days after the date Owner notifies Contractor of a request or demand from a Lender that such Lien be discharged, released and removed of record; and (d) the date the final payment is due to Contractor hereunder.

(iii) Upon the failure of Contractor to perform its obligations under Section 2.20(b), Owner may, but shall not be obligated to, either (i) obtain a bond, letter of credit or other security for such Lien and, upon posting of such security therefor, shall be entitled to recover promptly from Contractor the reasonable costs and expenses incurred by Owner in connection therewith, or (ii) offset the amount of any such Lien from any amounts otherwise due to Contractor hereunder or draw upon any letter of credit provided by Contractor hereunder (including the Letter of Credit) and thereafter pay, release, satisfy and discharge such Lien. Additionally, if Contractor fails to perform its obligations under this Section 2.20, Contractor shall pay or reimburse Owner for any costs and expenses incurred by Owner in releasing, discharging and satisfying any such Lien (including, without limitation, any reasonable attorneys' fees and other court costs) and shall indemnify, defend and hold harmless the Owner Indemnified Parties to the extent required under Section 11.1(iv). The terms and provisions of this Section 2.20 shall survive the expiration or termination of this Agreement.

2.21 Books and Records. Contractor shall keep and maintain books, records and accounts showing payments made to Contractor by Owner for Work performed on a time and materials basis or other non-fixed price basis (together with supporting documentation). Such books, records and accounts shall be maintained by Contractor for at least five (5) years after the Final Completion Date.

(i) Contractor shall keep and maintain full and detailed books, construction and manufacturing logs, records, daily reports, accounts, schedules, payroll records, receipts, statements, electronic files, correspondence and other pertinent documents as may be necessary for proper management under this Agreement, as required under Applicable Law or this Agreement, and in any way relating to this Agreement ("Books and Records"). Contractor shall maintain all such Books and Records in accordance with GAAP applicable in the United States and shall retain all such Books and Records for a minimum period of time equal to the greater of: (i) seven (7) years after Final Completion, (ii) such period of time as may be required under Applicable Law, and (iii) the time period required for resolution of all Third Party claims arising out of or relating to this Agreement, the Work or the Facility.

(ii) Upon reasonable notice, Owner, Lender, and any of their representatives, including the Independent Engineer, shall have the right to audit or to have audited Contractor's Books and Records (including all amounts billed under any Change Orders that are not a lump sum price and any items not part of such lump sum price, such as allowances); *provided, however,* that such parties shall not have the right to audit or have audited Contractor's Books and Records in connection with the internal composition of any compensation that is fixed in amount hereunder, except to the extent that any such compensation has any bearing with respect to (i) any claims brought by Contractor for extra compensation (excluding agreed upon Change Orders) and such claims depend in whole or in part on the internal composition of any such fixed amounts, (ii) any proceeding (including any civil, criminal or administrative proceeding or investigation) before any Governmental Authority in which Owner is involved and such information is necessary in the written opinion of the Governmental Authority, (iii) regulatory compliance, standards or demands from any Governmental Authority in writing; or (iv) any amounts for which Contractor seeks payment if this Agreement is terminated by Owner under Sections 16.1 or 16.4. When requested by Owner, Contractor shall provide the auditors with reasonable access to all such Books and Records, and Contractor's personnel shall cooperate with the auditors to effectuate the audit or audits hereunder. The auditors shall have the right to copy all such Books and Records at their cost. Contractor shall bear all costs and expenses incurred by it in assisting Owner with audits performed pursuant to this Section 2.21. The restrictions in this Section 2.21 to the audit rights of Owner, Lender or Lender's independent engineer shall not control over any rights such parties have under Applicable Law, in discovery in any litigation arising out of Article 18 or in any litigation against Guarantor.

2.22 Special Tools. Contractor shall provide all special tools and lifts identified in Exhibit E necessary for the assembly, erection, installation, start-up, commissioning and testing of the Equipment (the "Special Tools"). Contractor shall deliver the Special Tools to the Site on or before the delivery of the associated Equipment to the Delivery Point.

2.23 Spare Parts List. Contractor shall provide all spare parts, including: (i) start-up and commissioning spare parts and (ii) spare parts ordered for or by Owner, prior to Substantial

Completion, in accordance with the Requirements, as sourced from General Electric under the Power Island Supply Agreement (if any). Contractor shall properly store and maintain all spare parts in strict accordance with manufacturer's requirements Spare parts ordered by Contractor must be equivalent or better than and interchangeable with the original parts they are intended to replace. Spare parts must be properly treated and packed for prolonged storage, considering Site ambient conditions. All boxes and packing must be labeled, marked and numbered for identification and a detailed packing list shall be provided by Contractor. Contractor shall implement all necessary precautions for proper storage. Contractor shall provide spare parts information to Owner in Excel® spreadsheet format. Contractor shall be entitled to use any spare parts that are acquired by Owner and are then available on the Project Site; provided, that Contractor shall place an order to replace the spare parts it uses immediately (and promptly provide Owner evidence that re-ordering has occurred) and any such parts shall be replaced Delivered Duty Paid (DDP) Project Site (Incoterms 2010) as soon as possible at Contractor's expense. Contractor shall provide to Owner a list of strategic and other spare parts that Contractor and its Subcontractors recommend be purchased to maintain reliable operations. The spare parts list shall identify the price of each such part, General Electric and other vendors, General Electric's part name and General Electric's part number, expected useful life and typical delivery lead times. Such list will be delivered to Owner no later than one hundred fifty (150) Days prior to the date shown for Mechanical Completion in the Project Schedule. Contractor will prepare and negotiate purchase orders with the applicable original equipment manufacturer for additional spare parts requested by Owner, which shall provide that all such additional spare parts shall be delivered to the Project Site. Owner will execute and pay for such purchase orders. Contractor will provide, as part of the Contract Price, inspection, expediting, receipt and storage services with respect to such purchase orders until Substantial Completion. Contractor will cooperate with Owner to determine the best pricing for obtaining spare parts. Contractor and Owner will cooperatively determine whether or not any spare parts should be purchased as part of the original Equipment purchase orders entered by Contractor. If the Parties agree to include the purchase of spare parts in any such original purchase order, the cost of such spare parts (other than start-up and commissioning spare parts) will be charged to Owner and is not a part of the Contract Price.

2.24 Hazardous Substances. (a) Contractor shall transport and handle all Hazardous Substances that Contractor or any of its Subcontractors brings to the Site in accordance with all applicable Environmental Laws. Contractor and its Subcontractors shall label Hazardous Substances that each brings to the Site and shall train their personnel in the safe usage and handling of such Hazardous Substances, including any training that is required by Applicable Law. Contractor shall bear all costs and expenses and shall be solely liable for any reporting, response, removal, transportation, disposal, investigation, cleanup or other investigatory, remedial, or corrective action (in all cases by licensed, insured, competent and professional contractors in a safe manner and in accordance with Applicable Law) required by any Applicable Law, including Environmental Laws, as a result of any Hazardous Substances that are brought on, transported to, handled, treated, released, generated, disposed, discharged, used or stored on or at the Site by Contractor or any of its Subcontractors or any Person for whom any of them may be responsible. As between Owner and Contractor, Owner shall be liable (and shall arrange) for the reporting, response, removal, transportation, disposal, investigation, cleanup or other investigatory, remedial, or corrective action (in all cases by licensed, insured, competent and professional contractors in a safe manner and in

accordance with Applicable Laws) required by any Applicable Law, including Environmental Laws, as a result of (i) any Hazardous Substances properly brought to the Site by Contractor or its Subcontractors in quantities reasonably necessary for the performance of the Work of which Owner had knowledge of the same and which were subsequently released or discharged by Owner (but only to the extent of such release or discharge by Owner or for any Person for whom Owner may be liable other than Contractor or its Subcontractors) or (ii) any Pre-Existing Hazardous Substances existing at the Site as of the Effective Date (except to and only to the extent Contractor, its Subcontractors or any Person for whom any of them may be responsible had knowledge of the same and subsequently released, discharged or exacerbated the same). Contractor shall not commence or continue any construction activities on any portion of the Site on, in or under which remedial actions related to such Hazardous Substances are to be (or are being) performed until such actions are to the point where Contractor's construction activities will not interfere with such remedial actions. The terms and provisions of this Section 2.24 shall survive the expiration or termination of this Agreement.

(b) Throughout performance of the Work, Contractor and its Subcontractors shall conduct all operations in such a way as to minimize impact upon the natural environment and prevent any release or spread of contaminated or Hazardous Substances. In the event Contractor or its Subcontractors encounter at the Site any material reasonably believed to be contaminated or a Pre-Existing Hazardous Substance in such quantities or at such levels that may require investigation or remediation pursuant to Applicable Law and not arising as a result of the performance of the Work, Contractor and its Subcontractors shall take reasonable precautions to avoid exacerbating any such material reasonably believed to be contaminated or a Pre-Existing Hazardous Substance and immediately stop work in the affected area and notify Owner of the condition. Pending receipt of written instructions from Owner, Contractor shall not resume Work in the affected area. If any such Pre-Existing Hazardous Substance (or any such material reasonably believed to be contaminated or a Pre-Existing Hazardous Substance) that has not been disclosed in the Environmental Reports directly causes a demonstrated increase in Contractor's cost to perform the Work or the time required for performance of any part of the Work, an equitable adjustment shall be made in the Contract Price and Milestone Schedule.

2.25 Protection of Persons and Property. Contractor shall be responsible for initiating, maintaining and supervising safety precautions and programs in connection with the performance of the Work. Contractor shall comply with Applicable Law bearing on the health and safety of persons and the safety of property. Contractor is responsible for, and shall take all reasonable precautions and measures to ensure, the security of the Site and shall coordinate such precautions and measures with Owner's security functions if requested. Contractor shall appoint a full-time Site safety officer responsible for introducing, administering, and monitoring procedures to promote safe working conditions at the Site. Contractor shall establish a hazardous substance management plan and an emergency response plan for the Project.

2.26 Labor Relations. Contractor is responsible for maintaining labor relations on the Site in such manner that there is harmony among the employees of Contractor and its Subcontractors. Contractor and its Subcontractors shall conduct their labor relations in accordance with the recognized prevailing local area practices. Contractor shall inform Owner promptly of any labor

dispute, anticipated labor dispute, request or demand by a labor organization, its representatives or members which may reasonably be expected to affect the Work. Contractor further agrees to inform Owner, before any commitments are made, about the negotiations of any Project specific agreements or understandings with local or national labor organizations relative to this Project, including any Project labor agreement. Contractor shall be responsible for establishing and implementing wage rates and labor productivity controls for the Work.

2.27 Surface and Subsurface Conditions. Owner has provided Contractor with the preliminary geotechnical reports (the "Subsurface Reports") as set forth on Exhibit AA. Contractor's design set forth in Exhibit A is based upon such Subsurface Reports. Owner has not made and shall make no express or implied warranty to Contractor as to the accuracy and completeness of any subsurface information that has been or may be supplied by Owner to Contractor (including the Subsurface Reports), and Owner shall not be liable for breach of any representation or warranty to Contractor for any such information provided by Owner with respect to the Site. Notwithstanding the foregoing, Contractor has not made any independent inspection of the subsurface conditions nor has it verified the accuracy of the Subsurface Reports. Contractor expressly assumes any and all costs and risks associated with performing the Work as it relates to known subsurface conditions at the Site, including buried structures, and subsurface conditions, to the extent the same are forth in the Subsurface Reports or the Phase I and II environmental site assessment reports described in Appendices Q and R of Exhibit A ("Environmental Reports"), and any subsurface conditions that should have been reasonably expected to exist at the Site based upon the subsurface characteristics of the Site and the results of the Subsurface Reports and Environmental Reports. Contractor acknowledges that Owner and Contractor will be required to provide continued access to certain infrastructure and monitoring wells located on the Site to enable the owner of the nearby Ormet Superfund site to the east of the Site to comply with such owner's ongoing site monitoring and remediation obligations. To the extent that actual surface or subsurface conditions at the Project Site differ from (i) the subsurface conditions known and disclosed in the Subsurface Reports and Environmental Reports or (ii) known conditions (with Contractor being deemed to have knowledge of all surface conditions existing at the Site as of the date of Contractor's inspection of the Site, which inspection shall occur not later than thirty (30) days after Owner provides written notice that Owner's demolition contractor has substantially completed its demolition work, which is targeted for completion by March 15, 2019), including subsurface conditions which are ordinarily encountered and that should have been reasonably expected (in quantity and nature) to exist at the Site based upon the results of the Subsurface Reports and Environmental Reports, Contractor shall be entitled to seek a Change Order pursuant to Section 8.1 with respect to demonstrable impacts for such difference. No adjustment in the Contract Price and/or Milestone Schedule shall be made to account for known subsurface conditions, conditions disclosed in the Subsurface Reports and Environmental Reports or conditions that should have been reasonably expected (in quantity and nature) to exist at the Site based upon the results of the Subsurface Reports and Environmental Reports.

2.28 Archeological and Related Findings. Contractor shall reasonably promptly advise Owner of any findings of archeological items, plant/animal life, endangered species, burial grounds, historical artifacts or the like which are, or may be, protected under Applicable Law or applicable Permits ("Archeological and Related Findings") and, use its commercially reasonable efforts to

avoid any delay in the Work occasioned by such findings. Owner shall reasonably promptly give Contractor written instructions on handling such findings and all related Work, and Contractor shall comply with such reasonable instructions of Owner to the extent they comply with Applicable Law. Contractor shall develop and implement an unanticipated archaeological/cultural resources discoveries plan in accordance with the Ohio Power Siting Board letter of notification and staff report included in Appendix P of Exhibit A hereto. Contractor shall be entitled to seek a Change Order equitably adjusting the Contract Price and/or Milestone Schedule pursuant to Section 8.1 with respect to demonstrable impacts arising from any such Archeological and Related Findings that were not set forth in the Subsurface Reports or Environmental Reports as of the Effective Date.

2.29 Design and Engineering.

(a) As engineer of record, Contractor has full design and engineering responsibility for the performance of the Work. Contractor shall engage all supervisors, engineers, designers, draftsmen, Subcontractors, and others necessary for the design and engineering of the Facility and the preparation of all drawings, specifications, plans, reports, and other design and engineering documentation (including all media and calculations) for the Work, setting forth in detail the requirements for the construction of the Facility in accordance with this Agreement and Section 01200 "Contract Drawings and Documents" in Exhibit A ("Design Documents"). Contractor shall design and engineer the Facility in accordance with Requirements to be capable of operating in conformance with the Performance Guarantees. During performance of the Work, Contractor shall upload to and maintain the Design Documents on a web-based database as and when such Design Documents (or iterations thereof) are completed or revised and Owner shall have unlimited access (including download capability) to the Design Documents through an agreed upon electronic data management system ("EDMS"). Prior to the end of the Warranty Period, Contractor shall provide a copy of such material in an electronic medium acceptable to Owner.

(b) The Design Documents listed in Section 01200 "Contract Drawings and Documents" in Exhibit A that are subject to review by Owner ("Design Deliverables") shall be submitted to Owner, Owner's Engineer and the Independent Engineer through the EDMS in an agreed format(s). Owner will be entitled, but not obligated, to review or comment on such Design Deliverables within fourteen (14) days of receipt thereof. Contractor shall not commence the Work related to such Design Deliverables without having given due consideration to Owner's comments submitted during such fourteen (14) day period. Contractor shall, prior to commencement of Work related to such Design Deliverables, resubmit such Design Deliverables on which Owner has commented: (i) showing the changes, if any, made by Contractor in response to such comments and (ii) providing a reasonable explanation if it has not accepted any of Owner's comments.

(c) Design Documents will be deemed final when identified by Contractor as "issued for permit or for construction," except Design Deliverables that are subject to review and comment by Owner during the fourteen (14) day period provided in Section 2.29(b). Design Documents that are required by Applicable Law to be certified, stamped, or under seal shall be certified, stamped, or sealed by registered professional engineers, licensed and qualified to perform engineering services in the applicable jurisdictions. No review, comment, approval or lack of disapproval of Owner, nor any acceptance or acknowledgment of any of the Work, shall, in any way, relieve Contractor of any

of its guarantees or obligations hereunder, including its responsibility for errors and omissions, confirming all quantities, selection of fabrication processes, construction techniques, the accuracy of the dimensions, details, and the quality of its instruments of service prepared in connection with the Facility as well as its responsibility for the quality, integrity, safety, and timely performance of the Work.

2.30 Utility Usage. Contractor shall provide and pay for potable water, the sewer connection, and the construction power connections required in connection with performance of the Work prior to the Substantial Completion Date. Contractor shall provide its own information technology and telecommunications, cable, or satellite communications. Contractor shall provide to Owner a detailed list of those Consumables that it intends to use in the performance of the Work that are of a nature that continuing use of such Consumables will be necessary during operation of the Facility. Within thirty (30) Days of receiving such list, Owner will specify, in writing, the vendor it intends to use to provide each of such Consumables. Contractor will purchase such Consumables from the specified vendor directly or as Owner and Contractor may otherwise agree. Contractor shall be responsible for providing a first fill of all Consumables for the Work as part of the Contract Price.

2.31 Coordination. Contractor shall provide for coordination of the activities of Contractor's and its Subcontractors' forces with the activities of Owner's forces and each of its separate contractors. Contractor shall afford all separate contractors reasonable opportunity for storage of their materials and equipment and for performance of their work on the Site provided the same agree to abide by any reasonable Site safety rules and procedures. Contractor shall reasonably cooperate and coordinate its Work with Owner's other contractors performing services on the Site. Owner shall direct all separate contractors to cooperate with Contractor and to avoid actions that could unreasonably interfere with the activities of Contractor. Contractor acknowledges that a portion of the Site near the existing switchyard will be shared with another contractor performing switchyard de-energization work as described in Exhibit I, and Contractor agrees to cooperate, and coordinate the performance of the Work affecting such portion of the Site, prudently and in a reasonable manner with such other contractor, and otherwise in accordance with this Agreement.

2.32 Monitoring Wells. In accordance with Exhibit A, Contractor shall identify any monitoring wells on the Site which will require relocation in connection with the Work, and Owner shall coordinate such relocation with the applicable Governmental Authorities and perform (or cause to be performed) the physical relocation of such wells at Owner's expense by the time set forth on the Milestone Schedule.

ARTICLE 3

OWNER

3.1 Owner's Manager. Owner shall appoint a single representative to act as its manager and as the coordinator of this Agreement on Owner's behalf (the "Owner's Manager"). The Owner's Manager shall act as the liaison for Owner's communications with Contractor. The Owner's Manager shall coordinate all activities of Owner, including reporting activities, communication activities,

and insurance procurement and administration. Only those directives issued in writing by the Owner's Manager that do not amend or modify any of the provisions of this Agreement shall be binding upon Owner, it being expressly agreed by Contractor that no oral communications by the Owner's Manager nor any written communications by the Owner's Manager that would amend or modify any provision of this Agreement (excluding written Change Orders) shall be binding upon Owner.

3.2 Operating Personnel. Owner shall provide the operating personnel necessary to support Contractor in the initial operation of the Facility (i.e., the start-up and commissioning of the Facility). The operating personnel shall take direction from the Contractor and will be limited to four (4) professionals a day with the primary purpose of being trained in the operation of the Facility. Contractor shall have no obligations or liabilities for actions taken by such operating personnel unless the same is done at Contractor's direction.

3.3 Records. Owner shall keep proper records of the operation and maintenance of the Facility during the Warranty Period in accordance with prudent industry practices.

3.4 Hazardous Materials. Owner has provided the Environmental Reports to Contactor. Prior to mobilization to the Site, Owner shall implement and complete the remediation activities set forth on Exhibit I.

3.5 Fuel, Water, and Consumables. (a) Owner shall provide, at the relevant Site boundary interface point, natural gas, and all utilities, including water and sewer (including sanitary, storm and process) for testing and, after backfeed has occurred, electricity, as set forth in Exhibit A, to enable construction, testing, start-up, commissioning, and initial operation of the Facility, and all Performance Tests in accordance with the Milestone Schedule.

(b) Owner shall be responsible for providing all Consumables other than the first fill, which shall be provided by Contractor.

3.6 Electric Power. Owner shall provide electric power for the construction, energization, commissioning, operation, and testing of the Facility as further set forth in Exhibit A.

3.7 Licenses and Permits. Owner shall obtain any Owner Permits in a timely manner such that it does not delay Contractor's performance of the Work in accordance with the Milestone Schedule. Owner shall assist Contractor in Contractor's endeavors to secure the Contractor Permits and cooperate with Contractor by providing information and support during any hearings in the process of obtaining such permits. In undertaking such assistance, Owner shall not be obligated to incur any material out-of-pocket costs and expenses without reimbursement from Contractor.

3.8 Scheduling and Delivery of Output. Owner shall arrange for the delivery of all electric energy generated by the Facility. Contractor shall comply with the scheduling and nomination procedures for delivery of electric energy to be mutually developed by the Parties no later than sixty (60) days prior to the date for such delivery set out in the Milestone Schedule. Upon receipt of adequate notice from Contractor in accordance with such scheduling and nomination procedures, Owner shall coordinate delivery of electric energy from the Facility to conduct start-

up, operation, or testing; provided that Owner shall only be required to provide for such delivery in accordance with the Milestone Schedule.

3.9 Access. Owner will provide Contractor with sufficient and timely access to the Site in order to conduct any Work under this Agreement.

3.10 Taxes. Notwithstanding anything in the Agreement to the contrary, Owner shall be solely responsible for and shall pay, as required by Applicable Law (but subject to its rights to contest), the appropriate Governmental Authority, all: (i) real property taxes assessed on the Site and the Facility; (ii) property and ad valorem taxes assessed on Equipment, Materials, and Spare Parts following delivery to the Site or any location at which Owner has accepted title to same, and (iii) the Taxes for which Owner is expressly responsible pursuant to Section 2.5(b) of this Agreement.

ARTICLE 4

SCHEDULE

4.1 Commencement. Contractor shall commence the performance of its obligations under this Agreement upon its receipt of the Notice to Proceed, and shall thereafter perform the Work in accordance with the Milestone Schedule.

4.2 Mechanical Completion. (a) Contractor shall deliver to Owner a consolidated Punch List not later than thirty (30) days prior to the anticipated date of Mechanical Completion, and Owner agrees to review and provide preliminary feedback on Contractor's proposed Punch List within a reasonable period after receipt thereof (not to exceed 15 days), and thereafter the Parties agree to work diligently towards the finalization of a Punch List reasonably acceptable to Owner. Provided that the other conditions to Mechanical Completion have been satisfied, Substantial Completion will occur notwithstanding that the Punch List items remain to be completed by Contractor, provided that Contractor shall commence promptly and diligently pursue to completion such Punch List items, and Contractor shall minimize interference with Owner's commercial operation of the Facility while performing any Punch List work after the Substantial Completion Date.

(b) When Contractor believes that Mechanical Completion has been achieved, Contractor shall so notify Owner and Owner's Engineer in writing. Promptly thereafter, Owner shall conduct those investigations and inspections as it deems necessary or appropriate to determine if Mechanical Completion has in fact been achieved. Within ten (10) Business Days after the receipt of Contractor's notice by Owner, Owner shall either (i) notify Contractor that Mechanical Completion has been achieved, or (ii) notify Contractor that Mechanical Completion has not been achieved and stating the reasons therefor. In the event Owner provides written notice that Mechanical Completion has been achieved, Contractor and Owner shall execute a "Certificate of Mechanical Completion", attached hereto as Exhibit M, establishing and identifying the date Contractor provided the corresponding notice of Mechanical Completion as the Mechanical Completion Date. In the event Owner provides written notice that Mechanical Completion has not been achieved, Contractor

shall (subject to the terms of Article 5), at its sole cost and expense, and as part of the Work, immediately correct and/or remedy the defects, deficiencies and other conditions which so prevent Mechanical Completion. Upon completion of any such corrective and/or remedial actions, Contractor shall resubmit its notice stating that it believes that Mechanical Completion has been achieved and the foregoing procedures shall be repeated until Mechanical Completion has in fact been achieved.

4.3 Substantial Completion & Liquidated Damages for Delay. (a) Contractor covenants and agrees that Substantial Completion shall be achieved not later than the Guaranteed Substantial Completion Date.

(b) Contractor shall deliver to Owner a consolidated updated Punch List not later than twelve (12) days prior to the anticipated date of Substantial Completion, and Owner agrees to review and provide preliminary feedback on Contractor's proposed Punch List within a reasonable period after receipt thereof (not to exceed five (5) Business Days), and thereafter the Parties agree to work diligently towards the finalization of a Punch List reasonably acceptable to Owner. Provided that the other conditions to Substantial Completion have been satisfied, Substantial Completion will occur notwithstanding that the Punch List items remain to be completed by Contractor, provided that Contractor shall commence promptly and diligently pursue to completion such Punch List items, and Contractor shall minimize interference with Owner's commercial operation of the Facility while performing any Punch List work after the Substantial Completion Date.

(c) When Contractor believes that Substantial Completion has been achieved, Contractor shall so notify Owner and Owner's Engineer in writing. Promptly thereafter, Owner shall conduct those investigations and inspections as it deems necessary or appropriate to determine if Substantial Completion has in fact been achieved. Within five (5) days after the receipt of Contractor's notice by Owner, Owner shall either (i) notify Contractor that Substantial Completion has been achieved, or (ii) notify Contractor that Substantial Completion has not been achieved and stating the reasons therefor. In the event Owner provides written notice that Substantial Completion has been achieved, Contractor and Owner shall execute a "Certificate of Substantial Completion", attached hereto as Exhibit N, establishing and identifying the Substantial Completion Date. In the event Owner provides written notice that Substantial Completion has not been achieved, Contractor shall (subject to the terms of Article 5), at its sole cost and expense, and as part of the Work, immediately correct and/or remedy the defects, deficiencies and other conditions which so prevent Substantial Completion. Upon completion of any such corrective and/or remedial actions, Contractor shall resubmit its notice stating that it believes that Substantial Completion has been achieved and the foregoing procedures shall be repeated until Substantial Completion has in fact been achieved; provided however, for any resubmitted notice, Owner shall respond within two (2) days after receipt of Contractor's notice (provided that at least one (1) of such two (2) days shall be a Business Day). For the sake of clarity, when it is ultimately determined that Substantial Completion has been achieved, the Substantial Completion Date for purposes of calculating Substantial Completion Liquidated Damages shall be deemed the date Contractor sent the corresponding notice to Owner pursuant to this Section (and not the date upon which Owner confirms Substantial Completion has been achieved) so long as Substantial Completion has been achieved as stated in such notice from Contractor. Notwithstanding the foregoing, once Owner puts the

Facility into commercial operation (which commercial operation shall not be deemed to include any operation of the Facility during which revenue is generated solely as a result of start-up activities, commissioning or Performance Tests and related activities in the normal course), any Substantial Completion Liquidated Damages shall cease to accrue (if any), and the Warranty Period shall begin.

(c) The Parties agree that it would be extremely difficult and impracticable under the presently known and anticipated facts and circumstances to ascertain and fix the actual damages Owner would incur if Contractor fails to achieve Substantial Completion on or before the Guaranteed Substantial Completion Date. Accordingly, if Contractor fails to achieve Substantial Completion on or before the Guaranteed Substantial Completion Date, then Owner shall be entitled to recover from Contractor as liquidated damages for any such delays, and not as a penalty, the following amounts per day for each day after the Guaranteed Substantial Completion Date until the date Substantial Completion is achieved (the "Substantial Completion Liquidated Damages"):

(i) $[***] per day for the first fifteen (15) days of delay;

(ii) $[***] per day for the next thirty (30) days of delay; and

(iii) $[***] per day for any subsequent days of delay.

It is acknowledged and agreed by the Parties hereto that the liquidated damages identified in this Section relate solely to the failure of Contractor to achieve Substantial Completion on or before the Guaranteed Substantial Completion Date, and to no other duty or obligation of Contractor (including, without limitation, Contractor's obligation to properly complete the Work). It is further acknowledged and agreed by the Parties hereto that (A) other than Owner's right to terminate this Agreement for a Contractor Default under Section 16.1(a) and Owner's related rights and remedies upon such termination (including, without limitation, those under Section 16.1(b)), the liquidated damages identified in this Section are Owner's sole and exclusive remedy for the failure of Contractor to achieve Substantial Completion on or before the Guaranteed Substantial Completion Date, and (B) the liquidated damages identified in this Section are a good faith estimate of the damages Owner would suffer in the event Substantial Completion is not achieved by the Guaranteed Substantial Completion Date.

4.4 Final Completion. Upon achievement of Substantial Completion, Contractor shall be required to complete any and all Work required to achieve Final Completion in a manner consistent with the operational requirements of the Facility as directed by Owner. Contractor shall schedule and coordinate with Owner any Work, including any repeated Performance Testing, required to achieve Final Completion to minimize any adverse impact on Owner's ability to operate the Facility. When Contractor believes that it has achieved Final Completion, Contractor shall so notify Owner and Owner's Engineer in writing. Promptly thereafter, Owner shall conduct those investigations and inspections as it deems necessary or appropriate to determine if Final Completion has in fact been achieved. Within seven (7) Days after the receipt of Contractor's notice, Owner shall either (i) notify Contractor that Final Completion has been achieved, or (ii) notify Contractor that Final Completion has not been achieved and stating the reasons therefor. In the event Owner provides written notice that Final Completion has been achieved, Contractor and Owner shall execute a "Certificate of Final Completion", attached hereto as Exhibit O establishing and identifying the

Final Completion Date. In the event Owner provides written notice that Final Completion has not been achieved, Contractor shall, at its sole cost and expense, and as part of the Work, immediately correct and/or remedy the defects, deficiencies and other conditions which so prevent Final Completion. Upon completion of such corrective and/or remedial actions, Contractor shall resubmit its notice stating that it believes Final Completion has been achieved and the foregoing procedures shall be repeated until Final Completion has in fact been achieved.

ARTICLE 5

PERFORMANCE TESTING & PERFORMANCE GUARANTEES

5.1 Performance Guarantee. Contractor shall achieve all Minimum Performance Criteria for the Facility. Contractor guarantees that the Facility shall successfully achieve all of the Performance Guarantees in connection with a Completed Performance Test in which all of the Minimum Performance Criteria are also achieved.

5.2 Performance Tests. The Performance Tests for determining whether the Facility achieves the Minimum Performance Criteria and Performance Guarantees are described in Exhibit A. Performance Tests and any repeat Performance Tests shall be performed as specified in Exhibit A. Performance Tests shall (i) be conducted in the presence of Owner, Owner's Engineer and Independent Engineer and (ii) utilize the operating personnel provided by Owner, acting under the technical direction and supervision of Contractor. Contractor shall be entitled to provide test technicians for purposes of data collection and similar services during the Performance Tests; provided, that such technicians must not operate the Equipment during any such test. If Contractor fails to successfully perform any of the Performance Tests, the Defects and other conditions that so prevent performing such tests successfully must be promptly thereafter corrected or remedied and such tests shall be re-performed in accordance with Section 5.3. As soon as reasonably practicable following the performance of any Performance Test, Contractor shall submit to Owner a detailed report explaining and analyzing the Performance Test and the results obtained, together with gross and reduced data and such other information as is required hereunder or is reasonably requested by Owner in order to allow Owner to have the requisite information needed to make informed judgments. Performance Tests conducted after the Substantial Completion Date must be scheduled with due regard for minimizing the operating expenses of and maximizing revenues to be derived from Facility operations during such tests and avoiding disruption of Owner's operations. All revenues (if any) derived from the operation of the Facility during any Performance Test or otherwise are the property of Owner and Owner shall retain such revenues.

5.3 Procedures Upon Failure. (a) Contractor shall perform, and re-perform, the Performance Test until all of the Minimum Performance Criteria have been successfully achieved in connection with a Completed Performance Test. In confirmation and furtherance of the foregoing, Contractor covenants and agrees that its obligation to assure that the Facility so achieves the Minimum Performance Criteria in connection with a Completed Performance Test is absolute (and that Contractor shall, at its sole cost and expense, implement all corrective and/or remedial measures until the Minimum Performance Criteria are in fact achieved in connection with a Completed Performance Test). Contractor shall do all things necessary to achieve the Minimum Performance

Criteria notwithstanding that the amounts incurred by Contractor to do so may exceed the Contract Price.

(b) If, after the performance of the initial Completed Performance Test, the Facility fails to meet or exceed the Minimum Performance Criteria, Contractor shall, at Contractor's sole cost and expense and within ninety (90) days thereafter correct and/or remedy the defects, deficiencies and other conditions which so prevent the achievement of such minimum required performance levels. Upon completion of any such corrective and/or remedial actions, Contractor shall notify Owner. As soon as reasonably practicable after Owner's receipt of such notice, Contractor shall re-perform the Performance Tests. The foregoing procedures shall be repeated until the Facility achieves the Minimum Performance Criteria in connection with a Completed Performance Test. Subject to Sections 3.5 and 3.6, any such Performance Tests performed by Contractor and any test personnel and test equipment shall be at Contractor's sole cost and expense.

(c) In the event that Substantial Completion does not occur on or before the Guaranteed Substantial Completion Date due to Contractor's failure to fulfill its obligations under this Agreement that are conditional to Substantial Completion, Contractor will not be entitled to pay Performance Liquidated Damages in lieu of achieving the Minimum Performance Criteria and must continue to diligently pursue achievement of Substantial Completion.

5.4 Minimum Performance Criteria Achieved; Cure Period. In the event the Project achieves Substantial Completion, having satisfied the Minimum Performance Criteria, but not having fully achieved all of the Performance Guarantees, as evidenced by the Performance Test results (such completed Performance Test in which the Minimum Performance Criteria have been so satisfied in order to achieve Substantial Completion being herein referred to as the "First Completed Minimum Performance Test"), Contractor shall be entitled to the Cure Period within which to correct such performance shortfall, and Contractor, at its expense, shall correct and/or remedy the defects, deficiencies and other conditions which so prevent achievement of the Performance Guarantees, and Contractor shall promptly prepare a corrective work plan based on information then currently known that describes in reasonable detail the process Contractor intends to follow to achieve such Performance Guarantees and submit such plan to Owner for its review and approval. Owner shall have the right to provide comments to such work plan and the Parties shall thereafter promptly and in good faith confer and make all reasonable efforts to resolve such issues. Upon Owner's approval of such corrective work plan, Contractor shall immediately commence and promptly complete corrective measures to rectify the cause of such failure, including correcting defects or deficiencies in the Work (including redesign and replacement of any defective parts), and make any necessary adjustments, but at all times performing such corrective actions in accordance with Owner's operation and maintenance schedule so as to not unreasonably interfere with the operation of the Facility and Owner's security and safety requirements. Owner shall provide Contractor with reasonable access to the Work sufficient to perform such corrective actions under this Agreement, so long as such access does not unreasonably interfere with operation of the Facility or Owner's obligations under any power purchase agreement and subject to any reasonable security or safety requirements of Owner; provided, however, Contractor recognizes that Owner will be commercially operating the Facility during the Cure Period and Contractor shall schedule and coordinate with Owner any Work, including support of Performance Testing, and minimize the

downtime or curtailed operation of the Facility, or other adverse impact on Owner's ability to operate the Facility, during the Cure Period. To the extent that Contractor reasonably needs an outage or to curtail operation, and Owner needs to keep the Facility in full service because of peak energy demands, and Contractor can reasonably agree that continued operation of the Facility is not a safety or potential damage related concern, then Contractor and Owner may mutually agree to an equitable extension of the Cure Period based on Contractor's remedial plan, as approved by Owner. Contractor shall provide at least seven (7) days' notice to Owner when it proposes to perform such corrective actions. Upon completion of any such corrective and/or remedial actions, Contractor shall notify Owner. As soon as reasonably practicable after Owner's receipt of such notice, Contractor shall re-conduct the Performance Tests. Subject to Article 3, any such Performance Tests performed by Contractor and any test personnel, and test equipment shall be at Contractor's sole cost and expense. If the Facility has not successfully achieved all of the Performance Guarantees by the end of the Cure Period in connection with a Completed Performance Test in which all of the Minimum Performance Criteria were also achieved, then Contractor shall cease taking corrective actions to achieve the Performance Guarantees, and in that event, Contractor shall pay Owner in accordance with Section 5.5 the applicable Performance Liquidated Damages for such Performance Guarantees not achieved based on the results of the last Performance Test conducted by Contractor in which the Minimum Performance Criteria were also achieved (the "Last Completed Performance Test"; it being acknowledged and agreed that if no Completed Performance Test in which all of the Minimum Performance Criteria were achieved occurs during the Cure Period, then the First Completed Minimum Performance Test shall be deemed the Last Completed Performance Test). Contractor shall not take any action during the Cure Period which will result in the Facility's performance falling short of the Minimum Performance Criteria. If the Minimum Performance Criteria are not achieved during the last Performance Test conducted by Contractor during the Cure Period, Contractor shall, at Contractor's sole cost and expense and within ninety (90) days after notice thereof from Owner, correct and/or remedy the defects, deficiencies and other conditions which so prevent achievement of the Minimum Performance Criteria. As soon as is reasonably practicable after Contractor's completion of such corrective and/or remedial actions and Owner's receipt of notice of Contractor of the same, Contractor shall re-perform the Performance Test. The foregoing procedures shall be repeated until the Facility achieves the Minimum Performance Criteria in connection with a completed Performance Test.

5.5 Performance Liquidated Damages. The Parties agree that it would be extremely difficult and impracticable under the presently known and anticipated facts and circumstances to ascertain and fix the actual damages Owner would incur should Contractor achieve Substantial Completion, but fail to successfully achieve each of the Performance Guarantees by the end of the Cure Period. Accordingly, if Contractor achieves Substantial Completion, but fails to successfully achieve all of the Performance Guarantees by the end of the Cure Period, then Owner shall be entitled to recover from Contractor as liquidated damages for any such failure, and not as a penalty, those amounts identified on Exhibit H attached hereto (the "Performance Liquidated Damages"); it being acknowledged and agreed by the Parties hereto that the liquidated damages identified in this Section relate solely to Contractor's failure to achieve the Performance Guarantees by the end of the Cure Period, and to no other duty or obligation of Contractor. It is further acknowledged and agreed by the Parties hereto that (i) other than Owner's right to terminate this Agreement for a Contractor Default under Section 16.1(a) and Owner's related rights and remedies upon such

termination (including, without limitation, those under Section 16.1(b)), the liquidated damages identified in this Section are Owner's sole and exclusive remedy for Contractor's failure to successfully achieve all of the Performance Guarantees by the end of the Cure Period, and (ii) the liquidated damages identified in this Section are a good faith estimate of the damages Owner would suffer in the event Contractor fails to successfully achieve all of the Performance Guarantees by the end of the Cure Period. If Contractor has failed to achieve all of the Minimum Performance Criteria (or Substantial Completion does not occur on or before the Guaranteed Substantial Completion Date due to Contractor's failure to fulfill its obligations under this Agreement that are conditional to Substantial Completion), Contractor will not be entitled to pay the Performance Liquidated Damages to achieve Substantial Completion in lieu of achieving the Minimum Performance Criteria and must continue diligently seeking to satisfy all of the Performance Guarantees and to achieve the Minimum Performance Criteria, and shall pay Owner all Substantial Completion Liquidated Damages due and owing under this Agreement.

ARTICLE 6

CONTRACT PRICE AND PAYMENT; LETTERS OF CREDIT

6.1 Contract Price. Owner shall pay Contractor for the due, proper and complete performance of the Work as required hereunder, and for the due performance of all other obligations and duties imposed upon Contractor pursuant to this Agreement, the "Contract Price" of $319,526,150.00, subject to additions and deductions by Change Order as provided in this Agreement. All such amounts shall be paid to Contractor in Dollars.

6.2 Milestone Payments. Upon the occurrence or completion, as applicable, of a Milestone set forth in the payment schedule attached hereto as Exhibit J (the "Payment Schedule"), the corresponding portion of the Contract Price shall be due and payable to Contractor (each a "Milestone Payment").

6.3 Application for Payment. (a) Contractor shall, on a monthly basis, submit to Owner an application for payment for amounts due to Contractor as provided in Section 6.2 (each, an "Application for Payment"). Contractor shall submit each Application for Payment to Owner on the fifth (5th) Day of each calendar month. The Application for Payment shall (i) set forth the Milestone or Milestones which Contractor has successfully achieved, or which have otherwise occurred, during the preceding calendar month, (ii) set forth the Milestone Payment or Payments which correspond to such Milestones, and (iii) be in a form mutually acceptable to the Parties and substantially in the form attached hereto as Exhibit X. Each Application for Payment shall be accompanied by a signed statement that Contractor has paid all Subcontractors' amounts then due and undisputed under their Subcontracts, a duly executed waiver of mechanics', materialmen's and construction liens from Contractor in the form attached hereto as Exhibit K-1 establishing payment or satisfaction of the payment requested by Contractor in the Application for Payment and duly executed conditional partial lien waivers from Major Subcontractors in the form set forth in Exhibit K-2 for amounts invoiced to Contractor in the preceding calendar month by Major Subcontractors, together with any other lien waivers obtained by Contractor or the Major Subcontractors relating to the Work covered by the Application for Payment, provided the final Application for Payment shall be accompanied by (y) a final and full waiver of liens from Contractor in the form attached

hereto as Exhibit K-3, and (z) a final and full waiver of liens from each Major Subcontractor and any other Subcontractors with any Subcontract or supply agreement having an aggregate value in excess of $[***] (in the form set forth in Exhibit K-4), together with any other lien waivers obtained by Contractor or the Major Subcontractors relating to the Work covered by the final Application for Payment.

(b) Contractor acknowledges that Owner and its Lenders may be obtaining title insurance policies in connection with the Facility. As Contractor is not obligated to submit lien waivers to Owner from Contractor's Subcontractors (other than the Major Subcontractors) except as provided in Section 6.3(a), Contractor agrees to provide the title insurance company issuing Owner's and lender's title insurance policies for the Facility such information and documents as are customarily and reasonably required of a title insurance company issuing such policies, including information as to Contractor's financial condition; provided however, in no event shall such documents materially increase Contractor's risk, exposure or liability with respect to Liens beyond that which is set forth in this Agreement. Contractor shall also include the Owner's and Lender's respective title insurance company(ies) as an indemnified party with respect to the absence of Liens (except Permitted Liens) in Section 11.1(a)(iv).

6.4 Review of Application for Payment. Owner shall, within ten (10) Business Days after the receipt of Contractor's Application for Payment (and all supporting documentation), review the same and notify Contractor in writing of the amount therein which Owner approves and any amounts therein that Owner disputes and determines are not properly due to Contractor (which notice shall also include an explanation of the reasons for such dispute or reason for withholding payment in whole or in part as permitted in this Agreement).

6.5 Withholding Payments. In addition to Owner's right to withhold payment to the extent such payment is disputed in good faith by Owner, Owner may withhold a Milestone Payment in whole or in part up to the amount reasonably necessary to protect Owner from loss, ensure Contractor's proper performance of the Work or otherwise protect fully Owner's rights hereunder (A) if the Work corresponding to a Milestone Payment is not properly completed, (B) if Contractor has failed to pay any Liquidated Damages when required under the terms of this Agreement (and if there is no such express requirement, then within thirty (30) days after Owner's demand for the same), (C) if Contractor has failed to provide the Letter of Credit (or the required amendment thereof) when required under the terms of this Agreement, (D) if a Contractor Default has occurred or (E) as may be necessary to protect Owner from loss because of (1) defective, deficient or nonconforming Work which has not been remedied within thirty (30) days after written notice from Owner, or (2) mechanics' liens (but only to the extent provided in Section 2.20). Owner shall not be deemed in default by reason of withholding a Milestone Payment in whole or in part to the extent set forth above while the reason for withholding remains uncured. When Contractor believes that it has cured the reason for any such withholding, Contractor shall resubmit an Application for Payment for the amount which was withheld. If Owner agrees that the reason for withholding has been cured, certification and payment for the withheld amount shall be made as provided in this Agreement.

6.6 Payment. As to each Application for Payment, Owner shall pay Contractor the amount Owner approves pursuant to Section 6.4 above within thirty (30) Days after the receipt of the corresponding Application for Payment (and all supporting documentation).

6.7 Payment Dates. Notwithstanding anything to the contrary contained in this Agreement, in the event that a payment to be made under this Agreement falls on any day that is not a Business Day, the payment shall be deemed due on the first Business Day thereafter.

6.8 Effect of Payment. Payment of the Contract Price (or any portion thereof), approval of any Application for Payment, and/or issuance of any Milestone Payment shall not constitute (i) Owner's acceptance or approval of any portion of the Work, or (ii) a waiver of any claim or right Owner may have at that time or thereafter, including claims regarding unsettled Liens, warranties, defective or deficient Work, or indemnification obligations of Contractor. No payment made by Owner shall be considered or deemed to represent that Owner has inspected the Work or checked the quality or quantity of the Work or that Owner knows or has ascertained how or for what purpose Contractor has used sums previously paid.

6.9 Letter of Credit.

(a) As security for the performance of Contractor's obligations hereunder, including, without limitation, its obligation to pay any applicable Liquidated Damages, and in lieu of any cash retainage, within ten (10) Business Days after the effective date of the Notice to Proceed, Contractor shall furnish and deliver to Owner an irrevocable standby letter of credit in the form attached hereto as Exhibit R (subject to any ministerial modifications requested by the issuing bank which are acceptable to Owner) in a face amount equal to five percent (5%) of the Contract Price, and naming Owner as beneficiary, and issued by a commercial bank in the United States of America that qualifies as a Creditworthy Bank (as the same may be amended or replaced from time to time as required by this Agreement, the "Letter of Credit"). Contractor shall maintain the stated amount of the Letter of Credit in an amount initially equal to five percent (5%) of the Contract Price, and escalating on the first Day of each calendar quarter thereafter by an amount equal to five percent (5%) of all amounts invoiced by Contractor (pursuant to an Application for Payment), such that until the achievement of Substantial Completion the Letter of Credit shall equal the sum of (i) five percent (5%) of the Contract Price and (ii) five percent (5%) of all amounts (in the aggregate) invoiced by Contractor through and including such first Day of each calendar quarter. Such Letter of Credit must remain in full force and effect until released pursuant to Section 6.9(d). Contractor shall cause any amendments or replacements of the Letter of Credit required in order to maintain compliance with the provisions of this Section 6.9 and elsewhere in this Agreement to be timely executed and delivered to Owner. In the event the Contract Price is increased by one or more Change Orders in accordance with the terms of this Agreement, by a cumulative amount of [***] U.S. Dollars (U.S. $[***]) or more, Contractor shall, at Owner's request, increase the amount of the Letter of Credit to reflect the proportionate increase in such Contract Price. Such increase in value of the Letter of Credit shall be reflected in a Change Order mutually agreed upon by the Parties. If at any time the rating of the commercial bank that issued the Letter of Credit no longer qualifies as a Creditworthy Bank, Contractor shall notify the Owner of the same and shall replace the Letter of Credit within

twenty (20) Days with a letter of credit issued by a commercial bank in the United States of America that qualifies as a Creditworthy Bank.

(b) Upon the achievement of Substantial Completion, the stated amount of the Letter of Credit shall be reduced or increased, as the case may be, to an amount equal to five percent (5%) of the Contract Price plus (i) one hundred percent (100%) of the maximum amount of Liquidated Damages assessable at such time, or that would be assessable at such time, and not yet paid (based on the assumption that the performance and availability of the Facility will not improve from that which exists as of the Substantial Completion Date) (and, for the avoidance of doubt, "assessable" Liquidated Damages shall include the amount of any Liquidated Damages then in dispute); and (ii) two hundred percent (200%) of the value of the Punch List.

(c) Upon written notice from Owner (and Contractor to the extent required) to the commercial bank that issued the Letter of Credit that Contractor has achieved Final Completion and paid all Liquidated Damages owed to Owner (including the payment of all Substantial Completion Liquidated Damages and all Performance Liquidated Damages that may be owed at Final Completion), the Letter of Credit shall decrease to an aggregate amount of two and one-half percent (2.5%) of the Contract Price. No later than thirty (30) Days after Owner's acceptance of the Final Completion and receipt of all such Liquidated Damages, Owner shall provide the commercial bank that issued the Letter of Credit with written notice of such acceptance and payment.

(d) The Letter of Credit shall remain in full force and effect without any lapse whatsoever in the amounts specified herein from the issuance of the Letter of Credit through the date that is thirty (30) Days after the expiration of the Warranty Period (as the same may have been extended with respect to Corrective Work), at which time the Letter of Credit will be returned to Contractor, provided that Contractor has assigned to Owner all Subcontractor warranties pursuant to Section 9.4. No later than thirty (30) Days after the expiration of the Warranty Period (as the same may have been extended with respect to Corrective Work) and assignment of all such Subcontractor warranties, Owner shall provide the commercial bank that issued the Letter of Credit with written notice of the expiration of the Warranty Period for all Work, and shall thereafter promptly provide any other information reasonably requested by the bank to cancel the Letter of Credit.

(e) Owner shall have the right to draw down on or collect against such Letter of Credit from time to time in whole or in part upon Owner's demand in the event (i) of a Contractor Default or the owing by Contractor to Owner under this Agreement for Liquidated Damages or any other Losses arising out of or relating to a breach of any obligation under this Agreement by Contractor, such Contractor Default or otherwise or (ii) Contractor has failed or refused to deliver an updated Letter of Credit, or any amendment thereof, timely as provided herein. Partial drawings are permitted under the Letter of Credit. In addition to the foregoing draw rights, (i) Owner shall also have the right to draw down on or collect against the Letter of Credit for all remaining funds in the Letter of Credit upon Owner's demand if Contractor has not, prior to forty-five (45) Days before the then current expiration date, where Contractor has an obligation to continue to maintain such Letter of Credit, delivered to Owner a replacement letter of credit substantially identical to the Letter of Credit and from a commercial bank in the United States of America that qualifies as a Creditworthy Bank and extending the expiration date for a period of one (1) year, but in no event beyond the date

which is thirty (30) days after the Warranty Period (as the same may be extended with respect to Corrective Work), and (ii) Owner shall also have the right to draw down on or collect against the Letter of Credit for all remaining funds available under such Letter of Credit upon Owner's demand if the issuing bank is no longer qualifies as a Creditworthy Bank and Contractor has not, within the applicable time period set forth in this Section 6.9(a), delivered to Owner at Owner's request a replacement letter of credit substantially identical to the Letter of Credit from a commercial bank in the United States of America that qualifies as a Creditworthy Bank.

(f) Notwithstanding the foregoing, in the event of a termination for convenience by Owner pursuant to Section 16.4, Owner shall promptly notify the issuing commercial bank with directions to release, if the Work is terminated in whole, or decease proportionally, if the Work is terminated in part, the Letter of Credit to comply with the requirements of this Section 6.9(f).

6.10 Offset. Owner may, upon prior written notice to Contractor, offset any amount due and payable from Contractor under this Agreement to Owner against any amount due and payable to Contractor hereunder.

ARTICLE 7

EXCUSABLE EVENTS

7.1 Excusable Event. Provided Contractor complies with the terms and provisions of this Article 7, Contractor shall be entitled to an equitable: (i) extension to the Milestone Schedule, including the Guaranteed Substantial Completion Date to the extent that such Excusable Event demonstrably, actually and adversely delays Contractor's performance of any Work that is on the critical path and causes (or will cause) Contractor to complete the Work beyond the Target Substantial Completion Date, and/or (ii) increase to the Contract Price to the extent such Excusable Event demonstrably increases Contractor's cost of performing the Work, and in each case Contractor complies with the Change Order requirements of this Agreement. For the avoidance of doubt, Contractor shall continue to perform all other Work not affected by the Excusable Event in order to mitigate the impact of the Excusable Event on Contractor's ability to meet the Milestone Schedule, including the Target Substantial Completion Date.

7.2 Procedures upon Excusable Event. Upon occurrence of an Excusable Event, other than a Change in Law which is governed by Section 2.16(b), Contractor shall comply with the following:

(i) Contractor shall provide written notice to Owner describing the particulars of the Excusable Event, with written notice given promptly after the occurrence of the Excusable Event, and in no event more than ten (10) days after Contractor becomes aware of the occurrence of such Excusable Event;

(ii) Contractor's written notice under the preceding clause (i) shall estimate the Excusable Event's expected duration and probable impact on the performance of Contractor's obligations hereunder and/or the cost of the Work and include documentation substantiating the impact upon the Milestone Schedule, and

Contractor shall continue to furnish timely regular reports with respect thereto during the continuation of the Excusable Event;

(iii) Contractor shall make a written request for an equitable adjustment in the Milestone Schedule, including the Guaranteed Substantial Completion Date and/or Contract Price to Owner within ten (10) days after the cessation of the Excusable Event specifying the number of days Contractor believes that its activities were in fact delayed as a result of the event and/or the increase in the cost of the Work on account of the Excusable Event. If the impacts of the Excusable Event cannot reasonably be determined by Contractor within ten (10) days after the cessation of the Excusable Event, then Contractor shall give Owner Contractor's best estimate of the delay and/or increase in cost within such ten (10) day period, and Contractor shall update Owner every ten (10) days thereafter as to the number of days Contractor believes that its activities were in fact delayed as a result of the event and/or the increase in the cost of the Work on account of the Excusable Event until the cessation of the impacts incurred due to the Excusable Event, along with a statement setting forth Contractor's recovery plan and describing in detail the efforts of Contractor that have been or are going to be made to overcome or remove the Excusable Event and to minimize the potential adverse impact resulting from such Excusable Event;

(iv) Contractor shall demonstrate, to the reasonable satisfaction of Owner, that the Excusable Event delayed the performance of the Work and/or increased the cost of the Work, and that the activity claimed to have been delayed was in fact delayed by the Excusable Event;

(v) Contractor shall perform its obligations under this Agreement which are not impacted or affected by the Excusable Event and shall exercise all reasonable efforts to correct or cure the event delaying or preventing performance in order to resume full performance;

(vi) Contractor shall exercise reasonable efforts to mitigate any delay in the performance or increased cost of its obligations under the terms of this Agreement that may result as a consequence of the occurrence of an Excusable Event; and

(vii) when Contractor is able to resume performance of the affected obligations under this Agreement, Contractor shall promptly resume performance and provide Owner written notice to that effect.

Contractor shall be responsible for all costs associated with the prosecution of a claim of an Excusable Event in accordance with this Article 7. Notwithstanding anything to the contrary contained herein, (i) any extension in the Guaranteed Substantial Completion Date shall be of no greater scope and of no longer duration than is reasonably required by the occurrence of an Excusable Event, (ii) no liability of Contractor which arose before the occurrence of an Excusable Event shall be excused, and (iii) no obligation to pay money in a timely manner shall be excused as a result of the occurrence of an Excusable Event.

7.3 Burden of Proof. The burden of proof as to whether an Excusable Event has occurred and whether such event entitles Contractor to an equitable extension in the Milestone Schedule and/or increase in the Contract Price shall be upon Contractor.

7.4 Change Order for Excusable Event. Compliance with the terms of this Article is a condition precedent to receipt of an equitable extension in the Guaranteed Substantial Completion Date and/or increase in the Contract Price, provided that Contractor shall not waive relief for an Excusable Event unless Contractor fails to provide the original written notice to Owner under Section 7.2(i) within thirty (30) days after Contractor becomes aware of the occurrence of such Excusable Event. Subject to the foregoing, in the event of a failure of Contractor to comply in all material respects with the terms of this Article, then Contractor shall be deemed to have waived any claim relating to such Excusable Event and Contractor shall not be entitled to an extension of time or an increase in the Contract Price on account thereof. Upon satisfaction by Contractor of the terms and conditions of this Article, Owner and Contractor shall exercise good faith efforts to agree on the extent to which the Work has been delayed on account of any such Excusable Event. Once the Parties have mutually agreed as to the extent of such delay, they shall enter into a Change Order reflecting their agreement as to the equitable adjustment in the Milestone Schedule, including the Guaranteed Substantial Completion Date and/or Contract Price. If the Parties are unable to agree upon an equitable adjustment in the Milestone Schedule, including the Guaranteed Substantial Completion Date and/or Contract Price, then such matter shall be resolved in accordance with Article 18.

7.5 Force Majeure Deductible. Notwithstanding anything herein to the contrary, Contractor shall only be entitled to an adjustment of the Contract Price in connection with a Force Majeure Event in the event and solely to the extent that Contractor incurs demonstrated actual and reasonable costs of more than [***] U.S. Dollars ($[***]) resulting from all Force Majeure events in the aggregate (the "Force Majeure Deductible") (after which, for avoidance of doubt, all documented actual and reasonable costs incurred by Contractor from subsequent Force Majeure events will be compensated without the need to meet any monetary threshold for the particular event), Contractor hereby agreeing to absorb such Force Majeure Deductible, provided that no such costs under this Section 7.5 shall include costs for loss or damage to the Work for which Contractor has risk of loss and for which it has received (or is entitled to receive) proceeds of insurance.

7.6 Rights Limited. The rights and remedies set forth in this Article 7, plus any other impacts the Parties agree to address per a Change Order (e.g., impacts to Performance Guarantees), shall be Contractor's sole and exclusive rights and remedies in the event of an occurrence of an Excusable Event, and Contractor hereby waives all other rights and remedies at law and/or in equity that it might otherwise have against Owner on account of an Excusable Event.

ARTICLE 8

CHANGE ORDERS

8.1 Change Order. A "Change Order" is a written instrument signed by Owner and Contractor, stating their mutual agreement upon all of the following: (i) a change in the Work, if any; (ii) the amount of the adjustment in the Contract Price, if any; (iii) the extent of the adjustment

in the Milestone Schedule, if any; and (iv) any other appropriate modifications to this Agreement given the matter in question. Each Change Order shall be substantially in the form attached hereto as Exhibit Y.

8.2 Change Order Process. (a) Contractor Initiated Change: Contractor shall only have the right to request a Change Order on account of an Excusable Event in accordance with Article 7. Contractor shall submit to Owner a draft Change Order. If an Excusable Event will cause an increase or decrease in Contractor's cost or time for performance, Contractor shall so identify those changes in Contractor's request. Contractor's request must include supporting documentation reasonably requested by or necessary for Owner to evaluate Contractor's proposal. If Owner agrees with the Claim described in Contractor's request, the Parties will negotiate an equitable adjustment to the Contract Price or the Milestone Schedule, or both, with the adjustment to be reflected in a Change Order. Contractor, however, shall proceed as directed in writing by Owner pending such agreement. Owner will not be liable to Contractor for any Claims for damages, including on account of lost profits, arising from a decrease in the Work. No change is effective without a Change Order issued or executed by Owner. Contractor may not suspend, in whole or in part, performance of the Work during any dispute over any Change Order request.

(b) Owner Initiated Change: Owner may request additions, deletions, reductions in scope or other changes to the Work. If Owner so desires to change the Work, it shall submit a change request to Contractor in writing. Within ten (10) Business Days of its receipt of any such request (unless otherwise extended by mutual agreement of the Parties), Contractor shall review the request and advise Owner of the feasibility of the requested change, and shall submit a proposal to Owner stating (i) the increase or decrease, if any, in the Contract Price which would result from such change, (ii) the effect, if any, upon the Milestone Schedule by reason of such proposed change, and (iii) any other appropriate modifications impacting to this Agreement as a result of such requested change, including (if applicable) to the Performance Guarantees or Contractor's Warranty. Contractor's proposal must include supporting documentation reasonably requested by or necessary for Owner to evaluate Contractor's proposal. Any adjustment arising out of a Change Order shall be negotiated equitably by Owner and Contractor on a Shared Information Basis. Contractor shall cause its Project Manager to make itself available and to use reasonable efforts to meet or otherwise confer with Owner to discuss any Change Order request, Contractor's proposal, and the estimates therein contained, and to answer any questions or clarify any information provided with respect thereto. Owner or the Owner's Manager may request that Contractor's Project Manager provide additional reasonable information or further information and data to the extent Contractor has failed to provide such information and data required to be provided or if there are errors, mistakes, or omissions in any information or data previously provided as part of the estimates contained in Contractor's proposal. Owner shall have three (3) Business Days to accept or reject in writing Contractor's proposal in relation to the requested change. If Owner accepts Contractor's proposal within such three (3) Business Day period, Owner and Contractor shall execute a Change Order reflecting the requested change in the Work and any agreed upon adjustments, if any, including those in the Contract Price and the Milestone Schedule or other impacts to the Work. In the event Owner disagrees with Contractor's proposal, then Owner shall notify Contractor that Owner has decided to withdraw its requested change. Should Owner fail to respond to within such three (3) Business Day period, Owner shall be deemed to have withdrawn its requested change. Contractor, however, shall proceed

as directed in writing by Owner pending such agreement on the Change Order or required response from Owner. Owner will not be liable to Contractor for any decrease in the Contract Price arising from a decrease in the Work. No change is effective without a Change Order signed by Owner. If Owner and Contractor cannot agree on the price for such Change Order, Owner may, at its option, direct Contractor to proceed with Owner's requested addition or other change to the Work on a time and materials basis calculated, without contingency, on a Shared Information Basis based on the rates set forth in Exhibit V to the extent applicable plus a markup of eighteen percent (18%) for general and administrative expenses and profit. Contractor may not suspend, in whole or in part, performance of the Work during any dispute over any Change Order request or an Owner's direction to proceed or during the review and negotiation of any Change Order based thereon (or any adjustment to the Contract Price or Milestone Schedule to be set forth therein) or on account of any dispute regarding amounts claimed to be owed to Contractor under this Agreement, unless directed to do so by Owner. If directed by Owner to proceed with Owner's requested addition or other change to the Work, a disputed item, or a dispute of whether Work is in or out of the scope of Work required of Contractor hereunder, pending review and agreement upon such Change Order adjustments or resolution of such dispute, Contractor shall (without waiving any rights or remedies with respect to such change or dispute) do so.

(c) Estimate of Impacts: In estimating the impact of a proposed Change Order, Contractor shall ensure that it has properly accounted for all cost and time impacts arising from or related to the proposed Change Order, including cumulative impacts associated with all previous Change Orders. Contractor's acceptance of payment under a Change Order or Contractor's agreement to a Change Order constitutes a waiver of all of Contractor's Claims related to or arising from that Change Order or Claims arising out of or relating to cumulative impacts of that Change Order and any previous Change Order.

8.3 Contents of Change Order. The draft Change Order shall include: (i) a technical description of the proposed change in such detail as Owner may reasonably require, (ii) a lump sum firm price adjustment (increase or decrease) in the Contract Price, if any, caused by the proposed change, (iii) all potential effect(s), if any, on the time for Substantial Completion, or any other schedule or dates for performance by Contractor hereunder, caused by the proposed change, and (iv) all potential effect(s), if any, on Contractor's ability to comply with any of its obligations hereunder, including Contractor's Warranties and Performance Guarantees, caused by the proposed change.

8.4 Owner Approval Required. All changes to the Work in any Change Order will not be effective until signed by Owner.

ARTICLE 9

WARRANTY

9.1 Warranty. Contractor warrants to Owner that:

(i) all of its professional services (including, without limitation, design and engineering services) will be performed in accordance and conformity with the Requirements of

this Agreement, including, without limitation, Applicable Law, Permits, Applicable Codes and Standards, Prudent Industry Practices and in a good and workmanlike and professional manner.

(ii) the Work, including all Equipment and the Facility, and each component thereof (a) shall be: (i) new, undamaged, complete, of good quality, fit for the purposes specified in this Agreement and of suitable grade for the intended function and use as specified in this Agreement; (ii) capable of performing in a good and workmanlike manner; (iii) in accordance with all of the Requirements and specifications of this Agreement, including in accordance with Prudent Industry Practices, Applicable Law, Permits and Applicable Codes and Standards; (iv) free from encumbrances to title (other than Permitted Liens); (v) free from defects in material and workmanship, including, without limitation, those caused by a breach of Section 9.1(i); (vi) with respect to Equipment or any component of Equipment, composed and made of only proven technology, of a type in commercial operation at the effective date of this Agreement; (vii) capable of operating in accordance with all Requirements of this Agreement (including Applicable Law, Applicable Codes and Standards and the required emissions criteria) and (viii) engineered and designed, subject to the professional standard of care set forth in Section 9.1(i), without any defects or deficiencies that materially and adversely affect (A) the mechanical, electrical or structural integrity of the Facility, (B) the performance of the Facility or (C) the continuous, safe, reliable and prudent operation of the Facility during its design life, and (b) shall not infringe upon the Intellectual Property Rights of any third party.

(the foregoing warranties being collectively, the "Warranty").

Nothing in this Warranty, including compliance with Prudent Industry Practices, Applicable Law, Permits or Applicable Codes and Standards, shall be interpreted to require any obligation by Contractor with respect to emissions or noise compliance for the Facility other than Contractor's obligation to achieve the Guaranteed Emissions and the Guaranteed Noise levels as set forth in the Performance Guarantees.

The Warranty is independent of the Minimum Performance Criteria and the Performance Guarantees set forth in this Agreement. Any Work, or component thereof, that is not in conformity with any Warranty is defective ("Defective") and contains a defect ("Defect").

9.2 Warranty Period. The "Warranty Period" means the period commencing upon the Substantial Completion Date and ending one (1) year thereafter. The Warranty Period for corrected, redesigned, repaired, replaced or reperformed Defective Work will be extended for one (1) year from the date of the completion of the correction, redesign, repair, replacement or reperformance of the Defect. However, in no event shall the Warranty Period for any part of the Work, including the Corrective Work and Warranty obligations under this Agreement, extend beyond the second (2nd) anniversary of the Substantial Completion Date.

9.3 Breach of Warranty.(a) If, at any time prior to the expiration of the Warranty Period (or within the additional period referenced in Section 9.2 as to any Work which has been redesigned,

repaired, replaced, reperformed or otherwise corrected and then re-warranted) (i) Contractor has knowledge of any failure or breach of the Warranty, or (ii) Owner shall discover any failure or breach of the Warranty, Contractor shall, upon written notice from Owner, at Contractor's sole cost and expense, immediately and on an expedited basis correct such Defective Work and, subject to Section 2.12(f) any other portions of the Facility damaged or affected by such Defective Work, whether by repair, replacement or otherwise ("Corrective Work") (which Corrective Work shall include any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, reconstruction, retesting and/or reinspection of any part or portion of the Work or re-performance of Contractor's professional services, and otherwise cause the Work to comply fully with the Warranty, the Requirements and this Agreement). All parts and components employed in repairs and replacements shall have a level of quality and workmanship equivalent to or greater than that required of the Work as initially installed under this Agreement. Any Corrective Work performed by Contractor pursuant to this Section 9.3 shall be commenced promptly and completed in accordance with the Agreement on an expedited basis. If two or more failures shall occur in the same part or component of the Equipment (whether or not the failure occurs prior to or during the Warranty Period, as the same may be extended as provided herein) then Contractor shall perform a root cause analysis investigation of such failures, regardless of whether the Warranty Period shall have expired, and share the results thereof with Owner. The cost of the root cause analysis investigation performed by Contractor pursuant to this Section 9.3 shall be at Contractor's sole expense, and Contractor shall submit, as part of its root cause analysis investigation and report, sufficient design and performance calculations related to such part or component failure. Unless Contractor can demonstrate to Owner the failure was not attributable to a defect or other breach of Warranty as set forth above, Contractor shall remedy, at Contractor's sole cost and expense, the cause, and not just the effect, of such failure or breach. Contractor shall be responsible for the costs of performing the removal of any Defective or damaged parts and for the installation of any repaired or replacement parts (including the costs of opening and closing the Equipment and Facility). Contractor shall also be responsible for the costs associated with (i) shipping any parts to be repaired or replaced to the place of repair or disposal, as the case may be, and (ii) the costs of shipping any repaired or replacement parts to the Site, including, but not limited to, any customs duties or similar levies which may be assessed as a result of the shipment of any such repaired or replacement parts. Contractor shall use commercially reasonable efforts to remedy any such failure or breach so as to minimize revenue loss to Owner and to avoid disruption of Owner's operations at the Site. In the event Contractor fails to initiate and diligently pursue corrective action within five (5) Days of Contractor's receipt of Owner's notice (or submit a corrective action plan to Owner within such five (5) Day period and diligently pursue the proposed corrective action within ten (10) Days of the submittal of such plan), Owner may undertake such corrective action at Contractor's expense. Contractor shall be liable for all actual, documented costs, charges and expenses incurred by Owner in connection with such repair or replacement and shall pay to Owner within thirty (30) Days of receipt of Owner's invoice therefor (and appropriate substantiating documentation) an amount equal to such costs, charges and expenses. Contractor will be provided access to the Facility sufficient to perform its Corrective Work, so long as such access does not unreasonably interfere with the operation of the Facility and subject to any reasonable security or safety requirements of Owner.

9.4 Subcontractor Warranties. Contractor shall, without additional cost to Owner, use commercially reasonable efforts to obtain warranties from Subcontractors that meet or exceed the

requirements of this Agreement and shall cause such warranties to be freely assignable to Owner at the end of the Warranty Period (or upon expiration or termination of this Agreement, if earlier), without consent or approval, upon notice to the Subcontractor; provided, however, Contractor shall not in any way be relieved of its responsibilities and liability to Owner under this Agreement, regardless of whether such Subcontractor warranties meet the requirements of this Agreement, as Contractor shall be fully responsible and liable to Owner for its Warranty and Corrective Work obligations and liability under this Agreement for all Work. All such warranties shall be deemed to run to the benefit of Owner and Contractor. To the extent that any such Subcontractor warranties extend beyond the expiration of the Warranty Period (including, without limitation, the warranties provided by General Electric under the Power Island Supply Agreement), such warranties, with duly executed instruments assigning the warranties to Owner, shall be delivered by Contractor to Owner prior to the expiration of the Warranty Period and as a condition of returning the Letter of Credit upon the expiration of the Warranty Period pursuant to Section 6.9(d). Upon assignment, all warranties provided by any Subcontractor shall be in such form as to permit direct enforcement by Owner against any Subcontractor whose warranty is called for. Contractor agrees that Contractor's Warranty, as provided under this Article 9 shall apply to all Work regardless of the provisions of any Subcontractor warranty, and such Subcontractor warranties shall be in support of, and not a limitation of, such Contractor's Warranty. This Section 9.4 shall not in any way be construed to limit Contractor's Warranty or other obligations under this Agreement for the entire Work, including its obligation to enforce Subcontractor warranties.

9.5 General Electric Warranty. Notwithstanding anything in the contrary in this Article 9, with respect to the GE Equipment provided pursuant to the Power Island Supply Agreement, Contractor hereby provides the same warranty, subject to the same conditions, as that provided for in Article 9 of the Power Island Supply Agreement, mutatis mutandis; provided, however, that the expense of refinishing, uncovering, or of removal and replacement, as the case may be, and of making good other Work that is not part of the General Electric scope of supply pursuant to the Power Island Supply Agreement affected by such removal and replacement shall be borne by Contractor and no extension of time or increase in the Contract Price will be allowed in connection therewith and provided that the foregoing shall in no event limit the Warranty Period with respect to defects in the GE Equipment to the extent such defect is contributed to, or is a result of, the acts or omissions of Contractor or its Subcontractors; and provided that such warranty shall be in addition to, and not a limitation of, Contractor's Warranty and nothing herein shall imply that Owner's recourse against Contractor with respect to such warranty is subject to, or limited to the extent of, Contractor's recovery under its corresponding warranty from General Electric under the Power Island Supply Agreement.

9.6 Primary Liability. Contractor shall have primary liability with respect to the Warranties set forth in this Agreement, whether or not any Defect is also covered by a warranty of a Subcontractor or other third party, and Owner need only look to Contractor for corrective action. In addition thereto, the Warranty expressed herein shall not be restricted in any manner by any warranty of a Subcontractor or other third party, and the refusal of a Subcontractor or other third party to provide a warranty or to correct Defective Work shall not excuse Contractor from its liability as to the Warranty provided herein.

9.7 Exclusions. The warranties set forth in this Article 9 shall not apply to damage to any Work, to the extent: (i) that such damage is caused by improper repairs or alterations or misuse by Owner; (ii) that Owner's operation or maintenance of the Work or any component thereof was not in compliance with a material requirement of the O&M Manuals delivered by Contractor to Owner (or Prudent Industry Practices in the absence of Owner having received all or any portion of the O&M Manuals or if such manuals do not provide sufficient guidance) or (iii) that damage is due to normal wear and tear of the Facility.

9.8 Exclusive Remedies and Warranties. (a) EXCEPT FOR ANY EXPRESS WARRANTIES UNDER THIS AGREEMENT (INCLUDING THE WARRANTY), THE PARTIES HEREBY DISCLAIM ANY AND ALL OTHER WARRANTIES, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY AND IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND THE PARTIES AGREE THAT THE REMEDIES SET FORTH IN THIS AGREEMENT ARE OWNER'S EXCLUSIVE REMEDIES FOR A BREACH OF WARRANTY DISCOVERED AFTER SUBSTANTIAL COMPLETION OR ANY OTHER CLAIM FOR DEFECTIVE WORK DISCOVERED AFTER SUBSTANTIAL COMPLETION, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE; PROVIDED, THAT SUCH LIMITATION WILL NOT LIMIT THOSE RIGHTS OR REMEDIES AVAILABLE TO OWNER TO REDRESS CONTRACTOR'S FAILURE TO SATISFY OTHER OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING CONTRACTOR'S INDEMNITY OBLIGATIONS.

(b) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, ANY CLAIMS WITH RESPECT TO THE FACILITY FAILING TO ACHIEVE ANY "MINIMUM LIFE OF", "DESIGN LIFE", "SERVICE LIFE" OR "LIFE OF" REQUIREMENT CONTAINED IN EXHIBIT A, SECTIONS 01600.16.7, 01630.25.2.4, 01624.3.1, 01624.3.6 OR 01624.11 OF THIS AGREEMENT MUST BE MADE PRIOR TO THE END OF THE WARRANTY PERIOD (AS THE SAME MAY BE EXTENDED) OR ARE HEREBY WAIVED BY OWNER.

ARTICLE 10

INSURANCE

Contractor (and its Subcontractors) and Owner shall provide and maintain the insurance and waivers of subrogation specified in Exhibit L in accordance with the terms and provisions thereof.

ARTICLE 11

INDEMNITY

11.1 General Indemnification. (a) Without limitation of the other indemnification obligations of Contractor under this Agreement, Contractor hereby agrees to indemnify, defend and hold harmless Owner, its Affiliates, the Owner's Engineer, the Independent Engineer, the Lenders, and the respective directors, officers, members, managers, professional advisors, employees and agents of any of the foregoing (each an "Owner Indemnified Party") and the Owner's and Lender's title insurance company(ies) with respect to subpart (iv) below, from and against any and all Losses incurred or suffered by any Owner Indemnified Party or such title company to the extent arising

out of any of the following: (i) personal injury to or death of any person, or damage to any Third Party tangible property to the extent caused by the negligence or willful misconduct of Contractor, its Subcontractors, or any Person or entity directly employed by any of them, or any Person or entity for whose acts any of them are liable in connection with the performance of the Work, or their respective officers, employees and agents; (ii) actual or alleged violation, misappropriation or infringement by the Work of any Intellectual Property Right or unauthorized disclosure or use of trade secrets by Contractor, any Subcontractors, or any Person or entity directly employed by any of them, or any Person or entity for whose acts any of them are liable in connection with the performance of the Work, or their respective officers, employees and agents, provided that the foregoing shall not apply to any information or technology furnished by Owner or that Owner directs Contractor to incorporate into the Facility in connection with a modification of the Work by Owner after the Effective Date (which claim would not have occurred but for such modification by Owner), provided that Contractor's indemnity as to any actual or alleged violation, misappropriation or infringement of any Intellectual Property Right or unauthorized disclosure or use of trade secrets with respect to the General Electric scope of supply provided under the Power Island Supply Agreement shall be as provided in Section 12.4 of this Agreement; (iii) Claims, including fines and penalties, asserted by a Governmental Authority due to actual or alleged violation of Applicable Law or safety requirements (or, solely with respect to portions of the Work that are not the responsibility of General Electric under the Power Island Supply Agreement, Applicable Codes and Standards) by Contractor, its Subcontractors, or any Person or entity directly employed by any of them, or any Person or entity for whose acts any of them are liable in connection with the performance of the Work, or their respective officers, employees and agents; (iv) the filing of a lien, or other encumbrance (excluding Permitted Liens), on all or part of the Facility or Site by Contractor, a Subcontractor, a Supplier, or any Person or entity directly employed by any of them, or any Person or entity for whose acts any of them are liable in connection with the performance of the Work, or their respective officers, employees and agents; (v) Claims, including fines and penalties, asserted by a Governmental Authority due to Contractor's nonpayment of any Taxes or withholding for which Contractor is contractually liable under this Agreement; (vi) Contractor's failure to make payments (provided this payment obligation shall not apply to the extent that such failure results from Owner's failure to have paid Contractor undisputed amounts due under this Agreement and Owner has failed to cure such non-payment) or otherwise comply with its obligations under any agreements with its Subcontractors or Suppliers; (vii) Contractor's breach of the warranty and guarantee set forth in Section 2.12(b) (which warranty and guarantee excludes Permitted Liens) or (viii) Contractor's, its Subcontractor's or any Person's for whom any of them may be responsible transportation, handling, release, treatment, generation, disposal, discharge, use or storage of any Hazardous Substance brought on the Site by Contractor, a Subcontractor or any Person or entity directly employed by any of them, or any Person or entity for whose acts any of them are liable in connection with the performance of the Work, or their respective officers, employees and agents, or any exacerbation (but only to the extent of such exacerbation by Contractor, a Subcontractor or any Person or entity directly employed by any of them, or any Person or entity for whose acts any of them are liable in connection with the performance of the Work) of any Pre-Existing Hazardous Substance disclosed in the Environmental Reports or otherwise known to Contractor, a Subcontractor or any Person or entity directly employed by any of them, or any environmental condition caused by Contractor, a Subcontractor or any Person or entity directly employed by any

of them, or any Person or entity for whose acts any of them are liable in connection with the performance of the Work, or their respective officers, employees and agents.

(b) Owner hereby agrees to indemnify, defend and hold harmless Contractor, its Affiliates, and their respective directors, officers, employees and agents (each a "Contractor Indemnified Party"), from and against any and all Losses incurred or suffered by any Contractor Indemnified Party to the extent arising out of any of the following: (i) personal injury to or death of any person, or damage to any Third Party tangible property (as used in this clause (i), the term "Third Party tangible property" shall exclude Contractor's or Subcontractor's Construction Aids, the Facility and any Work to be incorporated into the Facility), to the extent caused by the negligence or willful misconduct of Owner or any Person or entity directly employed by Owner, or any Person or entity for whose acts Owner is liable (excluding Contractor and its Subcontractors); (ii) any Hazardous Substances properly brought to the Site by Contractor or its Subcontractors in quantities necessary for the performance of the Work of which Owner had knowledge of the same and which were subsequently released or discharged by Owner or any Person or entity for whose acts Owner is liable (excluding Contractor and its Subcontractors), but only to the extent of such release or discharge by Owner or such Person or entity for whose acts Owner is liable; (iii) any Pre-Existing Hazardous Substances existing at the Site as of the Effective Date (excluding those circumstances in which Contractor owes an indemnity for the same under Section 11.1(a)(viii)); or (iv) Claims brought directly against Contractor by any lessors or owners of the Project, Facility or Site that are not parties to this Agreement (other than Claims brought or that are entitled to be brought pursuant to the Agreement) to the extent such Claims are in excess of those that would have been incurred had such lessor or owner agreed to limit or waive Contractor's liability to the same extent such liability is waived or limited under the terms of this Agreement.

(c) Owner hereby agrees to indemnify, defend and hold harmless the Contractor Indemnified Parties from and against any and all Losses incurred or suffered by any Contractor Indemnified Party for Claims brought pursuant to the Power Island Supply Agreement by General Electric or a "Supplier Indemnified Party" under and as defined in the Power Island Supply Agreement, to the extent arising out of any of the following: (i) the failure by Owner to obtain the Owner Permits pursuant to Section 2.6 of the Power Island Supply Agreement (subject to Contractor's obligations under Section 2.6(b) of this Agreement); (ii) the failure of Owner to provide insurance required by Section 10.6 of the Power Island Supply Agreement; (iii) nonpayment of any taxes or withholding for which Owner was responsible under the Power Island Supply Agreement prior to execution of the Assignment, Assumption and Consent Agreement (and excluding any Contractor Taxes hereunder); (iv) any Pre-Existing Hazardous Substances existing at the Site as of the Effective Date (excluding those circumstances in which Contractor owes an indemnity for the same under Section 11.1(a)(viii)); and (v) Owner's failure to fulfill a Retained Obligation or, to the extent allocable to Owner, a Shared Obligation for reasons other than a breach by General Electric of the Power Island Supply Agreement; provided that such indemnification, defense and hold harmless obligations of Assignor in clauses (i) – (v) above shall exclude any Losses to the extent arising out of or relating to any breach by Contractor or its Subcontractors of Contractor's obligations under the Power Island Supply Agreement or this Agreement. The obligations of this Section 11.1(c) shall not be lessened or abrogated by the execution of Assignment, Assumption and Consent Agreement.

11.2 Comparative Negligence. It is the intent of the Parties that where negligence is determined to have been joint or contributory, principles of comparative negligence will be followed and each party shall bear the proportionate cost of any loss, damage, expense or liability attributable to that party's negligence.

11.3 Third Parties Defined. "Third Party" or "Third Parties" under this Agreement shall mean any and all Person(s) that are not a party to this Agreement other than (i) Owner Indemnified Parties, Contractor Indemnified Parties, or their respective successors or assigns, (ii) any entity with an equity or security interest in Owner and its Affiliates' assets or property, or (iii) any other entity that seeks to claim as a third party beneficiary of the Owner. No portion of the Work, Equipment or the Facility is Third Party property for the purposes of this Agreement.

11.4 Indemnification Procedure. Promptly after receipt by an Indemnified Party of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity provided for in this Article 11 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact; provided, however, the rights of the Indemnified Party pursuant to this Article 11 shall not be limited by the failure to give the Indemnifying Party notice, except to the extent the Indemnifying Party can demonstrate that said failure has a material adverse effect on the defense of the matter. The Indemnifying Party shall, at its sole cost and expense, assume on behalf of the Indemnified Party, and conduct with due diligence and in good faith, the defense thereof; provided, however, the Indemnified Party shall have the right to be represented therein by advisory counsel of its own selection and at its own expense; and provided, further, if the defendants in any such action include both the Indemnifying Party and the Indemnified Party, and, in the opinion of reputable counsel, there may be a conflict of interest with the Indemnifying Party, the Indemnified Party shall have the right (at the Indemnifying Party's expense) to select separate counsel to participate in the defense of such action on its own behalf and to assert any additional or inconsistent defenses. The Indemnifying Party shall control the defense and settlement of all Claims over which it has assumed the defense; provided, however, that the Indemnifying Party shall not conclude any settlement that affects an Indemnified Party or any of its Affiliates without the prior approval of Indemnified Party; provided, however, that the Indemnifying Party may settle the action, provided that the Indemnifying Party does not agree, without the consent of the Indemnified Party, to any compromise or settlement that is not an unconditional release of the Indemnified Party from all liabilities other than the payment of any money that will be paid by Indemnifying Party or which places any obligation or covenant on an Indemnified Party or any of its Affiliates or would require an admission of fault on the part of an Indemnified Party.

11.5 Failure to Defend Action. If any claim, action, proceeding or investigation arises as to which the indemnity provided for in this Article 11 applies, and after receipt of written notice thereof the Indemnifying Party fails to assume the defense of such claim, action, proceeding or investigation within a reasonable period of time, then the Indemnified Party may, upon ten (10) Business Days' (or less, if a response to such claim is required in such time) written notice to the Indemnifying Party, and at the Indemnifying Party's expense, contest such claim, with the Indemnifying Party remaining obligated to indemnify the Indemnified Party under this Article 11.

11.6 Survival. The indemnities set forth in this Article 11 shall survive the termination or expiration of this Agreement.

ARTICLE 12

INTELLECTUAL PROPERTY

12.1 Ownership of Documents. Subject to Section 12.2 below, all specifications, schedules, plans, reports, drawings, exhibits, design documentation (including all media and calculations), computer files, software, books and records, as-built drawings, manuals, and other documents and other work product prepared by or on behalf of Contractor for Owner and which is furnished or required to be furnished to Owner pursuant to this Agreement, whether in tangible or intangible or electronic form (collectively, the "Deliverables"), are the property of Owner, and such Deliverables shall be owned by Owner irrespective of any copyright notices or confidentiality legends to the contrary which may have been placed in or on the same. If not previously delivered, Contractor shall deliver such Deliverables to Owner upon its request upon any termination of this Agreement or in any event upon completion of the Work.

12.2 Irrevocable License. All Intellectual Property Rights in or relating to the Work, including any incorporated into any of the Deliverables, shall remain the sole property of Contractor or its respective Subcontractors and Suppliers, subject to the license herein granted. With respect to the Deliverables and other Intellectual Property Rights used or delivered in the performance of the Work, Contractor hereby grants to Owner (for use by Owner and its employees, contractors and agents) an irrevocable, perpetual, nonexclusive, royalty-free, fully paid-up, transferable (subject to the limitations in Section 12.5), world-wide license to use such Intellectual Property Rights included or contained in or incorporated into the Deliverables in connection with the construction, operation, maintenance, repair, modification, completion of the Work in the event of termination, installation, erection, startup, commissioning, training of personnel, addition, improvement, alteration and decommissioning of the Facility, and any component thereof (collectively, the "Permitted Purposes"). Owner may, further, at no cost to Owner, use such Deliverables for the maintenance and repair of (and for additions, improvements, changes or alterations to) the Facility. The foregoing rights include the rights to retain, copy, execute, modify, create derivative works of, and otherwise use copies of the Deliverables and the Intellectual Property Rights and the information contained therein or related thereto for the Permitted Purposes with respect to the Facility and as otherwise provided in this Agreement. Notwithstanding the foregoing, Owner acknowledges that the Deliverables are prepared and furnished by Contractor pursuant to this Agreement and are not intended or represented to be suitable for use or reuse by Owner or others on any project other than the Project or on any future projects. Any use or reuse on any project other than the Project or on any future project without prior written verification or adaption by Contractor for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Contractor.

12.3 Proprietary Calculations. To the extent required in writing by a Governmental Authority for purposes relating to the Facility, Contractor will (and will use its commercially reasonable efforts to cause all applicable Subcontractors to) provide confidential or proprietary design calculations and other formulas not otherwise provided hereunder (collectively, "Proprietary

Calculations") to the Governmental Authority. All such Proprietary Calculations may be disclosed solely to the extent required by a Governmental Authority.

12.4 Subcontractor Licenses. With respect to the Intellectual Property Rights owned or used by Subcontractors in performance of the Work, Contractor shall procure for Owner an irrevocable, perpetual, nonexclusive, royalty-free, fully paid-up, transferable (subject to the limitations in Section 12.5), world-wide license to use such Intellectual Property Rights in connection with the Permitted Purposes to the same extent as the license provided by Contractor under Section 12.2, and shall cause any applicable Subcontractor to execute any documents reasonably requested by Owner to evidence the foregoing; provided, however, solely with respect to Owner's right to use the Intellectual Property Rights in connection with the addition, improvement or alteration of the Facility or any component thereof, Contractor's obligation shall be to use commercially reasonable efforts to obtain such license rights, and in the event Contractor cannot obtain a substantially similar license from such a Subcontractor in connection with the addition, improvement or alteration of the Facility or any component thereof, Contractor will promptly notify Owner and the Parties shall work together in good faith and in an expedited manner to obtain a license adequate to support all of the Permitted Purposes. Notwithstanding the requirements of Section 11.1(a)(ii) and Article 12, with respect to intellectual property matters relating to or arising from the General Electric scope of supply provided pursuant to Power Island Supply Agreement, Contractor hereby provides only those same ownership and license rights and corresponding indemnity rights, limitations and obligations that are provided to Contractor (as assignee of Owner) in the Power Island Supply Agreement, mutatis mutandis. In the event that any Third Party claims an actual or alleged violation, misappropriation or infringement by the General Electric scope of supply provided pursuant to Power Island Supply Agreement of any Intellectual Property Right or unauthorized disclosure or use of trade secrets by General Electric or its subcontractors for which Contractor provides an indemnity under this Agreement, then Contractor covenants to use commercially reasonable efforts to enforce General Electric's indemnity obligations under the Power Island Supply Agreement with respect to such a Claim, but Contractor's liability to Owner for such a Claim shall be limited to Contractor's actual recovery from General Electric on account thereof; provided, however, that Contractor and Owner shall cooperate reasonably in pursuing General Electric with respect to such Claim, and if requested by Owner, Owner may take an assignment from Contractor of its indemnity claim against General Electric for such matter, whereupon (i) Owner may pursue the indemnity claim against General Electric directly for Owner's own account and (ii) Contractor shall not have any further liability to Owner under this Agreement with respect to such Claim.

12.5 Transfer and Assignment. The licenses and rights granted to Owner herein and the tangible and intangible forms of the Deliverables provided to Owner may be transferred, assigned, or sublicensed, without Contractor's consent, to any Person to whom the Facility (or the development rights thereto) or this Agreement is sold, leased, assigned, or otherwise transferred and to any transferee, assignee, and successor in interest of Owner.

12.6 Warranty. Contractor warrants that: (a) all Intellectual Property Rights that may exist in the Deliverables furnished hereunder in connection with the Work are now (or shall at their incorporation into the Work be) vested in Contractor or (b) Contractor will be able to grant Owner

the license rights referred to in Section 12.2 so that Owner may timely, and as it may reasonably require, exercise such rights in connection with the Facility.

12.7 Claim of Infringement. If Owner or any of the Work, the Facility, or component thereof becomes subject to a Claim of infringement or misappropriation identified in Section 11.1(a)(ii), or if Contractor believes that it may be subject to such a Claim, Contractor shall remedy such Claim at its expense and at its option by any reasonable means, including: (i) replacing or modifying the allegedly infringing or misappropriated element(s), or (ii) securing for Owner the right to continue to use such element(s), in each case without loss of functionality and without adversely affecting Facility operations or any license and rights granted hereunder. Contractor shall give prompt written notice to Owner if Contractor believes that any information or technology furnished by Owner or that Owner directs Contractor to incorporate into the Facility infringes or misappropriates any Third Party's Intellectual Property Rights.

12.8 Injunction. If Owner, any Owner Indemnified Party, or Contractor is enjoined from completing, using, operating, or otherwise enjoying the Facility or any part thereof, or from any Permitted Purpose of any Deliverable or any Intellectual Property Rights as a result of any Claim identified in Section 11.1(a)(ii), Contractor shall exercise its best efforts to have such injunction removed at no cost to Owner or any applicable Owner Indemnified Party. Any failure to secure the removal of such injunction shall not constitute a Force Majeure Event. If Contractor fails to secure the removal of such injunction, it shall continue to defend and remedy such Claim in accordance with Section 11.1(a)(ii).

12.9 No Release. Owner's acceptance of Contractor's engineering designs, drawings, or specifications or Contractor's selection of equipment shall not be construed to relieve Contractor of any obligation under this Article 12.

12.10 Survival. This terms and provisions of this Article 12 shall survive the termination or expiration of this Agreement.

ARTICLE 13

CONFIDENTIALITY

13.1 Confidential and Proprietary Information. Owner and Contractor each agree to keep confidential, and shall not disclose, upon receipt from the other Party, any drawings, plans, specifications, pricing methodologies, pricing information and technical information (i) which is conspicuously and reasonably marked as "proprietary" or "confidential" (including, without limitation, any documentation relevant to an employee of either Party which is so marked), (ii) which is supplied orally with a contemporaneous confidential designation and is confirmed to be "proprietary" or "confidential" in writing within ten (10) days after oral disclosure, or (iii) which is known by the receiving Party to be confidential or proprietary information or documentation of the disclosing Party (collectively, the "Confidential Information"). Owner and Contractor shall use reasonable judgment in determining what constitutes "Confidential Information" and shall reasonably endeavor to minimize the amount of information deemed "Confidential Information". Each Party agrees to utilize the same standards and procedures with respect to Confidential

Information received from the other Party which it applies to its own confidential information, but not less than reasonable care. Notwithstanding the foregoing, the Parties may grant access to the Confidential Information in accordance with the following terms:

(i) the Parties may disclose Confidential Information to their respective Affiliates and the respective officers, directors, employees, advisors and counsel of such Parties and their Affiliates; provided that each Party shall cause any such Affiliate, officer, director, employee, advisor or counsel of such Party to keep the Confidential Information confidential and shall not disclose the same to any other Person (except another Person described in this Section 13.1(i)) without the prior written consent of the disclosing Party.

(ii) the Parties may disclose Confidential Information to their contractors, subcontractors (including Subcontractors), consultants, representatives and agents whose access is necessary for the proper performance of the Parties' respective duties and obligations under this Agreement so long as any such disclosure shall be limited to such Confidential Information as any such contractor, subcontractor (including any Subcontractor), consultants, representative or agent requires in order to properly perform the respective duties and obligations under this Agreement, but only if such contractor, subcontractor, consultant, representative or agent agrees: (i) to keep the Confidential Information confidential on terms substantially similar to this Article 13; (ii) not to disclose the same to any other Person without the prior written consent of the disclosing Party and (iii) not to use any Confidential Information for any purpose other than as provided in this Section 13.1(ii).

(iii) Owner may disclose Confidential Information, on a "need to know basis", to its contractors, subcontractors (including Subcontractors), suppliers, consultants and agents for the completion, repair, operation and maintenance of, and additions, improvements, changes or alterations to, the Facility; but only if such contractor, subcontractor, supplier, consultant or agent agrees: (i) to keep the Confidential Information confidential on terms substantially similar to this Article 13; (ii) not to disclose the same to any other Person without the prior written consent of the disclosing Party, and (iii) not to use any Confidential Information for any purpose other than as provided in this Section 13.1(iii).

(iv) Owner may also disclose Confidential Information to Lenders and potential Lenders and prospective and actual purchasers of the Facility or direct or indirect interests in Owner, the Independent Engineer and the Owner's Engineer, on a "need to know basis" so long as any such disclosure shall be: (i) subject to the agreement of any such Lender (or potential Lender) or prospective (or actual) purchaser to keep the Confidential Information confidential on terms substantially similar to this Article 13, (ii) to not disclose the same to any third party (other than its counsel and other consultants) without the prior written consent of Contractor and (iii) not to use any Confidential Information for any purpose other than in connection with the Facility and the development, construction, ownership, leasing, use, operation, maintenance,

repair and financing thereof or evaluating and administering its potential or actual extension of credit, or purchase from, or investment in, Owner or the Facility or fulfilling its contractual responsibilities to Owner or a Lender.

13.2 Disclosure of Confidential Information. Notwithstanding anything to the contrary contained herein, the Parties shall have no obligation with respect to any Confidential Information which (i) is or becomes publicly known through no act of the receiving Party in breach of this Agreement, (ii) is approved for release by written authorization of the disclosing Party, (iii) is required to be disclosed by the receiving Party pursuant to a legal process (so long as the receiving Party uses commercially reasonable efforts to avoid disclosure of such Confidential Information, and prior to furnishing such Confidential Information, the receiving Party notifies the disclosing Party and gives the disclosing Party the opportunity to object to the disclosure and/or to seek a protective order), (iv) has been rightfully furnished to the receiving Party without any restriction on use or disclosure and not in violation of the rights of the other Party or was made available to the receiving Party or its representatives on a non-confidential basis prior to its disclosure hereunder, or (v) has been independently developed without use or reliance on the disclosing Party's Confidential Information. Nothing in this Agreement shall bar the right of either Party to seek and obtain from any court injunctive relief against conduct or threatened conduct which violates the terms of this Article 13.

13.3 Public Relations. Contractor agrees that all public relations matters arising out of or in connection with the Work are the sole responsibility of Owner. Contractor shall obtain Owner's prior written approval of the text of any public announcements, publications, photographs, or other type of communication concerning the Work which Contractor or its Subcontractors wish to release for publication, which approval may be withheld in Owner's sole discretion. So long as Contactor complies with the provisions of this Article 13, Contractor may discuss the portions of the Work or Project not constituting Confidential Information on a non-public basis in its normal course of conducting business.

13.4 Survival. Each Party agrees to hold the Confidential Information confidential for the longer of a period of three (3) years from receipt or for a period of two (2) years from the earlier to occur of termination of this Agreement or Final Completion. This terms and provisions of this Article 13 shall survive the termination or expiration of this Agreement.

ARTICLE 14

REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

Contractor hereby represents and warrants to Owner as follows:

14.1 Due Organization; Good Standing. Contractor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and qualified to conduct business in the State of Ohio.

14.2 Due Authorization. The execution, delivery and performance of this Agreement by Contractor have been duly authorized by all necessary corporate action on the part of Contractor

and do not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Contractor or any other party to any other agreement with Contractor.

14.3 Execution and Delivery. This Agreement has been duly executed and delivered by Contractor. This Agreement constitutes the legal, valid, binding and enforceable obligation of Contractor, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by principles of equity.

14.4 Governmental Approvals. No governmental authorization, approval, order, license, permit, franchise or consent, and no registration, declaration or filing with any Governmental Authority is required on the part of Contractor in connection with the execution, delivery and performance of this Agreement, except those which have already been obtained or which Contractor anticipates will be timely obtained in the ordinary course of performance of this Agreement and except for Owner Permits.

14.5 Intellectual Property Rights. Contractor has, or will have prior to incorporation into the Work, all necessary right and authority to grant the license in and to the Intellectual Property Rights granted pursuant to Article 12 (including where necessary, by having obtained the necessary rights and licenses from its Affiliates or Subcontractors or from third party licensors, as the case may be). The Intellectual Property Rights licensed to Owner under this Agreement and the Intellectual Property Rights that Owner will acquire by virtue of purchasing the Work are all of the Intellectual Property Rights that Owner will need to operate, maintain, service and/or transfer the Facility.

14.6 No Litigation. No litigation, investigation, or proceeding of or before any arbitrator or Governmental Authority is pending against or, to the knowledge of Contractor, threatened against or affecting Contractor or any of its properties, rights, revenues, assets, or the Work (a) which could reasonably be expected to have a material adverse effect on the properties, business, prospects, operations, or financial condition of Contractor or (b) which could reasonably be expected to have a material adverse effect on the ability of Contractor to perform its obligations under this Agreement.

14.7 Financial Solvency. Contractor is financially solvent, able to pay all debts as they mature and possesses sufficient working capital to complete the Work and perform its obligations hereunder. Guarantor is financially solvent, able to pay all debts as they mature, and possesses sufficient working capital to perform the obligations required by the Parent Guaranty.

14.8 Qualifications. Contractor is qualified to design, engineer, procure, construct, pre-commission, commission, start-up and test the Facility and has sufficient experience and competence to do so.

ARTICLE 15

REPRESENTATIONS AND WARRANTIES OF OWNER

Owner represents and warrants to Contractor as follows:

15.1 Due Organization; Good Standing; Qualified to do Business. Owner is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and qualified to conduct business in the State of Ohio.

15.2 Due Authorization. The execution, delivery and performance of this Agreement by Owner have been duly authorized by all necessary company action on the part of Owner and do not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Owner or any other party to any other agreement with Owner.

15.3 Execution and Delivery. This Agreement has been duly executed and delivered by Owner. This Agreement constitutes the legal, valid, binding and enforceable obligation of Owner, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by principles of equity.

15.4 Governmental Approvals. No governmental authorization, approval, order, license, permit, franchise or consent, and no registration, declaration or filing with any Governmental Authority is required on the part of Owner in connection with the execution, delivery and performance of this Agreement, except those which have already been obtained or which Owner anticipates will be timely obtained in the ordinary course of performance of this Agreement and except for Contractor's Permits.

15.5 No Litigation. No litigation, investigation, or proceeding of or before any arbitrator or Governmental Authority is pending against or, to the knowledge of Owner, threatened against or affecting Owner or any of its properties, rights, revenues, or assets which could reasonably be expected to have a material adverse effect on the properties, business, prospects, operations, or financial condition of Owner such that it could reasonably be expected to have a material adverse effect on the ability of Owner to perform its obligations under this Agreement.

15.6 Ownership of Site and Facility. Owner owns the Site (except that Owner holds easement interests granted by its Affiliate, Ohio River Partners Shareholder LLC, with respect to a portion of the laydown area on the Site and the locations of the river water intake, water supply piping, discharge piping and wastewater outfall), and Owner has not leased or assigned any direct interest in the Facility (other than to its Lenders in connection with the financing of the Facility) as of the Effective Date.

ARTICLE 16

DEFAULT & REMEDIES

16.1 Contractor Default. (a) The occurrence of any one or more of the following matters constitutes a default by Contractor under this Agreement (a "Contractor Default"):

(i) Contractor shall refuse or persistently fails to provide sufficient properly skilled workers, adequate supervision or materials of the proper quality in order to perform the Work;

(ii) Contractor shall fail in any material respect to prosecute the Work according to the Project Schedule or other applicable agreed schedule or in a workmanlike, safe and skillful manner;

(iii) Except as otherwise expressly covered by another Contractor Default set forth in this Section 16.1, any breach of any material duty or obligation of Contractor;

(iv) Failure of Contractor to perform its obligations under this Agreement such that the Project does not achieve Substantial Completion within 180 days after the Guaranteed Substantial Completion Date (provided that no additional cure period will apply to this Contractor Default);

(v) Failure of Contractor to perform its obligations under this Agreement such that the Project does not achieve Final Completion within 180 days after the Guaranteed Final Completion Date (provided that no additional cure period will apply to this Contractor Default);

(vi) Contractor or Guarantor becomes insolvent or generally fails to pay, or admits in writing its inability or unwillingness to pay, its debts as they become due (provided that no additional cure period will apply to this Contractor Default);

(vii) Contractor or Guarantor makes a general assignment for the benefit of its creditors (provided that no additional cure period will apply to this Contractor Default);

(viii) Contactor or Guarantor shall commence or consent to any case, proceeding or other action (a) seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of Contractor or Guarantor or of Contractor’s or Guarantor’s debts under any Applicable Law relating to bankruptcy, insolvency, reorganization or relief of debts, or (b) seeking appointment of a receiver, trustee or similar official for Contractor or Guarantor or for all or any part of Contractor’s or Guarantor’s property (provided that no additional cure period will apply to this Contractor Default);

(ix) any case, proceeding or other action against Contractor or Guarantor shall be commenced (a) seeking to have an order for relief entered against Contractor or Guarantor as debtor, (b) seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of Contractor or Guarantor or Contractor’s or Guarantor’s debts under any Applicable Law relating to bankruptcy, insolvency, reorganization or relief of debtors, or (c) seeking appointment of a receiver, trustee, or similar official for Contractor or Guarantor or for all or any part of Contractor’s or Guarantor’s property; and such case, proceeding or action is not dismissed within sixty (60) days thereafter (provided that no additional cure period will apply to this Contractor Default);

(x) Failure of Contractor to make payment to Owner, when due, of any payment required under this Agreement that is not disputed in good faith by Contractor, including, without limitation, Liquidated Damages;

(xi) Failure to maintain and, as applicable, amend the Letter of Credit, as required by this Agreement (provided that no additional cure period will apply to this Contractor Default);

(xii) Failure to pay undisputed amounts to Subcontractors in a timely manner in accordance with their Subcontract;

(xiii) A dissolution of Contractor or Guarantor (provided that no additional cure period will apply to this Contractor Default);

(xiv) Any assignment or transfer by Contractor of its rights and obligations under this Agreement without Owner's prior written consent (provided that no additional cure period will apply to this Contractor Default);

(xv) Abandonment of the Work, or if within five (5) days after Contractor's receipt of written notice from Owner stating its belief that Contractor has abandoned all or part of the Work, Contractor has failed to (a) resume diligent performance of the Work or (b) provide reasonable assurances that it has not abandoned all or part of the Work;

(xvi) Repudiation of any of Contractor's obligations under this Agreement;

(xvii) Failure to maintain insurance required under this Agreement (provided that no additional cure period will apply to this Contractor Default);

(xviii) Contractor's failure to comply with Applicable Law or Applicable Codes and Standards in the performance of the Work;

(xix) Failure to discharge, bond over or otherwise remove liens filed by any Subcontractor as required by this Agreement;

(xx) Contractor's commission of any willful misconduct;

(xxi) Contractor's aggregate liability under this Agreement for any Liquidated Damages either reaches or exceeds any of the limits in Section 19.2;

(xxii) Any representation or warranty of Contractor contained in this Agreement shall prove to be materially false or intentionally misleading at the time such representation or warranty is made;

(xxiii) The Parent Guaranty is repudiated by Guarantor or shall cease to be valid, binding or enforceable or if there is a default under such Parent Guaranty, and such default shall persist on the date of written notice thereof from Owner (provided that no additional cure period will apply to this Contractor Default);

(xxiv) A General Electric Triggered Default (provided that no additional cure period beyond what is provided in the Power Island Supply Agreement will apply to this Contractor Default); or

(xxv) An "Owner Default" under the Power Island Supply Agreement occurs which is not due to any breach by Owner of the Retained Obligations or, to the extent allocable to Owner, the Shared Obligations (provided that no additional cure period beyond what is provided in the Power Island Supply Agreement will apply to this Contractor Default).

The cure period with respect to the defaults above (other than those stated above as having no cure period) shall be fourteen (14) days after Owner's written notice to Contractor of Contractor's Default, but if such Contractor Default cannot be cured with the exercise of reasonable diligence within such fourteen (14) day period such longer cure period as may be necessary to cure such failure, not to exceed ninety (90) days from written notice in total, and provided further that in each case that Contractor has initiated and diligently pursues such cure.

(b) Upon the occurrence of any Contractor Default, Owner, in addition to its right to pursue any other remedy provided under this Agreement or now or hereafter existing at law or in equity, may, by written notice to Contractor (or Guarantor in the case of (viii) below), and without prejudice to any of its other rights or remedies, (i) draw upon the Letter of Credit and/or withhold amounts due to Contractor up to an amount sufficient to cure such Contractor Default; (ii) take possession of the Site and Facility and of all Equipment, Materials, and Consumables, tools, machinery, submittals and other information owned or held by Contractor but in no event shall Owner have the right to take possession of the Construction Aids absent Contractor's written approval; (iii) proceed against Contractor in accordance with Article 18; (iv) seek specific performance of Contractor's obligations under this Agreement to the extent permitted by Applicable Law; (v) either by itself or through others finish the Work by whatever method Owner may deem expedient; (vi) terminate this Agreement; (vii) terminate Contractor's right to perform all or any portion of the Work; and/or (viii) enforce the Parent Guaranty against Guarantor. If the cost of finishing the Work (including the cost of arranging for completion of the Work and, at Owner's option, performing such Work on an accelerated basis to preserve as nearly as possible adherence to the Milestone Schedule, including the Guaranteed Substantial Completion Date set forth therein (as may be adjusted pursuant to this Agreement), and performing Contractor's other obligations under this Agreement, exceeds the unpaid balance of the Contract Price (the amount of such excess referred to herein as "**Excess Costs of Cover**"), then Contractor, subject to the limitations on Contractor's liability set forth in Section 19.3, shall pay Owner such Excess Costs of Cover, as damages for loss of bargain and not as a penalty. Contractor acknowledges that, in the event of such a termination, Owner may enter into one or more contracts (including a turnkey contract) for the completion of the Facility and that such contracts may require the replacement contractors to perform all such work on an accelerated basis, and that, as a result thereof, the Excess Costs of Cover may be substantial. To the extent applicable, Contractor shall remain liable for the satisfaction of all Losses for which Contractor is liable hereunder which are incurred prior to Owner's termination (including Contractor's indemnification obligations hereunder and payment of all Liquidated Damages accrued as of the date of termination). Owner shall be released from any obligation to pay Contractor for any amount owed for the Contract Price allocated for the portion of Work terminated. The exercise of the right of Owner to terminate this Agreement, as provided herein,

does not preclude Owner from exercising other remedies that are provided herein or are available at law or in equity as further set forth in Section 20.12.

16.2 Owner Default. (a) The occurrence of any one or more of the following matters shall constitute a default by Owner under this Agreement (an "**Owner Default**"):

(i) Owner becomes insolvent or generally fails to pay, or admits in writing its inability or unwillingness to pay, its debts as they become due;

(ii) Owner makes a general assignment for the benefit of its creditors;

(iii) Owner shall commence or consent to any case, proceeding or other action (a) seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of Owner or of Owner's debts under any Applicable Law relating to bankruptcy, insolvency, reorganization or relief of debts, or (b) seeking appointment of a receiver, trustee or similar official for Owner or for all or any part of Owner's property;

(iv) any case, proceeding or other action against Owner shall be commenced (a) seeking to have an order for relief entered against Owner as debtor, (b) seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of Owner or Owner's debts under any Applicable Law relating to bankruptcy, insolvency, reorganization or relief of debtors, or (c) seeking appointment of a receiver, trustee, or similar official for Owner or for all or any part of Owner's property; and such case, proceeding or action is not dismissed within sixty (60) days thereafter;

(v) Owner fails to pay to Contractor any payment required under this Agreement which is not subject to a good faith dispute by Owner or which Owner is not entitled to withhold payment in accordance with this Agreement, and such failure continues for thirty (30) days after receipt of written notice of such failure; or

(vi) An "Owner Default" under the Power Island Supply Agreement occurs which is due to any breach by Owner of the Retained Obligations or, to the extent allocable to Owner, the Shared Obligations (provided that no additional cure period beyond what is provided in the Power Island Supply Agreement will apply to this Owner Default).

(b) Upon the occurrence of an Owner's Default, Contractor may (i) suspend its performance of the Work, or (ii) terminate this Agreement. If this Agreement is so terminated by Contractor for an Owner's Default, Contractor, as its sole and exclusive remedy hereunder, shall be entitled to receive amounts calculated in accordance with Section 16.4.

16.3 No Release. No termination under this Article 16 shall release either Party from any obligations incurred hereunder prior to such termination; provided however, for purposes of clarity, any and all Liquidated Damages shall cease to accrue upon such termination.

16.4 Termination for Convenience. Owner may terminate this Agreement without cause at any time and for any reason or no reason upon written notice to Contractor. If this Agreement is

so terminated after the issuance of a Notice to Proceed, Contractor, as its sole and exclusive remedy hereunder, shall be entitled to receive: (i) the value of the Work properly completed prior to the date of termination not previously covered by any prior payments, including profit with respect to such completed Work, and (ii) reasonable, documented demobilization costs and termination/cancellation costs under Subcontracts incurred by Contractor to implement such termination. Any Work for which title has passed (or by the terms of this Agreement, should have passed) to Owner prior to the date of such termination shall remain the property of Owner. No termination payment or other amount shall be payable to Contractor if the termination for convenience occurs prior to Owner's issuance of a Notice to Proceed.

16.5 Actions Upon Termination. Upon termination of this Agreement or Contractor's right to perform Work, Contractor shall promptly (a) discontinue the Work (except any performance necessary for purposes of safety or security or to carry out such termination), (b) cease entering into or issuing Subcontracts and purchase orders in respect of the Facility or Work, (c) remove from the Site (and properly dispose of) all waste, rubbish and debris associated with the Work, (d) conduct an inventory of the equipment and materials related to the Work on the Site or being shipped to the Site, (e) remove its personnel and equipment related to the Work from the Site, (f) take such steps as are reasonably necessary to maintain, preserve and protect the Work completed and in progress and to protect associated materials, equipment and supplies at the Site, stored off-site or in transit; (g) assign to Owner upon written request all rights and obligations (excluding rights and obligations of Contractor to the extent relating to the period prior to the assignment) of Contractor under Subcontracts (and warranties thereunder) entered into by Contractor in connection with this Agreement, and make every reasonable effort to cancel Subcontracts, including lease and rental agreements, and purchase orders upon terms satisfactory to Owner (using Contractor's reasonable efforts in light of the Subcontract terms to mitigate costs incident to termination of the Work) to the extent they relate to the performance of the Work that is discontinued unless Owner elects to take assignment of any such Subcontracts or Contractor is directed by Owner (at Owner's cost solely in the event of a termination for convenience by Owner pursuant to Section 16.4) to take other actions with respect to same, (h) cooperate with Owner for the efficient transition of the Work, (i) cooperate with Owner in the transfer of all Deliverables, including drawings, specifications, plans, reports, and other design documentation (including all media and calculations) for the terminated Work, including the applicable Permits, licenses, computer files and any other items or information and disposition of Work in progress and (j) execute all documents and take all other reasonable steps requested by Owner which may be required or reasonably necessary to vest in Owner all rights, set-offs, benefits and titles necessary for Owner to assume any obligations with respect to the Work.

16.6 Owner's Right to Carry Out the Work. If Contractor defaults under this Agreement or neglects to carry out the Work in accordance with this Agreement and fails within a seven (7) day period after receipt of written notice from Owner to take steps to commence and continue curing such default or neglect with diligence and promptness, Owner, without prejudice to any other rights or remedies Owner may have, may correct such deficiencies at Contractor's expense (including Owner's internal, general, and administrative expenses) and Owner shall have the right to reimbursement of such reasonable expenses and may, without limitation: (i) deduct such amounts incurred by Owner from amounts due or to become due to Contractor; (ii) draw on the Letter of Credit to recover such expenses; or (iii) otherwise obtain reimbursement directly from Contractor

therefor. The exercise by Owner of any of its rights under this Section 16.6 shall not diminish any of Contractor's obligations hereunder or relieve Contractor from full compliance with the requirements hereof.

16.7 Termination for Extended Force Majeure. Contractor shall not have the right to elect to terminate the Power Island Supply Agreement pursuant to Section 16.6 thereof without the prior written consent of Owner, which may be given or withheld in its sole and absolute discretion; provided, however, if General Electric terminates the Power Island Supply Agreement pursuant to Section 16.6 of the Power Island Supply Agreement, then Contractor shall have the right to terminate this Agreement upon fifteen (15) days' prior written notice to Owner. If this Agreement is so terminated, then each Party, as its sole and exclusive obligation and remedy hereunder, shall pay all amounts due to the other Party for Work performed and any undisputed amounts incurred under this Agreement prior to the effective date of such termination, and Contractor shall be obligated to comply with Section 16.5 and shall remain liable for any Liquidated Damages accrued prior to such termination. Owner shall retain title to all Equipment and Work and portions of the Facility for which title has already passed to Owner under this Agreement.

ARTICLE 17

SUSPENSION RIGHTS

17.1 Suspension by Owner. (a) Owner shall have the right, at any time and from time to time and for any reason, to suspend all or any part of the Work upon giving written notice to Contractor, whereupon Contractor shall suspend the carrying out of such suspended Work for such time or times and in such manner as Owner may require and shall take reasonable steps to minimize any costs associated with such suspension. During any such suspension, Contractor shall exercise commercially reasonable efforts to maintain the Work and to protect Owner's associated interests at minimum cost, including mitigating and minimizing the amount of costs that may result from such suspension, and Contractor shall properly preserve, protect and secure such suspended Work and the Facility in such manner as Owner may reasonably require. Unless otherwise instructed by Owner, Contractor shall during any such suspension maintain its staff and labor on or near the Site and otherwise be ready to proceed expeditiously with the Work upon receipt of Owner's further instructions. Except where such suspension ordered by Owner is the result of or due to the fault or negligence of Contractor or any Subcontractor, Contractor shall be entitled to the reasonable, demonstrated costs incurred by Contractor in the implementation and discontinuance of the suspension under a Change Order, including reasonable demobilization and remobilization costs, if necessary, upon providing appropriate supporting documentation to evidence such costs, and a time extension to the Milestone Schedule extending the Milestone Schedule for a period of time reasonably necessary to overcome the effects of such suspension if and to the extent permitted under Article 8. Upon receipt of notice to resume suspended Work, Contractor shall immediately resume performance of the Work to the extent required in the notice. In no event shall Contractor be entitled to any additional profits or damages due to such suspension. Should a suspension of the entire Work which is ordered by Owner continue for one hundred eighty (180) or more consecutive days, either Party may terminate this Agreement by written notice to the other Party and the rights and

remedies of Contractor shall be the same as those set forth in Section 16.4 hereof in the event of termination by convenience by Owner. Notwithstanding the foregoing, Owner expressly acknowledges and agrees that it shall have no right to suspend manufacture of the General Electric scope of supply under the Power Island Supply Agreement except as permitted in the Power Island Supply Agreement.

17.2 Suspension by Contractor. Notwithstanding anything to the contrary in this Agreement, Contractor shall have the responsibility at all times to prosecute the Work diligently and shall not suspend, stop or cease performance hereunder or permit the prosecution of the Work to be delayed; provided, however, subject to Owner's right to withhold or offset payment to Contractor under this Agreement, if Owner fails to pay to Contractor when properly due any undisputed (in good faith) Milestone Payment required under this Agreement, and such failure continues for fifteen (15) days after Owner's receipt of written notice from Contractor of such failure, then Contractor may, upon five (5) days' additional written notice to Owner, suspend its performance of the Work in whole or in part until Contractor receives such undisputed amounts. Contractor shall be entitled to a Change Order (i) adjusting the Contract Price for any reasonable, demonstrated costs incurred by Contractor resulting from such suspension, including reasonable demobilization and remobilization costs, and (ii) extending the Milestone Schedule for a period of time reasonably necessary to overcome the effects of such suspension to the extent allowed under Article 8; provided that Contractor complies with the notice and Change Order request requirements set forth in Article 8.

ARTICLE 18

DISPUTE RESOLUTION

18.1 Disputes. The Project Manager and the Owner's Manager shall attempt to expeditiously reach a mutually acceptable resolution of any claim, dispute or other controversy arising out of, or relating to, this Agreement (each a "**Dispute**"). In the event that such Dispute cannot be resolved by such representatives of Contractor and Owner, the dispute will be referred to a Senior Officer from each Party for resolution by mutual agreement between said officers, who shall attempt in good faith to resolve the dispute amicably. Any mutual determination by the Senior Officers shall be final and binding upon the Parties. However, should such Senior Officers fail to arrive at a mutual decision as to the Dispute within thirty (30) days after notice to both individuals of the Dispute, or such longer period as the Parties may mutually agree, then either Party may (a) commence mediation in accordance with and subject to the provisions set forth in Section 18.2 hereof or, if the mediation does not result in a mutual decision or the amount in Dispute is $[***] or less, commence a legal action in accordance with Section 18.3; or (b) immediately pursue their remedies at law without first participating in mediation. Notwithstanding the foregoing, nothing in this Article 18 shall be construed to prevent a Party from filing a legal action or proceeding in order to preserve legal rights or claims.

18.2 Mediation. If a Dispute has not been resolved by agreement by the Parties' Senior Officers as provided in Section 18.1 above, and involves an amount in Dispute of more than $[***], either Party may submit the Dispute for non-binding mediation in accordance with the Construction Industry Mediation Procedures of the American Arbitration Association ("**AAA**") then currently in

effect as modified herein or by mutual agreement of the Parties. The Parties shall seek to agree on the appointment of a mediator within fifteen (15) days of the Dispute being submitted for mediation, failing which the mediator shall be appointed by the AAA. If the Dispute is referred to mediation as provided herein, at least one representative of each Party with the authority to settle the Dispute shall be present at the mediation. The mediation shall be held in New York, New York (provided, however, that if Ohio law requires that the mediation take place in the State of Ohio, then the mediation shall be held in Columbus, Ohio). The cost of the mediation shall be shared equally by the Parties, but each Party shall bear its own costs and expenses, including attorneys' fees, incurred in connection with such mediation. However, if the mediation does not result in a mutual decision as to the Dispute within thirty (30) days after the appointment of the mediator, either party may commence litigation subject to the provisions set forth in Section 18.3 hereof.

18.3 Venue. Any legal action or proceeding with respect to this Agreement shall be brought in the United States District Court for the Southern District of Ohio, Eastern Division or, if such court lacks jurisdiction, in the Court of Common Pleas of the State of Ohio in Franklin County. Each of the Parties hereby accepts and consents to, generally and unconditionally, the jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Each of the Parties hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

18.4 Jury Waiver. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BETWEEN THE PARTIES OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER DOCUMENTS ENTERED INTO IN CONNECTION HEREWITH. Owner and Contractor hereby agree that all issues of law and fact shall be decided by a judge only. Contractor agrees to incorporate this jury waiver into all of the agreements with any Major Subcontractors for the Work and to use commercially reasonable efforts to incorporate this jury waiver into all of the agreements with any other first-tier Subcontractors or Suppliers for the Work whose Subcontracts or supply agreements have an aggregate value in excess of [***] U.S. Dollars (U.S. $[***]).

18.5 Prevailing Party. The prevailing Party in any court proceedings shall be reimbursed by the other Party for all reasonable out-of-pocket costs, expenses and charges, including, without limitation, reasonable attorneys' fees, incurred by said prevailing Party, but if the prevailing Party has had only a partial victory, then the court will make an allocation based on the extent to which the court views the prevailing Party as having prevailed.

18.6 Performance During Dispute. Pending final resolution of a Dispute, Contractor shall proceed diligently with the performance of the Work and its duties and obligations under this Agreement, and Owner shall continue to make payments of undisputed amounts in accordance with this Agreement.

ARTICLE 19

LIMITATION OF LIABILITY

19.1 Consequential Damages. Notwithstanding anything to the contrary contained in this Agreement, and except for (i) damages arising out of or liability for breach with respect to confidentiality covenants under Article 13 of this Agreement, (ii) damages for which a Party has an indemnification obligation under Section 11.1(a)(i) or (b)(i), (iii) damages solely in respect of Third Party intellectual property Claims relating to the General Electric scope of supply provided under the Power Island Supply Agreement for which Contractor has an indemnification obligation pursuant to Section 12.4 (provided that, for purposes of clarity, Contractor's liability to Owner for damages under such a Claim shall be limited to Contractor's actual recovery from General Electric on account thereof), (iv) the Gross Negligence of Contractor's Senior Personnel, (v) willful misconduct or fraud of a Party, (vi) costs incurred directly by Contractor to achieve all of the Minimum Performance Criteria, and (vii) any provision obligating Contractor to pay for liquidated damages in this Agreement (none of which shall be interpreted or construed as, consequential, special, incidental, indirect, punitive or exemplary damages or damages for loss of revenue or profits, loss of goodwill, loss of production, loss of opportunity, costs of capital or financing, loss of use, or loss of contracts for the purposes of this Agreement), Owner and Contractor waive all claims against each other (and against each other's parent company, Affiliates, contractors, subcontractors (including Subcontractors), consultants and agents) for any consequential, special, incidental, indirect, punitive, or exemplary damages, and damages for loss of revenue or profits, loss of goodwill, loss of production, loss of opportunity, costs of capital or financing, loss of use, or loss of contracts, and regardless of whether any such claim arises out of breach of contract or warranty, tort (including negligence of any kind or character), product liability, indemnity, contribution, strict liability or other legal theory. Contractor covenants and agrees that it will use commercially reasonable efforts to obtain a written waiver of claims against Owner (and its parent company, Affiliates, contractors, subcontractors, consultants and agents) identical to the waiver set forth in the preceding sentence from each Major Subcontractor performing any portion of the Work. Nothing in this Section 19.1 is intended to nullify or limit the exclusion from the waiver of consequential, special, incidental, indirect, punitive, or exemplary damages, and damages for loss of revenue or profits, loss of goodwill, loss of production, loss of opportunity, costs of capital or financing, loss of use, or loss of contracts damages in favor of General Electric under Section 19.1 of the Power Island Supply Agreement with respect to General Electric's obligations arising out of or liability for breach with respect to General Electric's warranty covenants under Article 9 of the Power Island Supply Agreement.

19.2 Liquidated Damages. (a) Notwithstanding anything to the contrary contained in this Agreement, the aggregate liability of Contractor for Performance Liquidated Damages shall in no event exceed an amount equal to [***] percent ([***]%) of the Contract Price.

(b) Notwithstanding anything to the contrary contained in this Agreement, the aggregate liability of Contractor for Substantial Completion Liquidated Damages shall in no event exceed an amount equal to [***] percent ([***]%) of the Contract Price.

(c) Notwithstanding anything to the contrary contained in this Agreement, the overall aggregate liability of Contractor for all Liquidated Damages shall in no event exceed an amount equal to [***] percent [***]%) of the Contract Price.

Liquidated Damages shall be paid by Contractor when due without set-off, counterclaim, or reduction whatsoever.

19.3 Overall Limitation. Notwithstanding anything to the contrary contained in this Agreement, the aggregate liability of Contractor (including its Affiliates, officers, directors, assignees and employees) to Owner in relation to any and all obligations under this Agreement, whether such liability arises out of breach of contract or warranty, tort (including but not limited to negligence of any kind or character), product liability, indemnity, contribution, strict liability or other legal theory, shall not exceed an amount equal to [***] percent ([***]%) of the Contract Price (as may be adjusted by Change Order). The preceding limitation of Contractor's liability shall not apply to, and no credit shall be issued against such liability limitation for:

(i) (a) Contractor's indemnity obligations set forth in Section 11.1(a)(i) and 11.1(a)(iv) under this Agreement, and (b) Contractor's indemnity obligations pursuant to Section 12.4 solely in respect of Third Party intellectual property Claims relating to the General Electric scope of supply provided under the Power Island Supply Agreement (provided that, for purposes of clarity, Contractor's liability to Owner for damages under such a Claim shall be limited to Contractor's actual recovery from General Electric on account thereof);

(ii) Contractor's abandonment of the Work;

(iii) Claims which arise or result from (a) the Gross Negligence of Contractor's Senior Personnel or (b) willful misconduct or fraud of Contractor or its Subcontractors;

(iv) Contractor's obligation to deliver to Owner full legal title to and ownership of all or any portion of the Work and Facility as required under this Agreement;

(v) Costs incurred by Contractor to achieve all of the Minimum Performance Criteria, Mechanical Completion and Substantial Completion or to perform (subject to Section 2.12(f) to the extent applicable) Corrective Work; and

(vi) The proceeds (excluding payment of deductibles) of any policies of insurance specifically and separately procured and maintained (or required to be maintained) by Contractor for the Work in accordance with the terms of this Agreement, but not those policies that are part of Contractor's practice program.

ARTICLE 20

GENERAL PROVISIONS

20.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without regard to conflicts of law principles.

20.2 Entire Agreement. This Agreement represents the entire agreement between Owner and Contractor with respect to the subject matter hereof, and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement may be amended or modified only by a written instrument signed by both Owner and Contractor.

20.3 Assignment. (a) Contractor shall not assign, pledge or otherwise transfer this Agreement or any right or obligation hereunder without the prior written consent of Owner, which consent may be given or withheld in Owner's sole discretion. Notwithstanding the foregoing, if Owner in its sole discretion consents to any such assignment, pledge or other transfer, Kiewit Power Constructors Co. shall not be relieved of any of its liabilities or obligations under this Agreement and shall remain primarily liable for the payment and performance of all obligations of Contractor under this Agreement, whether accruing before, on or after such assignment, pledge or other transfer, the Guarantor shall continue to be liable under the Parent Guaranty notwithstanding such assignment, pledge or other transfer and, if requested by Owner, Kiewit Power Constructors Co. shall provide an affirmation of such continuing primary liability, and Guarantor shall provide an affirmation of its continuing liability under the Parent Guaranty, each in and form and substance reasonably acceptable to Owner.

(b) Except as otherwise provided in this Section, Owner shall not assign, pledge or otherwise transfer this Agreement or any right or obligation hereunder without the prior written consent of Contractor, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Contractor hereby covenants and agrees that Owner may, without Contractor's consent, assign or delegate any or all of its rights or obligations under this Agreement:

(i) to any Affiliate or co-venturer of Owner provided the financial creditworthiness of the assignee is equal or better than the Owner or the assignee otherwise demonstrates that it has the financial resources necessary to perform its obligations under this Agreement;

(ii) to any Person which acquires all or substantially all of the assets of Owner related to the Facility or the ownership interests in Owner; and/or

(iii) to any Lender of Owner. In the event Owner does in fact intend to collaterally assign this Agreement to a Lender, Contractor agrees that it shall (and shall cause the Guarantor to) (x) execute a consent to Owner's collateral assignment of this Agreement to any such Lender (which consent shall be in a form that is customary for the financing of a gas-fired power project and reasonably acceptable to such Lender) provided however, that such shall not materially impair or diminish Contractor's rights or materially increase Contractor's obligations under this Agreement, and (y) provide an opinion of in-house counsel reasonably satisfactory to such Lender regarding the due execution and authorization (and, if required by such Lender, an opinion of outside counsel reasonably satisfactory to such Lender (the reasonable out-of-pocket cost for which shall be paid by Owner) regarding the enforceability) of this Agreement, the Parent Guaranty and such preceding consent and such other matters as such Lender may reasonably request.

(c) Upon any permitted assignment by Owner, Owner will be released from all obligations or liabilities arising out of or related to this Agreement relating to the period from and after such assignment.

(d) Any assignment or transfer of this Agreement pursuant to this Section shall be subject to all limitations of liability contained in this Agreement.

(e) Except as specifically provided in this Section, any assignment or transfer of this Agreement or any rights, duties or interest hereunder by Owner or Contractor without the prior written consent of the other Party hereto shall be void and of no force and effect.

20.4 Cooperation with Financing. Contractor agrees to provide such assistance as is reasonably requested by Owner in connection with Owner's efforts to secure financing for the Facility, which shall include, without limitation, providing technical assistance as Owner may request in addressing any Lender issues or concerns and meeting with the Lenders and their representatives.

In connection with the financing of the Project, Contractor agrees to (and shall cause the Guarantor to) execute, acknowledge and deliver to Owner such documents and instruments and take such other commercially reasonable actions as are reasonably necessary to (a) accommodate any financing or refinancing of the Project; and (b) satisfy the reasonable requests of Owner's Lenders or any prospective Lender in connection with such financing or refinancing; provided however, that such shall not materially impair or diminish Contractor's rights or materially increase Contractor's obligations under this Agreement.

Subject to, in the case of financial information and other Confidential Information, terms of confidentiality reasonably acceptable to Contractor and the Lenders or prospective Lenders or prospective equity investors in the Project or the Independent Engineer, as applicable, Contractor agrees to provide such information and documentation as may be requested by the Lenders or prospective Lenders or prospective equity investors in the Project, and the Independent Engineer, including:

(a) Financial information, evidence of corporate existence, and evidence of incumbency of persons executing this Agreement;

(b) Opinions of counsel consistent with those set forth in Section 20.3(b)(iii)(y) and addressing such other matters as may be reasonably required by the Lenders or a prospective Lender; and

(c) Any reasonable consents and agreements, estoppel certificates, or other documents reasonably required in connection with the financing or refinancing of the Project.

If any financing party or prospective Lender, including a prospective equity investor, determines that an amendment or modification of this Agreement is required in connection with or as a condition to the financing or any refinancing of the Project, Owner and Contractor shall negotiate in good faith and in consultation with the financing party or prospective

Lender, including a prospective equity investor, the terms of any such requested amendment or modification, including an equitable adjustment to the Contract Price and Milestone Schedule if the same is demonstrably impacted by the requested amendment or modification.

20.5 Survival. All provisions of this Agreement that are expressly or by their nature or implication to come into or continue in force and effect after the expiration or termination of this Agreement shall remain in effect and be enforceable following such expiration or termination. Without limiting the foregoing, the following provisions are hereby explicitly set forth, for the purpose of clarity, as those that shall survive expiration or termination of this Agreement: Section 2.5, Section 2.12, Section 2.20, Section 2.21, Section 2.24, Section 4.3, Article 5, Section 6.9, Article 9, Article 11, Article 12, Article 13 Article 14, Article 15, Article 16, Article 18, Article 19, and Article 20.

20.6 Contractual Relationship. Nothing contained in this Agreement shall be construed as creating a contractual relationship of any kind (i) between Owner and a Subcontractor or Supplier, or (ii) between any persons or entities other than Owner and Contractor.

20.7 Severability. In case any provision in this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected. If Contractor's obligation to pay any Liquidated Damages under this Agreement is, or becomes, void or unenforceable (either in whole or in part) for any reason, then Owner shall, to the extent of the voidness or unenforceability, be entitled to claim unliquidated damages at law in relation to any relevant delay or other matter which would otherwise have been the subject of the liquidated damages, *provided* that Contractor's aggregate liability for Liquidated Damages and unliquidated damages in respect of such relevant delay or such other matter shall not exceed the applicable amount of Liquidated Damages agreed under this Agreement in respect thereof; provided further that this Section 20.7 shall not impose any greater liability upon Contractor than would otherwise have been imposed pursuant to the applicable Liquidated Damages.

20.8 Notices. Any notice, demand, offer, or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be either (i) hand delivered; (ii) delivered by same day or overnight courier; or (iii) delivered by electronic (Email) or certified mail, return receipt requested, to the other Party at the address set forth below.

If to Owner: Long Ridge Energy Generation LLC
c/o FIG LLC
1345 Avenue of the Americas, 45th Floor
New York, NY 10105
Attn: Ken Nicholson
Email: knicholson@fortress.com

And

Attn: Robert Wholey
Email: bo.wholey@longridgeenergy.com

With a Copy to: Morgan, Lewis & Bockius LLP
One Federal Street
Boston, MA 02110
Attn: James L. Black, Jr., Esq.
Email: james.black@morganlewis.com

If to the Owner's
Engineer: Black & Veatch Corporation
9000 Regency Parkway
Suite 300
Cary, NC 27518
Attn: Jason Rowell
Email: RowellJ@bv.com

If to Contractor: Kiewit Power Constructors Co.
9401 Renner Blvd.
Lenexa, KS 66219
Attn: Chris Turnbull
Email: chris.turnbull@kiewit.com

With a Copy to: Kiewit Power Constructors Co.
9401 Renner Blvd.
Lenexa, KS 66219
Attn: Bobby Brown
Email: bobby.brown@kiewit.com

Each Party shall have the right to change the place to which notice shall be sent or delivered by sending a similar notice to the other Party in like manner. Notices, demands, offers or other written instruments shall be deemed to be received if delivered by hand, by same-day or overnight courier service, or electronic or certified mail on the date actually received at the address of the intended recipient.

20.9 Headings. The headings and captions used in this Agreement are inserted for reference and convenience only and the same shall not limit or construe the sections, articles or paragraphs to which they apply or otherwise affect the interpretation thereof.

20.10 Singular and Plural. Words which are used herein and import the singular number shall mean and include the plural number and vice versa where the context so requires.

20.11 Interpretation. In the event of any inconsistency or discrepancy between written words and specific numbers, the description of any such figures by written words shall govern.

20.12 Rights and Remedies. Except to the extent this Agreement expressly provides that a specific remedy for a particular circumstance is the exclusive remedy available for such circumstance and except as otherwise expressly provided in this Agreement, (i) rights and remedies available to Owner and/or Contractor as set forth in this Agreement shall be cumulative with and in addition to, and not in limitation of, any other rights or remedies available to such Parties at law and/or in equity, and (ii) any specific right or remedy conferred upon or reserved to Owner and/or Contractor in any provision of this Agreement shall not preclude the concurrent or consecutive exercise of a right or remedy provided for in any other provision hereof.

20.13 Agreed Rate. Each Party agrees that it will pay to the other Party interest at the Agreed Rate on any overdue amount from the due date thereof to, but not including, the date such amount is paid.

20.14 Incorporation by Reference. The recitals set forth on the first few pages of this Agreement, as well as all Exhibits attached hereto, are hereby incorporated into this Agreement by this reference and expressly made a part of this Agreement.

20.15 No Waiver. No course of dealing or failure of Owner and/or Contractor to enforce strictly any term, right or condition of this Agreement shall be construed as a waiver of such term, right or condition. No express waiver of any term, right or condition of this Agreement shall operate as a waiver of any other term, right or condition.

20.16 Rights of Third Parties. This Agreement and all rights hereunder are intended for the sole benefit of the Parties and, to the extent expressly provided, for the benefit of the Lenders, the Owner Indemnified Parties, the Contractor Indemnified Parties and the Persons described in Section 20.22 below, and shall not imply or create any rights on the part of, or obligations to, any other Person.

20.17 Counterparts. This Agreement may be executed by the Parties in one or more counterparts, all of which taken together, shall constitute one and the same instrument.

20.18 Signatures. The exchange of copies of this Agreement and of signature pages by facsimile, email or other electronic transmission shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile, email or other electronic means shall be deemed to be their original signatures for all purposes.

20.19 English Language Documents. Any document, manual, certificate or notice required or authorized to be given hereunder shall be provided in the English language.

20.20 Further Assurances. Contractor and Owner agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of

this Agreement, including executing a bill of sale or similar instrument in a form reasonably agreed to by the Parties.

20.21 Approvals Not To Relieve Contractor. No approval, consent, acceptance or rejection of, inspection of or failure to inspect, failure to disapprove or comment on, review or non-review of, or rejection of or failure to reject, any matter, Work, design documents, documents, or calculations of Contractor by Owner, Owner's Engineer or Independent Engineer shall relieve Contractor of any of its obligations, guarantees or warranties under this Agreement or otherwise.

20.22 No Recourse. Anything to the contrary notwithstanding (except as provided in the next sentence), the obligations of Owner or Contractor under this Agreement are: (i) obligations of Owner or Contractor and do not constitute obligations of (and no recourse shall be had with respect thereto to) any member, officer, director, or employee of Owner or Contractor, any of their Affiliates, or any shareholder, partner, member, officer, director, or employee of Owner or Contractor respectively and (ii) no action shall be brought or maintained against any such Affiliate, member, officer, director, employee, parent, or Affiliate companies, or any shareholder, partner, member, officer, director, or employee of any thereof, each of whom shall be third party beneficiaries of this Agreement for purposes of enforcing the provisions of this Section 20.22. Notwithstanding the foregoing, Owner shall have recourse against the Guarantor in accordance with Section 20.23 below and the Parent Guaranty.

20.23 Parent Guaranty. On or before the Effective Date, Contractor shall provide an unconditional, irrevocable parent guaranty from Guarantor in the form attached as Exhibit T hereto ("Parent Guaranty"). Contractor shall not be entitled to any compensation under this Agreement unless and until Contractor provides the foregoing Parent Guaranty to Owner in accordance with this Section 20.23.

20.24 Approvals in Writing. Any approval, consent, acceptance or authorization of a Party expressly required under this Agreement shall be obtained in writing.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the duly authorized representatives of Owner and Contractor as of the date first written above.

OWNER:	CONTRACTOR:
LONG RIDGE ENERGY GENERATION LLC	KIEWIT POWER CONSTRUCTORS CO.
By: /s/ Robert Wholey Name: Robert Wholey Title: President	By: /s/ John Jennings Jr. Name: John Jennings Jr. Title: President

[Signature Page to EPC Contract]

Exhibit 10.18

CERTAIN IDENTIFIED INFORMATION MARKED WITH “[***]” HAS BEEN OMITTED FROM THIS DOCUMENT BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED.

Execution Version

AGREEMENT FOR THE PURCHASE AND SALE OF POWER GENERATIO EQUIPMENT AND RELATED SERVICES

BY AND BETWEEN

LONG RIDGE ENERGY GENERATION LLC

AND

GENERAL ELECTRIC COMPANY

FOR THE HANNIBAL PORT POWER PROJECT

DATED AS OF FEBRUARY 15, 2019

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AGREEMENT FOR THE PURCHASE AND SALE OF POWER GENERATION EQUIPMENT AND RELATED SERVICES

THIS AGREEMENT FOR THE PURCHASE AND SALE OF POWER GENERATION EQUIPMENT AND RELATED SERVICES (hereinafter, together with all Exhibits and amendments hereto, this "**Agreement**") is made and entered into as of the 15th day of February, 2019 (the "**Effective Date**") by and between General Electric Company, a corporation organized and existing under the laws of New York, with a place of business at 1 River Road, Schenectady, New York 12345 ("**Supplier**"), and Long Ridge Energy Generation LLC, a Delaware limited liability company ("**Owner**"). Supplier and Owner are referred to collectively as the "**Parties**" or singularly as a "**Party**".

W I T N E S S E T H

WHEREAS, Owner is developing that certain nominal 485 megawatt (MW) net power output natural gas-fired combined cycle electric generating facility located at the former Ormet Smelter facility in Hannibal, Ohio and commonly referred to as the Hannibal Port Power Project at the Long Ridge Energy Terminal (the "**Facility**");

WHEREAS, Supplier desires to engineer, manufacture, supply, deliver and warrant the Equipment for the Facility; and

WHEREAS, Supplier and Owner wish to enter into this Agreement, pursuant to which Owner agrees to engage Supplier to engineer, manufacture, supply, deliver and warrant the Equipment, all as more particularly described in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual representations, warranties, covenants and agreements contained in this Agreement and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Supplier and Owner, intending to be legally bound, hereby agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Definitions. For purposes of this Agreement, the following terms shall have the following definitions:

"Access Day" means any day during which the Equipment is available to Supplier to complete tuning, adjustments, corrections, and checkout of the Equipment or other commissioning and retesting in connection with Supplier's commissioning services or to correct any defects in the Equipment.

"Access Period" has the meaning given in Section 5.2(d).

"Additional Warranty Period" has the meaning given in Section 9.2.

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with such Person. FIG LLC and Persons who Control, are Controlled by, or are under Common Control with FIG LLC shall be deemed to be Affiliates of Owner.

"Agreed Rate" an annual (365 or 366 Days, as appropriate) rate of interest equal to the lesser of: (i) two percent (2%) in excess of the Prime Rate and (ii) the maximum rate permitted by applicable Law.

"Agreement" has the meaning given in the Preamble to this Agreement.

"Applicable Codes and Standards" means those codes, requirements, and standards of design, engineering, construction, operation, workmanship, equipment, and components specified in Exhibit A (as may be amended from time to time); provided, however, if the relevant standard is not so specified or is ambiguous therein, then "Applicable Codes and Standards" shall mean those standards of design, engineering, construction, workmanship, operation, care and diligence normally practiced by internationally recognized power generation equipment manufacturing companies in performing services of a similar nature generally acceptable to the power industry in the United States of America (including firms providing the design, construction, manufacturing and delivery of electrical, steam, environmental, and other equipment, facilities and improvements and related technical services and training for facilities similar to the Facility) prevailing during performance of the Work in accordance with good engineering design practices, applicable Law, applicable permits, and codes and other standards established for such Work. In the event of an inconsistency or conflict between any of the Applicable Codes and Standards, the highest performance standard as contemplated therein shall govern the Parties' performance under this Agreement, unless otherwise agreed.

"As-Built Drawings" means all drawings and documents identified in the Schedule of Submittals in Exhibit A as "As-Built Drawings" or otherwise relating to the as-built condition of

the Work, as modified and updated to accurately show the final actual as-built condition of the Work upon Final Completion.

"Business Day" means any day other than a Saturday or Sunday or a day on which commercial banks are authorized to be closed in the State of Ohio or New York City.

"Capability Tests" means the capability tests described in Exhibit H.

"Certificate of Final Completion" has the meaning given in Section 4.6.

"Certificate of Substantial Completion" has the meaning given in Section 4.5.

"Change in Law" shall mean and refer to the enactment, adoption, promulgation, amendment, modification, repeal or change in interpretation by a Governmental Authority after the Effective Date of this Agreement of any United States Law which is applicable to the performance of the Work; it being expressly understood and agreed by the Parties hereto that a change in any income, corporate or franchise tax Law or any Law by which a tax is levied or assessed on the basis of Supplier's income, profits, revenues or gross receipts or Supplier's presence in any taxing jurisdiction shall not be a Change in Law. Any Change in Law enacted, published or issued before the Effective Date, whether or not such Change in Law becomes effective after the Effective Date, shall not constitute a Change in Law under this Agreement. For purposes of this definition, a "United States Law" shall mean and refer to any Law of any Governmental Authority located in the United States (whether local, municipal, county, state, federal or otherwise), or any interpretation or application thereof by any such Governmental Authority.

"Change Order" has the meaning given in Section 8.1.

"CKOM" means a "kick-off meeting" with respect to the Facility in which Owner, Supplier and EPC Contractor are all in attendance, which meeting shall occur on March 19, 20, and 21, 2019; provided, however, that such meeting may occur upon any later date upon which the Parties mutually agree in writing.

"Collateral Damage" means all physical damage to the 7HA.02 combustion turbine, generator, clutch, and steam turbine and to any equipment along the common shaft supplied by Supplier under this Agreement, resulting from the failure of or defect in a part of the 7HA.02 combustion turbine, other than damage to the initially failing or defective part itself (which is addressed under Warranty).

"Completed Performance Test" means the completion of a Performance Test in its entirety under the following conditions: (i) without the use of any auxiliary, standby or temporary equipment or machinery, and (ii) while the Facility is operated in its normal mode of operation, which shall consist of (x) the operation of the Facility as a whole, (y) the concurrent operation of Facility systems, and (z) the operation of all Facility systems within the manufacturers' specifications, and without over-stressing, over-firing or over-pressurizing any such systems.

"Confidential Information" has the meaning given in Section 13.1.

"Contract Price" has the meaning given in Section 6.1.

"Control" means, with respect to a Person, (i) the direct or indirect ownership of more than fifty percent (50%) of the outstanding capital stock or other securities or equity interests having ordinary voting power to elect the board of directors, managing general partner or similar managing authority of such Person or (ii) the power to direct the management of such Person, directly or indirectly, whether through the ownership of voting securities, partnership or limited liability company interests, by contract or otherwise.

"Credit Rating" means, for any Person, the rating then assigned to such Person's senior unsecured long-term debt obligations (not supported by third party credit enhancements), or if such Person does not have a rating for its senior unsecured long-term debt, the then current corporate rating assigned to such Person.

"Creditworthy Bank" means a commercial bank having a Credit Rating of (a) A or better from Standard & Poor's, or (b) A2 or better from Moody's, or (c) if such bank has a Credit Rating at such time from both Standard & Poor's and Moody's, A or better from Standard & Poor's and A2 or better from Moody's.

"CT Package" means a single natural gas-fired combustion turbine (model 7HA.02), all parts, components, materials, equipment and other items required for such combustion turbine to be complete and fully functional in conformance with the Specifications, as more fully described in Exhibit A attached hereto.

"Cure Period" has the meaning set forth in Section 5.5.

"Day" or "day" means a calendar day.

"Default" means either an Owner Default or a Supplier Default.

"Delay Liquidated Damages" means, collectively, Documents Liquidated Damages, Delivery Liquidated Damages, and Substantial Completion Liquidated Damages.

"Deliver(y)" or "Delivered" means, with respect to any Equipment Package or Major or Minor Component, that Supplier has delivered such Equipment Package or Major or Minor Component to the Delivery Point (in the case of shipments originating within the United States, DAP (Delivered At Place, Incoterms 2010) and in the case of shipments originating outside of the United States, DDP (Delivered Duty Paid, Incoterms 2010)) and has done so such that all applicable Equipment is in a condition sufficient to permit the proper installation of such Equipment Package or Major or Minor Component.

"Delivery Liquidated Damages" has the meaning given in Section 4.3.

"Delivery Notice" has the meaning set forth in Section 4.3.

"Delivery Point" means, as agreed by the Parties, either at a suitable barge landing, rail siding or Site laydown area designated by Owner (provided, however, if the conditions at the Site

prohibit Supplier from accessing the laydown area or other location designated by Owner at the Site, then the best location at the Site with unimpeded access for unloading the Equipment as determined by Owner).

"Dispute" has the meaning given in Section 18.1.

"Document Deadline" means each deadline date identified in Exhibit F attached hereto; which dates may be adjusted pursuant to the terms and provisions of this Agreement.

"Document Package" means each package of drawings and other documents identified in Exhibit F attached hereto.

"Documents Liquidated Damages" has the meaning given in Section 4.2.

"Dollars" means the lawful currency of the Unites States of America.

"Effective Date" has the meaning set forth in the preamble to this Agreement.

"Emissions MAC" means the guaranteed emissions performance levels set forth in Exhibit H, Section B for Guaranteed Cold Start Emissions, Guaranteed Warm Start Emissions, Guaranteed Hot Start Emissions, Guaranteed Shutdown Emissions and Guaranteed Steady State Emissions.

"Emissions Tests" means the steady state emissions tests, startup and shutdown emissions tests conducted in accordance with test codes specified under section 01100.5 of Exhibit A.

"Environmental Law" means any applicable Law which relates to environmental quality, health, safety, pollution, contamination, cleanup, or the protection of human health, ambient air, waters (including ground waters) or land; including the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Section 9601 et seq; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq; the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq; the Clean Water Act, as amended, 33 U.S.C. Section 1251 et seq; and the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651 et seq.

"EPC Contract" means that certain Engineering, Procurement and Construction Agreement by and between Owner and EPC Contractor with respect to the Facility.

"EPC Contractor" means that certain engineering, procurement and construction contractor identified by Owner.

"Equipment" means all of the turbines, generators, parts, components, materials, equipment and other items comprising the Equipment Packages, which includes one (1) combustion turbine, one (1) generator, one (1) clutch, one (1) condensing steam turbine, one HRSG, one (1) distributed control system and steam turbine bypass valves, as more fully described in Exhibit A attached hereto.

"Equipment Package" individually means any one of (and "Equipment Packages" collectively means all of) the following packages: CT Package, Generator Package, HRSG Package, PCS Package and ST Package.

"Estimated Completion Date" means the estimated date of completion of a Milestone, as identified in the relevant column of the Payment Schedule.

"Excess Weld Costs" has the meaning set forth in Section 5.7.

"Excess Weld Quantities" has the meaning set forth in Section 5.7.

"Facility" has the meaning given in the Recitals to this Agreement.

"Final Completion" shall be deemed to have occurred when:

(i) Substantial Completion has been achieved;

(ii) the Guaranteed Net Equipment Electrical Output, the Guaranteed Net Equipment Heat Rate and the Guaranteed SCR Ammonia Consumption have been achieved, or, if not achieved, to the extent applicable Supplier has paid to Owner any Performance Liquidated Damages owed, and Supplier has completed making necessary system adjustments required for the continuous, safe and reliable operation of the Equipment;

(iii) all As-Built Drawings, and other documents as required under the document submittal list set forth in the Schedule of Submittals in Exhibit A of the Specifications of this Agreement to be delivered to Owner by Final Completion have been so delivered;

(iv) any Liquidated Damages for which Supplier is liable, and other amounts owed by Supplier to Owner under this Agreement, if any, have been paid to Owner;

(v) final lien waivers and releases from Supplier and each Major Subcontractor have been delivered to Owner;

(vi) all Work, including Punch List items, has been completed, and all other duties and obligations of Supplier under this Agreement have been fully performed, other than obligations that require future performance (e.g., Warranty and indemnification obligations); and

(vii) Supplier has submitted a draft Certificate of Final Completion to Owner pursuant to Section 4.6.

"Final Completion Date" means the date upon which Final Completion has been achieved.

"Final Performance Testing Protocol" collectively means those final, detailed and complete performance testing procedures, protocol, activities, requirements and criteria for the Facility

developed by the EPC Contractor on the basis of the Preliminary Performance Testing Protocol; which testing protocol (i) shall be subject to Owner's and Supplier's review and approval (not to be unreasonably withheld or delayed), and (ii) shall be deemed to have replaced the Preliminary Performance Testing Protocol once they have been reviewed and approved by Owner and Supplier (and shall thereafter be deemed part of this Agreement).

"First Completed Minimum Performance Test" has the meaning set forth in Section 5.5.

"Force Majeure Event" means any catastrophic storm or flood, lightning, tornado, hurricane, earthquake or other act of God, war, civil disturbance, terrorist attack, revolt, insurrection, sabotage, commercial embargo, epidemic or fire (excluding any fire started as a result of a malfunction or failure of the Equipment) or National Strike, provided that such act or event (i) actually and demonstrably delays or renders impossible the affected Party's performance of its obligations under this Agreement, (ii) is beyond the reasonable control of the affected Party and was not due to its fault or negligence, and (iii) (or the effect of such act or event) could not have been prevented or avoided by the affected Party through the exercise of reasonable diligence, including the expenditure of any reasonable sum taking into account the likely impact of the Force Majeure Event. For the avoidance of doubt, Force Majeure Events shall not include any of the following: (i) economic hardship, (ii) changes in market conditions, (iii) late delivery or failure of construction equipment or materials, supplies or components of Equipment (except to the extent caused by an event otherwise independently considered a Force Majeure Event hereunder), (iv) strikes, or other similar labor actions other than National Strikes, (v) unavailability or shortages of laborers, suppliers, subcontractors or sub-subcontractors (except to the extent caused by an event otherwise independently considered a Force Majeure Event hereunder); (vi) climatic conditions (including rain, snow, wind, temperature and other weather conditions), tides, and seasons, regardless of the magnitude, severity, duration or frequency of such climatic conditions, tides or seasons (excluding catastrophic storms or floods, lightning, tornadoes, and hurricanes subject to the conditions set forth above); (vii) inability or failure to make a payment for any reason; (viii) shortages (except to the extent caused by an event otherwise independently considered a Force Majeure Event hereunder) or price fluctuations with respect to materials, supplies or components of the Equipment or Work; or (ix) flaws in design requiring re-design or re-engineering of any portion of the Equipment or Work.

"Foundation Ready" means, as to each Major Component, the corresponding foundation has been poured and the concrete has cured such that the applicable Major Component can, consistent with Prudent Practices, be placed on such foundation.

"FNTP Deadline" has the meaning set forth in Section 2.1.

"Generator Package" means a single generator (model H84), all parts, components, materials, equipment and items required for such generator to be complete and fully functional in conformance with the Specifications, as more fully described in Exhibit A attached hereto.

"Governmental Authority" means any national, federal, state, county, municipal, local or other government or governmental, quasi-governmental, regulatory or administrative body, branch,

agency, commission, court or other governmental authority, or any department, board, bureau or instrumentality thereof.

"Gross Negligence" shall mean any act, omission or failure to act, (whether sole, joint or concurrent) that was in reckless disregard of, or wanton indifference to, the harmful consequences to the affected Party, to the safety or property of another Person or to the environment.

"Guaranteed Delivery Date" means the "Guaranteed Delivery Date" or "Agreed to Dates (by GE & Kiewit)" indicated on Exhibit A, Attachment 02-01f corresponding to each Major Component and Minor Component as provided in the Milestone Schedule (which Guaranteed Delivery Date may be adjusted in accordance with the terms and provisions of this Agreement).

"Guaranteed Net Equipment Electrical Output" has the meaning set forth in section 01100.5.1 of Exhibit A.

"Guaranteed Net Equipment Heat Rate" has the meaning set forth in section 01100.5.1 of Exhibit A.

"Guaranteed SCR Ammonia Consumption" has the meaning set forth in section 01100.5.1 of Exhibit A.

"Guaranteed Substantial Completion Date" means the date by which the EPC Contractor guarantees to Owner that substantial completion will be achieved in the EPC Contract.

"Guaranteed Weld Quantities" has the meaning given in Section 5.7.

"Hazardous Substance" means (A) any substance which is listed, defined, designated or classified under any Environmental Law as a (i) hazardous material, substance, constituent or waste, (ii) toxic material, substance, constituent or waste, (iii) radioactive material, substance, constituent or waste, (iv) dangerous material, substance, constituent or waste, (v) pollutant, (vi) contaminant or (vii) special waste; (B) any material (including radioactive material), substance, constituent or waste regulated under any Environmental Laws; or (C) petroleum, petroleum products, polychlorinated biphenyl, pesticides, asbestos, or asbestos-containing materials.

"HRSG Package" means a single three-pressure, natural circulation heat recovery steam generator (as identified in the Specifications) ("HRSG"), all parts, components, materials, equipment and items required for such HRSG to be complete and fully functional in conformance with the Specifications, as more fully described in Exhibit A attached hereto.

"HRSG Weld Liquidated Damages" has the meaning set forth in Section 5.7.

"Indemnified Party" means an Owner Indemnified Party or a Supplier Indemnified Party, as the case may be.

"Installation Manual" means Supplier's manual for the installation of the Equipment, which manual will be delivered by Supplier to Owner within the time periods set forth on Exhibit B.

"Intellectual Property Rights" means all patents, copyrights, trademarks, trade names, trade dress, service marks, trade secrets, software, firmware, mask works, industrial design rights, rights of priority, know-how, design flows, methodologies and any and all other intellectual property rights protected under any Law.

"Invoice" has the meaning given in Section 6.3.

"Last Completed Performance Test" has the meaning set forth in Section 5.5.

"Law" means any constitution, charter, statute, treaty, act, law, ordinance, regulation, code, rule, order, decree, permit, judgment, directive, ruling, decision, order, guideline, resolution or declaration of any Governmental Authority (including, without limitation, any codes or regulations), or any interpretation or application thereof by any such Governmental Authority.

"Lender(s)" shall mean and refer to lenders and/or equity investors (including any trustee or agent on behalf of such lenders and/or equity investors) providing development, bridge, construction and/or permanent equity and/or debt financing or refinancing of the development, construction, ownership, leasing, operation or maintenance (including working capital) of the Facility, whether that financing or refinancing takes the form of private or public debt or equity or any other form.

"Licensed Materials" has the meaning given in Section 12.1.

"Lien" means, with respect to any property or asset, any mortgage, deed of trust, lien (including a mechanics' or materialmen's lien), pledge, charge, security interest, or encumbrance of any kind in respect of such property or asset, whether or not filed, recorded or otherwise perfected or effective under applicable Law, as well as the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such property or asset.

"Liquidated Damages" means, collectively, Documents Liquidated Damages, Delivery Liquidated Damages, HRSG Weld Liquidated Damages, Substantial Completion Liquidated Damages, and Performance Liquidated Damages.

"LNTP Letter Agreement" means the letter agreement dated as of May 14, 2018 between Supplier and Owner pertaining to the LNTP Work.

"LNTP Work" means the engineering work and services described in Exhibit S attached hereto.

"LOC-1" has the meaning set forth in Section 6.9.

"LOC-2" has the meaning set forth in Section 6.9.

"LOC-3" has the meaning set forth in Section 6.9.

"Losses" means losses, fines, penalties, claims, demands, suits, causes of action, legal or administrative proceedings, damages, liabilities, interest, costs, and expenses (including reasonable attorneys' fees and court costs and costs of investigation).

"Major Component" means the Equipment designated as such on the Milestone Schedule.

"Major Equipment and Services" means the portions of the Equipment and Services listed on Exhibit A, Attachment 13.

"Major Subcontract" means any subcontract with a Subcontractor engaged for the Major Equipment and Services having an aggregate value in excess of [***] U.S. Dollars ($[***] USD), provided, however, subcontracts with bulk material suppliers or for subcomponents of Major Equipment and Services are excluded from the definition of Major Subcontracts.

"Major Subcontractor" means any Subcontractor with whom Supplier enters into a Major Subcontract.

"Major Sub-Supplier" means any Subcontractor with whom Supplier enters, or intends to enter, into a Major Subcontract, and the Subcontractors listed on Exhibit A, Attachment 13.

"Mechanical Completion" shall be deemed to have occurred when the all of the following to have occurred (excluding EPC Contractor's punch list items relating thereto):

(i) The generating Equipment has been installed with required connections and controls to produce electrical power;

(ii) All other equipment that is part of the work under the EPC Contract has been installed, checked for alignment, lubrication and rotation;

(iii) All remaining electrical systems have been checked out, cold commissioned and are ready for energization and operation;

(iv) Each subsystem of the Project is functionally complete for initial operation and interconnection with the utility;

(v) All electrical continuity and ground fault tests and all mechanical tests and calibrations have been completed:

(vi) All instrumentation (including the Continuous Emissions Monitoring System) is operational, and has been calibrated in accordance with manufacturers' standards and guidelines and loop checked;

(vii) The applicable Equipment has been pressure tested, flushed and cleaned out as necessary, excluding steam blows;

(viii) Project systems have been turned over from construction to the commissioning group;

(ix) EPC Contractor has completed its work to cause the equipment and systems to be capable of operating safely in accordance with applicable Law, Permits, prudent industry practices and good engineering and construction practices for further commissioning and testing; and

(x) All other criteria necessary for the achievement Mechanical Completion as provided in the EPC Contract have been satisfied or achieved.

"Mechanical Completion Date" means the date upon which the Facility has achieved Mechanical Completion.

"Milestone Payment" has the meaning given in Section 6.2.

"Milestone Schedule" shall mean that schedule of Milestones set forth on Exhibit A, Attachment 02-01f, as the same may be adjusted from time to time pursuant to the terms of this Agreement.

"Milestones" means those milestones related to the Work to be achieved hereunder by Supplier, as identified on the Milestone Schedule and/or Payment Schedule.

"Minimum Performance Criteria" shall mean and refer to those minimum criteria and levels of performance identified on Exhibit G attached hereto, which the Power Island should meet during the performance of a Completed Performance Test.

"Minor Component" means the Equipment designated as such on the Milestone Schedule.

"Moody's" means Moody's Investor Service, Inc.

"National Strike" means any strike or other labor dispute sanctioned, supported or effected by one or more national or international unions representing employees of the party affected by such event that is national or international in scope and not targeted at Supplier or any of its Subcontractors.

"Net Equipment Electrical Output Minimum Performance" has the meaning set forth in Exhibit G.

"Net Equipment Heat Rate Minimum Performance" has the meaning set forth in Exhibit G.

"Non-Compliant Suspension" has the meaning set forth in Section 17.2.

"Noise Tests" means the noise tests conducted in accordance with ASME PTC 36, ASME B133.8 and ISO 3746.

"Notice to Proceed" has the meaning set forth in Section 2.1.

"Ohio Sales & Use Taxes" has the meaning set forth in Section 2.5.

"Operation & Maintenance Manual" means Supplier's manual for the operation and maintenance of the Power Island.

"Owner" has the meaning set forth in the Preamble to this Agreement.

"Owner Additional Insureds" has the meaning given in Section 10.1.

"Owner-Caused Delay" shall mean a delay in Supplier's performance of its obligations under this Agreement which is actually and demonstrably caused by Owner, the EPC Contractor or any of their respective contractors (other than Supplier or its Subcontractors) (which delay is not expressly excused pursuant to the provisions of this Agreement or not attributable to an exercise by Owner of its rights under this Agreement in response to Supplier's failure to comply with the terms of this Agreement), which adversely and demonstrably impacts the Milestone Schedule.

"Owner-Caused Delay Event" has the meaning given in Section 7.6.

"Owner Default" has the meaning given in Section 16.2.

"Owner Indemnified Party" has the meaning set forth in Section 11.1.

"Owner Permits" means those Permits identified in Exhibit D attached hereto.

"Owner's Engineer" shall mean and refer to Black & Veatch Corporation, or any successor entity designated by Owner to act as a representative of Owner.

"Owner's Manager" has the meaning given in Section 3.1.

"Part(ies)" has the meaning given in the Preamble to this Agreement.

"Payment Schedule" has the meaning given in Section 6.2.

"PCS Package" means a plant distributed control system package, all parts, components, materials, equipment and other items required for such control system to be complete and fully functional in conformance with the Specifications, as more fully described in Exhibit A attached hereto.

"Performance Guarantees" means those levels of performance and guaranteed values identified on Exhibit H attached hereto, which the Power Island should meet during the performance of a Completed Performance Test.

"Performance Liquidated Damages" has the meaning set forth in Section 5.6.

"Performance Test" collectively means the performance tests conducted and completed, or to be conducted and completed, in accordance with the Final Performance Testing Protocol and as is otherwise provided in this Agreement.

"Permits" means all licenses, permits, certificates of authority, authorizations, approvals, registrations, franchises and similar consents granted or issued by any Governmental Authority.

"Permitted Liens" has the meaning set forth in Section 2.20.

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

"Power Island" collectively means all of the Equipment Packages.

"Product Update Information" means update information applicable to the Equipment and details regarding their implementation.

"Preliminary Performance Testing Protocol" means the preliminary performance testing procedures, activities, requirements and criteria identified in Attachment 19-04 of Exhibit A, which will be customized by the EPC Contractor for the Project consistent with the Specifications.

"Preservation Work" has the meaning given in Section 16.5.

"Prime Rate" means the per annum (365 or 366 Days, as appropriate) prime rate as published from time-to-time in the "Money Rates" table of The Wall Street Journal; provided, however, if more than one such prime rate is published, the average shall be used for purposes of this Agreement.

"Product Bulletin" has the meaning given in Section 2.27.

"Project" means the design, engineering, procurement, construction, pre-commissioning, commissioning, testing and start-up of a nominal 485 megawatt net power output natural gas-fired combined cycle electric generating facility located at the former Ormet Smelter facility in Hannibal, Ohio and commonly referred to as the Hannibal Port Power Project at the Long Ridge Energy Terminal.

"Project Manager" has the meaning given in Section 2.12.

"Progress Payment" has the meaning given in Section 6.2.

"Prudent Practices" means those practices, methods and standards as are commonly used in performing work and services of a nature similar to the Work, to accomplish the desired result in a manner consistent with reliability, safety, applicable Law, Applicable Codes and Standards, equipment suppliers' and manufacturers' recommendations, environmental protection and expedition, which in the exercise of reasonable judgment by those experienced in the industry and in light of the facts known at the time a decision was made, are considered good, safe, reliable and prudent practices, methods and standards.

"Punch List" means a comprehensive list prepared upon Substantial Completion identifying those minor details of mechanical adjustment which require repair, completion, correction or re-execution, the non-completion of which does not (i) interfere with Owner's occupancy, use and

commercial operation of the Facility, or (ii) prevent the continuous operation of the Facility in accordance with Prudent Practices, applicable Laws and Applicable Codes and Standards. However, the Punch List shall not include any items that could reasonably be expected to prevent the safe, reliable and continuous operation of the Facility.

"Ready for First Fire" shall occur with respect to the Power Island Equipment when the following requirements have been satisfied:

1. All material components of the Equipment necessary to support first fire of the Equipment have been delivered to the Delivery Point by Supplier and constructed and installed by the EPC Contractor in accordance with Supplier's recommendations;

2. All material systems required to support first fire have been installed and cold commissioning tests completed and deemed to be ready for initial commissioning and first fire by the EPC Contractor and confirmed by Supplier, and the Parties have agreed that the Equipment is ready for safe operation and, as installed, and would not void any Supplier's warranty;

3. Such systems have been flushed and cleaned out as necessary;

4. The necessary balance of plant systems and interconnections have been appropriately checked for alignment, lubrication, rotation, and hydrostatic and pneumatic pressure integrity, appropriate flushed, cleaned, and statically tested;

5. The distributed control system and continuous emissions monitoring systems have been installed and fully functional. The continuous emissions monitoring system need not be certified;

6. The necessary plant systems (non-Power Island Equipment systems) and interconnects are available to provide safe and continuous operation;

7. The necessary fuels, lubricants and operating supplies are continuously available;

8. Owner's trained operators are available for operation of the Power Island Equipment;

9. Owner's craft labor and management support are available if needed to make corrections to the Facility; and

10. Supplier will have reasonable access to Supplier's equipment including station cranes and similar equipment.

"Reliability Run" means the reliability run described in Exhibit H.

“Requirements” has the meaning given in Section 2.7.

“SCR Ammonia Consumption” means the SCR ammonia consumption rate of the Equipment as tested and corrected in general accordance with Applicable Codes and Standards.

“SCR Ammonia Consumption Minimum Performance” has the meaning set forth in Exhibit G.

“Senior Officer” means the chief executive officer, president or any senior manager of the parties hereto.

“Services” means all services provided or to be provided by Supplier in connection with the design, engineering, manufacturing, procurement, supply, and Delivery of the Equipment and as otherwise required by the terms of this Agreement, including, without limitation, the TA Services.

“Site” means the site described in Exhibit L attached hereto.

“Spare Parts” means the spare parts, including the startup and commissioning spare parts, as described in Exhibit A, Sections 01100.1.9 and 01100.1.10.

“Special Tools” has the meaning set forth in Section 2.23.

“Specifications” means and refer to those documents and scope of work identified or contained within Exhibit A attached hereto, which documents and scope of work define generally the program requirements and the concept design, scope and intent for the Facility.

“Standard & Poor’s” means Standard & Poor’s Ratings Group, a division of McGraw Hill, Inc.

“Startup Tests” means the startup tests conducted in accordance with test codes specified under section 01100.5 of Exhibit A.

“ST Package” means a single steam turbine (model D650), all parts, components, materials, equipment and other items required for such steam turbine to be complete and fully functional in conformance with the Specifications, as more fully described in Exhibit A attached hereto.

“Subcontractor” means any subcontractor, vendor or supplier (in any such case, of any tier) of services or materials to Supplier in connection with the performance of the Work.

“Substantial Completion” shall be deemed to have occurred when:

(i) the Equipment shall have passed all Startup and Emissions Tests, Noise Tests, Reliability Run and Capability Tests, and as demonstrated by the most recent completed Performance Test that has been conducted, all of the Substantial Completion Guarantees have been successfully achieved and all Minimum Performance Criteria have been successfully achieved without invalidating or

adversely affecting any other guaranteed performance levels conditional to the achievement of Substantial Completion;

(ii) in the event that all Performance Guarantees have not been achieved, but all Minimum Performance Criteria have been achieved, (i) Supplier has delivered its corrective work plan to pursue the achievement of all Performance Guarantees and turned over the Work to Owner and (ii) the face amount of LOC-3 shall have been increased, beyond the face amount otherwise required by this Agreement, in an amount equal to the maximum aggregate amount of Performance Liquidated Damages that would be payable under this Agreement based on the results of the First Completed Minimum Performance Test (provided that the maximum aggregate face amount of LOC-3 shall not exceed an amount equal to thirty-five percent (35%) of the Contract Price), which increased face amount of LOC-3 shall secure the full and faithful payment of the Performance Liquidated Damages which are ultimately determined to be due from Supplier under this Agreement, and such LOC-3 shall not expire prior to the time that the aggregate amount of Performance Liquidated Damages have been ultimately determined to be due from Supplier under this Agreement have been paid to Owner;

(iii) the Equipment is capable of being synchronized with the grid;

(iv) Supplier has completed making necessary adjustments to the Work identified during the start-up and testing process conditional to continuous, safe and reliable operation of the Equipment;

(v) except for Punch List items to be completed after the achievement of Substantial Completion, the Work is completed and capable of being operated in the normal course of business in compliance with applicable Laws and Supplier's applicable written procedures and requirements;

(vi) Supplier has submitted the Punch List for Supplier's Work and pursued the same in accordance with Section 4.5;

(vii) Supplier has provided to Owner two (2) hard copies and one (1) electronic version of the preliminary Operation & Maintenance Manual;

(viii) Supplier has delivered to Owner the Special Tools;

(ix) Supplier has provided Owner copies of all Product Update Information applicable to the Equipment and details regarding their implementation;

(x) If and to the extent that Supplier has utilized any of Owner's Spare Parts during Supplier's commissioning and Performance Tests, Supplier, at Supplier's sole cost, has either replaced such Spare Parts or placed an order for such Spare Parts (on an expedited basis);

(xi) Supplier has completed all training of Owner's personnel in accordance with Section 2.24;

(xii) all undisputed Documents Liquidated Damages, Delivery Liquidated Damages and HRSG Weld Liquidated Damages have been paid to Owner, provided that, with respect to any such disputed Liquidated Damages and any Substantial Completion Liquidated Damages estimated by Owner in accordance with Section 4.5(b), the face amount of LOC-3 shall have been increased, beyond the face amount otherwise required by this Agreement, in an amount equal to the aggregate amount of such Liquidated Damages then disputed between the Parties or so estimated by Owner (provided that the maximum aggregate face amount of LOC-3 shall not exceed an amount equal to thirty-five percent (35%) of the Contract Price), which increased face amount of LOC-3 shall secure the full and faithful payment of the Documents Liquidated Damages, Delivery Liquidated Damages HRSG Weld Liquidated Damages and Substantial Completion Liquidated Damages which are ultimately determined to be due from Supplier under this Agreement, and such LOC-3 shall not expire prior to the time that the aggregate amount of such Liquidated Damages have been ultimately determined (whether by mutual agreement of the Parties or by means of dispute resolution proceedings under Article 18) to be due from Supplier under this Agreement have been paid to Owner;

(xiii) Supplier has delivered to Owner LOC-3;

(xiv) Supplier has delivered to Owner an interim lien waiver and other supporting invoice documentation required to be delivered as of such date; and

(xv) Supplier has submitted a draft Certificate of Substantial Completion to Owner pursuant to Section 4.5.

"Substantial Completion Date" means the date upon which Substantial Completion has been achieved.

"Substantial Completion Guarantees" means the guaranteed performance levels described in Exhibit H, Section B (Substantial Completion Guarantees).

"Substantial Completion Liquidated Damages" has the meaning given in Section 4.5.

"Supplier" has the meaning set forth in the Preamble to this Agreement.

"Supplier Commissioning Work" means the Work necessary to properly complete tuning, adjustment, correction and check-out of the Equipment so that a Completed Performance Test may be performed on the Power Island.

"Supplier Default" has the meaning given in Section 16.1.

"Supplier Indemnified Party" has the meaning set forth in Section 11.1.

"Supplier Permits" has the meaning given in Section 2.6.

"Supplier's Specifications" means those specifications for the Power Island supplied by Supplier as set forth in Exhibit A, Section "Technical Attachments" attached hereto.

"Surplus Weld Costs" has the meaning set forth in Section 5.7.

"Surplus Weld Quantities" has the meaning set forth in Section 5.7.

"TA Services" means the Services described as such in Section 2.3.

"Tax(es)" means any and all governmental taxes, duties, imposts, assessments, charges, levies or tariffs imposed or assessed by the United States, the State of Ohio or any other Governmental Authority (whether domestic or foreign), including, without limitation, all sales, consumer and use taxes, business and occupation taxes, excise taxes and duties, corporation taxes, income taxes, withholding taxes, value added taxes, and customs duties and taxes, and any interests, penalties or fines related to the foregoing.

"Warranty" has the meaning given in Section 9.1.

"Warranty Period" has the meaning given in Section 9.2.

"Weld LD Rates" has the meaning set forth in Section 5.7.

"Work" has the meaning given in Section 2.2.

1.2 Interpretation.

(i) As used in this Agreement, the masculine gender shall include the feminine and neuter and the singular number shall include the plural, and vice versa.

(ii) Unless expressly stated otherwise, references in this Agreement to a Person (including the Parties) include its successors and permitted assigns and, in the case of a Governmental Authority, any Person succeeding to its functions and capacities.

(iii) As used in this Agreement, references to "days" shall mean calendar days, unless the term "Business Days" is used. If the time for performing a payment or notice obligation under this Agreement expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day.

(iv) As used in this Agreement, where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings; the words "herein," "hereunder" and "hereof" refer to this Agreement, taken as a whole, and not to any particular provision of this Agreement; and "including" means "including, for example and without limitation," and other forms of the verb "to include" are to be interpreted similarly.

(v) As used in this Agreement, all references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as amended, supplemented, restated or otherwise modified from time to time. Any term defined or provision incorporated in this Agreement by reference to another document, instrument or agreement shall continue to have the meaning or effect ascribed thereto whether or not such other document, instrument or agreement is in effect. In this Agreement, references to applicable Laws (including Permits) and provisions thereof are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding, or supplementing the applicable Laws (including Permits) or provisions thereof.

(vi) References in this Agreement to Recitals, Articles, Sections and Exhibits are, unless otherwise indicated, to Recitals, Articles, or Sections of, and Exhibits to, this Agreement. All Exhibits attached to this Agreement are incorporated herein by this reference and made a part hereof for all purposes. References in this Agreement to an Exhibit shall mean the referenced Exhibit and any sub-exhibits, sub-parts, components or attachments that form a part thereof.

(vii) Each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

(viii) In the event of a conflict or inconsistency between the terms of the body of this Agreement and those of the Exhibits attached hereto, the following order of precedence shall govern the interpretation of such documents:

(a) amendments to the terms and provisions of the body of his Agreement (i.e., excluding the Exhibits);

(b) The terms and provisions of the body of this Agreement (i.e., excluding the Exhibits);

(c) The terms and provisions of Exhibits G and H;

(d) The Specifications; and

(e) The terms and provisions of any Exhibits (or select portions thereof) which are not identified in the preceding clauses of this Section 1.2(viii).

ARTICLE 2

DUTIES AND OBLIGATIONS OF SUPPLIER

2.1 Notice to Proceed. (a) If Owner provides to Supplier on or before February 15, 2019 (the "FNTP Deadline") a written notice stating that Supplier should proceed with the Work (the "Notice to Proceed"), then Owner shall make a payment to Supplier of the corresponding amount indicated on Exhibit J within five (5) Business Days after Owner's delivery of the Notice to Proceed

to Supplier, and Supplier shall proceed with the Work and this Agreement shall remain in full force and effect. In the event Owner fails to provide a Notice to Proceed to Supplier on or before the FNTP Deadline, each of the dates set forth in the Milestone Schedule shall be extended thirty days plus one day for each day that occurs after February 15, 2019 until the date Owner provides the Notice to Proceed to Supplier.

(b) Owner previously elected to release the LNTP Work by entering into the LNTP Letter Agreement with Supplier pursuant to which Supplier has commenced the performance of the LNTP Work and Owner has made a payment to Supplier in the amount of $[***]. Such payment for the LNTP Work is hereby credited against the Contract Price. The Parties agree that the LNTP Letter Agreement is hereby merged into and superseded by this Agreement, with the LNTP Work being deemed a portion of the Work hereunder and subject to the terms and conditions of this Agreement.

2.2 Performance of the Work. Supplier hereby covenants and agrees that it shall (i) design, engineer, manufacture, procure, supply, and Deliver the Equipment in accordance with the terms and provisions of this Agreement, and perform and/or provide all work, services, equipment, materials, consumables and other items necessary to properly and timely complete the same, and (ii) properly perform all Services; in each case, all as more specifically identified in Exhibit A attached hereto (collectively, as the same may be modified pursuant to a Change Order, the "Work").

2.3 Technical Assistance.

a) Supplier shall provide the technical advisory services ("TA Services") in accordance with Exhibit A, Attachment 19-02 as part of the Work. Provided EPC Contractor achieves the dates set forth in Section 2.3(b), all TA Services hours shall be to Supplier's account. If EPC Contractor fails to achieve the dates in Section 2.3(b) for any reason not attributable to Supplier, incremental hours required by EPC Contractor from Supplier in addition to those set forth in the Contract Price will be invoiced at the rates set forth in Exhibit A, Attachment 19-02. Supplier's rates shall not be increased more than three percent (3%) per year to those set forth in Exhibit A, Attachment 19-02.

b)

Milestone	**Guarantee Dates**
CTG-First Fire	June 16, 2021
HRSG Hydro Test Start	April 2, 2021
STG - Roll on Steam	August 2, 2021
Targeted Substantial Completion	September 13, 2021

c) In addition to the TA Services described in Exhibit A, Attachment 19-02, Supplier shall:

A. Follow EPC Contractor's prescribed procedures on keeping records of service and time activities of service personnel while at the Site.

B. Provide EPC Contractor a written timesheet and daily report of the Work performed each day. EPC Contractor must sign and approve all time expended to validate time for reimbursement. Unsigned timesheets will not be paid. Supplier's field service representative must clear with EPC Contractor for any period spent away from the Project other than normal off-time and advise EPC Contractor how Supplier's field service representative can be reached in the event of an emergency.

C. Allow Supplier's field service representative to have authority and responsibility to:

   i. Accept work installed at each step of the installation process by co-signing with EPC Contractor the quality assurance and verification documentation.

   ii. Authorize and sign timesheets for remedial or extra Work performed by EPC Contractor on behalf of Supplier.

D. Supplier's erection / start up duties shall include, but not be limited to:

   i. Sign on to the crew work log for the work being inspected on a daily basis.

   ii. Provide notice of inspection hold points for critical installations.

   iii. Understand and agree to EPC Contractor requested hold points and sign offs in the event there are additional requirements from either Owner or EPC Contractor above and beyond those required by Supplier.

   iv. Sign off on all hold points as appropriate and agreed upon as work progresses.

   v. Provide any unique or special information for consideration for rigging any Supplier provided component for unloaded or erection, to include but not limited to center of gravity, component weight, special instructions as to rigging attachment points or rigging configuration, and any other special handling instructions.

   vi. Ensure EPC Contractor has any required information regarding handling, storage, and maintenance of any Supplier provided components ninety (90) days in advance of delivery.

   vii. Provide a daily report detailing time of arrival on site, time of departure, inspections completed, results of inspections completed, deficiencies noted, suggested corrective actions, conversations between Supplier and EPC Contractor or Owner personnel, as well as any other pertinent observations regarding safety, quality, or progress.

EPC Contractor has relied upon Supplier's field service representative(s) assigned or associated with this Project and any actions taken by EPC Contractor under the direction of any Supplier's field service representatives shall be deemed to be authorized by Supplier. In the event Supplier's field services representatives requires any part of the Project to be re-performed, modified or otherwise corrected by EPC Contractor to retain the rights and remedies afforded under this Agreement, including Supplier's warranty obligations, which was originally performed in accordance with Supplier's written requirements or the direction of Supplier's field services representatives, those reasonable and direct costs incurred by EPC Contractor to perform the same shall be to Supplier's account.

2.4 Sufficient Personnel. Supplier shall, at all times during the term of this Agreement, keep sufficient personnel employed so that the Work is completed in accordance with the terms and provisions of this Agreement.

2.5 Taxes. (a) Subject to the terms of Section 2.5(b), Supplier shall pay all existing and future Taxes relating to, or incurred in connection with, the Equipment and/or the performance of the Work, including, without limitation, (i) all sales, consumer, use, excise, value added and similar taxes related to, or incurred in connection with, the Equipment, the performance of the Work, and/or Supplier's purchase of materials and services used by Supplier in manufacturing the Equipment, including services, consumables, construction aids and tools acquired and used by Supplier in conveying, storing or installing Equipment at the Site or supporting Supplier in such activities when the items are not incorporated into the Work and are not transferred to Owner upon completion of the Agreement, (ii) all duties, tariffs, customs, charges, levies and taxes (whether foreign or otherwise) related to the import or export of Equipment, (iii) all of Supplier's income, net worth, gross receipts and franchise, business and professional taxes, duties, customs, charges, levies or tariffs (whether foreign or United States federal, state, local or other), including any state Tax which is in lieu of, or in substitution of, a state income tax, (iv) any withholding obligations, employment insurance and similar contributions and benefits required in relation to the employees of Supplier and its Subcontractors and any payroll or employment compensation taxes, social security tax, health care, pension and retirement contributions, FICA, accrued time off, or similar taxes or contributions for employees of Supplier and its Subcontractors and (v) any Tax imposed by a taxing authority outside of the State of Ohio, provided, however, that to the extent Supplier ships any Equipment to a storage facility in the United States pursuant to Section 17.3, Supplier shall not be responsible for any storage-related taxes assessed by the state in which the storage facility is located while such Equipment is in storage. The Contract Price includes the Taxes described in this Section 2.5(a) and, except as expressly provided in Section 2.16 with respect to a Change in Law, will not be increased with respect to any such Taxes, including any increase of any such Taxes, or with respect to any withholdings that Owner may be required to make in respect of any such Taxes.

(b) Supplier represents and warrants that the Contract Price does not include or otherwise reflect any Ohio state or local sales or use taxes (such taxes being collectively referred to as the "Ohio Sales & Use Taxes").To implement such exclusion of Ohio Sales & Use Taxes, Owner has certified by written notification to Supplier that the Equipment sold to Owner and installed or incorporated into the Work for transfer to Owner will retain the status of tangible personal property for Ohio tax purposes after transfer to Owner is completed. Owner has certified by written

notification to Supplier that all such items of tangible personal property sold to Owner and installed or incorporated into the Work will be exempt from Ohio Sales & Use Taxes. As of the Effective Date, Owner has issued written certificates in accordance with the requirements of Ohio Revised Code Section 5739.03(B) and (C) (copies of which are attached hereto as Exhibit Q). Accordingly, it is the intent of Owner that no Ohio Sales & Use Taxes will be paid by Supplier or its Subcontractors on their purchase of the Equipment that remains part of the Work upon completion and that Supplier will not charge or seek reimbursement of Ohio Sales & Use Taxes from Owner on sales of the tangible personal property and services to Owner. Supplier agrees that Owner's Exhibit Q sales tax certifications comply with Ohio Revised Code § 5739.03(B) and (C) and acknowledges prior receipt of the documents by executing this Agreement. Supplier shall use its best efforts to implement and effectuate the sales and use tax plan memorialized herein and within the certificates referenced by providing copies of the certificates and sharing relevant information to its Subcontractors and suppliers and vendors of Equipment to effectuate Owner's Ohio Sales & Use Taxes exclusion from the Contract Price. If Owner's exemption statement were deemed to be incorrect or challenged by the applicable taxing authority, any Ohio Sales & Use Taxes determined to be due and payable under applicable Law shall be Owner's responsibility. Reimbursement of tax by Owner under this Section 2.5(b) shall require written notice to Owner that a tax audit is on-going and that the taxing authority intends to reject Owner's certificate and assess tax against Supplier or a Subcontractor. Notice must be given by Supplier in a commercially reasonably time to allow Owner to participate in that part of the tax audit and to defend against any assessment threatened or formally issued.

(c) Each Supplier Invoice shall break down in detail the aggregate amount reflected on such Supplier's Invoice by separately listing and identifying each Equipment milestone and the major pieces of equipment associated with each such milestone and the amount of the charges related thereto. Owner shall request and Supplier shall make its best reasonable effort to provide additional information regarding each such Invoice to allow Owner to satisfy its obligations to pay Ohio Sales & Use Taxes as required under Ohio law and this Agreement, however such requests for additional information shall not relieve Owner of making payment in accordance with Section 6.6.

(d) Owner and Supplier shall cooperate in good faith with each other, and shall use their commercially reasonably efforts, to reduce and defer the payment of Ohio Sales & Use Taxes and other Taxes relating to this Agreement and the Work, including taking advantage of applicable exemptions and consulting and cooperating in good faith with each other in order to effectively handle and contest any audit, examination, investigation, or administrative, court or other proceeding. In connection therewith, Supplier shall assign to Owner its rights to any refund of Ohio Sales & Use Taxes which have been paid or reimbursed by Owner to Supplier in order to enable Owner to contest the determination of taxability and recover any overpayment of such Ohio Sales & Use Taxes, and hereby agrees that it will execute any document reasonably requested by Owner to evidence the foregoing.

2.6 Permits. (a) Except for the Owner Permits (which Owner shall obtain), Supplier shall secure and pay for all Permits necessary to perform Supplier's Work within a reasonable period of time following the Effective Date and, in any event, prior to performance of the relevant portion of the Work for which the applicable Permit is required (the "Supplier Permits").

(b) Supplier shall assist Owner in Owner's endeavors to secure the Owner Permits and cooperate with Owner by providing information and support during any hearings in the process of obtaining such permits. In undertaking such assistance, Supplier shall not be obligated to incur out-of-pocket costs and expenses without reimbursement from Owner.

2.7 Requirements. Supplier shall, and shall cause each Subcontractor to, perform the Work in a good and workmanlike manner, using new materials, and in compliance with Prudent Practices, the Specifications, Laws, the Permits (including the Owner Permits) applicable to the performance of the Work, Applicable Codes and Standards, and all other terms, provisions and requirements of this Agreement (collectively, the "Requirements"). NOTWITHSTANDING SUPPLIER'S OBLIGATIONS TO COMPLY WITH ALL PERMITS, SUPPLIER'S SOLE OBLIGATIONS WITH RESPECT TO EMISSIONS LEVELS OF THE FACILITY ARE LIMITED TO ACHIEVING THE GUARANTEED EMISSIONS LEVELS AS SET FORTH IN AND AS LIMITED BY THE PERFORMANCE GUARANTEES. If there are any conflicts between or among the standards of performance derived from the Requirements, Supplier shall comply with the most stringent or, if there is no clear most stringent standard, shall promptly notify Owner of the conflict, in which case the Parties shall cooperate and negotiate in good faith such modifications to this Agreement as are necessary to resolve the conflict.

2.8 Subcontractors. Supplier may retain such Subcontractors as in Supplier's reasonable judgment may be necessary to complete Supplier's duties and obligations under this Agreement; provided, however, that (i) Supplier shall ensure that the Major Equipment and Services shall be procured from the corresponding pre-approved Subcontractors listed on Exhibit A, Attachment 13 and (ii) no such engagement shall relieve Supplier of any of its duties, responsibilities, obligations or liabilities under this Agreement. Any Subcontractor engaged for the Major Equipment and Services items who is not currently a pre-approved Subcontractor for the applicable portion of the Work as listed on Exhibit A, Attachment 13 shall be subject to Owner's prior written approval. As between Owner and Supplier, Supplier shall be solely responsible for the acts, omissions and defaults of its Subcontractors and any other Persons for which Supplier or any of its Subcontractors are responsible. In addition, Supplier shall cause each of its Subcontractors to comply with the requirements of this Agreement that are applicable to such Subcontractor's work as if such Subcontractor were Supplier hereunder. Nothing in this Agreement shall be construed to impose on Owner any obligation, liability or duty to a Subcontractor or any other Persons for which Supplier or any such Subcontractor is responsible, or to create any contractual relationship between any such Persons and Owner (including any obligation to pay or to see to the payment of any moneys due any such Persons). Except as otherwise expressly provided herein, no Subcontractor or any other Person for which Supplier or any such Subcontractor is responsible is intended to be nor shall be deemed a third party beneficiary of this Agreement. Supplier shall pay (or caused to be paid) its Subcontractors in accordance with the terms and conditions of the relevant agreement. Supplier shall promptly notify Owner in writing of any material dispute between Supplier and any Major Sub-Supplier which will or is reasonably likely to adversely affect the delivery or performance of the Work and provide a reasonable description thereof, which notice shall be treated as Confidential Information hereunder.

2.9 Independent Contractor. In performing its duties and obligations under this Agreement, Supplier shall, at all times, act in the capacity of an independent contractor, and shall not in any respect be deemed (or act as) an agent of Owner for any purpose or reason whatsoever.

2.10 Cleaning. Prior to the Final Completion Date, Supplier shall remove from the Site all of Supplier's tools, equipment and debris (as well as that of its Subcontractors).

2.11 Transfer of Title & Risk of Loss. (a) Title to each portion of the Equipment shall pass from Supplier to Owner as follows:

(i) As to each item of Equipment to be shipped from within the United States, upon Supplier making such item available for shipment from the warehouse or from the manufacturer's facility and when such item departs from the warehouse or from the manufacturer's facility, at which time it will be deemed to be introduced into the stream of interstate commerce.

(ii) As to each item of Equipment to be shipped from within a country other than the United States, upon the earlier of (x) when such item has been cleared for export, at which time it will be deemed to be introduced into the stream of interstate commerce, or (y) if shipped from within the European Union, when such item departs from the territorial land, sea and overlying airspace of the sending country, as applicable.

(b) Title to Services shall pass from Supplier to Owner as performed.

(c) Supplier warrants that legal title to and ownership of the Equipment and Work shall transfer to Owner free and clear of any and all Liens, claims and defects in title. Supplier shall indemnify, defend and hold harmless Owner and each of the Owner Indemnified Parties from and against any loss, damage, claim, expense or cost (including, without limitation, court costs and reasonable attorneys' fees) arising out of or relating to the breach of the foregoing warranty. The terms and provisions of this Section 2.11 shall survive the expiration or termination of this Agreement.

(d) The passage of title to Owner shall not be deemed an acceptance or approval of any Equipment (or any Work), affect the allocation of risk of loss, or otherwise relieve Supplier of any obligation under this Agreement to provide and pay for transportation and storage in connection with the Equipment. Supplier retains the risk of loss of the Work until completion of Supplier's Delivery obligations. Supplier shall be liable for any loss or damage, whenever and wherever occurring, that results from Supplier's performance of any repair or replacement work on a Delivered component by Supplier, a Subcontractor, or any other individual or entity for whom Supplier is responsible.

(e) Supplier, at its sole cost and expense, shall prepare all required import/export documentation or similar documentation that may be required by Owner prior to title transfer of any Equipment.

2.12 Supplier's Representative. Supplier shall appoint a single representative to act as its manager and as the coordinator of this Agreement on Supplier's behalf (the "Project Manager"). The Project Manager shall act as the liaison for Supplier's communications with Owner and shall be responsible for providing all reports due under the Agreement to Owner. The Project Manager shall coordinate all activities of Supplier, including reporting activities, communication activities, and insurance procurement and administration.

2.13 Manufacturing and Shipment Progress. From and following issuance of the Notice to Proceed, Supplier shall provide Owner with monthly progress reports describing the status of the manufacturing and shipment of the Equipment. During the manufacturing of the Equipment, Owner shall be permitted, at its sole expense, upon reasonable advance notice and during regular business hours, to observe and inspect the manufacturing and assembly process for the Equipment at Supplier's and its Subcontractors' applicable manufacturing facilities, other than restricted areas where proprietary work that is a Supplier trade secret is being performed. In addition, Owner may observe and inspect any portion of the Work being performed at the Site at any time. Owner's inspection of the Equipment or Work or its failure to inspect does not relieve Supplier of its obligation to fulfill the requirements of this Agreement, nor is it to be construed as acceptance by Owner. If Supplier becomes aware of any delays in the manufacture, assembly or shipment of any Equipment that could reasonably be expected to result in Supplier failing to deliver the Equipment to the Delivery Point by the relevant Guaranteed Delivery Date, Supplier shall promptly notify Owner of such delays and provide a reasonable estimate of their expected duration. In the event Owner reasonably believes that Supplier will not meet one or more Milestones within fourteen (14) days after the applicable date specified in the Milestone Schedule therefor, Owner may notify Supplier thereof in writing, and Supplier shall, (i) within fifteen (15) days following receipt of any such notice, provide to Owner a written plan detailing the steps Supplier will implement to remediate any such deviation from the Milestone Schedule, and (ii) promptly thereafter, implement such plan.

2.14 Quality Control Program. Supplier shall perform the Work in accordance with a quality assurance and control program complying with the Requirements, which program shall include factory test procedures applicable prior to final assembly and shipment of the Equipment. Owner shall be permitted, at its sole expense, to review such program to ensure compliance of the Work with the requirements of this Agreement.

2.15 Qualifications. Supplier and each of its Subcontractors shall at all times during performance of the Work be qualified and capable of performing the Work in accordance with the terms of this Agreement and shall hold all professional licenses and certifications required in connection therewith, which such licenses and certifications shall be maintained at Supplier's sole cost and expense.

2.16 Legal Requirements. (a) Supplier shall comply, and shall cause its Subcontractors to comply, with all Permits, Laws and Applicable Codes and Standards which are applicable to the Work, the Facility and/or the Site and shall give all notices pertaining thereto.

(b) Upon the occurrence of a Change in Law, Supplier shall be entitled to an equitable adjustment in the Contract Price and/or Milestone Schedule provided (i) Supplier notifies Owner in writing with ten (10) Days after Supplier becomes aware of any such Change in Law, (ii) as to

a request for an equitable adjustment in the Contract Price, Supplier can demonstrate to the satisfaction of Owner, acting reasonably, that the Change in Law increased Supplier's cost of performing the Work, and (iii) as to a request for an equitable adjustment in the Milestone Schedule, Supplier can demonstrate to the satisfaction of Owner, acting reasonably, that the Change in Law materially delayed the performance of the Work. Upon satisfaction by Supplier of the terms and conditions of this Section, Owner and Supplier shall exercise good faith efforts to agree on the extent to which the Work has been delayed and/or Supplier's costs increased on account of any such Change in Law. Once the Parties have mutually agreed as to the extent of such impact, they shall enter into a Change Order reflecting their agreement as to the equitable adjustment in the Milestone Schedule and/or Contract Price. If the Parties are unable to agree upon an equitable adjustment in the Milestone Schedule and/or Contract Price, then such matter shall be resolved in accordance with Article 18. Prior to the Notice to Proceed, Supplier will provide confirmation to Owner (within ten (10) Business Days of Owner's request therefor) that, to the best of Supplier's knowledge, there has been no Change in Law that adversely affects the performance by Supplier of its obligations hereunder other than as previously notified to Owner in writing, or disclosing to Owner with reasonable specificity any then applicable Change in Law.

2.17 Cooperation of Supplier. Supplier acknowledges that, concurrently with the performance of the Work, Owner, EPC Contractor and Owner's other separate contractors will be performing construction work and services at the Site. During performance of any Work at the Site, Supplier shall not (and shall cause its Subcontractors not to) unreasonably interfere with Owner, EPC Contractor or Owner's other separate contractors and shall cooperate (and shall cause its Subcontractors to cooperate) with Owner, EPC Contractor and each other separate contractor in the performance of their respective duties.

2.18 Rules & Regulations. During performance of any Work at the Site, Supplier, its Subcontractors and their respective agents and employees shall observe all pertinent and reasonable Site, safety and health rules and regulations issued by Owner or EPC Contractor, including those relating to passes, badges and conduct on the Site.

2.19 Periodic Reports & Meetings. (a) Supplier shall prepare and submit to Owner a monthly status report, which report shall be prepared in a manner and format reasonably satisfactory to Owner and shall include, but shall not be limited to, (i) an executive summary and a detailed description of the progress of the Work, including a critical path chart illustrating the progress which has been made, and (ii) an updated report as to Supplier's adherence to the Milestone Schedule, and specifically addressing whether the Work is on schedule or behind schedule, and actions being taken to correct schedule delays.

(b) Supplier will schedule and conduct a CKOM. Throughout the duration of this Agreement, the Owner's Manager shall be entitled to schedule and conduct weekly meetings between Supplier, Owner, EPC Contractor, Owner's other separate contractors, and any other parties designated by Owner for the purpose of discussing the status of the Facility.

2.20 No Liens. (a) Supplier shall not assume, create or suffer to exist or be created any Lien on (i) the Site, the Facility, or any portion thereof (including the Equipment after title to the same has transferred to Owner), by, through or under Supplier, any Subcontractor, or any of their

respective employees, or (ii) any other property of Owner by, through or under Supplier, any Subcontractor, or any of their respective employees; provided, however, the foregoing shall not apply to Liens (including mechanics' liens, suppliers' liens, materialmen's liens or other similar liens) filed, recorded or asserted by or through Supplier, its Subcontractors, or any of their respective employees due to Owner's non-payment of amounts properly due and payable to Supplier under this Agreement (the "Permitted Liens").

(b) If there arises a Lien by, through or under Supplier, any Subcontractor or any of their respective employees that violates Supplier's obligations under Section 2.20(a), then Supplier shall:

(i) promptly, following receipt of written notice of such Lien or of Supplier's becoming aware of the assertion of such Lien, provide written notice thereof to Owner; and

(ii) as soon as reasonably practicable, but in no event later than fifteen (15) days after the date that Supplier receives written notice that such Lien was filed, recorded or asserted, or otherwise becomes aware of such Lien, either (x) pay or discharge, and discharge of record, any such Lien, (y) pay the appropriate amount into a court of competent jurisdiction in order to have the Lien vacated of record, or (z) provide, at Supplier's option, either a bond or letter of credit from a surety or commercial bank reasonably acceptable to Owner to protect against such Lien (which bond or letter of credit shall be in form, substance and amount sufficient (after satisfying all procedural and substantive requirements therefor under applicable Law) to discharge such Lien such that it is neither enforceable against Owner nor any asset of Owner and to permit Owner to obtain title insurance with no exceptions for such Lien). Notwithstanding the foregoing, Supplier shall in any event discharge, release and remove of record any such Lien no later than the date that is the earliest to occur of: (a) ten (10) Business Days prior to the date the existence of such Lien would give rise to a default under any financing documents or similar agreements Owner or, with respect to the Facility, any of its Affiliates has entered into with any Lenders, as determined by Owner and communicated to Supplier no less than fifteen (15) days prior to the date such default would otherwise arise; (b) five (5) Business Days following the date that the claimant under any such Lien commences procedures to foreclose upon such Lien; (c) ten (10) Business Days after the date Owner notifies Supplier of a request or demand from a Lender that such Lien be discharged, released and removed of record; and (d) the date the final progress payment is due to Supplier hereunder.

(c) Upon the failure of Supplier to perform its obligations under Section 2.20(b), Owner may, but shall not be obligated to, either (i) obtain a bond, letter of credit or other security for such Lien and, upon posting of such security therefor, shall be entitled to recover promptly from Supplier the reasonable costs and expenses incurred by Owner in connection therewith, or (ii) offset the amount of any such Lien from any amounts otherwise due to Supplier hereunder or draw upon any letter of credit provided by Supplier hereunder and thereafter pay, release, satisfy and discharge such Lien. Additionally, if Supplier fails to perform its obligations under this Section 2.20, Supplier shall indemnify, defend and hold harmless Owner and each of the Owner Indemnified Parties from

and against any costs and expenses incurred by Owner in releasing, discharging and satisfying any such Lien (including, without limitation, any reasonable attorneys' fees and court costs). The terms and provisions of this Section 2.20 shall survive the expiration or termination of this Agreement.

2.21 Books and Records. Supplier shall keep and maintain books, records and accounts showing payments made to Supplier by Owner for Work performed on a time and materials basis or other non-fixed price basis (together with supporting documentation). Such books, records and accounts shall be maintained by Supplier for at least five (5) years after the Final Completion Date.

2.22 O&M Manual. Supplier shall submit the Operation & Maintenance Manual to Owner within sixty (60) days after the shipment of the last Equipment Package. Unless required by applicable Law, Supplier agrees that neither the Operation & Maintenance Manual (nor any updates or amendments to the Operation & Maintenance Manual, including any service bulletins) shall materially adversely impact the performance, safety or the expected lifetime of the Equipment. Any such updates or amendments shall be sent to Owner in a timely manner. In addition, Supplier agrees that the Operation & Maintenance Manual (and any updates or amendments to the Operation & Maintenance Manual, including any service bulletins) shall comply with Prudent Practices and be consistent with applicable Laws.

2.23 Special Tools. Supplier shall provide all special tools and jacking/lifting devices identified on Exhibit A (Attachment 15-04) necessary for the assembly, erection, installation, start-up, commissioning and testing of the Equipment (the "Special Tools"). Supplier shall deliver the Special Tools to the Site at least ten (10) days prior to the first delivery of Equipment to the Delivery Point.

2.24 Training. Supplier shall, at a mutually agreed time on or before the date that is ninety (90) days prior to the date Owner reasonably believes Mechanical Completion will be achieved, commence a training program for Owner's (and its operator's) personnel in relation to the operation and maintenance of the Power Island. Such program shall be in accordance with the terms of Section 01100.1.5 in Exhibit A, and shall, in any event, consist of the provision of training manuals and technical assistance, and the conducting of classroom and hands-on instruction. Supplier shall complete all such training on or before the Mechanical Completion Date or such other date as mutually agreed by the Parties in writing.

2.25 Spare Parts List. On or before the date which is one hundred and eighty (180) days prior to the date Owner reasonably believes Mechanical Completion will be achieved, Supplier shall provide Owner with a list of spare parts necessary to operate and maintain the Equipment for a period of two (2) years after the Mechanical Completion Date, which list shall identify such parts by type, quantity, and the estimated costs for the same.

2.26 Hazardous Substances. (a) Supplier shall transport and handle all Hazardous Substances that Supplier or any of its Subcontractors bring to the Site in accordance with all applicable Environmental Laws. Supplier and its Subcontractors shall label Hazardous Substances that each brings to the Site and shall train their personnel in the safe usage and handling of such Hazardous Substances, including any training that is required by applicable Laws. Except as expressly provided in the last sentence of Section 2.26(b), Supplier shall bear all costs and expenses

and shall be solely liable for any reporting, response, removal, transportation, disposal, investigation, cleanup or other investigatory, remedial, or corrective action (in all cases by licensed, insured, competent and professional contractors in a safe manner and in accordance with applicable Laws) required by any applicable Laws, including Environmental Laws, as a result of any Hazardous Substances that are brought on, transported to, handled, treated, released, generated, disposed, discharged, used or stored on or at the Site by Supplier or any of its Subcontractors, provided that with respect to releases or discharges, costs, expenses and liabilities shall be limited to those caused or exacerbated by the acts or omissions of Supplier or its Subcontractors. Supplier shall indemnify, defend and hold harmless Owner and each of the Owner Indemnified Parties from and against any and all Losses resulting from any release or discharge of any Hazardous Substances brought on the Site by Supplier or its Subcontractors and any response, removal, cleanup or other remedial action required by applicable Environmental Laws as a result thereof. As between Owner and Supplier, Owner shall be liable (and shall arrange) for the reporting, response, removal, transportation, disposal, investigation, cleanup or other investigatory, remedial, or corrective action (in all cases by licensed, insured, competent and professional contractors in a safe manner and in accordance with applicable Laws) required by any applicable Laws, including Environmental Laws, as a result of any Hazardous Substances existing at the Site as of the Effective Date (unless the same has been released or discharged at the Site by Supplier or any of its Subcontractors). Owner shall indemnify, defend and hold harmless Supplier and each of the Supplier Indemnified Parties from and against any and all claims, causes of action, proceedings, demands, or suits of any third party resulting from any Hazardous Materials which (i) were present on the Site prior to the commencement of Supplier's Work or are brought onto the Site by Owner, its contractors or subcontractors (other than Supplier and its Subcontractors and any other Person for whom Supplier is responsible) after the commencement of Supplier's Work and/or (ii) improperly handled or disposed of by Owner. The terms and provisions of this Section 2.26 shall survive the expiration or termination of this Agreement.

(b) Throughout performance of the Work, Supplier and its Subcontractors shall conduct all operations in such a way as to minimize impact upon the natural environment and prevent any release or spread of Hazardous Substances. In the event Supplier or its Subcontractors encounter at the Site any material reasonably believed to be a Hazardous Substance and not arising as a result of the performance of the Work, Supplier and its Subcontractors shall take reasonable precautions to avoid exacerbating any such Hazardous Substance and immediately stop work in the affected area and notify Owner of the condition. Pending receipt of written instructions from Owner, Supplier shall not resume Work in the affected area. If any such Hazardous Substance directly cause a demonstrated increase in Supplier's cost to perform the Work or the time required for performance of any part of the Work, an equitable adjustment shall be made in the Contract Price and schedule. Owner shall be responsible for the disposal of any excess or partially used Hazardous Substances produced or generated during the course of Supplier's Services at the Site (other than Hazardous Substances released or discharged at the Site by reason of the acts or omissions of Supplier or its Subcontractors, which shall be Supplier's responsibility).

2.27 Product Bulletins. From the date of Delivery of the CT Package until the expiration of the Warranty Period or any Additional Warranty Period, as applicable, Supplier shall inform

Owner of all technical modifications to the CT Package that are not optional product optimizations, but the implementation of which are categorized by Supplier as "mandatory", by promptly issuing to Owner a bulletin as to such modifications (each, a "Product Bulletin"). As to any Product Bulletin that is applicable to the CT Package during the preceding period, Supplier shall perform the modifications required by such Product Bulletin at its sole cost and expense. Such work by Supplier shall constitute Work under this Agreement and shall be (i) performed in accordance with the warranty provisions and other standards applicable to Work under this Agreement and (ii) subject to the warranty obligations and limitations provided in this Agreement.

ARTICLE 3

OWNER

3.1 Owner's Manager. Owner shall appoint a single representative to act as its manager and as the coordinator of this Agreement on Owner's behalf (the "Owner's Manager"). The Owner's Manager shall act as the liaison for Owner's communications with Supplier. The Owner's Manager shall coordinate all activities of Owner, including reporting activities, communication activities, and insurance procurement and administration. Only those directives issued in writing by the Owner's Manager that do not amend or modify any of the provisions of this Agreement shall be binding upon Owner, it being expressly agreed by Supplier that no oral communications by the Owner's Manager nor any written communications by the Owner's Manager that would amend or modify any provision of this Agreement shall be binding upon Owner.

3.2 Operating Personnel. Owner shall provide the operating personnel necessary to commence the initial operation of the Facility (i.e., the start-up and commissioning of the Facility) and to conduct the Performance Test.

3.3 Records. Owner shall keep proper records of the operation and maintenance of the Facility during the Warranty Period or any Additional Warranty Period, as applicable. These records shall be kept in the form of log-sheets and copies shall be submitted to Supplier upon its request.

ARTICLE 4

SCHEDULE

4.1 Commencement. Supplier shall commence the performance of its obligations under this Agreement upon its receipt of the Notice to Proceed, and shall thereafter perform the Work in accordance with the Milestone Schedule; provided, however, that Supplier has commenced performance of the LNTP Work pursuant to the LNTP Letter Agreement.

4.2 Document Packages & Liquidated Damages for Delay. (a) Supplier shall deliver to Owner the drawings and other documents comprising each Document Package by the applicable Document Deadline (which Document Deadlines may be adjusted in accordance with the terms and provisions of this Agreement).

(b) The Parties agree that it would be extremely difficult and impracticable under the presently known and anticipated facts and circumstances to ascertain and fix the actual damages Owner would incur should Supplier fail to deliver certain Document Packages to Owner by the applicable Document Deadline. Accordingly, if Supplier fails to deliver to Owner by the applicable Document Deadline any of the Document Packages identified on Exhibit A, Attachment 2 as being subject to Documents Liquidated Damages, then Owner shall be entitled to recover from Supplier as liquidated damages for any such delay, and not as a penalty, $[***] per day for each day after the applicable Document Deadline until the date the corresponding Document Package is delivered to Owner (the "Documents Liquidated Damages"). Supplier's maximum aggregate liability for Documents Liquidated Damages shall not exceed [***] Dollars ($[***] USD).

It is acknowledged and agreed by the Parties hereto that the liquidated damages identified in this Section relate solely to Supplier's failure to deliver a Document Package to Owner by the applicable Document Deadline and to no other duty or obligation of Supplier. It is further acknowledged and agreed by the Parties hereto that (i) other than Owner's right to terminate this Agreement for a Supplier Default under Section 16.1(vii) and Owner's related rights and remedies upon such termination (including, without limitation, those under Section 16.1(b)), the liquidated damages identified in this Section are Owner's sole and exclusive remedy for Supplier's failure to deliver a Document Package to Owner by the applicable Document Deadline, and (ii) the liquidated damages identified in this Section are a good faith estimate of the damages Owner would suffer in the event Supplier fails to deliver a Document Package to Owner by the applicable Document Deadline.

4.3 Delivery of Equipment & Liquidated Damages for Delay. (a) Supplier shall Deliver each Major Component and Minor Component to the Delivery Point by the Guaranteed Delivery Date corresponding to each such Major Component and Minor Component as provided in the Milestone Schedule (which Guaranteed Delivery Dates may be adjusted in accordance with the terms and provisions of this Agreement). Such Delivery shall be made on Supplier's arriving means of conveyance, not unloaded.

(b) Supplier shall pack or cause to be packed the Equipment in a commercially reasonable manner to accommodate transportation and delivery to the Delivery Point (i.e., so as to deliver the Equipment in a clean, new and undamaged condition). Supplier shall appoint a designated logistics coordinator to coordinate all transportation and logistics activities required to be performed by Supplier under this Agreement. Owner may contact Supplier's Project Manager from time to time for updates on the Delivery schedule and current location of the Equipment. From the first date that Equipment is shipped by Supplier until the date that all Equipment has been delivered to the Delivery Point, Supplier shall provide a weekly report detailing the status (including any actual or expected delays in transportation) and location of Equipment that is in transit to the Delivery Point. Supplier shall provide Owner with seven (7) days (on an estimated basis) advance written notice of the date of delivery of any Equipment to the Delivery Point such that Owner can arrange for the unloading of any Equipment at the time of delivery to the Delivery Point.

(c) Supplier acknowledges and agrees that it shall not be permitted to deliver any Equipment to the Delivery Point earlier than forty-five (45) days in the case of the Major Components

and thirty (30) days in the case of the other Equipment prior to the corresponding Guaranteed Delivery Date (or prior to such other date as the Parties may mutually agree in writing), provided that Supplier shall notify Owner of any anticipated Delivery of the Major Components prior to thirty (30) days of prior to the corresponding Guaranteed Delivery Date in accordance with the advance notice requirements to be established by Supplier and Owner during the CKOM.

(d) When Supplier believes that it has Delivered a Major Component or Minor Component to the Delivery Point, Supplier shall so notify Owner (a "Delivery Notice"). Within five (5) Business Days after Owner's receipt of a Delivery Notice, Owner shall inspect the Major Component or Minor Component in question and shall either (x) notify Supplier that the Major Component or Minor Component has been Delivered, or (y) if Owner believes that the Major Component or Minor Component has not been Delivered, notify Supplier of such belief and the reasons for such belief. If Supplier receives written notice from Owner pursuant to clause (d)(x) above, the corresponding Major Component or Minor Component shall be deemed Delivered as of the date of issuance of Supplier's Delivery Notice. In the event Owner provides written notice that Delivery of the applicable Major Component or Minor Component has not been achieved, Supplier shall, at its sole cost and expense, promptly correct and/or remedy the defects, deficiencies and other conditions which so prevent Delivery of such Major Component or Minor Component. Upon completion of any such corrective and/or remedial actions, Supplier shall resubmit its Delivery Notice stating that it believes Delivery has been achieved and the foregoing procedures shall be repeated until Delivery of the applicable Major Component or Minor Component has in fact been achieved. For the sake of clarity, when it is ultimately determined that Delivery of a Major Component or Minor Component has occurred, the date of Delivery of such Major Component or Minor Component for purposes of calculating Delivery Liquidated Damages shall be deemed the date Supplier sent the corresponding Delivery Notice to Owner (and not the date upon which Owner confirms such Delivery). Additionally, the days between Supplier's issuance of a Delivery Notice and Owner's first written notice that Delivery has not been achieved shall not be included in the calculation of Delivery Liquidated Damages; provided, however, that from and after the first time that Owner delivers a written notice that Delivery has not been achieved for any Major Component or Minor Component, then the days between Supplier's issuance of any subsequent Delivery Notice (whether relating to the same Major Component or Minor Component or a different Major Component or Minor Component) and Owner's written notice that Delivery has not been achieved (whether relating to the same Major Component or Minor Component or a different Major Component or Minor Component) shall be included in the calculation of Delivery Liquidated Damages.

(e) The Parties agree that it would be extremely difficult and impracticable under the presently known and anticipated facts and circumstances to ascertain and fix the actual damages Owner would incur should Supplier fail to Deliver a Major Component or Minor Component by the applicable Guaranteed Delivery Date. Accordingly, if Supplier fails to Deliver any Major Component or Minor Component by the corresponding Guaranteed Delivery Date, then Owner shall be entitled to recover from Supplier as liquidated damages for any such delay, and not as a penalty, the following amounts per day for each day after the applicable Guaranteed Delivery Date until the date the corresponding Major Component or Minor Component is Delivered (the "Delivery Liquidated Damages"):

In the case of each Major Component, $[***] per day of delay per each Major Component, and in the case of each Minor Component, $[***] per day of delay per each Minor Component; provided, however, Supplier's aggregate liability for Delivery Liquidated Damages shall not exceed (y) $[***] per day for the first thirty (30) days of delay in the aggregate (i.e., for this purpose, any day on which any Major Component, Minor Component is delayed shall constitute a day of delay that is counted against such thirty (30) day cap) and (z) $[***] per day for any subsequent days of delay.

It is acknowledged and agreed by the Parties hereto that the liquidated damages identified in this Section relate solely to Supplier's failure to Deliver a Major Component or Minor Component by the applicable Guaranteed Delivery Date and to no other duty or obligation of Supplier. It is further acknowledged and agreed by the Parties hereto that (i) other than Owner's right to terminate this Agreement for a Supplier Default under Section 16.1(a)(vii) and Owner's related rights and remedies upon such termination (including, without limitation, those under Section 16.1(b)), the liquidated damages identified in this Section are Owner's sole and exclusive remedy for Supplier's failure to Deliver a Major Component or Minor Component by the corresponding Guaranteed Delivery Date, and (ii) the liquidated damages identified in this Section are a good faith estimate of the damages Owner would suffer in the event Supplier fails to Deliver a Major Component or Minor Component by the corresponding Guaranteed Delivery Date.

Notwithstanding the foregoing, Delivery Liquidated Damages shall not accrue with respect to a Major Component or Minor Component if (i) on any day in which Delivery of such package has been delayed, the foundation corresponding to such Major Component is not Foundation Ready due to a cause not attributable to an exercise by Owner of its rights under this Agreement in response to Supplier's failure to meet its obligations under this Agreement or (ii) when Delivered, there is minor damage or a minor defect to such Major Component or Minor Component, the repair or remedy of which would not materially affect in any way the installation of such Major Component or Minor Component or Supplier's or EPC Contractor's construction, start-up and commissioning schedule, and as to which Supplier has submitted to Owner a proposed remedial plan and timeline to correct such damage or defect. Owner agrees to review and provide preliminary feedback on Supplier's proposed remedial plan within a reasonable period after receipt thereof, and thereafter the Parties agree to work diligently towards the finalization of a remediation plan reasonably acceptable to Owner and the EPC Contractor. Upon finalization of such remedial plan, Supplier shall commence promptly and diligently pursue to completion such remedial plan, and Supplier shall minimize interference with EPC Contractor's work while performing Supplier's remedial plan.

4.4 Mechanical Completion. When Mechanical Completion of the Facility has been achieved, Owner shall promptly thereafter notify Supplier of the same (as well as the date when Mechanical Completion was in fact achieved).

4.5 Substantial Completion & Liquidated Damages for Delay.

(a) Supplier shall deliver to Owner a proposed Punch List not later than fifteen (15) days prior to the anticipated date of Substantial Completion, and Owner agrees to review and provide preliminary feedback on Supplier's proposed Punch List within a reasonable period after receipt

thereof, and thereafter the Parties agree to work diligently towards the finalization of a Punch List reasonably acceptable to Owner. Provided that the other conditions to Substantial Completion have been satisfied, Substantial Completion will occur notwithstanding that the Punch List items remain to be completed by Supplier, provided that Supplier shall commence promptly and diligently pursue to completion such Punch List items, and Supplier shall minimize interference with Owner's commercial operation of the Equipment while performing any Punch List work after the Substantial Completion Date.

(b) Supplier shall deliver to Owner its proposed estimate of Substantial Completion Liquidated Damages with reasonable supporting documentation not later than fifteen (15) days prior to the anticipated date of Substantial Completion, and Owner agrees to review and provide preliminary feedback on Supplier's estimate within a reasonable period after receipt thereof. Supplier shall provide Owner with any other information reasonably requested by Owner to enable Owner to make its good faith estimate of Substantial Completion Liquidated Damages. Owner's good faith estimate of Substantial Completion Liquidated Damages shall be used for purposes of determining the proper face amount of LOC-3 to be delivered by Supplier in accordance with clause (xii) of the definition of Substantial Completion.

(c) When Supplier believes that Substantial Completion has been achieved, Supplier shall so notify Owner and Owner's Engineer in writing and shall deliver a draft Certificate of Substantial Completion to Owner. Immediately thereafter, Owner shall conduct those investigations and inspections as it deems necessary or appropriate to determine if Substantial Completion has in fact been achieved. Within five (5) Business Days after the receipt of Supplier's notice to Owner, Owner shall either (i) notify Supplier that Substantial Completion has been achieved, or (ii) notify Supplier that Substantial Completion has not been achieved and stating the reasons therefor. In the event Owner provides written notice that Substantial Completion has been achieved, Supplier and Owner shall execute a "Certificate of Substantial Completion", attached hereto as Exhibit N, establishing and identifying the Substantial Completion Date. In the event Owner provides written notice that Substantial Completion has not been achieved, Supplier shall (subject to the terms of Article 5), at its sole cost and expense, and as part of the Work, immediately correct and/or remedy the defects, deficiencies and other conditions which so prevent Substantial Completion. Upon completion of any such corrective and/or remedial actions, Supplier shall resubmit its notice stating that it believes that Substantial Completion has been achieved and the foregoing procedures shall be repeated until Substantial Completion has in fact been achieved. For the sake of clarity, when it is ultimately determined that Substantial Completion has been achieved, the Substantial Completion Date for purposes of calculating Substantial Completion Liquidated Damages shall be deemed the date Supplier sent the corresponding notice to Owner pursuant to this Section (and not the date upon which Owner confirms Substantial Completion has been achieved). Additionally, the days between Supplier's notice to Owner and Owner's first written notice to Supplier that Substantial Completion has not been achieved shall not be included in the calculation of Substantial Completion Liquidated Damages; provided, however, that from and after the first time that Owner delivers a written notice to Supplier that Substantial Completion has not been achieved, then the days between Supplier's issuance of any subsequent notice that it believes Substantial Completion has been achieved and Owner's written notice that Substantial Completion has not been achieved shall be included in the calculation of Substantial Completion Liquidated Damages.

(d) The Parties agree that it would be extremely difficult and impracticable under the presently known and anticipated facts and circumstances to ascertain and fix the actual damages Owner would incur if Supplier fails to achieve Substantial Completion during or by the end of the Access Period. Accordingly, if after the Access Period Supplier fails to achieve Substantial Completion, then Owner shall be entitled to recover from Supplier as liquidated damages for any such delays, and not as a penalty, the following amounts per day for each day after the last Access Day until the date Substantial Completion is achieved (the "Substantial Completion Liquidated Damages"):

(i) $[***] per day for the first fifteen (15) days of delay;

(ii) $[***] per day for the next thirty (30) days of delay; and

(iii) $[***] per day for any subsequent days of delay.

It is acknowledged and agreed by the Parties hereto that the liquidated damages identified in this Section relate solely to the failure of Supplier to achieve Substantial Completion during or by the end of the Access Period, and to no other duty or obligation of Supplier (including, without limitation, Supplier's obligation to properly complete the Work). It is further acknowledged and agreed by the Parties hereto that (A) other than Owner's right to terminate this Agreement for a Supplier Default under Section 16.1(a)(vii) and Owner's related rights and remedies upon such termination (including, without limitation, those under Section 16.1(b)), the liquidated damages identified in this Section are Owner's sole and exclusive remedy for the failure of Supplier to achieve Substantial Completion during or by the end of the Access Period, and (B) the liquidated damages identified in this Section are a good faith estimate of the damages Owner would suffer in the event Substantial Completion is not achieved during or by the end of the Access Period.

4.6 Final Completion. Upon achievement of Substantial Completion, Supplier shall be required to complete any and all Work required to achieve Final Completion, in a manner consistent with the operational requirements of the Facility as directed by Owner. Supplier shall schedule and coordinate with Owner any Work, including support of Performance Testing, required to achieve Final Completion to minimize any adverse impact on Owner' ability to operate the Facility. When Supplier believes that it has achieved Final Completion, Supplier shall so notify Owner and Owner's Engineer in writing and shall deliver a draft Certificate of Final Completion to Owner. Immediately thereafter, Owner shall conduct those investigations and inspections as it deems necessary or appropriate to determine if Final Completion has in fact been achieved. Within seven (7) Days after the receipt of Supplier's notice, Owner shall either (i) notify Supplier that Final Completion has been achieved, or (ii) notify Supplier that Final Completion has not been achieved and stating the reasons therefor. In the event Owner provides written notice that Final Completion has been achieved, Supplier and Owner shall execute a "Certificate of Final Completion", attached hereto as Exhibit O establishing and identifying the Final Completion Date. In the event Owner provides written notice that Final Completion has not been achieved, Supplier shall, at its sole cost and expense, and as part of the Work, immediately correct and/or remedy the defects, deficiencies and other conditions which so prevent Final Completion. Upon completion of such corrective and/or remedial actions, Supplier shall resubmit its notice stating that it believes Final Completion has

been achieved and the foregoing procedures shall be repeated until Final Completion has in fact been achieved.

ARTICLE 5

PERFORMANCE TESTING & PERFORMANCE GUARANTEES

5.1 Performance Guarantee. Supplier guarantees that the Power Island shall successfully achieve all of the Performance Guarantees in connection with a Completed Performance Test in which all of the Minimum Performance Criteria are also achieved.

5.2 Start-Up, Commissioning & Supplier Commissioning Work; Access Days. (a) After the Mechanical Completion Date, Owner's operating personnel shall, under the EPC Contractor's observation, direction and supervision (along with the technical advice of Supplier), commence the initial operation of the Facility (i.e., the start-up and commissioning of the Facility), and shall, under the EPC Contractor's observation, direction and supervision (along with the technical advice of Supplier), continue with such operation during the performance of the Performance Test.

(b) Supplier shall properly complete the Supplier Commissioning Work within the Access Period. Supplier acknowledges, understands and agrees that the EPC Contractor will be performing those services and activities referenced in Section 5.2(a) at the same time that Supplier will be performing the Supplier Commissioning Work and Supplier shall account for such simultaneous activities in its planning for the performance of the Supplier Commissioning Work. Notwithstanding the foregoing, in the event Supplier is unable to perform the Supplier Commissioning Work on any portion of any Access Day solely by reason of interference caused by the EPC Contractor's start-up and commissioning of any part of the Facility, including but not limited to steam chemistry cleanup, outages for screen removal, screen cleaning and water wash, testing and setting of relief and safety valves, balance of plant and Facility-wide functional testing, performance testing and reliability testing, then if such inability would invalidate or materially reduce the efficacy of the Supplier Commissioning Work otherwise performed on such Access Day, then such day shall not count as an Access Day (or, if such inability does not invalidate or materially reduce the efficacy of the Supplier Commissioning Work otherwise performed on such Access Day, then only the portion of such day to which the interference relates shall not be credited as an Access Day and Supplier shall be entitled to use such portion on another day within the Access Period) (but only if Supplier notifies Owner in writing of any such interference within twenty-four (24) hours of such occurrence and Owner, acting reasonably, concurs with Supplier's claim).

(c) During the Access Period, Owner shall ensure the following to the extent necessary for Supplier to perform the Supplier Commissioning Work:

(i) The continuous availability of all fuels, lubricants, operating supplies and electrical backfeed;

(ii) Owner's operating personnel (provided Supplier has trained such personnel as provided in this Agreement) are available for operation of the Facility;

(iii) Operation of the Facility at the times and at the loads reasonably requested by Supplier;

(iv) Craft labor and management support are available if needed to undertake corrective work to the Facility;

(v) Supplier will have reasonable access to the Power Island to the extent necessary for Supplier to perform the Supplier Commissioning Work, including priority access to specific plant work areas, station cranes and similar equipment;

(vi) The most current copy of the Facility start-up schedule is available to Supplier; and

(vii) A copy of the control room log is available to Supplier.

(d) Supplier shall be provided a total (not necessarily consecutive) of forty-five (45) Access Days in the aggregate, after the date such Equipment has achieved “Ready for First Fire” requirements (the “Access Period”) without incurring any responsibility for payment of Substantial Completion Liquidated Damages for delay in achieving Substantial Completion. If Owner is unable or fails to provide the required number of Access Days prior to the Guaranteed Substantial Completion Date, then Supplier shall have no liability to Owner for Substantial Completion Liquidated Damages in these circumstances until Owner has provided Supplier with the required number of Access Days. The Parties will actively participate in the coordination and scheduling of commissioning activities and performance and equipment testing-related activities to achieve Substantial Completion in an organized, effective and efficient manner to minimize the impact of delays for the achievement of Substantial Completion including implementing reasonable workarounds to progress commissioning and testing activities. The Access Days (A) may be expended individually or in any particular grouping(s) of days, not necessarily consecutive, (B) must be coordinated in advance with the EPC Contractor including during the regular site coordination meetings, with Supplier giving advance request for application of such Access Days, (C) shall not be required to be used on days when the critical path schedule is delayed due to Owner or EPC Contractor’s work and (D) in the event that Supplier performs Supplier’s Commissioning Work on a day during a planned outage which was scheduled in accordance with Owner’s or EPC Contractor's schedule for commissioning activities, such day shall not be considered an Access Day (provided that neither Owner nor EPC Contractor shall be obligated to permit Supplier’s Commissioning Work on a day during a planned outage if such Supplier’s Commissioning Work would interfere or be inconsistent with the purpose for the planned outage).

5.3 Performance Test. As soon as practicable after the proper completion of the Supplier Commissioning Work, the EPC Contractor shall conduct the Performance Test in order to determine if the Power Island meets the Minimum Performance Criteria and the Performance Guarantees. As soon as reasonably practicable following the performance of any Performance Test, Owner shall submit to Supplier a detailed report explaining and analyzing the Performance Test and the results obtained.

5.4 Procedures Upon Failure. (a) Owner shall cause the EPC Contractor to perform, and re-perform, the Performance Test until all of the Minimum Performance Criteria have been

successfully achieved in connection with a Completed Performance Test. In confirmation and furtherance of the foregoing, Supplier covenants and agrees that its obligation to assure that the Power Island so achieves the Minimum Performance Criteria in connection with a Completed Performance Test is absolute (and that Supplier shall, at its sole cost and expense, implement all corrective and/or remedial measures until the Minimum Performance Criteria are in fact achieved in connection with a Completed Performance Test). Supplier shall do all things necessary to achieve the Minimum Performance Criteria notwithstanding that the amounts incurred by Supplier to do so may exceed the Contract Price.

(b) If, after the performance of the initial Completed Performance Test, the Power Island fails to meet or exceed the Minimum Performance Criteria, Supplier shall, at Supplier's sole cost and expense and within ninety (90) days thereafter correct and/or remedy the defects, deficiencies and other conditions which so prevent such performance levels. Upon completion of any such corrective and/or remedial actions, Supplier shall notify Owner. As soon as reasonably practicable after Owner's receipt of such notice, Owner shall (or shall cause the EPC Contractor) to re-perform the Performance Test. The foregoing procedures shall be repeated until the Power Island achieves the Minimum Performance Criteria in connection with a Completed Performance Test. Owner shall supply the natural gas, water and utilities and operators necessary for conducting Performance Tests and retests, and consumables required for normal operation of the Facility. Supplier shall not be responsible for the costs of fuel or consumables required for normal operation of the Facility, nor the cost of normal operating personnel required to conduct any test or retest. Supplier shall pay for test personnel, test equipment and testing consumables for retests.

(c) In the event Supplier fails to fulfill its obligations under this Agreement that are conditional to Substantial Completion, Supplier will not be entitled to pay Performance Liquidated Damages in lieu of achieving the Minimum Performance Criteria and must continue to diligently pursue achievement of Substantial Completion and achievement of the Minimum Performance Criteria.

5.5 Minimum Performance Criteria Achieved. After the EPC Contractor has performed a Completed Performance Test in which the Minimum Performance Criteria have been achieved (the "First Completed Minimum Performance Test") but the Performance Guarantees have not been achieved in their entirety, Supplier shall be granted a mutually agreed upon number of days during the one hundred eighty (180) day period after completion of the First Completed Minimum Performance Test (but in no event later than one hundred eighty (180) Days after the Guaranteed Substantial Completion Date) (the "Cure Period") to correct and/or remedy the defects, deficiencies and other conditions which so prevent achievement of the guaranteed performance levels, and Supplier, at its expense, shall promptly: (i) commence and complete corrective measures to rectify the cause of such failure, including correcting defects or deficiencies in the Work (including redesign and replacement of any defective parts), and (ii) make any necessary adjustments. Upon completion of any such corrective and/or remedial actions, Supplier shall notify Owner. As soon as reasonably practicable after Owner's receipt of such notice, Owner shall (or shall cause the EPC Contractor to) re-perform the Performance Test. Supplier may request Owner to re-perform the Performance Test on no more than three (3) occasions during the Cure Period. After a Performance Test that fails to demonstrate that all Performance Guarantees have been achieved, the costs of any subsequent

retesting performed by Owner or the EPC Contractor and test personnel, test equipment, natural gas, water, utilities and testing consumables shall be borne as provided in Section 5.4(b). Supplier recognizes that Owner will be commercially operating the Facility during the Cure Period and Supplier will make all reasonable efforts to minimize the downtime or curtailed operation of the Facility during the Cure Period. To the extent that Supplier reasonably needs an outage or to curtail operation during the Cure Period on a permitted Access Day, and Owner needs to keep the Facility in full service because of peak energy demands, and continued operation of the Facility is not a safety or potential damage related concern, then Supplier and Owner may mutually agree to an equitable extension of the Cure Period based on a mutually approved remediation plan. If, upon expiration of the Cure Period, the Power Island has not successfully achieved all of the Performance Guarantees in connection with a Completed Performance Test in which all of the Minimum Performance Criteria were also achieved, then Supplier shall pay Owner Performance Liquidated Damages on the basis of the last Completed Performance Test in which the Minimum Performance Criteria were achieved (the "Last Completed Performance Test"; it being acknowledged and agreed that if no Completed Performance Test in which all of the Minimum Performance Criteria were achieved occurs during the Cure Period, then the First Completed Minimum Performance Test shall be deemed the Last Completed Performance Test). Supplier shall not take any action during the Cure Period which will result in the Power Island's performance falling short of the Minimum Performance Criteria. If the Minimum Performance Criteria are not achieved during the last Performance Test conducted by Supplier during the Cure Period, Supplier shall, at Supplier's sole cost and expense and within ninety (90) days after notice thereof from Owner, correct and/or remedy the defects, deficiencies and other conditions which so prevent achievement of the Minimum Performance Criteria. As soon as is reasonably practicable after Supplier's completion of such corrective and/or remedial actions and Owner's receipt of notice of Supplier of the same, Supplier shall re-perform the Performance Test. The foregoing procedures shall be repeated until the Power Island achieves the Minimum Performance Criteria in connection with a Completed Performance Test.

5.6 Performance Liquidated Damages. The Parties agree that it would be extremely difficult and impracticable under the presently known and anticipated facts and circumstances to ascertain and fix the actual damages Owner would incur should the Power Island fail to successfully achieve all of the Performance Guarantees upon completion of the Last Completed Performance Test. Accordingly, if the Power Island fails to successfully achieve all of the Performance Guarantees upon completion of the Last Completed Performance Test, then Owner shall be entitled to recover from Supplier as liquidated damages for any such failure, and not as a penalty, those amounts identified on Exhibit H attached hereto (the "Performance Liquidated Damages"); it being acknowledged and agreed by the Parties hereto that the liquidated damages identified in this Section relate solely to Supplier's failure to achieve the Performance Guarantees upon completion of the Last Completed Performance Test, and to no other duty or obligation of Supplier. It is further acknowledged and agreed by the Parties hereto that (i) other than Owner's right to terminate this Agreement for a Supplier Default under Section 16.1(a)(vii) and Owner's related rights and remedies upon such termination (including, without limitation, those under Section 16.1(b)), the liquidated damages identified in this Section are Owner's sole and exclusive remedy for Supplier's failure to successfully achieve all of the Performance Guarantees upon completion of the Last Completed Performance Test, and (ii) the liquidated damages identified in this Section are a good faith estimate

of the damages Owner would suffer in the event Supplier fails to successfully achieve all of the Performance Guarantees upon completion of the Last Completed Performance Test.

5.7 HRSG Weld Quantity Liquidated Damages.

(a) Supplier guarantees the weld quantities ("Guaranteed Weld Quantities") for the erection of the HRSG, associated piping and auxiliary equipment scope of Supplier as set forth in Exhibit A, Attachment 16-06-GE C-50 Document.

(b) Supplier agrees that for any difference in the number or length of field welds required in excess of the Guaranteed Weld Quantities, Supplier shall pay to Owner, as liquidated damages and not as a penalty, and to the extent that such difference is attributable to Supplier or Equipment, an amount ("HRSG Weld Liquidated Damages") determined as set forth in Section 5.7(c)–(e) below, and based upon the rate structure ("Weld LD Rates") set forth in Exhibit M.

(c) In the event the actual weld quantities, by weld type line item, exceed the corresponding Guaranteed Weld Quantities ("Excess Weld Quantities") then a value will be calculated ("Excess Weld Costs") based upon the Weld LD Rates.

(d) In the event the actual weld quantities, by weld type line item, are less than the corresponding Guaranteed Weld Quantities ("Surplus Weld Quantities") then a value will be calculated ("Surplus Weld Costs") based upon the Weld LD Rates.

(e) After all such Excess Weld Costs and Surplus Weld Costs have been determined by weld type line item, Supplier's liability for HRSG Weld Liquidated Damages shall be the difference between the aggregate value of Excess Weld Costs and the aggregate value of Surplus Weld Costs, when the aggregate value of Excess Weld Costs exceeds the aggregate value of Surplus Weld Costs. In no event shall Supplier be entitled to additional monies in the event the aggregate value of Surplus Weld Costs exceeds the aggregate value of Excess Weld Costs. Supplier's maximum liability to Owner for HRSG Weld Liquidated Damages is eight percent (8%) of the Contract Price.

(f) The Parties agree that it would be extremely difficult and impracticable under the presently known and anticipated facts and circumstances to ascertain and fix the actual damages Owner would incur should the actual weld quantities fail to successfully achieve the Guaranteed Weld Quantities. Accordingly, Owner shall be entitled to recover from Supplier as liquidated damages, and not as a penalty, the HRSG Weld Liquidated Damages; it being acknowledged and agreed by the Parties hereto that the liquidated damages identified in this Section relate solely to Supplier's failure to achieve the Guaranteed Weld Quantities, and to no other duty or obligation of Supplier. It is further acknowledged and agreed by the Parties hereto that (i) other than Owner's right to terminate this Agreement for a Supplier Default under Section 16.1(a)(vii) and Owner's related rights and remedies upon such termination (including, without limitation, those under Section 16.1(b)), the liquidated damages identified in this Section are Owner's sole and exclusive remedy for Supplier's failure to successfully achieve all of the Guaranteed Weld Quantities, and (ii) the liquidated damages identified in this Section are a good faith estimate of the damages Owner would suffer in the event Supplier fails to successfully achieve all of the Guaranteed Weld Quantities.

ARTICLE 6

CONTRACT PRICE AND PAYMENT; LETTERS OF CREDIT

6.1 Contract Price.

(a) Owner shall pay Supplier for the due, proper and complete performance of the Work as required hereunder, and for the due performance of all other obligations and duties imposed upon Supplier pursuant to this Agreement, the "Contract Price" of One Hundred Nine Million Nine Hundred Seventy Thousand Five Hundred Seventy and No/100 Dollars ($109,970,570.00) subject to additions and deductions by Change Order as provided in this Agreement. All such amounts shall be paid to Supplier in Dollars.

(b) The Contract Price shall be subject to a price adjustment if the Notice to Proceed is not issued by February 28, 2019. Under this condition, the total Contract Price shall increase by 0.25% for each monthly period thereafter (assessed on the first day of each such monthly period (i.e., on the first day of the month) until the Notice to Proceed is issued by Owner.

6.2 Payments. Upon the occurrence or completion, as applicable, of a Milestone set forth in the payment schedule attached hereto as Exhibit J (the "Payment Schedule"), the corresponding portion of the Contract Price shall be due and payable to Supplier (each a "Milestone Payment"). Additionally, upon the lapse of each calendar month identified in the Payment Schedule, the progress payment associated with such calendar month shall be due and payable (each a "Progress Payment").

6.3 Invoicing. (a) Supplier shall submit to Owner an application for payment for amounts due to Supplier as provided in Section 6.2 (each, an "Invoice"). Supplier shall submit each Invoice to Owner as Milestones are successfully achieved, or with respect to any Progress Payment on the fifth (5th) Day of each calendar month in which they are due. The Invoice shall (i) set forth the Milestone or Milestones which Supplier has successfully achieved, or which have otherwise occurred, including the document evidencing each Milestone's completion (as shown on Exhibit J), (ii) set forth the Milestone Payment or Payments which correspond to such Milestones, (iii) set forth the Progress Payments due and payable with respect to the calendar month, if any, and (iv) be in a form mutually acceptable to the Parties. Each Invoice shall be accompanied by a duly executed waiver of mechanics', materialmen's and construction liens from Supplier in the form attached hereto as Exhibit K-1 establishing payment or satisfaction of the payment requested by Supplier in the Invoice, provided the final Invoice shall be accompanied by (y) a final and full waiver of lien from Supplier in the form attached hereto as Exhibit K-2 and (z) a final and full waiver from each Major Subcontractor in the form attached hereto as Exhibit K-3. Each Invoice shall be sufficiently detailed so as to allow Owner to verify and substantiate the amounts and descriptions of items included therein, including as applicable, descriptions of materials or equipment supplied to Owner, services performed and specific detail necessary for the verification and substantiation of the Invoice. Each Invoice shall be accompanied by the statement described in Section 2.5(c).

(b) Supplier acknowledges that Owner and its Lenders may be obtaining title insurance policies in connection with the Facility. As Supplier is not obligated to submit lien waivers to Owner from Supplier's Subcontractors (except, with respect to Major Subcontractors, as a condition to Final Completion), Supplier agrees to provide the title insurance company issuing Owner's and lender's title insurance policies for the Facility such information and documents as are customarily and reasonably required of a title insurance company issuing such policies, including information as to Supplier's financial condition and an appropriate indemnification agreement relating to title to the Equipment and the absence of Liens (except Permitted Liens).

6.4 Review of Invoice. Owner shall, within ten (10) Business Days after the receipt of Supplier's Invoice (and all supporting documentation described in Section 6.3), review the same and notify Supplier in writing of any amount therein which Owner disputes and determines are not properly due to Supplier (which notice shall also include an explanation of the reasons for such dispute).

6.5 Withholding Payments. Owner may withhold a Milestone Payment or Progress Payment in whole or in part (A) to the extent the Work corresponding to a Milestone Payment is not properly completed in accordance with the Requirements of this Agreement, or (B) if a Supplier Default (or any event or circumstance which, with the giving of notice and/or expiration of the applicable cure period provided in this Agreement, would constitute a Supplier Default) has occurred. Owner shall not be deemed in default by reason of withholding a Milestone Payment or Progress Payment in whole or in part while any of the above matters remains uncured. When Supplier believes that it has cured the reason for any such withholding, Supplier shall resubmit an Invoice for the amount which was withheld. If Owner agrees that the reason for withholding has been cured, payment for the withheld amount shall be made as provided in this Agreement.

6.6 Payment. As to each Invoice, Owner shall pay Supplier the amount Owner approves pursuant to Section 6.4 above within thirty (30) Days after the receipt of the corresponding Invoice (and all supporting documentation described in Section 6.3).

6.7 Payment Dates. Notwithstanding anything to the contrary contained in this Agreement, in the event that a payment to be made under this Agreement falls on any day that is not a Business Day, the payment shall be deemed due on the first Business Day thereafter.

6.8 Effect of Payment. Payment of the Contract Price (or any portion thereof), approval of any Invoice, and/or issuance of any Milestone Payment or Progress Payment shall not constitute (i) Owner's acceptance or approval of any portion of the Work, or (ii) a waiver of any claim or right Owner may have at that time or thereafter, including claims regarding unsettled Liens, warranties, defective or deficient Work, or indemnification obligations of Supplier. No payment made by Owner shall be considered or deemed to represent that Owner has inspected the Work or checked the quality or quantity of the Work or that Owner knows or has ascertained how or for what purpose Supplier has used sums previously paid.

6.9 Letters of Credit. Not later than five (5) Business Days after the Notice to Proceed, Supplier shall furnish and deliver to Owner an unconditional, irrevocable letter of credit in the form attached hereto as Exhibit R (subject to any ministerial modifications requested by the issuing bank

which are acceptable to Owner), in a face amount equal to five percent (5%) of the Contract Price, and naming Owner as beneficiary (the "LOC-1"). Not later than five (5) days after the date Owner notifies Supplier that the final Delivery of the Equipment has occurred, Supplier shall furnish and deliver to Owner either (y) a replacement unconditional, irrevocable letter of credit in the form attached hereto as Exhibit R but in in a face amount equal to ten percent (10%) of the Contract Price or (z) an amendment to LOC-1 that increases the face amount thereof to ten percent (10%) of the Contract Price ("LOC-2"). Upon the Substantial Completion Date, Supplier shall furnish and deliver to Owner either (y) a replacement unconditional, irrevocable letter of credit in the form attached hereto as Exhibit R or (z) an amendment to LOC-2, in either case that provides for a face amount equal to five percent (5%) of the Contract Price (plus any increased face amount on account of any potential Performance Liquidated Damages and Substantial Completion Liquidated Damages estimated by Owner, as provided in clauses (ii) and (xii) of the definition of Substantial Completion) (such new or amended letter of credit, "LOC-3") provided that the maximum aggregate face amount of LOC-3 shall not exceed an amount equal to thirty-five percent (35%) of the Contract Price. LOC-3 shall remain valid through the expiration of the Warranty Period or any Additional Warranty Period, as applicable, plus any additional period required in accordance with clauses (ii) and/or (xii) of the definition of Substantial Completion. At such time as the aggregate amount of Substantial Completion Liquidated Damages and Performance Liquidated Damages have been ultimately determined as contemplated by clauses (ii) and (xii) of the definition of Substantial Completion and paid to Owner, the face amount of LOC-3 shall reduce to an amount equal to five percent (5%) of the Contract Price. LOC-1, LOC-2 and LOC-3 shall secure the full and faithful payment obligations of Supplier hereunder, including, without limitation, its obligation to pay any applicable Liquidated Damages and its Warranty obligations under Article 9, and shall be issued by a Creditworthy Bank located in the United States. LOC-1 shall not expire sooner than the issuance of LOC-2, and LOC-2 shall not expire sooner than the issuance of LOC-3. Supplier shall cause LOC-1, LOC-2 and LOC-3 to be extended or replaced (including, without limitation, if applicable, replaced with the required LOC-2 or LOC-3, as applicable) not less than thirty (30) Days prior to any then current expiry date set forth therein. If the issuing bank under LOC-1, LOC-2 or LOC-3, as applicable, has ceased to be a Creditworthy Bank, Supplier shall cause a Creditworthy Bank to re-issue LOC-1, LOC-2 or LOC-3, as applicable, within twenty (20) days of the prior issuing bank ceasing to be a Creditworthy Bank Any draw made by Owner under LOC-1, LOC-2 or LOC-3, as applicable, shall not relieve Supplier of its obligations hereunder. If LOC-3 has not been fully drawn by Owner by such date, then LOC-3 (representing any undrawn portion thereof) shall be returned to Supplier on the later of (i) the thirtieth (30th) day after the expiration of the Warranty Period or any Additional Warranty Period, as applicable, and (ii) the thirtieth (30th) day after the aggregate amount of Liquidated Damages which are due from Supplier have been paid to Owner.

6.10 Offset. Owner may, upon prior written notice to Supplier, offset any undisputed amount due and payable from Supplier under this Agreement to Owner against any undisputed amount due and payable to Supplier hereunder.

ARTICLE 7

FORCE MAJEURE EVENTS; OWNER-CAUSED DELAY

7.1 Force Majeure Event. Provided Supplier complies with the terms and provisions of this Article 7, Supplier shall be entitled to an equitable extension to the applicable Guaranteed Delivery Date(s) to the extent that such Force Majeure Event causes (or will cause) Supplier to complete the Work beyond the applicable Guaranteed Delivery Date. For the avoidance of doubt, Supplier shall continue to perform all other Work not affected by the Force Majeure Event in order to mitigate the impact of the Force Majeure Event on Supplier's ability to meet the applicable Guaranteed Delivery Date.

7.2 Procedures upon Force Majeure Event. Upon occurrence of a Force Majeure Event, Supplier shall comply with the following:

(i) Supplier shall provide written notice to Owner describing the particulars of the Force Majeure Event, with written notice given promptly after the occurrence of the Force Majeure Event, and in no event more than seven (7) Days after Supplier becomes aware of the occurrence of such Force Majeure Event;

(ii) Supplier's written notice under the preceding clause (i) shall estimate the Force Majeure Event's expected duration and probable impact on the performance of Supplier's obligations hereunder, and Supplier shall continue to furnish timely regular reports with respect thereto during the continuation of the Force Majeure Event;

(iii) Supplier shall make a written request for an equitable adjustment in the applicable Guaranteed Delivery Date to Owner within ten (10) days after the cessation of the Force Majeure Event specifying the number of days Supplier believes that its activities were in fact delayed as a result of the event;

(iv) Supplier shall demonstrate, to the reasonable satisfaction of Owner, that the Force Majeure Event delayed the performance of the Work, and that the activity claimed to have been delayed was in fact delayed by the Force Majeure Event;

(v) Supplier shall perform its obligations under this Agreement which are not impacted or affected by the Force Majeure Event and shall exercise all reasonable efforts to correct or cure the event delaying or preventing performance in order to resume full performance;

(vi) Supplier shall exercise reasonable efforts to mitigate any delay in the performance of its obligations under the terms of this Agreement that may result as a consequence of the occurrence of a Force Majeure Event; and

(vii) when Supplier is able to resume performance of the affected obligations under this Agreement, Supplier shall promptly resume performance and provide Owner written notice to that effect.

Notwithstanding anything to the contrary contained herein, (i) any extension in the applicable Guaranteed Delivery Date shall be of no greater scope and of no longer duration than is reasonably required by the occurrence of a Force Majeure Event, (ii) no liability of Supplier which arose before the occurrence of a Force Majeure Event shall be excused, and (iii) no obligation to pay money in a timely manner shall be excused as a result of the occurrence of a Force Majeure Event.

7.3 Burden of Proof. The burden of proof as to whether a Force Majeure Event has occurred and whether such event entitles Supplier to an equitable extension in the Milestone Schedule shall be upon Supplier.

7.4 Change Order for Force Majeure Event. Compliance with the terms of this Article is a condition precedent to receipt of an equitable extension in the applicable Guaranteed Delivery Date. In the event of a failure of Supplier to comply with the terms of this Article, Supplier shall not be entitled to an extension of time and shall be deemed to have waived any claim relating to such Force Majeure Event. Upon satisfaction by Supplier of the terms and conditions of this Article, Owner and Supplier shall exercise good faith efforts to agree on the extent to which the Work has been delayed on account of any such Force Majeure Event. Once the Parties have mutually agreed as to the extent of such delay, they shall enter into a Change Order reflecting their agreement as to the equitable adjustment in the applicable Guaranteed Delivery Date. If the Parties are unable to agree upon an equitable adjustment in the applicable Guaranteed Delivery Date, then such matter shall be resolved in accordance with Article 18.

7.5 Rights Limited. Except as provided in Section 16.6 (Termination for Extended Force Majeure), the rights and remedies set forth in this Article 7 shall be Supplier's sole and exclusive rights and remedies in the event of an occurrence of a Force Majeure Event, and Supplier hereby waives all other rights and remedies at law and/or in equity that it might otherwise have against Owner on account of a Force Majeure Event.

7.6 Owner-Caused Delay. In the event that Supplier claims that an Owner-Caused Delay has occurred, Supplier shall provide a written notice to Owner promptly after the occurrence of such alleged Owner-Caused Delay (such occurrence, the "Owner-Caused Delay Event"), and in no event more than seven (7) days after Supplier becomes aware of the Owner-Caused Delay Event. As soon as practicable, but in no event more than fifteen (15) days after delivery of the original written notice, Supplier shall provide to Owner with a second written notice describing the details and impact of the Owner-Caused Delay Event, including an estimation of its expected duration and probable impact on the Contract Price and schedule for performance of Supplier's obligations under this Agreement and documentation substantiating such claimed impact. In the event of an Owner-Caused Delay Event that causes a demonstrable and substantiated impact to Contract Price or schedule, Supplier shall be entitled to a Change Order in accordance with the provisions of Article 8. If Supplier fails to provide the original written notice to Owner within the required time therefor, then Supplier waives the right to make a claim for Owner-Caused Delay. For the avoidance of

doubt, Supplier's recovery for Owner-Caused Delay shall be limited to demonstrable and substantiated impacts on the Contract Price and/or schedule.

ARTICLE 8

CHANGE ORDERS

8.1 Change Order. A "Change Order" is a written instrument signed by Owner and Supplier, stating their mutual agreement upon all of the following: (i) a change in the Work, if any; (ii) the amount of the adjustment in the Contract Price, if any; (iii) the extent of the adjustment in the Milestone Schedule, if any; and (iv) any other appropriate modifications to this Agreement given the matter in question.

8.2 Change Order Process. (a) Supplier Initiated Change: If Supplier wishes to propose any change in the Work, Supplier shall submit to Owner a draft Change Order; provided, however Owner may, in its sole and absolute discretion, accept or reject any such suggested change. If a proposed change in the Work will cause a material increase or decrease in Supplier's cost or time for performance, Supplier shall so identify those changes in Supplier's request. Supplier's request must include supporting documentation. If Owner agrees to Supplier's request, the Parties will negotiate an equitable adjustment to the Contract Price or the schedule, or both, with the adjustment to be reflected in a Change Order. Supplier, however, shall proceed as directed in writing by Owner pending such agreement. Owner will not be liable to Supplier for any claims arising from a decrease in the Work. No change is effective without a Change Order issued or executed by Owner.

(b) Owner Initiated Change: Owner may request additions, deletions, reductions in scope or other changes to the Work. If Owner so desires to change the Work, it shall submit a change request to Supplier in writing. Within ten (10) Days of its receipt of any such request (unless otherwise extended by mutual agreement of the Parties), Supplier shall review the request and advise Owner of the feasibility of the requested change, and shall submit a proposal to Owner stating (i) the increase or decrease, if any, in the Contract Price which would result from such change, (ii) the effect, if any, upon the Milestone Schedule by reason of such proposed change, and (iii) any other appropriate modifications impacting to this Agreement as a result of such requested change. Owner shall have five (5) Business Days to accept or reject in writing Supplier's proposal in relation to the requested change. If Owner accepts Supplier's proposal within such five (5) Business Day period, Owner and Supplier shall execute a Change Order reflecting the requested change in the Work and proposed adjustments, if any, including those in the Contract Price and the Milestone Schedule or other impacts to the Equipment Packages. In the event Owner disagrees with Supplier's proposal, then Owner shall notify Supplier that Owner has decided to withdraw its requested change. Should Owner fail to respond to within such five (5) Business Day period, Owner shall be deemed to have withdrawn its requested change. Supplier, however, shall proceed as directed in writing by Owner pending such agreement on the Change Order or required response from Owner. Owner will not be liable to Supplier for any claims arising from a decrease in the Work. No change is effective without a Change Order signed by both Owner and Supplier.

(c) Estimate of Impacts: In estimating the impact of a proposed Change Order, Supplier shall ensure that it has properly accounted for all cost and time impacts arising from or related to

the proposed Change Order, including, if applicable, cumulative impacts associated with all previous Change Orders. Supplier's acceptance of payment under a Change Order or Supplier's agreement to a Change Order constitutes a waiver of all claims related to or arising from that Change Order or claims arising out of or relating to cumulative impacts of that Change Order and any previous Change Order.

8.3 Contents of Change Order. The draft Change Order shall include: (i) a technical description of the proposed change in such detail as Owner may reasonably require, (ii) a lump sum firm price adjustment (increase or decrease) in the Contract Price, if any, caused by the proposed change, (iii) all potential effect(s), if any, on the time for Substantial Completion, or any other schedule or dates for performance by Supplier hereunder, caused by the proposed change, and (iv) all potential effect(s), if any, on Supplier's ability to comply with any of its obligations hereunder, including Supplier's Warranties and Performance Guarantees, caused by the proposed change.

8.4 Agreement Required. All changes to the Work shall be subject to mutual agreement of the Parties and no Change Order will be effective until signed by both Parties.

ARTICLE 9

WARRANTY

9.1 Warranty. Supplier warrants to Owner that:

(i) all Services to be provided by Supplier pursuant to this Agreement will be performed in a competent and diligent manner and in accordance with the Requirements;

(ii) the Work, including all Equipment, and each component thereof (a) shall be: (i) new, undamaged, complete, fit for the purposes specified in this Agreement and of suitable grade for the intended function and use; (ii) in accordance with all of the Requirements and Specifications of this Agreement; (iii) free from encumbrances to title; (iv) designed in accordance with the Requirements and Specifications and designed and fit for the intended purpose of generating electric power at the Facility on the Site connected to the PJM grid; (v) free from defects in material, manufacture and workmanship; and (vi) capable of operating in accordance with all Requirements and the Emissions MAC and (b) shall not infringe upon the Intellectual Property Rights of any third party.

(the foregoing warranties being collectively, the "Warranty").

9.2 Warranty Period. The Warranty shall commence upon the Effective Date and shall terminate on the earlier of (i) thirty-six (36) months after the Substantial Completion Date, or (ii) forty-eight (48) months after the last Major Component is Delivered, provided that such forty-eight (48) month period shall be extended day-for-day for each day Substantial Completion is delayed beyond the Guaranteed Substantial Completion Date, and provided that the Warranty for Services shall end one year after the completion of such Services (the applicable warranty period is hereinafter referred to as the "Warranty Period"); provided, however, any portion of the Work which has been

repaired, replaced or otherwise corrected or Services that have been re-performed during the Warranty Period (or Additional Warranty Period, as applicable) shall automatically be re-warranted by Supplier in conformity with all warranty requirements set forth in this Article 9 and Supplier will have the same obligations in relation thereto as set forth in this Article 9, for an additional period ending upon the later of (i) the termination of the original Warranty Period (or Additional Warranty Period, if applicable), or (ii) twelve (12) months after the date of completion of such repair, replacement or correction or re-performance (the "Additional Warranty Period"); provided, however, that in no case shall any Additional Warranty Period end later than forty-eight (48) months after the Substantial Completion Date.

9.3 Breach of Warranty.

(a) If, at any time prior to the expiration of the Warranty Period or any Additional Warranty Period (i) Supplier has knowledge of any failure or breach of the Warranty, or (ii) Owner shall discover any failure or breach of the Warranty, Supplier shall, upon written notice from Owner, at Supplier's sole cost and expense, promptly commence to correct, and diligently pursue until completion the correction of, such warranty failure or breach (which corrective action shall include, at Supplier's option, but in consultation with Owner, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, reconstruction, retesting and/or reinspection of any part or portion of the Work or re-performance of the Services, and otherwise cause the Work to comply fully with the Warranty and this Agreement. All parts and components employed in repairs and replacements shall have a level of quality and workmanship equivalent to or greater than that required of the Work as initially installed under this Agreement. Any corrective work performed by Supplier pursuant to this Section 9.3 shall be completed within a reasonable period of time.

(b) If two or more failures shall occur in the same part or component of the Equipment during the Warranty Period or any Additional Warranty Period, then Supplier shall perform a root cause analysis investigation of such failures and shall share the results thereof with Owner. The cost of the root cause analysis investigation performed by Supplier pursuant to this Section 9.3 shall be at Supplier's sole expense, and Supplier shall submit, as part of its root cause analysis investigation and report, sufficient design and performance calculations related to such part or component failure. Unless Supplier can demonstrate the failure was not attributable to a breach of Warranty as set forth above, Supplier shall remedy such failure or breach at Supplier's sole cost and expense as provided in this Section 9.3, and Supplier shall ensure, and demonstrate to the reasonable satisfaction of Owner, that such remedy addresses the underlying problem that caused the original failure(s) and substantially reduces the possibility that the same failure will repeat.

(c) With respect to the Warranty remedy provided herein, Supplier shall be responsible for the costs of performing the removal of any defective or damaged parts and for the installation of any repaired or replacement parts (including the costs of opening and closing the Equipment). Supplier shall also be responsible for the costs associated with (i) shipping any parts to be repaired or replaced to the place of repair or disposal, as the case may be, and (ii) the costs of shipping any repaired or replacement parts to the Site, including, but not limited to, any customs duties or similar levies which may be assessed as a result of the shipment of any such repaired or replacement parts.

Supplier shall use commercially reasonable efforts to remedy any such failure or breach so as to minimize revenue loss to Owner and to avoid disruption of Owner's operations at the Site.

(d) In the event Supplier fails to initiate and diligently pursue corrective action within five (5) Days of Supplier's receipt of Owner's notice (or submit a corrective action plan to Owner within such five (5) Day period and diligently pursue the proposed corrective action within ten (10) Days of the submittal of such plan), Owner may undertake such corrective action at Supplier's expense. Supplier shall be liable for all reasonable and documented costs, charges and expenses incurred by Owner to perform or cause to be performed such repair or replacement (and shall include engineering, design, correction, repair, replacement, removal and transportation costs, customs duties or clearance fees payable on parts or components replaced, disassembly, reinstallation, retesting and labor costs associated therewith) and shall pay to Owner within thirty (30) Days of receipt of Owner's invoice therefor (and appropriate substantiating documentation) an amount equal to such costs, charges and expenses. Supplier will be provided access to the Facility sufficient to perform its corrective work, so long as such access does not interfere with the operation of the Facility and subject to any reasonable security or safety requirements of Owner.

(e) In addition to the above terms and conditions, from first fire of the 7HA.02 combustion turbine until the later of (i) expiration of the Warranty Period or any Additional Warranty Period (as applicable) or (ii) the date which is thirty-six (36) months after the Substantial Completion Date, Supplier shall repair Collateral Damage at its sole cost and expense in accordance with this Section 9.3(b), including "in and out" and "opening and closing" costs. The foregoing obligation of Supplier is primary to insurance.

9.4 Major Sub-Supplier Warranties. To the extent that any Major Sub-Suppliers' warranties continue beyond the Warranty Period or any Additional Warranty Period, as applicable, Supplier shall exercise commercially reasonable efforts to cause such warranties to be assignable to Owner at the end of the Warranty Period or any Additional Warranty Period, as applicable (or upon expiration or termination of this Agreement, if earlier), without charge, consent or approval, upon notice to the Major Sub-Supplier.

9.5 Primary Liability. Supplier shall have primary liability with respect to the Warranties set forth in this Agreement during the Warranty Period or any Additional Warranty Period, as applicable, whether or not any defect, deficiency or other matter is also covered by a warranty of a Subcontractor, and Owner need only look to Supplier for corrective action. In addition thereto, the Warranties expressed herein shall not be restricted in any manner by any warranty of a Subcontractor, and the refusal of a Subcontractor to correct defective, deficient or nonconforming Work shall not excuse Supplier from its liability as to the Warranties provided herein during the Warranty Period or any Additional Warranty Period, as applicable.

9.6 Exclusions. The warranties set forth in this Article 9 shall not apply to damage to any Work, to the extent that Supplier can demonstrate: (i) that such damage is caused by Owner's failure to properly store the Equipment, install the Equipment in accordance with the Installation Manual or operate and maintain the Equipment in accordance with the Operation & Maintenance Manual (including revisions thereto) provided by Supplier, Supplier's Affiliates and/or its Subcontractors; or (ii) that damage is due to normal wear and tear of the Equipment. Owner shall

keep reasonable records of operation and maintenance during the Warranty Period or any Additional Warranty Period, as applicable. These records shall be kept in the form of log-sheets and copies shall be submitted to Supplier upon request.

9.7 Exclusive Remedies and Warranties. The terms of this Article 9 (Warranty) and Articles 4 (Schedule), 5 (Performance Testing & Performance Guarantees), and 11 (Indemnity), and Sections 6.5, 6.9 and 16.1(b) (to the extent there is a breach of the Warranty or failure or defect in the Work and it is not remedied as required by the Agreement) set forth the exclusive remedies for all claims based on a breach of the Warranty or the failure of or defect in the Equipment, whether the breach of the Warranty, failure or defect arises before or during the Warranty Period or any Additional Warranty Period, as applicable, and whether a claim, however instituted, is based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise. The warranties provided in this Agreement are exclusive and are in lieu of all other warranties and guarantees of Supplier, whether written, oral, implied or statutory. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.

ARTICLE 10

INSURANCE

10.1 Supplier's Insurance. Supplier shall, at its sole cost and expense, procure the insurance coverages set forth below, and shall maintain such coverages in full force and effect as specified in this Section. Supplier shall include Owner, the Owner's Engineer, the Lenders, EPC Contractor and such other parties as Owner may designate and their respective officers, directors, members. managers, partners, employees, agents and consultants as additional insureds (the "Owner Additional Insureds") to the following insurance policies; provided, however, the Owner Additional Insureds shall only be an additional insured thereunder for their vicarious liability, if any, resulting from the acts or omissions (or liability) of Supplier: Commercial General Liability, Commercial Automobile Liability, and Umbrella Liability Insurance Policies. The insurance coverage afforded under the policies described herein shall be primary and non-contributing with respect to any insurance carried independently by the Owner Additional Insureds. All such insurance policies shall indicate that in regards to the insureds, cross-liability and severability of interests shall exist for all coverages provided thereunder. All policies of insurance required under this Section shall be written on an "occurrence" basis. The insurance specified below shall be placed with insurance companies which, at a minimum, have a rating of A(X) or better by A.M. Best Company, or a rating of "A" or better by Standard & Poors. Supplier shall provide notice to the Owner Additional Insureds at least thirty (30) Days prior to the cancellation, non-renewal or material modification of any such policies.

(i) Commercial General Liability Insurance. A broad form Commercial General Liability Insurance Policy (written on form CG 00 01 04 13 or its coverage equivalent) and including, without limitation, a waiver of subrogation endorsement in favor of the Owner Additional Insureds, and reflecting the following coverages: Premises and Operations Liability; Explosion, Collapse and Underground Damage Liability; Personal Injury Liability (with employee and contractual exclusions

deleted); Broad Form Property Damage Liability; Broad Form Contractual Liability supporting Supplier's indemnification agreements in favor of the Owner Additional Insureds; Completed Operations and Products Liability for a period of not less than ten (10) years following the expiration of this Agreement; and Independent Contractor's Liability. The Commercial General Liability Insurance Policy must be written with a limit of liability of not less than $5,000,000 USD for each occurrence of bodily injury and/or property damage and an annual aggregate of liability of not less than $5,000,000 USD for bodily injury and/or property damage, but in no event less than required by law for primary and excess policies combined. The sub-limits for the Completed Operations and Products Liability coverage shall be $2,000,000 USD per occurrence and $2,000,000 USD in the aggregate annually.

(ii) Commercial Automobile Liability Insurance. A Commercial Automobile Insurance Policy and including, without limitation, a waiver of subrogation endorsement in favor of the Owner Additional Insureds. The Commercial Automobile Liability Insurance Policy must provide coverage for all owned, hired, rented, leased and non-owned automobiles, and must be written with a combined single limit of liability of not less than $5,000,000 USD for each occurrence of bodily injury and/or property damage, but in no event less than required by law for primary and excess policies combined.

(iii) Workers' Compensation Insurance. If any work subject to the terms of this Agreement is to be performed in a State other than Ohio, a Workers' Compensation Insurance Policy in an amount not less than the statutory limits for that State or as required by applicable State or Federal law, and Employers' Liability Insurance with limits of liability of not less than (a) $1,000,000 USD for bodily injury by accident, each accident, (b) $1,000,000 USD for bodily injury by disease, each employee, and (c) $1,000,000 USD for liability for disease, per occurrence or, if higher, the limits of liability required by applicable Law. In addition, coverage under the workers' compensation laws of Ohio whether as a state fund contributing employer or an employer granted the privilege of self-insurance by the Ohio bureau of workers' compensation.

(iv) Umbrella Liability Insurance. An Umbrella Liability Insurance Policy written in excess of the coverages provided by the Commercial General Liability, Commercial Automobile Liability and Employer's Liability Insurance Policies) and including, without limitation, a waiver of subrogation endorsement in favor of the Owner Additional Insureds. The Umbrella Liability Insurance Policy must be written with a combined single limit not less than $25,000,000 USD for each occurrence of bodily injury and/or property damage, and an annual aggregate of liability of not less than $25,000,000 USD for bodily injury and/or property damage.

(v) In-Transit Insurance Policy. An In-Transit Insurance Policy providing property insurance upon all Equipment on a full replacement cost basis, which insurance (x) shall be written on an "all risk" form, (y) shall provide coverage for loss or damage

to the Equipment while the same are "in transit" (i.e., coverage while in transit by land, air and/or ocean or other marine) or in storage during transit, and (z) shall be in effect from the commencement of loading of the Equipment at the manufacturer's or supplier's premises anywhere in the world until off loading at Site or Delivery at a warehouse in accordance with Section 17.3.

(vi) Equipment Floater. An "all risk" property insurance policy insuring tools, equipment and other property of any kind owned, rented or leased by Supplier against physical loss or damage (excluding any such equipment, materials or other property which is incorporated (or to be incorporated) into the Work).

10.2 Supplier's Certificates of Insurance. Supplier shall, within five (5) Days of its receipt of the Notice to Proceed, and at any other time upon request of Owner, furnish Owner with certificates of insurance (in form and substance reasonably satisfactory to Owner) evidencing the coverages required of Supplier hereunder, and shall not commence any work or services under this Agreement until all such insurance is obtained (and evidence thereof provided to Owner). Except as otherwise expressly provided herein, all insurance policies required by the terms of this Article 10 shall be kept in full force and effect until the completion of the Work and the date of the final payment to Supplier for the Work.

10.3 No Waiver. In no event shall any failure of Owner to receive certificates of insurance required hereunder, or to receive them by the date(s) required hereunder, be construed as a waiver of Supplier's obligation to obtain (or cause to be obtained) insurance coverages required by the terms of this Article 10. Failure of Owner to demand any certificate of insurance or other reasonably requested evidence of full compliance with the insurance requirements set forth in this Article 10, or failure of Owner to identify a deficiency in the evidence provided, shall not be construed as a waiver of Supplier's obligation to maintain (or cause to be maintained) the insurance required hereunder. The acceptance of delivery by Owner of any certificate of insurance evidencing required coverages and limits does not constitute approval or agreement by Owner that the insurance requirements have been met or that the insurance policies referenced in the certificates of insurance are in compliance with such requirements.

10.4 No Limit of Liability. The limits on insurance specified in Section 10.1 shall in no way be construed to limit the liability of Supplier, whether pursuant to any applicable Law, any provisions addressing Supplier's liability under this Agreement, or otherwise.

10.5 Property of Others. Notwithstanding anything to the contrary contained in this Agreement, Owner shall not insure nor be responsible for any loss or damage to tools, equipment or other property of any kind owned, rented or leased by Supplier, its Subcontractors, or their respective employees, consultants or agents; the loss and damage to which shall be at the sole risk, cost and expense of Supplier, its Subcontractors and their respective employees, consultants or agents.

10.6 Owner's Insurance. Owner shall (or shall cause the EPC Contractor to) purchase and maintain the following insurance coverages:

(a) All Risk Property Insurance: Owner shall purchase and maintain "All Risk" Property Insurance upon the Facility from the Substantial Completion Date through the expiration of the Warranty Period or any Additional Warranty Period, as applicable. Such property insurance shall be written on a full replacement cost basis, shall cover "all risks" of physical loss or damage including coverage for mechanical and electrical breakdown, and shall contain deductibles reasonably determined by Owner. Such property insurance shall include the interests of Owner, Supplier, and the Subcontractors, and shall insure against physical loss or damage to the Facility. Any loss insured under this property insurance shall be adjusted and settled by Owner, and shall be made payable to Owner. Owner and its insurers, for this property insurance, including any business interruption, shall waive right of subrogation against Supplier, its Affiliates, and its Subcontractor.

(b) ARBR/CAR Insurance: Owner shall maintain or cause to be maintained, to protect the interests of Owner and Supplier, either Construction All Risk Insurance or All Risk Builder's Risk Insurance (CAR/ARBR.) The CAR/ARBR policy shall at a minimum meet the following requirements:

a. Coverage: All risks of physical loss or damage to the Facility, including mechanical and electrical breakdown, in the course of construction, start-up, testing and commissioning, including materials, equipment and furnishings, subject to customary exclusions. Such policy shall also include:

    i. Minimum design/defects coverage shall equal LEG 2 or DE 4.

    ii. Named insured: Owner.

    iii. Additional insured: Supplier and all Subcontractors (regardless of tier).

    iv. Sum Insured: Value of the Facility at full completion.

b. Deductibles:

    i. USD $2,000,000 during testing/commissioning period for the gas turbine;

    ii. USD $500,000 during the testing/commissioning period for all other Equipment; and

    iii. USD $250,000 for all other losses.

c. Period Insured: From the planned start of any on-Site activity through the Substantial Completion Date.

d. Miscellaneous

    i. Non-cancellable by Owner and by the insurer.

    ii. Waiver of subrogation in favor of all insured parties.

e. Insurers

i. Authorized to provide insurance in the jurisdiction of the Project.

10.7 Property Waiver. Owner and Supplier waive all claims against each other (and against their respective officers, directors, and employees, and the Subcontractors, Lenders and Owner's Engineer) for loss or damage to any of their respective property located at the Site, except as hereafter provided:

(a) As to any loss or damage to Owner's property which is due to a breach or failure of the Warranty, Supplier shall be liable to the extent provided in Section 9.3.

ARTICLE 11

INDEMNITY

11.1 General Indemnification. (a) Without limitation of the other indemnification obligations of Supplier under this Agreement, Supplier hereby agrees to indemnify, defend and hold harmless Owner, its Affiliates, the Owner's Engineer (to the extent acting in such capacity under this Agreement), the Lenders, and their respective directors, officers, members, managers, employees and agents (each an "Owner Indemnified Party"), from and against any and all Losses incurred or suffered by any Owner Indemnified Party arising out of:

(i) any claim by a third party against such Owner Indemnified Party for personal injury (including death of persons) or damage to such third party's tangible property, to the extent caused by the negligence or willful misconduct of Supplier, a Subcontractor or any Person or entity directly employed by any of them, or any Person or entity for whose acts any of them are liable in connection with the performance of the Work, or their respective officers, employees and agents;

(ii) any claim of infringement of any Intellectual Property Right as more particularly described in and limited by Section 12.3 (Infringement Indemnification);

(iii) violation of applicable Laws by Supplier, a Subcontractor or any Person or entity directly employed by any of them, or any Person or entity for whose acts any of them are liable in connection with the performance of the Work, or their respective officers, employees and agents;

(iv) the creation, existence or filing of a Lien as more particularly described and limited by Section 2.20(c);

(v) Supplier's failure to provide insurance as required by this Agreement;

(vi) Supplier's nonpayment of any Taxes or withholding for which Supplier is contractually liable under this Agreement;

(vii) Supplier's failure to make payments to its Subcontractors when due or otherwise comply with its obligations under any agreements with its Subcontractors in connection with the Work under this Agreement; or

(viii) Supplier's or its Subcontractors' handling, release, treatment, disposal or storage of Hazardous Substances as more particularly described and limited by Section 2.26 (Hazardous Substances).

(b) Without limitation of the other indemnification obligations of Owner under this Agreement (including under Section 2.26), Owner hereby agrees to indemnify, defend and hold harmless Supplier, its Affiliates, and their respective directors, officers, employees and agents (each a "Supplier Indemnified Party"), from and against any and all Losses incurred or suffered by any Supplier Indemnified Party arising out of (i) any claim by a third party against such Supplier Indemnified Party for personal injury (including death of persons) or damage to such third party's tangible property, to the extent caused by the negligence or willful misconduct of Owner, its contractors or subcontractors (other than Supplier and its Subcontractors and any other Person for whom Supplier is responsible) in connection with the performance of the Project; (ii) violation of applicable Laws by Owner, its contractors or subcontractors (other than Supplier and its Subcontractors and any other Person for whom Supplier is responsible) in connection with the performance of the Project; (iii) Owner's failure to provide insurance as required by this Agreement; or (iv) Owner's nonpayment of any Taxes or withholding for which Owner is contractually liable under this Agreement.

11.2 Comparative Negligence. It is the intent of the Parties that where negligence is determined to have been joint or contributory, principles of comparative negligence will be followed and each party shall bear the proportionate cost of any loss, damage, expense or liability attributable to that party's negligence.

11.3 Third Parties Defined and Limited Waiver. "Third parties" under this Article 11 do not include (i) Supplier, Owner, their Affiliates, or their successors or assigns, or (ii) any entity with an equity interest in Owner or Supplier. No portion of the Equipment or the Facility is "third party property" for the purposes of this Article 11. The Parties' respective indemnification obligations under this Article 11 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for such indemnifying Party, or anyone directly or indirectly employed by them under workers' compensation acts, disability benefit acts or other employee benefit acts, and each indemnifying Party hereby waives and agrees that it will not assert any defense of immunity under any applicable workers' compensation laws, including but not limited to Ohio Revised Code section 4123.74, with respect to such Party's indemnity obligations for third party claims.

11.4 Indemnification Procedure. Promptly after receipt by an Indemnified Party of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity provided for in this Article 11 may apply, the Indemnified Party shall notify Supplier or Owner, as the case may be, in writing of such fact; provided, however, the rights of the Indemnified Party pursuant to this Article 11 shall not be limited by the failure to give Supplier or Owner (as the case may be) notice, except to the extent that said failure has a material adverse effect on the defense of the matter. Supplier or Owner (as the case may be) shall,

at its sole cost and expense, assume on behalf of the Indemnified Party, and conduct with due diligence and in good faith, the defense thereof; provided, however, the Indemnified Party shall have the right to be represented therein by advisory counsel of its own selection and at its own expense; and provided, further, if the defendants in any such action include both Supplier or Owner (as the case may be) and the Indemnified Party, and, in the opinion of reputable counsel, there may be a conflict of interest with Supplier or Owner (as the case may be), the Indemnified Party shall have the right to select separate counsel to participate in the defense of such action on its own behalf and to assert any additional or inconsistent defenses (at Supplier's or Owner's expense, as the case may be). Supplier or Owner (as the case may be) may settle the action, provided it does not agree, without the consent of the Indemnified Party, to any compromise or settlement that (i) is not an unconditional release of the Indemnified Party from all liabilities other than the payment of any money that will be paid by Supplier or Owner, as the case may be or (ii) would require an admission of fault on the part of the Indemnified Party.

11.5 Failure to Defend Action. If any claim, action, proceeding or investigation arises as to which the indemnity provided for in this Article 11 applies, and after receipt of written notice thereof Supplier or Owner, as the case may be, fails to assume the defense of such claim, action, proceeding or investigation within a reasonable period of time, then the Indemnified Party may, upon ten (10) Business Days' (or less, if a response to such claim is required in such time) written notice to Supplier or Owner, as the case may be, and at Supplier's or Owner's expense, as the case may be, contest such claim, with Supplier or Owner, as the case may be, remaining obligated to indemnify the Indemnified Party under this Article 11.

11.6 Survival. The indemnities set forth in this Article 11 shall survive the termination or expiration of this Agreement.

ARTICLE 12

INTELLECTUAL PROPERTY

12.1 Intellectual Property. Supplier's Specifications, computer programs, and any other drawings, specifications, documents, designs, software, and plans prepared by or on behalf of Supplier and/or the Subcontractors in connection with the Equipment or the Work and which are necessary to own, operate, maintain, repair or use the Equipment (collectively, the "Licensed Materials"), and all Intellectual Property Rights, if any, relating to the Licensed Materials or the contents of or concepts embodied in the Licensed Materials, are and shall remain the exclusive property of Supplier and/or the Subcontractors, as the case may be. Supplier hereby grants to Owner, any subsequent owner or operator of the Facility, the Lenders and their respective Affiliates, successors and assigns a paid-up, royalty-free, perpetual, irrevocable, non-exclusive, transferable, world-wide license for Owner to use such Licensed Materials and any derivative thereof, subject to the restrictions set forth below:

(i) All Intellectual Property Rights in or relating to any of the Licensed Materials shall remain the property of Supplier or the appropriate Subcontractor, whether or not the Facility is constructed; and

(ii) Owner and/or its assignees shall not, without the prior written consent of Supplier, use such Licensed Materials, in whole or in part, for any purpose other than those allowed under this Article 12. Owner may, however, at no cost to Owner, use such Licensed Materials for the construction, operation, maintenance and repair of (and for additions, improvements, changes or alterations to) the Facility and the installation, erection, startup and commissioning, operation, maintenance, and decommissioning of the Equipment. Further, if Supplier is in default under this Agreement and this Agreement is terminated by reason thereof, Owner shall be entitled to use the Licensed Materials for completion of the Facility by others without additional compensation.

12.2 Right to Transfer. Owner may assign the license granted under Section 12.1 to any permitted assignee of its rights under this Agreement or to any other person succeeding to the ownership (including any portion thereof) of the Equipment or the Facility.

12.3 Infringement Indemnification. (a) Supplier shall indemnify, defend and hold Owner and each Owner Indemnified Party harmless from and against any and all Losses arising out of any claim of infringement of any Intellectual Property Right resulting from the manufacture, offer for sale, sale, supply, or importation of the Equipment, or any part or component thereof, or other performance of the Work, the licensing of the Licensed Materials and other Intellectual Property Rights licensed hereunder to Owner, or the use or transfer by Owner of the Equipment, the Licensed Materials or the other Intellectual Property Rights licensed hereunder.

(b) Supplier shall be in charge of the defense and settlement of any claim under this Section; provided, however, that without relieving Supplier of its obligations hereunder or impairing Supplier’s right to control the defense or settlement thereof, Owner may elect to participate through separate counsel in the defense of any such claim, but the fees and expenses of such counsel shall be at the expense of Owner. Supplier shall not settle any such claim in a manner that would have an adverse effect on Supplier’s ability to perform the Work (or Owner’s ability to perform the Work in the event this Agreement is terminated), Owner’s ability to achieve Mechanical Completion, own, operate, maintain or transfer the Equipment, or that would result in the failure of the Equipment to comply with the Specifications or other requirements of this Agreement, without the prior written consent of Owner, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Supplier may not agree, without the consent of the Indemnified Party, to any compromise or settlement that (i) is not an unconditional release of the Indemnified Party from all liabilities other than the payment of any money that will be paid by Supplier or (ii) would require an admission of fault on the part of Owner. Furthermore, in addition to paying or reimbursing Owner Indemnified Parties’ Losses pursuant to Section 12.3(a), if any order by a court or arbitral tribunal of competent jurisdiction shall, by reason of any such infringement referred to in Section 12.3(a), be obtained against (i) the sale or delivery to Owner of the Equipment, (ii) the performance of the Work (whether by Supplier, or Owner if this Agreement is terminated), (iii) the performance of the work necessary to achieve Mechanical Completion, (iv) the ownership, operation, maintenance or transfer of the Equipment, or (v) the licensing and use of the Licensed Materials and other Intellectual Property Rights licensed hereunder, then, as promptly as practicable after Supplier’s knowledge or receipt of notice thereof, Supplier shall either (1) procure for Owner the right to continue using the

Equipment, (2) modify the Equipment so that it becomes non-infringing (provided that such Equipment continues to comply with the Specifications and other requirements of this Agreement), or (3) replace the Equipment with non-infringing Equipment complying with the Specifications and other requirements of this Agreement.

12.4 Exclusions. Supplier shall have no obligation or liability with respect to any claim of infringement of any Intellectual Property Right based upon: (i) any Work that has been altered without Supplier's consent; (ii) the combination or use of the Equipment with other products when the combination is part of any allegedly infringing process (excluding any combination or use of the Equipment with the balance of plant and other equipment to be furnished by the EPC Contractor under the EPC Contract); (iii) failure of Owner to implement any update provided by Supplier that would have prevented the claim; or (iv) use of the Equipment or Work in a manner not specified or intended by the terms of this Agreement.

12.5 Survival. This terms and provisions of this Article 12 shall survive the termination or expiration of this Agreement.

ARTICLE 13

CONFIDENTIALITY

13.1 Confidential and Proprietary Information. Owner and Supplier each agree to keep confidential, and shall not disclose, the terms and provisions of this Agreement and, upon receipt from the other Party, any documentation or information (i) which is marked as "proprietary" or "confidential" (including, without limitation, any documentation relevant to an employee of either Party which is so marked), (ii) which is supplied orally with a contemporaneous confidential designation and is confirmed to be "proprietary" or "confidential" in writing within ten (10) days after oral disclosure , or (iii) which is known by the receiving Party to be confidential or proprietary information or documentation of the disclosing Party (collectively, the "Confidential Information"). Each Party agrees to utilize the same standards and procedures with respect to Confidential Information received from the other Party which it applies to its own confidential information, but not less than reasonable care. Notwithstanding the foregoing, the Parties may grant access to the Confidential Information in accordance with the following terms:

(i) the Parties may disclose Confidential Information to their respective Affiliates and the respective officers, directors, employees, advisors and counsel of such Parties and their Affiliates; provided that any such Affiliate, officer, director, employee, advisor or counsel shall keep the Confidential Information confidential, shall not disclose the same to any other Person (except another Person described in this Section 13.1(i)) without the prior written consent of the disclosing Party, and shall not use any Confidential Information for any purpose other than (a) the performance of the receiving Party's obligations under this Agreement, (b) the completion, repair, operation and maintenance of, and additions, improvements, changes or alterations to, the Facility, or (c) as is necessary in operating the receiving Party's business.

(ii) the Parties may disclose Confidential Information to their contractors, subcontractors, representatives and agents whose access is necessary for the proper performance of the Parties' respective duties and obligations under this Agreement so long as any such disclosure shall be limited to such Confidential Information as any such contractor, subcontractor, representative or agent requires in order to properly perform the respective duties and obligations under this Agreement; but only if such contractor, subcontractor, representative or agent agrees (i) to keep the Confidential Information confidential, (ii) not to disclose the same to any other Person without the prior written consent of the disclosing Party, and (iii) not to use any Confidential Information for any purpose other than as provided in this Section 13.1(ii).

(iii) Owner may disclose Confidential Information, on a "need to know basis", to its contractors, subcontractors, suppliers, consultants and agents for the completion, repair, operation and maintenance of, and additions, improvements, changes or alterations to, the Facility; but only if such contractor, subcontractor, supplier, consultant or agent agrees (i) to keep the Confidential Information confidential, (ii) not to disclose the same to any other Person without the prior written consent of the disclosing Party, and (iii) not to use any Confidential Information for any purpose other than as provided in this Section 13.1(iii).

(iv) Owner may also disclose Confidential Information to Lenders and potential Lenders and prospective and actual purchasers of the Facility or direct or indirect interests in Owner so long as any such disclosure shall be subject to the written agreement of any such Lender (or potential Lender) or prospective (or actual) purchaser to keep the Confidential Information confidential, to not disclose the same to any third party (other than its counsel and other consultants) without the prior written consent of Supplier, and to not use any Confidential Information for any purpose other than evaluating and administering its potential or actual extension of credit to, or purchase from, or investment in, Owner or the Facility.

13.2 Disclosure of Confidential Information. Notwithstanding anything to the contrary contained herein, the Parties shall have no obligation with respect to any Confidential Information which (i) is or becomes publicly known through no act of the receiving Party, (ii) is approved for release by written authorization of the disclosing Party, (iii) is required to be disclosed by the receiving Party pursuant to a legal process (so long as the receiving Party uses commercially reasonable efforts to avoid disclosure of such Confidential Information, and prior to furnishing such Confidential Information, the receiving Party notifies the disclosing Party and gives the disclosing Party the opportunity to object to the disclosure and/or to seek a protective order), or (iv) has been rightfully furnished to the receiving Party without any restriction on use or disclosure and not in violation of the rights of the other Party. Nothing in this Agreement shall bar the right of either Party to seek and obtain from any court injunctive relief against conduct or threatened conduct which violates the terms of this Article 13.

13.3 Survival. Each Party agrees to hold the Confidential Information confidential for the longer of a period of three (3) years from receipt or for a period of two (2) years from the earlier to occur of termination of this Agreement or Final Completion. This terms and provisions of this Article 13 shall survive the termination or expiration of this Agreement.

ARTICLE 14

REPRESENTATIONS AND WARRANTIES OF SUPPLIER

Supplier hereby represents and warrants to Owner as follows:

14.1 Due Organization; Good Standing. Supplier is a corporation duly organized, validly existing and in good standing under the laws of the State of New York, and qualified to conduct business in the State of Ohio.

14.2 Due Authorization. The execution, delivery and performance of this Agreement by Supplier have been duly authorized by all necessary corporate action on the part of Supplier and do not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Supplier or any other party to any other agreement with Supplier.

14.3 Execution and Delivery. This Agreement has been duly executed and delivered by Supplier. This Agreement constitutes the legal, valid, binding and enforceable obligation of Supplier, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by principles of equity.

14.4 Governmental Approvals. No governmental authorization, approval, order, license, permit, franchise or consent, and no registration, declaration or filing with any Governmental Authority is required on the part of Supplier in connection with the execution, delivery and performance of this Agreement, except those which have already been obtained or which Supplier anticipates will be timely obtained in the ordinary course of performance of this Agreement and except for Owner Permits.

14.5 Licensed Materials and Intellectual Property. Supplier has all necessary right and authority to grant the license in and to the Licensed Materials granted pursuant to Article 12 (including where necessary, by having obtained the necessary rights and licenses from its Affiliates or Subcontractors or from third party licensors, as the case may be). The Intellectual Property Rights licensed to Owner under this Agreement and the Intellectual Property Rights that Owner will acquire by virtue of purchasing the Equipment are all of the Intellectual Property Rights that Owner will need to own, operate, maintain, service and/or transfer the Equipment.

ARTICLE 15

REPRESENTATIONS AND WARRANTIES OF OWNER:

Owner represents and warrants to Supplier as follows:

15.1 Due Organization; Good Standing; Qualified to do Business. Owner is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and qualified to conduct business in the State of Ohio.

15.2 Due Authorization. The execution, delivery and performance of this Agreement by Owner have been duly authorized by all necessary company action on the part of Owner and do not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Owner or any other party to any other agreement with Owner, except those which have already been obtained.

15.3 Execution and Delivery. This Agreement has been duly executed and delivered by Owner. This Agreement constitutes the legal, valid, binding and enforceable obligation of Owner, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by principles of equity.

15.4 Governmental Approvals. No governmental authorization, approval, order, license, permit, franchise or consent, and no registration, declaration or filing with any Governmental Authority is required on the part of Owner in connection with the execution, delivery and performance of this Agreement, except those which have already been obtained or which Owner anticipates will be timely obtained in the ordinary course of performance of this Agreement.

ARTICLE 16

DEFAULT & REMEDIES

16.1 Supplier Default. (a) The occurrence of any one or more of the following matters constitutes a default by Supplier under this Agreement (a "Supplier Default"):

(i) Supplier becomes insolvent or generally fails to pay, or admits in writing its inability or unwillingness to pay, its debts as they become due;

(ii) Supplier makes a general assignment for the benefit of its creditors;

(iii) Supplier shall commence or consent to any case, proceeding or other action (a) seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of Supplier or of Supplier's debts under any Law relating to bankruptcy, insolvency, reorganization or relief of debts, or (b) seeking appointment of a receiver, trustee or similar official for Supplier or for all or any part of Supplier's property;

(iv) any case, proceeding or other action against Supplier shall be commenced (a) seeking to have an order for relief entered against Supplier as debtor, (b) seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of Supplier or Supplier's debts under any Law relating to bankruptcy, insolvency, reorganization or relief of debtors, or (c) seeking appointment of a receiver, trustee, or similar official for Supplier or for all or any part of Supplier's property; and such case, proceeding or action is not dismissed within sixty (60) days thereafter;

(v) any representation or warranty of Supplier contained in Article 14 of this Agreement shall prove to be materially false or intentionally misleading at the time such representation or warranty is made;

(vi) Supplier assigns, conveys or transfers this Agreement or any interest herein in manner not permitted under Section 20.3;

(vii) Supplier's aggregate liability under this Agreement for any Liquidated Damages either reaches or exceeds any of the limits in Section 19.2;

(viii) Supplier has abandoned all or part of the Work, or within five (5) Days after Supplier's receipt of written notice from Owner stating its belief that Supplier has abandoned all or part of the Work, Supplier has failed to (a) resume diligent performance of the Work or (b) provide reasonable assurances that it has not abandoned all or part of the Work;

(ix) The Equipment has not achieved all of the Minimum Performance Criteria and Substantial Completion by the date which is one hundred eighty (180) Days after the Guaranteed Substantial Completion Date (unless Supplier demonstrates that the EPC Contractor or another Person other than Supplier or its Subcontractors was more than 50% responsible for such failure);

(x) Supplier shall at any time fail to pay Owner, when due, any payment required under this Agreement, including all Liquidated Damages, which is not subject to a good faith dispute by Supplier, and such failure continues for thirty (30) days after receipt of written notice of such failure;

(xi) Supplier fails to provide, maintain and, as applicable, amend, extend and replace LOC-1, LOC-2, and LOC-3, as applicable, or cause the same to be issued or re-issued by a Creditworthy Bank, as required pursuant to, and within the applicable time periods set forth in, Section 6.9 and the definition of Substantial Completion;

(xii) Supplier fails to maintain insurance as required by this Agreement, which failure continues for fifteen (15) days after Supplier's receipt of written notice thereof from Owner;

(xiii) Supplier fails to comply with its obligations under this Agreement to pay, discharge or bond over, or post a letter of credit to protect against, any Lien (other than Permitted Liens) and such failure continues beyond the applicable cure period set forth in Section 2.20; or

(xiv) Except as otherwise expressly provided for in this Section 16.1, Supplier is in breach of any of its material obligations under this Agreement (subject to the exclusive remedies set forth in Section 9.7 in the case of a breach of the Warranty), and such breach continues for thirty (30) days after Supplier's receipt of written notice thereof from Owner; provided, however, if such breach cannot with due diligence be

remedied by Supplier within such thirty (30) day period, and Supplier shall have diligently prosecuted the remedying of such breach within such thirty (30) days, such period shall be extended by an additional sixty (60) days (or such longer period as Owner may allow in writing, in its discretion).

(b) Upon the occurrence of any Supplier Default, Owner, in addition to its right to pursue any other remedy provided under this Agreement or, except as limited by the terms of this Agreement, existing at law or in equity, may, by written notice to the defaulting Party, and without prejudice to any of its other rights or remedies, (i) draw upon LOC-1, LOC-2 or LOC-3, as applicable, in whole or in part, as applicable, in accordance with this Agreement; (ii) proceed against Supplier in accordance with Article 18 (Dispute Resolution); (iii) withhold any Milestone Payment, Progress Payment or other payment in whole or in part; (iv) seek specific performance of Supplier's obligations under this Agreement to the extent permitted by applicable Laws (including, without limitation, Supplier's absolute obligation to assure that the Power Island achieves the Minimum Performance Criteria); (v) terminate this Agreement and/or (vi) terminate Supplier's right to perform the Work, provided that, with respect to the exercise of the remedies set out in (i) – (v) above, to the extent that Owner has been fully compensated by Supplier for Owner's Losses on account of a Supplier Default, Owner shall not be entitled to exercise multiple remedies to the extent that such exercise would result in a double recovery against Supplier for the same harm for which Owner has already been fully compensated. If Owner terminates this Agreement, Supplier shall pay to Owner a sum equal to the amount by which the actual and reasonable costs incurred by Owner in completing (or causing another vendor to complete) the Work, comparable to the terminated Work, exceeds that portion of the Contract Price allocable to the Work which has not been performed by Supplier, and Owner shall be released from any obligation to pay Supplier for any amount owed for the Contract Price allocated for the portion of Work which has not been performed by Supplier, provided that, notwithstanding the foregoing, Owner shall pay Supplier for all Work properly performed by Supplier prior to the termination date in accordance with this Agreement.

(c) Notwithstanding anything to the contrary in this Agreement, if Owner has undertaken, or plans to undertake, corrective or curative action or work to cure or remedy (or attempt to cure or remedy) a Supplier Default or other default in Supplier's obligations under this Agreement, then Owner may either (i) incur such costs and expenses first and be reimbursed by Owner therefor upon submittal of an invoice to Supplier, or (ii) present a bona fide estimate or quote obtained by Owner in good faith from the third party who Owner's proposes to undertake the corrective or curative action or work on Owner's behalf and demand, by submittal of an invoice to Supplier, Supplier's up-front payment of such estimated or quoted amount. If Supplier fails to pay any such invoiced amount to Owner within ten (10) days of Supplier's receipt of such invoice, then Owner may, in addition to its other rights and remedies under this Agreement, drawn down on LOC-1, LOC-2 or LOC-3, as applicable, in the amount of such unpaid invoice (with interest thereon at the Agreed Rate).

(d) The exercise of the right of Owner to terminate this Agreement as provided in Section 16.1(b) does not preclude Owner from exercising other remedies that are provided herein or are available at law or in equity (subject to the exclusive remedies set forth in Section 9.7 in the case of a breach of Warranty and in Sections 4.2(b), 4.3(e), 4.5(d), 5.6 and 5.7(f) in the case of Liquidated

Damages, and the limitation on double recovery set forth in Section 16.1(b)). No termination of this Agreement shall constitute a waiver, release or estoppel by Owner of any right, action or cause of action it may have against Supplier. Except as otherwise set forth in this Agreement, Owner's remedies are cumulative, and the exercise of, or failure to exercise, one or more of Owner's remedies shall not limit or preclude the exercise of, or constitute a waiver of, other remedies by Owner.

16.2 Owner Default. (a) The occurrence of any one or more of the following matters shall constitute a default by Owner under this Agreement (an "Owner Default"):

(i) Owner becomes insolvent or generally fails to pay, or admits in writing its inability or unwillingness to pay, its debts as they become due;

(ii) Owner makes a general assignment for the benefit of its creditors;

(iii) Owner shall commence or consent to any case, proceeding or other action (a) seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of Owner or of Owner's debts under any Law relating to bankruptcy, insolvency, reorganization or relief of debts, or (b) seeking appointment of a receiver, trustee or similar official for Owner or for all or any part of Owner's property;

(iv) any case, proceeding or other action against Owner shall be commenced (a) seeking to have an order for relief entered against Owner as debtor, (b) seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of Owner or Owner's debts under any Law relating to bankruptcy, insolvency, reorganization or relief of debtors, or (c) seeking appointment of a receiver, trustee, or similar official for Owner or for all or any part of Owner's property; and such case, proceeding or action is not dismissed within sixty (60) days thereafter;

(v) any representation or warranty of Owner contained in Article 15 of this Agreement shall prove to be materially false or intentionally misleading at the time such representation or warranty is made;

(vi) Owner assigns, conveys or transfers this Agreement or any interest herein in manner not permitted under Section 20.3;

(vii) Owner fails to pay to Supplier any payment required under this Agreement which is not subject to a good faith dispute by Owner, and such failure continues for thirty (30) days after receipt of written notice of such failure; or

(viii) Except as otherwise expressly provided for in this Section 16.2, Owner is in breach of any of its material obligations under this Agreement, and such breach continues for thirty (30) days after Owner's receipt of written notice thereof from Supplier; provided, however, if such breach cannot with due diligence be remedied by Owner within such thirty (30) day period, and Owner shall have diligently prosecuted the remedying of such breach within such thirty (30) days, such period shall be extended by an additional sixty (60) days.

(b) Upon the occurrence of an Owner's Default, Supplier may (i) proceed against Owner in accordance with Article 18, (ii) suspend its performance of the Work, and/or (iii) terminate this Agreement. If this Agreement is so terminated by Supplier for an Owner Default, Supplier, as its sole and exclusive remedy hereunder (but solely with respect to the claim giving rise to the termination and without limitation of any indemnification obligations of Owner under this Agreement), shall be entitled to receive a termination payment calculated in accordance with Section 16.4

(c) The exercise of the right of Supplier to terminate this Agreement as provided in Section 16.2 does not preclude Supplier from exercising other remedies that are provided herein or are available at law or in equity (subject to the exclusive remedies set forth in this Agreement and the limitation on double recovery against Owner for the same harm). Except as provided in the last sentence of Section 16.2(b), no termination of this Agreement shall constitute a waiver, release or estoppel by Supplier of any right, action or cause of action it may have against Owner. Except as otherwise set forth in this Agreement, Supplier's exercise of, or failure to exercise, one or more of its remedies shall not limit or preclude the exercise of, or constitute a waiver of, other remedies by Supplier.

16.3 No Release. No termination under this Article 16 shall release either Party from any obligations arising hereunder prior to such termination.

16.4 Termination for Convenience. Owner may terminate this Agreement without cause at any time and for any reason upon written notice to Supplier. If this Agreement is so terminated, Supplier, as its sole and exclusive remedy hereunder, shall be entitled to receive the "termination payment" (as set forth in Exhibit P attached hereto) corresponding to the date of termination identified in Owner's notice (minus any and all amounts paid by Owner to Supplier prior to the date of such termination). Any Equipment for which title has passed (or by the terms of this Agreement, should have passed) to Owner prior to the date of such termination shall remain the property of Owner; otherwise title shall remain with Supplier.

16.5 Actions Upon Termination. Upon termination of this Agreement or Supplier's right to perform Work hereunder, Supplier shall promptly (a) discontinue the Work, (b) cease entering into subcontracts and purchase orders in respect of the Facility, (c) remove from the Site (and properly dispose of) all waste, rubbish and debris associated with the Work, (d) conduct an inventory of the equipment and materials related to the Work on the Site or being shipped to the Delivery Point, (e) remove its personnel and equipment related to the Work from the Site, and (f) take such steps as are reasonably necessary to preserve and protect the Work completed and in progress and to protect associated materials, equipment and supplies at the Site, stored off-site or in transit (the "Preservation Work"), provided that, except in the case of a Supplier Default, Supplier shall be entitled to reimbursement from Owner for all reasonable and demonstrable expenses incurred by Supplier to complete the Preservation Work.

16.6 Termination for Extended Force Majeure. If a Force Majeure Event extends for more than three hundred sixty-five (365) consecutive days, then, upon thirty (30) days written notice, either Party (unless the Force Majeure Event is caused by acts or omissions of Owner, in which event only Supplier), may terminate this Agreement. Such termination shall be effective thirty (30)

days from the date of the termination notice, unless otherwise agreed by the Parties. If this Agreement is so terminated, then each Party, as its sole and exclusive obligation and remedy hereunder, shall pay all amounts due to the other Party for Work performed and any undisputed amounts incurred under this Agreement prior to the effective date of such termination, and Supplier shall be obligated to comply with Section 16.5 and shall remain liable for any Liquidated Damages accrued prior to such termination. Owner shall retain title to all Equipment for which title has already passed to Owner under this Agreement.

ARTICLE 17

SUSPENSION RIGHTS

17.1 Suspension by Owner. (a) Owner shall have the right, at any time, to suspend Work at the Site upon written notice to Supplier. Any additional transportation costs or costs related to TA Services, as well as storage costs, incurred by Supplier as a direct result of such suspension shall be payable by Owner upon submission of Supplier's corresponding invoice(s). The Milestone Schedule shall be equitably extended for a period of time reasonably necessary for Supplier to overcome the effects of such suspension.

(b) It is expressly agreed that Owner shall have no right to suspend manufacture of the Equipment.

17.2 Suspension by Supplier. If Owner fails to pay to Supplier when properly due any undisputed Milestone Payment required under this Agreement, and such failure continues for thirty (30) days after receipt of written notice of such failure, Supplier may suspend its performance of the Work in whole or in part. Notwithstanding the foregoing, if Supplier suspends its performance of the Work as provided in this Section and it is later determined that the amount Supplier alleged was properly due (and which was the basis of Supplier's Work suspension) was in fact not properly due, such suspension of the Work by Supplier shall be deemed to have been conducted in non-compliance with the terms of this Agreement (a "Non-Compliant Suspension"). Except as to a Non-Compliant Suspension, any cost incurred by Supplier in accordance with any such suspension (including storage costs) shall be payable by Owner upon submission of Supplier's invoice(s). Except as to a Non-Compliant Suspension, performance of Supplier's obligations shall be extended for a period of time reasonably necessary to overcome the effects of such suspension. Supplier shall resume any such suspended Work upon Owner's payment of the applicable Milestone Payment.

17.3 Shipment to Storage. If Owner notifies Supplier in writing that Owner is unable to accept delivery of any part or portion of the Equipment during a time when Supplier is permitted to deliver the same to the Delivery Point pursuant this Agreement (and Supplier is otherwise ready to deliver, and capable of delivering, such part or portion to the Delivery Point during such time frame), Supplier may ship such part or portion of Equipment to storage, such storage being in accordance with the Specifications or other instructions provided by Supplier. If such part or portion of Equipment is placed in storage, including storage at the facility where manufactured, the following conditions shall apply to such part or portion of the Equipment: (i) title shall thereupon pass to Owner if it has not already passed; (ii) risk of loss, unless otherwise agreed, shall thereupon pass to Owner if it has not already passed; (iii) any amounts otherwise payable to Supplier upon Delivery of such part or portion of the Equipment shall be payable upon presentation of Supplier's invoice(s);

and (iv) all expenses incurred by Supplier, including but not limited to, preparation for and placement into storage, handling, inspection, preservation, insurance, storage, removal charges and any taxes shall be payable by Owner upon submission of Supplier's invoice(s). If the Agreement includes Services, then to the extent such Services relate directly to the part or portion of the Equipment shipped to storage, any such related Services shall be subsequently changed to the rate then prevailing at the time of actual use and Owner shall pay the net increase over the rate prevailing at the time of shipment of such part or portion of the Equipment to storage. When conditions permit and upon payment of all amounts due under this Section, Supplier shall resume Delivery of the Equipment to the Delivery Point.

ARTICLE 18

DISPUTE RESOLUTION

18.1 Disputes. The Project Manager and the Owner's Manager shall attempt to expeditiously reach a mutually acceptable resolution of any claim, dispute or other controversy arising out of, or relating to, this Agreement (each a "Dispute"). In the event that such Dispute cannot be resolved by such representatives of Supplier and Owner, the dispute will be referred to a Senior Officer from each party for resolution by mutual agreement between said officers. Any mutual determination by the Senior Officers shall be final and binding upon the parties. However, should such Senior Officers fail to arrive at a mutual decision as to the Dispute within thirty (30) days after notice to both individuals of the Dispute, or such longer period as the Parties may mutually agree, then either Party may then pursue their remedies at law.

18.2 Venue. Any legal action or proceeding with respect to this Agreement shall be brought in the United States District Court for the Southern District of Ohio, Eastern Division or, if such court lacks jurisdiction, in the Court of Common Pleas of the State of Ohio in Franklin County. Each of the Parties hereby accepts and consents to, generally and unconditionally, the jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Each of the Parties irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to such Party at the address set forth in this Agreement. Each of the Parties hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

18.3 Jury Waiver. OWNER AND SUPPLIER HEREBY AGREE TO WAIVE THE RIGHT TO A JURY AND AGREE THAT ALL ISSUES OF LAW AND FACT SHALL BE DECIDED BY A JUDGE ONLY. Supplier agrees to incorporate this jury waiver into all of the agreements with any Major Subcontractors for the Work and to use commercially reasonable efforts to incorporate the jury waiver into any agreements with the other Subcontractors for the Work.

18.4 Prevailing Party. The prevailing Party in any court proceedings shall be reimbursed by the other Party for all reasonable out-of-pocket costs, expenses and charges, including, without

limitation, reasonable attorneys' fees, incurred by said prevailing Party, but if the prevailing Party has had only a partial victory, then the court will make an allocation based on the extent to which the court views the prevailing Party as having prevailed.

18.5 Performance During Dispute. Pending final resolution of a Dispute, Owner and Supplier shall continue to fulfill their respective obligations under this Agreement, including the payment of any amounts payable in accordance with this Agreement (other than disputed amounts), and such continued performance shall be without prejudice to any claims which are the subject matter of the Dispute.

ARTICLE 19

LIMITATION OF LIABILITY

19.1 Consequential Damages. Notwithstanding anything to the contrary contained in this Agreement, and except for (i) Supplier's obligations arising out of or liability for breach with respect to Warranty covenants under Article 9 of this Agreement and Supplier's and Owner's confidentiality covenants under Article 13 of this Agreement, (ii) Supplier's and Owner's indemnity obligations under Sections 11.1(a)(i) and 11.2(a)(i) respectively and Supplier's indemnity obligations set forth in this Agreement as they relate to claims by third parties for infringement of any Intellectual Property Right, (iii) the Gross Negligence, willful misconduct or fraud in connection with the performance of the Work of (a) in the case of Supplier's limitation of liability, Supplier, a Subcontractor or any Person or entity directly employed by any of them, or any Person or entity for whose acts any of them are liable or their respective officers, employees and agents, or (b) in the case of Owner's limitation of liability, any contractor of Owner (other than Supplier and Subcontractors) or any Person or entity directly employed by Owner or such contractor, or any Person or entity for whose acts Owner or such contractor are liable or their respective officers, employees and agents, (iv) costs incurred by Supplier to achieve all of the Minimum Performance Criteria, and (v) any provision obligating Supplier to pay for liquidated damages in this Agreement (none of which shall be interpreted or construed as, consequential, special, incidental, indirect, punitive or exemplary damages or damages for loss of profits, loss of use or loss of contracts for the purposes of this Agreement), Owner and Supplier waive all claims against each other (and against each other's parent company, Affiliates, contractors, subcontractors, consultants and agents) for any consequential, special, incidental, indirect, punitive or exemplary damages and damages for loss of profits, loss of use or loss of contracts, and regardless of whether any such claim arises out of breach of contract or warranty, tort, product liability, indemnity, contribution, strict liability or other legal theory. Supplier covenants and agrees that it will use commercially reasonable efforts to obtain a written waiver of claims against Owner (and its parent company, Affiliates, contractors, subcontractors, consultants and agents) substantially identical to the waiver set forth in the preceding sentence from each Major Subcontractor performing any portion of the Work. For the avoidance of doubt, Supplier's obligations to repair Collateral Damage in accordance with Section 9.3(b) shall not be deemed to be consequential, special, incidental, indirect, punitive or exemplary damages or damages for loss of profits, loss of use or loss of contracts for the purposes of this Agreement.

19.2 Liquidated Damages. (a) Notwithstanding anything to the contrary contained in this Agreement, the aggregate liability of Supplier to Owner for Performance Liquidated Damages shall in no event exceed an amount equal to [***] ([***]%) of the Contract Price.

(b) Notwithstanding anything to the contrary contained in this Agreement, the aggregate liability of Supplier to Owner for Delivery Liquidated Damages and Substantial Completion Liquidated Damages, collectively, shall in no event exceed an amount equal to [***] percent ([***]%) of the Contract Price.

(c) Notwithstanding anything to the contrary contained in this Agreement, the overall aggregate liability of Supplier to Owner for all Liquidated Damages shall in no event exceed an amount equal to [***] percent ([***]%) of the Contract Price.

19.3 Overall Limitation. Notwithstanding anything to the contrary contained in this Agreement, the aggregate liability of Supplier to Owner in relation to this Agreement, including the payment of Liquidated Damages, and the aggregate liability of Owner to Supplier in relation to this Agreement, whether such liability arises out of breach of contract or warranty, tort (including but not limited to negligence), product liability, indemnity, contribution, strict liability or other legal theory, shall not exceed an amount equal to the Contract Price. The preceding limitation of Supplier's liability shall not apply to, and no credit shall be issued against such liability limitation for:

(i) Supplier's obligations arising out of or liability for breach with respect to Supplier's non-disclosure covenants set forth in Article 13 of this Agreement;

(ii) Supplier's indemnity obligations set forth in this Agreement as they relate to claims by third parties for bodily injury, property damage and infringement of any Intellectual Property Right;

(iii) Claims which arise or result from the Gross Negligence, willful misconduct or fraud of Supplier or its Subcontractors; and

(iv) Costs incurred by Supplier to achieve all of the Minimum Performance Criteria.

The preceding limitation of Owner's liability shall not apply to, and no credit shall be issued against such liability limitation for:

(i) Owner's obligations arising out of or liability for breach with respect to Owner's non-disclosure covenants set forth in Article 13 of this Agreement;

(ii) Owner's indemnity obligations set forth in this Agreement as they relate to claims by third parties for bodily injury and property damage; and

(iii) Claims which arise or result from the Gross Negligence, willful misconduct or fraud of Owner or its contractors (other than Supplier and its Subcontractors).

19.4 The Supplier's and Owner's liability under this Agreement shall terminate on the earlier of the applicable statute of limitations for claims under Ohio law and eight years from Substantial

Completion. Owner or Supplier may enforce a claim that accrued before that date by commencing an action as provided in Section 18, before the expiration of the applicable statute of limitations.

ARTICLE 20

GENERAL PROVISIONS

20.1 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Ohio, without regard to conflicts of law principles.

20.2 Entire Agreement. This Agreement represents the entire agreement between Owner and Supplier with respect to the subject matter hereof, and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement may be amended or modified only by a written instrument signed by both Owner and Supplier.

20.3 Assignment. (a) Supplier shall not assign, pledge or otherwise transfer this Agreement or any right or obligation hereunder without the prior written consent of Owner, which consent may be given or withheld in Owner's sole discretion. Notwithstanding the foregoing, Supplier may, without Owner's consent, (i) assign or delegate this Agreement to an Affiliate of Supplier or (ii) factor, sell, assign, or otherwise transfer to any Affiliate or any third party financial institution any undisputed accounts receivable arising under this Agreement, provided such assignment of accounts receivable shall be subject to Owner's rights and remedies under this Agreement, including any Owner offset, deduction and withholding rights provided under this Agreement. For the avoidance of doubt, notwithstanding any such assignment, delegation, factoring, sale, assignment of receivables or other transfer pursuant to clause (i) or (ii) of the preceding sentence, the originally-named Supplier shall not be relieved of any of its liabilities or obligations under this Agreement and shall remain primarily liable for the payment and performance of all obligations of Supplier under this Agreement, whether accruing before, on or after such assignment, delegation, factoring, sale, assignment of receivables or other transfer and, if requested by Owner, the originally-named Supplier shall provide an affirmation of such continuing primary liability in and form and substance reasonably acceptable to Owner.

(b) Except as otherwise provided in this Section, Owner shall not assign, pledge or otherwise transfer this Agreement or any right or obligation hereunder without the prior written consent of Supplier, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Supplier hereby covenants and agrees that Owner may, without Supplier's consent, assign this Agreement or delegate any of its rights or obligations under this Agreement:

(x) to any Affiliate or designee of Owner;

(y) to the EPC Contractor (it being understood and agreed that if Owner assigns this Agreement to the EPC Contractor, Owner shall have the right to reserve the ability to make direct payments to Supplier of amounts the EPC Contractor determines to be due and payable to

Supplier in lieu of Owner paying such amounts to EPC Contractor under the EPC Contract for further disbursement to Supplier)

(z) to any entity which acquires all or substantially all of the assets of Owner related to the Facility; and/or

(aa) to any Lender of Owner. In the event Owner does in fact intend to collaterally assign this Agreement to a Lender, Supplier agrees that it shall (x) execute a consent to Owner's collateral assignment of this Agreement to any such Lender (which consent shall be in a form that is customary for the financing of a gas-fired power project and reasonably acceptable to the Lender), and (y) provide an opinion of counsel regarding the enforceability of this Agreement and the preceding consent.

(c) Upon any permitted assignment by Owner, Owner will be released from all obligations or liabilities arising out of or related to this Agreement relating to the period from and after such assignment; provided, however, in the case of an assignment by Owner to an Affiliate, Owner shall not be released from its payment obligations under this Agreement, unless such affiliate is, in Supplier's reasonable judgment, taking into account any guarantee or other credit support such Affiliate elects to provide, if any, substantially as creditworthy as the assigning Owner or otherwise reasonably creditworthy in light of the then remaining payment obligations under this Agreement.

(d) Any assignment or transfer of this Agreement pursuant to this Section shall be subject to all limitations of liability contained in this Agreement.

(e) Except as specifically provided in this Section, any assignment or transfer of this Agreement or any rights, duties or interest hereunder by Owner or Supplier without the prior written consent of the other Party hereto shall be void and of no force and effect.

20.4 Project Financing. Supplier agrees to provide such assistance as is reasonably requested by Owner in connection with Owner's efforts to secure non-recourse project financing for the Facility from a Lender, which shall include, without limitation, providing technical assistance as Owner may request in addressing Lender issues or concerns, providing such documents as are reasonably requested by the Lenders, executing such estoppels, consents and certificates as are reasonably requested of the Lenders, and meeting with the Lenders and their representatives.

20.5 Survival. All provisions of this Agreement that are expressly or by implication to come into or continue in force and effect after the expiration or termination of this Agreement shall remain in effect and be enforceable following such expiration or termination. Without limiting the foregoing, the following provisions are hereby explicitly set forth, for the purpose of clarity, as those that shall survive expiration or termination of this Agreement: Section 2.5, Section 2.11, Section 2.20, Section 2.22, Section 2.26, Section 2.27, Section 4.3, Section 4.5, Article 5, Section 6.9, Article 9, Article 11, Article 12, Article 13 Article 14, Article 15, Article 16, Article 18, Article 19, and Article 20.

20.6 Contractual Relationship. Nothing contained in this Agreement shall be construed as creating a contractual relationship of any kind (i) between Owner and a Subcontractor, or (ii) between any persons or entities other than Owner and Supplier.

20.7 Severability. In case any provision in this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected. If Supplier's obligation to pay any Liquidated Damages under this Agreement is, or becomes, void or unenforceable (either in whole or in part) for any reason, then Owner shall, to the extent of the voidness or unenforceability, be entitled to claim unliquidated damages at law in relation to any relevant delay or other matter which would otherwise have been the subject of the liquidated damages, *provided* that Supplier's aggregate liability for Liquidated Damages and unliquidated damages in respect of such relevant delay or such other matter shall not exceed the applicable amount of Liquidated Damages agreed under this Agreement in respect thereof.

20.8 Notices. All notices required hereunder shall be in writing and shall be deemed properly served if delivered in person, by email or if sent by registered or certified mail, with postage prepaid and return receipt requested, to the following addresses (or to such other addresses as either Party may subsequently designate):

If to Owner: Long Ridge Energy Generation LLC
c/o Fortress Investment Group
1345 Avenue of the Americas, 45th Floor
New York, NY 10105
Attn: Ken Nicholson
Email: knicholson@fortress.com

And

Attn: Robert Wholey
Email: bo.wholey@longridgeenergy.com

With a Copy to: Morgan, Lewis & Bockius LLP
One Federal Street
Boston, MA 02110
Attn: James L. Black, Jr., Esq.
Email: james.black@morganlewis.com

If to the Owner's
Engineer: Black & Veatch Corporation
9000 Regency Parkway
Suite 300
Cary, NC 27518
Attn: Jason Rowell
Email: RowellJ@bv.com

If to the
Supplier General Electric Company
1 River Road, 40-320AA
Schenectady, New York 12345
Attn: Marie Hartigan
Email: marie.hartigan@ge.com

With a Copy to: General Electric Company
11330 Clay Road
Suite 5336
Houston, TX 77041
Attn: Timothy Huskey
Email: Timothy.Huskey@ge.com

All notices required hereunder shall be deemed received on the date of delivery, or attempted delivery, if delivered in person, or if sent by email, on the date such email is sent, or if mailed, on the date which is two (2) Days after the date such notice is deposited in the mail.

20.9 Headings. The headings and captions used in this Agreement are inserted for reference and convenience only and the same shall not limit or construe the sections, articles or paragraphs to which they apply or otherwise affect the interpretation thereof.

20.10 Singular and Plural. Words which are used herein and import the singular number shall mean and include the plural number and vice versa where the context so requires.

20.11 Interpretation. In the event of any inconsistency or discrepancy between written words and specific numbers, the description of any such figures by written words shall govern.

20.12 Rights and Remedies. Except to the extent this Agreement expressly provides that a specific remedy for a particular circumstance is the exclusive remedy available for such circumstance and except as otherwise expressly provided in this Agreement, (i) rights and remedies available to Owner and/or Supplier as set forth in this Agreement shall be cumulative with and in addition to, and not in limitation of, any other rights or remedies available to such Parties at law and/or in equity, and (ii) any specific right or remedy conferred upon or reserved to Owner and/or Supplier in any provision of this Agreement shall not preclude the concurrent or consecutive exercise of a right or remedy provided for in any other provision hereof.

20.13 Agreed Rate. Each Party agrees that it will pay to the other Party interest at the Agreed Rate on any overdue amount from the due date thereof to, but not including, the date such amount is paid.

20.14 Incorporation by Reference. The recitals set forth on the first few pages of this Agreement, as well as all Exhibits attached hereto, are hereby incorporated into this Agreement by this reference and expressly made a part of this Agreement.

20.15 No Waiver. No course of dealing or failure of Owner and/or Supplier to enforce strictly any term, right or condition of this Agreement shall be construed as a waiver of such term, right or condition. No express waiver of any term, right or condition of this Agreement shall operate as a waiver of any other term, right or condition.

20.16 Rights of Third Parties. Except as expressly provided in this Agreement, nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either Owner or Supplier, provided that Long Ridge Energy Generation LLC (as Owner) may assign this Agreement to the EPC Contractor pursuant to Section 20.3 and any agreement effectuating such assignment shall prevail under this Section 20.16.

20.17 Counterparts. This Agreement may be executed by the Parties in one or more counterparts, all of which taken together, shall constitute one and the same instrument.

20.18 Signatures. The exchange of copies of this Agreement and of signature pages by facsimile, email or other electronic transmission shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile, email or other electronic means shall be deemed to be their original signatures for all purposes.

20.19 English Language Documents. Any document, manual, certificate or notice required or authorized to be given hereunder shall be provided in the English language.

20.20 Further Assurances. Supplier and Owner agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement, including executing a bill of sale or similar instrument in a form reasonably agreed to by the Parties.

20.21 No Nuclear Use. The Work is not intended for application (and shall not be used) in connection with any nuclear installation or activity (a "Nuclear Use") and Owner warrants that it shall not use the Work for any Nuclear Use, or permit others to use the Work for any Nuclear Use. If, in breach of the foregoing, any such Nuclear Use occurs, Supplier shall have no liability for any nuclear or other damage, injury or contamination attributable to a Nuclear Use, and Owner shall indemnify Supplier, its Affiliates and Subcontractors against any such liability resulting from any such Nuclear Use, whether arising as a result of breach of contract, warranty, indemnity, tort (including negligence), strict liability or otherwise.

20.22 No Use For Weapons. Owner hereby certifies that the Work, technical data, software or other information or assistance furnished by Supplier or its Affiliates under this Agreement will not be used in the design, development, production, stockpiling or use of weapons either by Owner or by any entity acting on Owner's behalf or which received any of the Work by Owner.

20.23 Global Sourcing. Major Equipment and Services shall only be sourced from a Major Sub-Supplier listed on Exhibit A, Attachment 13 (except as otherwise approved by Owner in accordance with Section 2.8). Except as provided in the preceding sentence, Supplier reserves the right in its discretion to obtain, source, subcontract, manufacture, fabricate and assemble the Equipment and any components and systems thereof from non-domestic concerns; it being understood that the quality standards and warranties of Supplier under this Agreement shall be adhered to in all cases irrespective of source and all sourcing shall be consistent with all applicable Laws, and Supplier shall remain liable for any obligations with respect to Taxes and export obligations as provided in this Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the duly authorized representatives of Owner and Supplier as of the date first written above.

OWNER: LONG RIDGE ENERGY GENERATION LLC By: /s/ Robert Wholey Name: Robert Wholey Title: President	SUPPLIER: GENERAL ELECTRIC COMPANY By: /s/ Michael Gradoia Name: Michael Gradoia Title: Commercial Leader

[Signature Page to Equipment Supply Agreement]

Exhibit 10.19

EXECUTION VERSION

FIRST LIEN CREDIT AGREEMENT

dated as of February 15, 2019

among

OHIO RIVER PP HOLDCO LLC,
as Holdings,

LONG RIDGE ENERGY GENERATION LLC and **OHIO GASCO LLC,**
as Co-Borrowers,

THE LENDERS AND LC ISSUERS PARTY HERETO FROM TIME TO TIME,

ING CAPITAL LLC,
as LC Issuer,

and

CORTLAND CAPITAL MARKET SERVICES LLC,
as Administrative Agent

AMP CAPITAL INVESTORS LIMITED,
as Lead Arranger,

ING CAPITAL LLC, MIRAE ASSET DAEWOO CO., LTD and **ELSDON INVESTMENT PTE LTD,**
as Co-Arrangers,

and

ING CAPITAL LLC,
as Documentation Agent

Senior Secured Credit Facilities

$445,000,000 Construction and Term Loan Facility

$154,000,000 LC Facility

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This FIRST LIEN CREDIT AGREEMENT, dated as of February 15, 2019 (this "Agreement"), is entered into among OHIO RIVER PP HOLDCO LLC, a Delaware limited liability company ("Holdings"), LONG RIDGE ENERGY GENERATION LLC (formerly known as Ohio PowerCo LLC), a Delaware limited liability company ("PowerCo"), OHIO GASCO LLC, a Delaware limited liability company ("GasCo" and, together with PowerCo, the "Co-Borrowers"), THE LENDERS AND LC ISSUERS PARTY HERETO FROM TIME TO TIME and CORTLAND CAPITAL MARKET SERVICES LLC, as administrative agent for the Lenders referred to herein (together with its successors and permitted assigns in such capacity, "Administrative Agent"), with AMP CAPITAL INVESTORS LIMITED, as lead arranger and lead bookrunner (in such capacities, "Arranger").

RECITALS

A. Capitalized terms used in these recitals and not otherwise defined shall have the respective meanings set forth for such terms in Exhibit A.

B. The Lenders have severally but not jointly agreed to extend a first lien term loan credit facility to the Co-Borrowers in an aggregate principal amount of $445,000,000 of Term Loans.

C. The LC Issuers have severally but not jointly agreed to issue standby Letters of Credit at any time and from time to time during the LC Availability Period, in an aggregate Stated Amount of $154,000,000.

D. The Co-Borrowers will incur Second Lien Loans pursuant to the Second Lien Credit Documents on the Closing Date in an aggregate principal amount, excluding any interest accrued and capitalized per the terms of such Second Lien Credit Documents, of up to $143,000,000, plus any Construction PIK Principal or Term PIK Principal (each as defined in the Second Lien Credit Agreement), as applicable, created thereunder (the "Second Lien Facility").

E. The Co-Borrowers will borrow Term Loans from the Lenders on a monthly basis, the proceeds of which will be used, together with the proceeds of the Second Lien Loans, to fund the Project Costs.

AGREEMENT

In consideration of the agreements herein and in the other Credit Documents and in reliance upon the representations and warranties set forth herein and therein, the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

1.1 DEFINITIONS. Except as otherwise expressly provided, capitalized terms used in this Agreement (including its exhibits and schedules) shall have the meanings given to such terms in Exhibit A.

1.2 RULES OF INTERPRETATION. Except as otherwise expressly provided herein or therein, the rules of interpretation set forth in Exhibit A shall apply to this Agreement.

ARTICLE 2
THE CREDIT FACILITIES

2.1 LOAN FACILITIES.

2.1.1 *Construction Loan Facility.*

(a) Availability. Subject to the terms and conditions set forth in this Agreement and in reliance upon the representations and warranties of Borrower Parties set forth herein, each Construction Lender severally, but not jointly, agrees to advance to Co-Borrowers from time to time during the Construction Availability Period such loans as Co-Borrowers may request pursuant to this Section 2.1.1 (individually, a "Construction Loan" and, collectively, the "Construction Loans"), in an aggregate principal amount which, when added to the aggregate principal amount of all prior Construction Loans made by such Lender under this Agreement, does not exceed such Lender's Construction Loan Commitment.

(b) Notice of Borrowing. Co-Borrowers shall request Construction Loans by delivering to Administrative Agent a Notice of Borrowing, which contains or specifies, among other things:

i. the aggregate principal amount of the requested Construction Loan, which shall be in the minimum amount of $5,000,000 or, if the remaining Construction Loan Commitments are less than $5,000,000, such remaining amount;

ii. the proposed date of the requested Construction Loan (which shall be a Banking Day);

iii. the account into which the proceeds of the Construction Loan will be deposited;

iv. a certification by Co-Borrowers that, as of the date such requested Construction Loan is proposed to be made, the Construction Loan proposed to be made on such date, when added together with all other Construction Loans made under this Agreement, does not exceed the Total Construction Loan Commitment; and

v. if the proceeds of the Construction Loan are requested to reimburse Drawstop Equity Contributions, the information required pursuant to Section 3.2.1(a)(y).

Co-Borrowers shall request no more than one Construction Loan per month (other than in respect of the Final Drawing). Co-Borrowers shall give each Notice of Borrowing to Administrative Agent so as to provide not less than the Minimum Notice Period applicable to Construction Loans. Any Notice of Borrowing may be modified or revoked by Co-Borrowers through the Banking Day prior to the Minimum Notice Period, and shall thereafter be irrevocable. Each Notice of Borrowing shall be delivered in the manner provided in Section 11.1.

If no account is specified for the deposit of the proceeds of such Construction Loan, the proceeds of the Construction Loan shall be deposited into the Construction Account.

(c) Construction Loan Interest. Subject to Section 2.6.3, Co-Borrowers shall pay interest on the unpaid principal amount of each Construction Loan from the date of Borrowing of such Construction Loan until the maturity or prepayment thereof at a fixed rate equal to 7.30% *per annum*.

(d) Construction Loan Principal Payments. Construction Loans shall automatically convert to Term Loans upon Term Conversion pursuant to Section 2.1.2(b). Co-Borrowers shall repay to Administrative Agent, for the account of each Lender, in full on the Construction Maturity Date the outstanding principal amount of any Construction Loan made by such Lender which have not been converted to Term Loans pursuant to Section 2.1.2(b).

(e) Cancellation and Return of Construction Notes. Upon the Term Conversion and payment in full of any principal amount of Construction Loans not converted to Term Loans and all accrued and unpaid interest thereon and fees in respect thereof, each such Lender shall promptly mark as canceled any Construction Notes issued to it under Section 2.1.6 or 9.13 then outstanding and return such canceled Construction Notes to Co-Borrowers.

2.1.2 *Term Loan Facility.*

(a) Availability. Subject to the terms and conditions set forth in this Agreement and in reliance upon the representations and warranties of Co-Borrowers set forth herein, each Term Lender severally, but not jointly, agrees to make to Co-Borrowers on the Term Conversion Date, at the request of Co-Borrowers, a term loan under this Section 2.1.2 (individually a "Term Loan" and, collectively, the "Term Loans") in an aggregate principal amount equal to the aggregate principal amount of outstanding Construction Loans made by such Lender (including, for the avoidance of doubt, the principal amount of any Construction Loans made on such date), not to exceed such Lender's Term Loan Commitment, or, to the extent elected by Co-Borrowers in the applicable Notice of Term Conversion, any lesser amount. Each Lender shall make its Term Loan by converting the principal amount of outstanding Construction Loans made by such Lender (or such lesser amount) to a Term Loan and the Administrative Agent shall deem such Term Loans so converted as fully funded and shall record them in the Register. Construction Loans and Term Loans shall not be simultaneously outstanding.

(b) Notice of Term Conversion. Co-Borrowers shall request Term Conversion by delivering to Administrative Agent a Notice of Term Conversion, which contains or specifies:

i. the aggregate principal amount of the requested Term Loans, which shall not exceed the lesser of (A) the aggregate principal amount of all Construction Loans outstanding as of the Term Conversion Date (including, for the avoidance of doubt, the principal amount of any Construction Loans made on such date) and (B) the Total Term Loan Commitment; and

ii. the proposed Term Conversion Date (which shall be a Banking Day on or before the Date Certain (as such date may be extended in accordance with the definition thereof)).

Co-Borrowers shall deliver the Notice of Term Conversion, together with evidence, if then available, documenting that the conditions to Term Conversion will be satisfied by the proposed Term Conversion Date, to Administrative Agent (with a copy to the Lenders) so as to provide at least five Banking Days' notice of Term Conversion. The Notice of Term Conversion may be modified or revoked by Co-Borrowers through the Banking Day prior to the applicable Minimum Notice Period, and shall thereafter be irrevocable. The Notice of Term Conversion shall be delivered in the manner provided in Section 11.1.

(c) Term Loan Interest. Subject to Section 2.6.3, Co-Borrowers shall pay interest on the unpaid principal amount of each Term Loan from the Term Conversion Date until the maturity or prepayment thereof at a fixed rate equal to 7.30% *per annum*.

(d) Term Loan - Scheduled Principal Amortization. On each Principal Repayment Date, Co-Borrowers shall repay to Administrative Agent, for the account of each Lender, the outstanding principal amount, if any, of all Term Loans in an amount equal to 0.25% of the aggregate principal amount of the Term Loans outstanding immediately after giving effect to the conversion contemplated herein on the Term Conversion Date, with any remaining unpaid principal, interest, fees and costs due and payable on the Final Maturity Date.

2.1.3 *[Reserved].*

2.1.4 *[Reserved].*

2.1.5 *Interest Provisions Relating to All Loans.*

(a) Interest Payment Dates. Co-Borrowers shall pay accrued interest on the unpaid principal amount of (i) each LC Loan (x) in the case of each Base Rate LC Loan, on each Quarterly Payment Date, (y) in the case of each LIBOR LC Loan, on the last day of each Interest Period related to such LC Loan and, if any applicable Interest Period is longer than 90 days, the respective dates that fall every 90 days after the commencement of such Interest Period, (ii) each Construction Loan or Term Loan on each Quarterly Payment Date, and (iii) in all cases, upon repayment or prepayment (to the extent thereof and including any Optional Prepayments or Mandatory Prepayments), at maturity (whether by acceleration or otherwise) and, in the case of LC Loans, upon conversion from one Type of Loan to another Type of Loan.

(b) LIBOR LC Loan Interest Periods. Each Interest Period selected by Co-Borrowers in its applicable Notice of Conversion of LC Loan Type for all LIBOR LC Loans shall be one, two, three or six months. Notwithstanding anything to the contrary in the preceding sentence, (A) any Interest Period which would otherwise end on a day which is not a Banking Day shall be extended to the next succeeding Banking Day unless such next Banking Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Banking Day, (B) any Interest Period which begins on the last Banking Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Banking Day of a calendar month, (C) Co-Borrowers may not select Interest Periods which would leave a greater principal amount of LC Loans subject to Interest Periods ending after a date upon which LC Loans are or may be required to be repaid than the principal amount of Loans anticipated to be outstanding after such date, (D) any Interest Period for a LC Loan which would otherwise end after the LC Maturity Date shall end on the LC Maturity Date, (E) LIBOR LC Loans for each Interest Period shall be in the minimum amount of $1,000,000, and (F) Co-Borrowers may not at any time have outstanding more than six different Interest Periods relating to LIBOR LC Loans. Notwithstanding anything to the contrary provided herein, Co-Borrowers may request irregular Interest Periods (without premium or penalty) with a duration other than a one, two, three or six month Interest Period in order to consolidate outstanding Interest Periods and Principal Repayment Dates, as well as to facilitate the repayment of LIBOR LC Loans in accordance with the terms of this Agreement. Upon receipt of an request from Co-Borrowers seeking such irregular Interest Period, Administrative Agent and the LC Participants shall endeavor to provide Co-Borrowers with such Interest Period so long as such Interest Period is available in the London interbank market, in the reasonable judgment of Administrative Agent; provided, that where this Agreement requires Co-Borrowers to have an irregular Interest Period for a LIBOR LC Loan Borrowing, Administrative Agent shall set the applicable Adjusted LIBO Rate through interpolating available LIBO Rate for periods having terms ending immediately prior to and immediately following such Interest Period. Co-Borrowers may contact Administrative Agent at any time prior to the end of an Interest Period for a quotation of Interest Rates in effect at such time for given Interest Periods, and Administrative Agent shall promptly provide such quotation. If Co-Borrowers fail to notify Administrative Agent of the next Interest Period for any LIBOR LC Loans in accordance with this Section 2.1.5(b), such LIBOR LC Loans shall automatically convert to Base Rate LC Loans on the last day of the current Interest Period therefor. Administrative Agent shall as soon as practicable notify Co-Borrowers of each determination of the Interest Rate applicable to each such Loan.

(c) Interest Computations. All computations of interest on Construction Loans, Term Loans and Base Rate LC Loans (other than Base Rate LC Loans where the Base Rate is determined by reference to the LIBO Rate pursuant to clause (c) of the definition of “Base Rate”) shall be based upon a year of 365 days or, in the case of a leap year, 366 days, shall be payable for the actual days elapsed (including the first day but excluding the last day), and, in the case of Base Rate LC Loans, shall be adjusted in accordance with any changes in the Base Rate to take effect on the beginning of the day of such change in the Base Rate. All computations of interest on LIBOR LC Loans (and Base Rate LC Loans where the Base Rate is determined by reference to the LIBO Rate pursuant to clause (c) of the definition of “Base Rate”) shall be based upon a year of 360 days and shall be payable for the actual days elapsed (including the first day but excluding the last day).

Each Co-Borrower agrees that all computations by Administrative Agent or any LC Issuer, as applicable, of interest shall be conclusive and binding in the absence of manifest error.

2.1.6 *Promissory Notes*. The obligation of Co-Borrowers to repay the Loans made by a Lender and to pay interest thereon at the rates provided herein shall, upon the written request of such Lender, be evidenced by promissory notes in the form of Exhibit B-1 (individually, a "Construction Note" and, collectively, the "Construction Notes"), Exhibit B-2 (individually, a "Term Note" and, collectively, the "Term Notes") and Exhibit B-3 (individually, an "LC Note" and, collectively, the "LC Notes"), each payable to such requesting Lender or its registered assigns and in the principal amount of such Lender's Construction Loan Commitment, Term Loan Commitment or LC Commitment, respectively. Co-Borrowers authorize each such requesting Lender to record on the schedule annexed to such Lender's Note or Notes, the date and amount of each Loan made by such requesting Lender, and each payment or prepayment of principal thereunder and agrees that all such notations shall constitute prima facie evidence of the matters noted; provided that in the event of any inconsistency between the records or books of Administrative Agent or any LC Issuer, as applicable, and any Lender's records or Notes, the records of Administrative Agent or such LC Issuer, as applicable, shall be conclusive and binding in the absence of manifest error. Co-Borrowers further authorize each such requesting Lender to attach to and make a part of such requesting Lender's Note or Notes continuations of the schedule attached thereto as necessary. No failure to make any such notations, nor any errors in making any such notations, shall affect the validity of Co-Borrowers' obligations to repay the full unpaid principal amount of the Loans or the duties of Co-Borrowers hereunder or thereunder. Upon the payment in full in cash of the aggregate principal amount of, and all accrued and unpaid interest on, the Loans, or in the case of Construction Loans, upon Term Conversion, the Lenders holding such Notes shall promptly mark the applicable Notes cancelled and return such cancelled Notes to Co-Borrowers. Term Notes (if any) shall be delivered to the applicable Term Lenders on the Term Conversion Date in accordance with Section 3.3.8.

2.1.7 *Loan Funding.*

(a) Notice. Each Notice of Borrowing, Notice of Term Conversion and Notice of Conversion of LC Loan Type shall be delivered to Administrative Agent in accordance with Sections 2.1.1(b), 2.1.2(b) and 2.1.8, respectively. Administrative Agent shall promptly notify each Lender of the contents of each Notice of Borrowing, Notice of Term Conversion and Notice of Conversion of LC Loan Type and of each Lender's portion of a requested Borrowing, if applicable.

(b) Lender Funding. Subject to the satisfaction or waiver (such waiver to be in writing by Administrative Agent with the consent of each Lender, with respect to closing conditions set forth in Section 3.1, or the Required Lenders, with respect to conditions set forth in Sections 3.2, 3.3 or 3.4 and any such waiver shall be binding on each Lender) of the conditions precedent specified herein, each Lender shall, before 1:00 p.m. New York City time on the date of each Borrowing specified in the respective Notice of Borrowing, make available to Administrative Agent

by wire transfer of immediately available funds in Dollars to the account of Administrative Agent most recently designated by it for such purpose, such Lender's Proportionate Share of the Loan to be made on such date. The failure of any Lender to make the Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation hereunder to make its Loan on the date of each Borrowing specified in the respective Notice of Borrowing. No Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing.

(c) Failure of Lender to Fund. Unless Administrative Agent shall have been notified by any Lender prior to the applicable date of a Borrowing of a Loan that such Lender does not intend to make available to Administrative Agent such Lender's Proportionate Share of the Loan (as the case may be) requested on such date, Administrative Agent may assume that such Lender has made such amount available to Administrative Agent on such date in accordance with the prior paragraph and Administrative Agent may, but shall not have obligation to, in its sole discretion and in reliance upon such assumption, make available to Co-Borrowers a corresponding amount on such date. If such corresponding amount is not in fact made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such corresponding amount on demand (and, in any event, within two Banking Days from the applicable date of such Borrowing) from such Lender together with interest thereon, for each day from the applicable date of such Borrowing until the date such amount is paid to Administrative Agent, at the Federal Funds Rate for the first two Banking Days after such date. If such Lender pays such amount to Administrative Agent, then such amount (excluding any interest paid to Administrative Agent thereon) shall constitute such Lender's Proportionate Share of such Loan. If such Lender does not pay such corresponding amount forthwith upon Administrative Agent's demand therefor or within two Banking Days from the applicable date of such Borrowing of a Loan, Administrative Agent may notify Co-Borrowers and Co-Borrowers shall immediately pay such corresponding amount to Administrative Agent together with interest thereon, for each day from the applicable date of such Borrowing until the date such amount is paid to Administrative Agent, at the rate then payable under this Agreement for Base Rate LC Loans. Nothing in this Section 2.1.7(c) shall be deemed to relieve any Lender from its obligation to fulfill its obligations hereunder or to prejudice any rights that Co-Borrowers may have against any Lender as a result of any default by such Lender hereunder.

(d) Account. No later than 2:00 p.m. New York City time on the date specified in each Notice of Borrowing, if the applicable conditions precedent listed in Section 3.2 have been satisfied or waived in accordance with the terms thereof and, subject to Section 2.1.7(c), Administrative Agent shall, after receipt of all funds from the Lenders, promptly make available the Construction Loans requested in such Notice of Borrowing in Dollars and in immediately available funds, at Administrative Agent's Account, by wire transfer, the proceeds of any such Construction Loans into the Construction Account (other than with respect to Construction Loans made on the Closing Date in accordance with the Funds Flow Memorandum and as permitted by Section 3.1(d) of the Depositary Agreement).

2.1.8 *Conversion of LC Loans*. Co-Borrowers may convert LC Loans from one Type of LC Loan to another Type of LC Loan; provided that (a) any conversion of LIBOR LC Loans into Base Rate LC Loans shall be effective on, and only

on, the first Banking Day after expiration of an Interest Period for such LIBOR LC Loans, (b) LC Loans shall be converted only in amounts of $1,000,000 and increments of $100,000 in excess thereof and (c) no Base Rate LC Loan may be converted into a LIBOR LC Loan (i) when any Event of Default has occurred and is continuing or (ii) after the date that is one month prior to the LC Maturity Date. Co-Borrowers shall request such a conversion by delivering to Administrative Agent a Notice of Conversion of LC Loan Type, which contains or specifies, among other things:

i. the LC Loans, or portion thereof, which are to be converted;

ii. the Type of LC Loans into which such LC Loans, or portion thereof, are to be converted;

iii. if such LC Loans are to be converted into LIBOR LC Loans, the initial Interest Period selected by Co-Borrowers for such LC Loans (which Interest Period shall be selected in accordance with Section 2.1.5(b));

iv. the proposed date of the requested conversion (which shall be a Banking Day and otherwise in accordance with this Section 2.1.8); and

v. if Base Rate LC Loans are to be converted to LIBOR LC Loans, a certification by Co-Borrowers that no Event of Default has occurred and is continuing.

Co-Borrowers shall so deliver each Notice of Conversion of LC Loan Type so as to provide at least the applicable Minimum Notice Period. Any Notice of Conversion of LC Loan Type may be modified or revoked by Co-Borrowers through the Banking Day prior to the applicable Minimum Notice Period, and shall thereafter be irrevocable. Each Notice of Conversion of LC Loan Type shall be delivered in the manner provided in Section 11.1. Administrative Agent shall promptly notify each Lender of the contents of each Notice of Conversion of LC Loan Type.

2.1.9 *Prepayments.*

(a) Terms of All Prepayments.

i. Upon the prepayment of any Loan (whether such prepayment is an Optional Prepayment or a Mandatory Prepayment), Co-Borrowers shall pay to Administrative Agent for the account of each Lender which made such Loan (A) all accrued interest to the date of such prepayment on the principal amount of such Loan prepaid, (B) all accrued fees to the date of such prepayment relating to the principal amount of such Loan being prepaid, (C) the applicable Call Premium determined for the prepayment date with respect to such Loan prepaid, if any, and (D) if such prepayment is the prepayment of a LIBOR LC Loan on a day other than the last day of an Interest Period for such LIBOR LC Loan, all Liquidation Costs incurred by each such Lender as a result of such prepayment (pursuant to the terms of Section 2.9).

ii. (A) All Optional Prepayments shall be applied, on a *pro rata* basis, (x) to prepay outstanding Construction Loans, (y) to reduce the remaining payments of Term Loans

required under Section 2.1.2(d) in such order as the Co-Borrowers may specify or, if no such order is specified by the Co-Borrowers, in direct order of maturity, or (z) to prepay outstanding LC Loans, in each case, together with (1) accrued but unpaid interest and the applicable Call Premium payable in connection with such prepayment and (2) amounts payable pursuant to Section 2.9 in connection with such prepayment, (B) except as otherwise specifically set forth herein (including in clause (c)(i) below), any Mandatory Prepayment shall be applied, on a *pro rata* basis, to prepay outstanding Construction Loans or to reduce the remaining payments of Term Loans required under Section 2.1.2(d) in inverse order of maturity, together with (x) accrued but unpaid interest and applicable Call Premium payable in connection with such prepayment and (y) amounts payable pursuant to Section 2.9 in connection with such prepayment and (C) subject to the foregoing clauses (A) and (B), any prepayment of LC Loans shall be applied first to any LC Loans that are Base Rate LC Loans and then to any LC Loans that are LIBOR LC Loans.

iii. In the event of any Mandatory Prepayment made pursuant to Section 2.1.9(c)(i)(F) with the proceeds of any performance liquidated damages or with Loss Proceeds in accordance with Section 3.9 of the Depositary Agreement, each quarterly Target Debt Balance amount set forth on Exhibit I occurring on or after the date of such prepayment shall be reduced by the percentage that represents the ratio of (x) the amount prepaid pursuant to Section 2.1.9(c)(i)(F) or pursuant to the Depositary Agreement, as applicable divided by (y) the aggregate principal amount of the Construction Loans or Term Loans, as applicable, outstanding immediately prior to such prepayment. Within five Banking Days after any such prepayment, the Co-Borrowers shall deliver to Administrative Agent a proposed revised Exhibit I implementing the adjustment described by this Section, together with reasonably detailed supporting calculations therefor, which revised exhibit, once approved by the Required Lenders, shall be deemed to replace the existing Exhibit I for all purposes under this Agreement.

(b) Optional Prepayments. Co-Borrowers may, at their option but subject to Section 2.9, upon five Banking Days' written notice to Administrative Agent (which notice may state that it is conditioned upon the effectiveness of another credit facility or facilities or other agreement(s) providing the source of funds for such Optional Prepayment, in which case such notice may be revoked by Co-Borrowers by providing written notice to Administrative Agent at least one Banking Day prior to the proposed date of the Optional Prepayment if one or more of such conditions is not satisfied), prepay (A)(i) any Construction Loans in whole or from time to time in part in minimum amounts of $1,000,000 or an incremental multiple of $100,000 in excess thereof (provided that such minimum amounts shall not apply to a prepayment of all outstanding Construction Loans), (ii) any Term Loans in whole or from time to time in part in minimum amounts of $1,000,000 or an incremental multiple of $100,000 in excess thereof (provided that such minimum amounts shall not apply to a prepayment of all outstanding Term Loans) or (iii) any LC Loans in whole or from time to time in part in minimum amounts of $500,000 or an incremental multiple of $100,000 in excess thereof (provided that such minimum amounts shall not apply to a prepayment of all LC Loans) (each, an "Optional Prepayment") plus (B) solely to the extent such Optional Prepayment occurs on or prior to the Call Premium Outside Date, the Call Premium determined for the prepayment date with respect to such Loan amount. Each such notice shall specify such prepayment date, the aggregate principal amount of the Loans to be prepaid on such prepayment date and the interest to be paid on such prepayment date with respect to such principal amount being prepaid,

and, if applicable, shall be accompanied by a certificate of a Responsible Officer as to the estimated Call Premium due in connection with such prepayment (calculated as if the date of such notice were the date of the prepayment), setting forth the details of such computation.

(c) Mandatory Prepayments.

i. Co-Borrowers shall prepay the Term Loans, LC Loans and LC Reimbursement Obligations as follows (each, a "Mandatory Prepayment"):

(A) *[reserved]*;

(B) on each Quarterly Payment Date occurring on and after the last day of the first quarter after the Term Conversion Date, in an amount necessary to cause the outstanding principal amount of the Loans to equal the Target Debt Balance for such Quarterly Payment Date, which amount shall in no event exceed 100% of Excess Cash Flow remaining on deposit in the Revenue Account as of such Quarterly Payment Date (the "Target Debt Balance Excess Cash Flow Sweep");

(C) not later than five Banking Days following the receipt by any Borrower Party of the proceeds of any conveyance, sale, lease, transfer or other disposition of assets or property other than pursuant to Section 6.4(a) through (g) (each, a "Disposition") exceeding $2,000,000, in the aggregate, the Co-Borrowers shall prepay the Loans and LC Reimbursement Obligations then outstanding (together with accrued and unpaid interest, accrued and unpaid fees and the applicable Call Premium on the Term Loans) in an amount equal to 100% of the Net Cash Proceeds in excess of $2,000,000 applicable to such Disposition; provided that, if the Co-Borrowers notify the Administrative Agent in writing of their intention to reinvest such Net Cash Proceeds in assets necessary or useful for the business of the Project (excluding, for the avoidance of doubt, assets that would be reflected as "current assets" on the balance sheet, which will be pledged as Collateral hereunder) pursuant to a transaction not prohibited under this Agreement, then the Co-Borrowers shall not be required to make such prepayment to the extent that such Net Cash Proceeds are so reinvested within 12 months following receipt thereof; provided, further that, to the extent such Net Cash Proceeds have not been so reinvested prior to the expiration of the foregoing 12-month period, the Co-Borrowers shall prepay the Loans and LC Reimbursement Obligations upon the expiration of such period in an amount equal to such Net Cash Proceeds; provided that such prepayment shall include the applicable Call Premium;

(D) within five Banking Days of receipt thereof by any Borrower Party, the Co-Borrowers shall prepay the Loans and LC Reimbursement Obligations then outstanding (together with accrued and unpaid interest, accrued and unpaid fees and the applicable Call Premium on the Term Loans) in an amount equal to 100% of the cash proceeds from the incurrence or issuance received by any Borrower Party of any Debt other than Permitted Debt, net of all Taxes and reasonable and customary fees, underwriting discounts, commissions, costs and other expenses, in each case actually incurred by the applicable Co-Borrower in connection with such issuance or incurrence; provided that such prepayment shall include the applicable Call Premium;

(E) within five Banking Days of receipt by any Borrower Party of the proceeds of any Project Document Claim, the Co-Borrowers shall prepay the Loans and LC Reimbursement Obligations then outstanding (together with accrued and unpaid interest and accrued and unpaid fees on such Loans and LC Reimbursement Obligations) in an aggregate amount equal to 100% of the Net Cash Proceeds of such Project Document Claim;

(F) within five Banking Days of receipt by any Borrower Party of any (i) Termination Payment or series of related Termination Payments exceeding $2,000,000, or (ii) any Project Document Termination Payment, the Co-Borrowers shall prepay the Loans and LC Reimbursement Obligations then outstanding (together with accrued and unpaid interest and accrued and unpaid fees on such Loans and LC Reimbursement Obligations) in an aggregate amount equal to 100% of the Net Cash Proceeds of such Termination Payment in excess of $2,000,000 or Project Document Termination Payment; provided, that, with respect to any Termination Payment (but, for the avoidance of doubt, not any Project Document Termination Payment) exceeding $2,000,000 received by the Co-Borrowers pursuant to and following the termination of any Permitted Commodity Hedge Agreement, if the Co-Borrowers notify the Administrative Agent in writing of their intention to enter into a replacement Permitted Commodity Hedge Agreement pursuant to a transaction not prohibited under this Agreement, the Co-Borrowers shall not be required to make such prepayment to the extent that such Net Cash Proceeds are actually used within 90 days from receipt of such Termination Payment to replace such terminated Permitted Commodity Hedge Agreement with a replacement agreement substantially similar to or on terms more economically favorable to the applicable Co-Borrower than the Permitted Commodity Hedge Agreement it replaces and substantially similar to or on more favorable non-economic terms (taken as a whole) than the Permitted Commodity Hedge Agreement it replaces; provided, further, that if the applicable Co-Borrower has not entered into such a replacement contract with respect to such Permitted Commodity Hedge Agreement within such 90-day period, the Co-Borrowers shall prepay the Loans and LC Reimbursement Obligations then outstanding in an aggregate amount equal to 100% of the Net Cash Proceeds of such Termination Payment in excess of $2,000,000;

(G) as, when and to the extent contemplated by Sections 3.2(b)(iv)(C) and (D), 3.9(b)(ii), 3.9(b)(iii), 3.9(b)(v), 3.9(c)(ii) and 3.11(b)(i) of the Depositary Agreement or any other applicable provision of this Agreement or any other Credit Document; and

(H) on the Term Conversion Date, the Co-Borrowers shall prepay the Term Loans then outstanding (together with accrued and unpaid interest, and accrued and unpaid fees on such Term Loans) in an amount equal to the lesser of (x) the amount necessary to cause the Debt to Capitalization Ratio on such date to equal 0.75:1.00 and (y) the aggregate amount then remaining on deposit in the Construction Account.

Each such prepayment (other than the prepayment referred to in clause (H) above) shall be applied, on a pro rata basis to (A) the outstanding Term Loans on a pro rata basis and in inverse order of maturity, together with accrued and unpaid interest payable in connection with such prepayment, and together with any applicable Call Premium in connection with such prepayment, and (B) to the outstanding LC Loans and LC Reimbursement Obligations, on a pro rata basis, in each case, together with any accrued but unpaid interest payable in connection with such

reimbursement or prepayment and together with any Liquidation Costs in connection with such prepayment.

ii. Co-Borrowers shall give Administrative Agent written notice of prepayment under Section 2.1.9(c)(i) not less than five Banking Days prior to such prepayment date. Each such notice shall specify such prepayment date, the aggregate principal amount of the Loans to be prepaid on such prepayment date and the interest to be paid on such prepayment date with respect to such principal amount being prepaid, and, if applicable, shall be accompanied by a certificate of a Responsible Officer as to the estimated Call Premium due in connection with such prepayment (calculated as if the date of such notice were the date of the prepayment), setting forth the details of such computation. The Administrative Agent will promptly notify each Lender of the contents of the Co-Borrowers' prepayment notice and of such Lender's pro rata share of the prepayment. Each Lender may reject all or a portion of its pro rata share of any Mandatory Prepayment (such declined amounts, the "Declined Proceeds") of Term Loans required to be made pursuant to Section 2.1.9(c)(i)(C) or Section 2.1.9(c)(i)(D) by providing written notice (each, a "Rejection Notice") to the Administrative Agent and the Co-Borrowers no later than 5:00 p.m. (New York City time) three Banking Days after the date of such Lender's receipt of notice from the Administrative Agent regarding such prepayment. Each Rejection Notice from a given Lender shall specify the principal amount of the mandatory prepayment of Term Loans to be rejected by such Lender. If a Lender fails to deliver a Rejection Notice to the Administrative Agent within the time frame specified above or such Rejection Notice fails to specify the principal amount of the Term Loans to be rejected, any such failure will be deemed an acceptance of the total amount of such mandatory prepayment of Term Loans. Any Declined Proceeds shall be first offered to the applicable Lenders that have not submitted a Rejection Notice, and any remaining Declined Proceeds shall be offered to the lenders under the Second Lien Credit Documents, to be applied in accordance with the terms of the Second Lien Credit Documents.

2.1.10 *Register*. Administrative Agent, acting solely for this purpose as a non-fiduciary agent of Co-Borrowers, shall maintain, at its address referred to in Section 11.1, a register for the recordation of the names and addresses of the Lenders (including any Person that becomes a Lender in accordance with Section 9.13 of this Agreement), the Commitments and Loans (and stated interest) of each Lender from time to time and the name of each Lender which holds a Note (the "Register"). The Register shall be available for inspection by Co-Borrowers or any Lender at any reasonable time and from time to time upon reasonable prior written notice. Administrative Agent shall record in the Register (a) the Commitments and the Loans from time to time of each Lender, (b) the interest rates applicable to all Loans and the effective dates of all changes thereto, (c) the Interest Period for each LIBOR LC Loan, (d) the date and amount of any principal or interest due and payable or to become due and payable from Co-Borrowers to each Lender hereunder, (e) each repayment or prepayment in respect of the principal amount of the Loans of each Lender, (f) the amount of any sum received by Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof, and (g) such other information as Administrative Agent may determine is necessary for the administering of the Loans and this Agreement. Any such recording shall be conclusive and binding in the absence of manifest error; provided that neither

the failure to make any such recordation, nor any error in such recordation, shall affect Co-Borrowers' Obligations in respect of any applicable Loans or otherwise; and provided, further, that in the event of any inconsistency between the Register and any Lender's records, the Register shall govern absent manifest error. This provision is intended to constitute a "book entry system" within the meaning of Treasury Regulations Section 5f.103-1(c)(1)(ii) and Proposed Treasury Regulations Section 1.163-5(b) (or, in each case, any amended or successor version) and shall be interpreted consistently with such intent.

2.1.11 *Re-Borrowing*. No Co-Borrower may re-borrow the principal amount of any Construction Loan or Term Loan repaid or prepaid. To the extent that any LC Commitment was reduced as a result of any issuance of LC Loan or any related Drawing Payment, such LC Commitment shall, so long as no Default or Event of Default shall have occurred and be continuing, be reinstated as a result of any repayment or prepayment of applicable LC Loans or Drawing Payment (other than a repayment of a Drawing Payment with the proceeds of LC Loans and any such repayment on the LC Maturity Date).

2.2 LC FACILITY.

2.2.1 *LC Commitment and Issuance.*

(a) LC Commitment. Notwithstanding anything that may be construed to the contrary in this Agreement, the aggregate amount of all LC Commitments of all LC Participants shall not exceed the lesser of (i) $154,000,000 (or such greater amount (in no event exceeding $179,000,000) to the extent the total amount of LC Commitments is increased pursuant to, and in accordance with, Section 2.2.2 upon the terms and subject to the conditions set forth therein) and (ii) if such total amount is reduced by Co-Borrowers pursuant to Section 2.5.2(b) or as otherwise expressly provided for in this Agreement, such lower amount (such amount, as it may be increased or reduced from time to time in accordance with this Agreement, the "Total LC Commitment").

(b) LC Issuer Commitments. Notwithstanding anything that may be construed to the contrary in this Agreement, the aggregate amount of all LC Issuer Commitments of all LC Issuers shall not exceed the lesser of (i) $154,000,000 (or such greater amount (in no event exceeding $179,000,000) to the extent the total amount of LC Commitments is increased pursuant to, and in accordance with, Section 2.2.2 upon the terms and subject to the conditions set forth therein) and (ii) if such total amount is reduced by Co-Borrowers pursuant to Section 2.5.2(b) or Section 2.5.2(c) or as otherwise expressly provided for in this Agreement, such lower amount (such amount, as it may be increased or reduced from time to time in accordance with this Agreement, the "Total LC Issuer Commitment").

(c) Issuance of the Letters of Credit. Subject to the terms and conditions set forth herein, Co-Borrowers may request the issuance of one or more Letters of Credit for their own account, in each case in form and substance reasonably acceptable to the applicable LC Issuer and Co-Borrowers at any time and from time to time during the LC Availability Period. Letters of Credit may be issued solely in support of any Co-Borrower's collateral posting obligations under any

Permitted Commodity Hedge Agreements; provided, however, that if any Incremental LC Commitments are obtained then Letters of Credit in an amount equal to such Incremental LC Commitments shall be issued solely in support of PowerCo's collateral posting obligations in connection with a bid in the PJM Capacity Auction (and for no other purpose). It is understood that as of the Closing Date, the Stated Amount of each Letter of Credit described on Exhibit M shall be equal to the respective amount set forth on such Exhibit.

2.2.2 *Incremental LC Commitments.*

(a) Co-Borrowers may at any time and from time to time during the LC Availability Period by written notice to the Administrative Agent (whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders and LC Issuers) (an "Incremental LC Commitment Request") request the establishment of one or more increases in the amount of the LC Commitments (each, an "Incremental LC Commitment") in an aggregate amount not exceeding $25,000,000.

(b) Each Incremental LC Commitment Request from the Co-Borrowers shall specify (i) the requested Incremental LC Commitment amount, (ii) the date on which the Co-Borrowers propose that the applicable Incremental LC Commitment shall be effective (an "Incremental LC Commitment Date"), which shall be a date not less than five Banking Days after the date on which the Incremental LC Commitment Request is delivered to the Administrative Agent and (iii) the identity of the Acceptable Credit Provider providing such Incremental LC Commitment (the "Incremental LC Issuer"). Each Incremental LC Commitment Request delivered by Co-Borrowers pursuant to this clause (b) shall be irrevocable.

(c) Incremental LC Commitments may be provided by any existing Lender or LC Issuer (but no existing Lender or LC Issuer will have any obligation to make or provide any Incremental LC Commitment, nor will the Co-Borrowers have any obligation to approach any existing Lender or LC Issuer to make or provide any Incremental LC Commitment) or by any other Acceptable Credit Provider that agrees to be bound as a Lender and an LC Issuer pursuant to a duly executed and delivered Increase and Joinder Agreement.

(d) The effectiveness of any Incremental LC Commitment shall be subject to the satisfaction on the applicable Incremental LC Commitment Date of each of the following conditions:

i. no Event of Default or Inchoate Default shall have occurred and be continuing or would exist after giving effect to such Incremental LC Commitment;

ii. the representations and warranties made by a Co-Borrower in any of the Credit Documents shall be true and correct in all material respects (except for any representations and warranties qualified by materiality or Material Adverse Effect in which case such representations and warranties shall be true and correct in all respects) as if made on such Incremental LC Commitment Date, unless such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct as of such earlier date);

iii. if a Letter of Credit is being issued, extended or increased on such Incremental LC Commitment Date, the applicable LC Issuer and Administrative Agent shall have received a Notice of LC Activity as and when required by Section 2.2.4(a);

iv. such Incremental LC Commitment shall be in an aggregate amount that is not less than $5,000,000 and shall be in increments of $1,000,000 in excess thereof (provided that such Incremental LC Commitment may be less than $5,000,000 if such amount represents all remaining availability under the limit set forth in Section 2.2.2(a));

v. such Incremental LC Commitment shall be effected pursuant to an increase and joinder agreement substantially in the form of Exhibit C-4 (an "Increase and Joinder Agreement"), which Increase and Joinder Agreement may effect such amendments to this Agreement and the other Credit Documents as may be necessary or as may be appropriate, in the reasonable opinion of the Administrative Agent (as directed in writing by the Required Lenders), to effect the provisions of this Section 2.2.2, executed and delivered by the Co-Borrowers, each Incremental LC Issuer providing such Incremental LC Commitment, the Administrative Agent, the LC Issuers and the LC Participants;

vi. the Co-Borrowers shall have delivered or caused to be delivered such legal opinions, authorization documents and other documents and instruments reasonably requested in connection with such Incremental LC Commitment by the Administrative Agent, the Incremental LC Issuer providing such Incremental LC Commitment or any Lender or LC Participant; and

vii. such other conditions as the Co-Borrowers, each Incremental LC Issuer providing such Incremental LC Commitment, the Administrative Agent, the LC Issuers and the LC Participants shall agree.

(e) On each Incremental LC Commitment Date, subject to the satisfaction of each of the foregoing terms and conditions, (i) the applicable Incremental LC Commitment shall be deemed for all purposes an LC Commitment, (ii) the Incremental LC Issuer providing such Incremental LC Commitment shall become an LC Issuer with respect to its Incremental LC Commitment and all matters relating thereto and all other matters under this Agreement, (iii) such Incremental LC Issuer shall have the rights and the obligations of an LC Issuer under this Agreement with respect to Letters of Credit to be issued by it thereafter and (iv) the Administrative Agent shall notify the Lenders and LC Issuers (including such Incremental LC Issuer) in writing of the effectiveness of such Incremental LC Commitment.

(f) Except as expressly contemplated in this Section 2.2.2, the terms and provisions of the Incremental LC Commitments shall be identical to the existing LC Commitments.

2.2.3 *[Reserved.]*

2.2.4 *Notice of Issuance of Letters of Credit, Amendment, Renewal, Extension; Certain Conditions.*

(a) To request the issuance of a Letter of Credit (or the amendment, renewal (other than an automatic renewal in accordance with clause (c) below), reinstatement or extension of an outstanding Letter of Credit), Co-Borrowers shall hand deliver or transmit by electronic communication to the applicable LC Issuer with an electronic copy thereof to the Administrative Agent (three Banking Days in advance of the requested date of issuance, amendment, renewal, reinstatement or extension or, with respect to any issuance, amendment, renewal or extension to take place on the Closing Date, one Banking Day in advance of the Closing Date) a Notice of LC Activity requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal, reinstatement or extension, the date on which such Letter of Credit is to expire, the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to issue, amend, renew, reinstate or extend such Letter of Credit. If requested by such LC Issuer, Co-Borrowers also shall submit a Letter of Credit application on such LC Issuer's standard form in connection with any request for a Letter of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by any Co-Borrower to, or entered into by Co-Borrowers with, any LC Issuer relating to any Letter of Credit issued by such LC Issuer, the terms and conditions of this Agreement shall control.

(b) A Letter of Credit shall be issued, amended, renewed or extended only if (and, upon issuance, amendment, renewal or extension of each Letter of Credit, Co-Borrowers shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension and/or any cancellations or the expiration of, or permanent reduction of the Stated Amount of, any Letter of Credit previously issued hereunder, the Total LC Exposure shall not exceed the Total LC Commitment or the Total LC Issuer Commitment.

(c) Each Letter of Credit shall expire on or prior to the close of business on the expiration date stated therein, which shall be a date the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the LC Maturity Date; provided that each Letter of Credit shall provide for automatic renewal thereof through a date no later than the LC Maturity Date unless the applicable LC Issuer has notified the beneficiary no later than the 30th day prior to the expiration thereof that such Letter of Credit will not be extended; provided, however, that a LC Issuer may only provide such a notice of non-renewal if an Event of Default has occurred and is continuing or as required by the applicable LC Issuer's internal policies or any Legal Requirement applicable to such LC Issuer.

2.2.5 *Reimbursement of Drawing Payments; LC Loans; LC Disbursements and Withdrawals from LC Account.* If any LC Issuer shall make a Drawing Payment under a Letter of Credit, Co-Borrowers shall reimburse such Drawing Payment by paying to such LC Issuer an amount equal to such Drawing Payment in Dollars, not later than 2:00 p.m., New York City time, on the Banking Day immediately following the date such LC Issuer makes such Drawing Payment; provided that, so long as no Event of Default pursuant to Section 7.1.1 or Section 7.1.2 (each a "Specified Event of Default") has occurred and is continuing, (i) any Drawing Payment in respect of a Letter of Credit that is not reimbursed on the Banking Day immediately following the

date of such LC Issuer making such Drawing Payment shall be deemed to be an irrevocable request by Co-Borrowers for a Borrowing in an aggregate amount equal to the amount of Co-Borrowers' LC Reimbursement Obligation with respect to such Letter of Credit (such Borrowing, an "LC Loan"), and (ii) such LC Issuer shall make an LC Loan in the amount of the such Drawing Payment and such LC Reimbursement Obligation shall be discharged and replaced in its entirety by such resulting LC Loan. Such requested amount shall be reduced, if necessary, such that the Total LC Exposure does not exceed the amount of the Total LC Commitments, with the amount of such Drawing Payment that is not covered by LC Loans becoming due and payable on demand. With respect to any LC Reimbursement Obligation that is not financed with a LC Loan because a Specified Event of Default has occurred and is continuing, such LC Reimbursement Obligation shall be due and payable on demand (together with interest) to the applicable LC Issuer and shall bear interest as provided in Section 2.6.3. The LC Loans made pursuant to this Section 2.2.5(a) shall initially be Base Rate LC Loans. Co-Borrowers shall pay to Administrative Agent, for the account of each applicable Lender, the unpaid principal amount of such Lender's LC Loans (if any) (i) from time to time as provided in the Depositary Agreement, and (ii) in any event no later than the LC Maturity Date. If Co-Borrowers shall fail to reimburse such Drawing Payment under a Letter of Credit (whether as a result of a Specified Event of Default or otherwise) in an amount sufficient to repay the applicable LC Issuer in full for the amount of Co-Borrowers' LC Reimbursement Obligation related to such Letter of Credit or to the extent Co-Borrowers' LC Reimbursement Obligation are discharged and replaced by a LC Loan resulting from a Drawing Payment, in each case, by 3:00 p.m., New York City time on the date of such Drawing Payment, then such LC Issuer shall notify the Administrative Agent and each LC Participant no later than 5:00 p.m., New York City time on such date (or the next Banking Day if such date is not a Banking Day) (unless such LC Participant is also the applicable LC Issuer) who has a participation interest in such Letter of Credit of the payment then due from Co-Borrowers or the amount of the LC Loan resulting from a Drawing Payment and, in the case of an LC Participant, such LC Participant's Proportionate Share thereof. Not later than 2:00 pm following the date of receipt of such notice, each LC Participant (unless such LC Participant is also the applicable LC Issuer) who has an LC Commitment that relates to such Letter of Credit shall pay to Administrative Agent in Dollars its Proportionate Share of the payment then due from Co-Borrowers or the LC Loan resulting from a Drawing Payment, in the same manner as provided above, and Administrative Agent shall promptly, upon receipt of all required amounts, pay to such LC Issuer in Dollars, the amounts so received by it from the LC Participants. Promptly following receipt by Administrative Agent of any payment from Co-Borrowers pursuant to this Section 2.2.5(a), Administrative Agent shall distribute such payment to the applicable LC Issuer or, to the extent such LC Participants have made payments pursuant to this Section 2.2.5(a) to reimburse such LC Issuer, then to such LC Participants and such LC Issuer as their interests may appear.

2.2.6 *Reimbursement Obligations Absolute*. The obligation of Co-Borrowers to reimburse any Drawing Payment as provided in Section 2.2.5(a) shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (a) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (b) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any

statement therein being untrue or inaccurate in any respect, (c) payment by the applicable LC Issuer under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, (d) any amendment or waiver of or any consent to departure from all or any terms of any of the Operative Documents, (e) the existence of any claim, setoff, defense or other right which Co-Borrowers may have at any time against the beneficiary of such Letter of Credit (or any Persons for whom such beneficiary may be acting), the applicable LC Issuer, Administrative Agent, any Lender or any other Person, whether in connection with this Agreement, the transactions contemplated hereby, by any other Operative Document or by any unrelated transaction, (f) any breach of contract or dispute among or between a Co-Borrower, an LC Issuer, Administrative Agent, any Lender or any other Person, (g) any non-application or misapplication by the beneficiary of a Letter of Credit of the proceeds of any Drawing Payment or any other act or omission of such beneficiary in connection with such Letter of Credit, (h) any failure to preserve or protect any Collateral, any failure to perfect or preserve the perfection of any Lien thereon, or the release of any of the Collateral securing the performance or observance of the terms of this Agreement or any of the other Credit Documents, (i) the failure of any Lender to make a LC Loan as contemplated by Section 2.2.5(a), (j) an adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of a Co-Borrower, (k) a Default or Event of Default under this Agreement or (l) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.2.6, constitute a legal or equitable discharge of, or provide a right of setoff against, a Co-Borrower's obligations hereunder; provided that, in each case, payment by an LC Issuer shall not have constituted gross negligence or willful misconduct by such LC Issuer as determined by a court of competent jurisdiction in a final and non-appealable judgment. Neither Administrative Agent, the Lenders nor the applicable LC Issuer, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of an LC Issuer; provided that nothing contained herein shall be construed to excuse an LC Issuer from liability to Co-Borrowers to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by Co-Borrowers to the extent permitted by applicable law) suffered by Co-Borrowers that are determined by a court having jurisdiction to have been caused by (i) such LC Issuer's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof or (ii) such LC Issuer's refusal to issue, renew or reinstate a Letter of Credit in accordance with the terms of this Agreement. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of an LC Issuer as determined by a court of competent jurisdiction in a final and non-appealable judgment, such LC Issuer shall be deemed to have exercised care in each

such determination and each refusal to issue a Letter of Credit. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, an LC Issuer may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

2.2.7 *Disbursement Procedures*. Each LC Issuer shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. Each LC Issuer shall promptly notify Co-Borrowers by telephone (confirmed by electronic transmission with a copy of such electronic transmission to the Administrative Agent) of such demand for payment and whether such LC Issuer has made or will make a Drawing Payment thereunder; provided that any failure to give or delay in giving such notice shall not relieve any Co-Borrower of its obligation to reimburse the applicable LC Issuer and the Lenders with respect to any such Drawing Payment.

2.2.8 *Interim Interest*. If an LC Issuer shall make any Drawing Payment, then, unless Co-Borrowers shall reimburse such Drawing Payment in full on the date such Drawing Payment is made, the unpaid amount thereof shall bear interest, for each day from and including the date such Drawing Payment is made to but excluding the date that Co-Borrowers reimburses such Drawing Payment (including in the case of a Drawing Payment under any Letter of Credit by discharging or financing such Drawing Payment by a LC Loan), at the rate per annum then applicable to Base Rate LC Loans; provided that if such Drawing Payment is not reimbursed by Co-Borrowers when due or discharged pursuant to Section 2.2.5, it shall bear interest as provided in Section 2.6.3. Interest accrued pursuant to this Section 2.2.8 shall be for the account of the applicable LC Issuer and/or applicable LC Participant, as the case may be.

2.2.9 *LC Loan Interest*. Co-Borrowers shall pay interest on the unpaid principal amount of each LC Loan from the date of the applicable Drawing Payment until the maturity or repayment thereof at the following rates per annum:

(a) with respect to the principal portion of such LC Loan which is, and during such periods as such LC Loan is, a Base Rate LC Loan, at a rate per annum equal to the Base Rate (such rate to change from time to time as the Base Rate shall change) *plus* the applicable Rate Margin in respect of Base Rate LC Loans; and

(b) with respect to the principal portion of such LC Loan which is, and during such periods as such LC Loan is, a LIBOR LC Loan, at a rate per annum during each Interest Period for such LIBOR LC Loan equal to the Adjusted LIBO Rate *plus* the applicable Rate Margin in respect of LIBOR LC Loans.

2.2.10 *[Reserved]*.

2.2.11 *Cash Collateralization*. If any Event of Default shall occur and be continuing, on the third Banking Day following the date on which Co-Borrowers receives notice from Administrative Agent in accordance with Section 7.2 demanding the deposit of Cash Collateral pursuant to this paragraph, Co-Borrowers shall deposit in a cash collateral account to be established as a sub-account of the Prepayment Account (as defined in the Depositary Agreement) with the Depositary Agent, in the name of PowerCo and for the benefit of the LC Issuers, an amount in Dollars in cash equal to 102.5% of the Total LC Exposure of the LC Issuers as of such date plus any accrued and unpaid interest thereon; provided that, upon the occurrence and continuance of any Event of Default under Section 7.1.2 applicable to any Co-Borrower, the obligation to deposit such Cash Collateral shall become effective immediately, and such deposit shall become immediately due and payable in Dollars, without demand or other notice of any kind. Each such deposit pursuant to this paragraph shall be held by Collateral Agent for the benefit of the LC Issuers as collateral for the payment and performance of the obligations of Co-Borrowers under this Agreement. Collateral Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of (i) for so long as an Event of Default shall be continuing, Administrative Agent and (ii) at any other time, Co-Borrowers, in each case, in Permitted Investments and at the risk and expense of Co-Borrowers, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by Collateral Agent to reimburse each LC Issuer for Drawing Payments for which such LC Issuer has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of Co-Borrowers' obligation to repay any LC Loans at such time or, if the maturity of the Construction Loans or Term Loans has been accelerated (but subject to the consent of Administrative Agent in accordance with Section 7.2), be applied to satisfy other obligations of Co-Borrowers under this Agreement. If any Co-Borrower is required to provide an amount of Cash Collateral hereunder as a result of the occurrence and continuance of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to such Co-Borrower within three Banking Days after all Events of Default have been cured or waived.

2.2.12 *Reporting*. Unless otherwise requested by Administrative Agent, each LC Issuer shall (a) provide to Administrative Agent copies of any notice received from any Co-Borrower pursuant to Section 2.2.4 no later than the next Banking Day after receipt thereof and (b) report in writing to Administrative Agent (who shall in turn promptly provide notice of same to all Lenders) (i) on or prior to each Banking Day on which such LC Issuer expects to issue, amend, renew or extend any Letter of Credit, the date of such issuance, amendment, renewal or extension, and the aggregate face amount of the Letters of Credit to be issued, amended, renewed or extended by it and outstanding after giving effect to such issuance, amendment, renewal or extension occurred (and whether the amount thereof changed), and such LC Issuer shall be permitted to issue, amend, renew or extend such Letter of Credit if Administrative Agent (at the direction of the Required Lenders) shall not have advised such LC Issuer that

such issuance, amendment renewal or extension would not be in conformity with the requirements of this Agreement, (ii) on each Banking Day on which such LC Issuer makes any Drawing Payment, the date of such Drawing Payment and the amount of such Drawing Payment and (iii) on any other Banking Day, such other information as Administrative Agent shall reasonably request, including but not limited to prompt verification of such information as may be requested by Administrative Agent; provided that any failure by any LC Issuer to comply with the reporting requirements of this Section 2.2.12 shall not affect any rights of such LC Issuer under the Credit Documents so long as such failure does not increase any cost or liability of any Co-Borrower under the Credit Documents.

2.2.13 *Replacement of an LC Issuer*. An LC Issuer may be replaced at any time with an Acceptable Credit Provider only (i) by written agreement among Co-Borrowers, Administrative Agent, the replaced LC Issuer and the successor LC Issuer or (ii) by written agreement among Co-Borrowers, Administrative Agent, and the successor LC Issuer following a default by the replaced LC Issuer in respect of its obligations under this Agreement or failure of such LC Issuer to satisfy the definition of an Acceptable Credit Provider or, if such LC Issuer is providing a Letter of Credit pursuant to the requirements of any Permit or Major Project Document, failure of such LC Issuer to satisfy the requirements of the applicable beneficiary of such Letter of Credit. Administrative Agent shall notify the Lenders and LC Participants in writing of any such replacement of an LC Issuer. At the time any such replacement shall become effective, Co-Borrowers shall pay all unpaid fees and LC Reimbursement Obligations, if any, accrued for the account of the replaced LC Issuer pursuant to Section 2.4. From and after the effective date of any such replacement, (a) the successor LC Issuer shall have all the rights and obligations of the replaced LC Issuer under this Agreement with respect to Letters of Credit to be issued thereafter and (b) references herein to the term "LC Issuer" shall be deemed to refer to such successor or to any previous applicable LC Issuer, or to such successor and all previous applicable LC Issuers, as the context shall require. After the replacement of any LC Issuer hereunder, the replaced LC Issuer shall remain a party hereto and shall continue to have all the rights and obligations of such LC Issuer under this Agreement with respect to any Letter of Credit issued by it prior to such replacement (and any LC Reimbursement Obligation or LC Loan with respect thereto) but shall not be required to issue any additional Letter of Credit.

2.2.14 *LC Participations*.

(a) *LC Participations*. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of any LC Issuer or any Lender, each LC Issuer hereby grants to each applicable LC Participant, and each applicable LC Participant hereby acquires from such LC Issuer, a participation in such Letter of Credit equal to such LC Participant's Proportionate Share of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each LC Participant hereby absolutely and unconditionally agrees to pay to the applicable LC Issuer in Dollars, such LC Participant's Proportionate Share of each Drawing Payment relating to the Letter

of Credit to which its LC Commitment is in respect of made by such LC Issuer not reimbursed by Co-Borrowers on the date due as provided in Section 2.2.5(a), or of any reimbursement payment required to be refunded to Co-Borrowers for any reason. Each LC Participant acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of a Letter of Credit pursuant to the terms of this Agreement is absolute and unconditional and shall not be affected by any circumstance whatsoever (other than circumstances arising from the gross negligence or willful misconduct of the applicable LC Issuer as determined by a court of competent jurisdiction in a final and non-appealable judgment), including any amendment, renewal or extension of a Letter of Credit or the occurrence and continuation of a Default or reduction or termination of the applicable LC Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. If any LC Participant defaults or fails to fulfill any of its obligations herein, no Default or Event of Default shall arise solely as a result of such default or failure and the default or failure of such LC Participant shall give rise to a claim for damages as between the applicable LC Issuer and the applicable LC Participant.

(b) Notwithstanding anything to the contrary herein, (i) the existence of any LC Participant shall not alter any LC Issuer's obligations hereunder, (ii) each LC Issuer shall remain responsible to Co-Borrowers for the performance of its obligations as if there were no LC Participants and (iii) a default or failure of any LC Participant to fulfill any of its obligations herein shall not be an excuse for any LC Issuer not to issue, amend, renew, reinstate or extend any Letter of Credit pursuant to Section 2.2.4 and subject to Section 3.4 as if there were no LC Participants nor shall such default or failure be an excuse for any LC Issuer not to make a LC Loan for the full amount of a Drawing Payment under any Letter of Credit.

2.3 FEES.

2.3.1 *Agents' Fees*. Co-Borrowers shall pay to each applicable Agent for the account of such Agent, the fees payable to such Agent set forth in the applicable Agency Fee Letter.

2.3.2 *Commitment Fees.*

(a) On each Quarterly Payment Date, Co-Borrowers shall pay to Administrative Agent, for the benefit of the Construction Lenders (other than any Defaulting Lender), accruing during the Payment Period ending on the day prior to such Quarterly Payment Date, a commitment fee (a "Construction Loan Commitment Fee") for such Payment Period equal to the product of (1) the sum of the daily average Unutilized Construction Loan Commitment of each Construction Lender (other than any Defaulting Lender) for such Payment Period *multiplied by* (2) a fraction, the numerator of which is the actual number of days in that Payment Period and the denominator of which is 360 *multiplied by* (3) 1.50%.

(b) On each Quarterly Payment Date, Co-Borrowers shall pay to Administrative Agent, for the benefit of the LC Participants (other than any Defaulting Lender), a commitment fee (a "LC Commitment Fee") for the Payment Period ending on the day prior to such Quarterly Payment Date equal to the product of (1) the sum of the daily average Unutilized LC Commitment of each LC Participant (other than any Defaulting Lender) for such Payment Period *multiplied by*

(2) a fraction, the numerator of which is the actual number of days in that Payment Period and the denominator of which is 360 *multiplied by* (3) 1.50%.

(c) Commitment Fees in respect of each of the LC Facility or the Construction Facility, as applicable, shall cease to accrue for a Lender on the date on which the last of the Commitments of such Lender under such facility shall terminate or be terminated.

2.4 LC FEES. On each Quarterly Payment Date, Co-Borrowers shall pay to Administrative Agent, (a) for the benefit of the LC Participants (other than any Defaulting Lender), accruing during the Payment Period ending on the day prior to such Quarterly Payment Date, a letter of credit participation fee (the "LC Participation Fee") for such Payment Period equal to the product of (1) the sum of the daily average Stated Amount of the Letters of Credit for such Payment Period *multiplied* by (2) a fraction, the numerator of which is the actual number of days in that Payment Period and the denominator of which is 360 *multiplied* by (3) 3.50%, and (b) for the benefit of each LC Issuer, accruing during the Payment Period ending on the day prior to such Quarterly Payment Date, a fronting fee the ("LC Fronting Fee") for such Payment Period equal to a product of (1) the sum of the daily average Stated Amount of the Letters of Credit issued by such LC Issuer for such Payment Period *multiplied* by (2) a fraction, the numerator of which is the actual number of days in that Payment Period and the denominator of which is 360 *multiplied* by (3) 0.20%.

2.5 TOTAL COMMITMENTS.

2.5.1 *Loan Commitment Amounts.*

(a) Total Construction Loan Commitment. Notwithstanding anything that may be construed to the contrary in this Agreement, the aggregate principal amount of all Construction Loans made by the Lenders shall not exceed the lesser of (i) $445,000,000 and (ii) if such total amount is reduced by Co-Borrowers pursuant to Section 2.5.2, such lower amount (such amount, as it may be reduced from time to time, the "Total Construction Loan Commitment").

(b) Total Term Loan Commitment. Notwithstanding anything that may be construed to the contrary in this Agreement, the aggregate principal amount of all Term Loans outstanding at any time shall not exceed the aggregate amount of Construction Loans outstanding as of the Term Conversion Date (including, for the avoidance of doubt, the amount of any Construction Loans made on such date) (such maximum amount, the "Total Term Loan Commitment").

(c) Letter of Credit Commitments. The Stated Amount of existing Letters of Credit shall not exceed at any time the Total LC Commitment or the Total LC Issuer Commitment.

2.5.2 *Reductions and Cancellations.*

(a) Co-Borrowers may at any time and from time to time by providing written notice to the Administrative Agent not less than the Minimum Notice Period permanently reduce (without premium or penalty) the Construction Loan Commitment, by an amount of $1,000,000 or an integral multiple of $500,000 in excess thereof (or, if less, the remaining Construction Loan

Commitment) or cancel (without premium or penalty) in its entirety the Total Construction Loan Commitment, subject to the provisions of Section 2.5.2(c). Co-Borrowers may not reduce or cancel the Total Construction Loan Commitment if, after giving effect to such reduction or cancellation, (i) the aggregate principal amount of all Construction Loans then outstanding would exceed the Total Construction Loan Commitment, (ii) the Available Construction Funds would not equal or exceed the aggregate unpaid amount required to cause the Completion Date to occur by the Date Certain and to pay (x) the Remaining Costs and (y) any anticipated Liquidation Costs and Call Premium arising from any prepayment related to such reduction or cancellation (as verified by the Independent Engineer), or (iii) such reduction or cancellation (including any corresponding required reduction or cancellation of the Second Lien Loan Commitments pursuant to Section 2.5.2(c)) could reasonably be expected to cause a Default, an Event of Default or result in the Co-Borrowers being unable to make the certifications set forth in Section 3.2.6. Once reduced or canceled, the Total Construction Loan Commitment may not be increased or reinstated.

(b) Co-Borrowers may at any time and from time to time permanently reduce, or cancel in its entirety the Total LC Commitment or terminate or cancel any Letter of Credit without premium or penalty; provided that (A) each such reduction or cancellation of the Total LC Commitment shall be in an amount that is an integral multiple of $500,000 and not less than $1,000,000 (or, if less, the remaining amount of the Total LC Commitment), (B) Co-Borrowers shall not voluntarily terminate or reduce the Total LC Commitment if, after giving effect to any concurrent prepayment of LC Loans or termination and cancellation of any Letter of Credit in accordance with this Section 2.5.2, the Total LC Exposure would exceed the Total LC Commitment, (C) Co-Borrowers shall not voluntarily terminate or reduce the Total LC Commitment if such reduction or cancellation would cause Co-Borrowers to fail to satisfy their credit support obligations under the Permitted Commodity Hedge Agreements, and (D) Co-Borrowers shall not voluntarily terminate or reduce the Total LC Commitment if, after giving effect thereto, a Default or Event of Default would occur. In the event Co-Borrowers permanently reduce or cancel all or a part of the Total LC Commitment, there shall be a permanent reduction or cancellation of the Total LC Issuer Commitment on a dollar-for-dollar basis. Without limiting the foregoing, Co-Borrowers shall not reduce or cancel all or any portion of the Total LC Issuer Commitment without a corresponding reduction or cancellation of the Total LC Commitment.

(c) Co-Borrowers shall notify Administrative Agent in writing of any election to terminate or reduce Commitments at least three Banking Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any such notice, Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by Co-Borrowers pursuant to this clause (c) shall be irrevocable; provided that a notice of termination of Commitments delivered by Co-Borrowers may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by Co-Borrowers (by written notice to Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Each reduction of Commitments pursuant to this Section 2.5.2 shall be made ratably among the Commitments of the Lenders participating in the applicable Facility in accordance with their respective Proportionate Shares. In addition, the Second Lien Loan Commitments shall be ratably reduced upon each reduction of the Construction Loan Commitment pursuant to this Section 2.5.2.

2.6 OTHER PAYMENT TERMS.

2.6.1 *Place and Manner*. Co-Borrowers shall make all payments due to any Lender, any LC Issuer or Administrative Agent hereunder free and clear and without setoff or counterclaim of any kind to Administrative Agent, for the account of such Lender, such LC Issuer or Administrative Agent (as the case may be), to the account of the Administrative Agent as identified to the Co-Borrowers from time to time (except for payments required to be made directly to an LC Issuer in accordance with Section 2.2.5(a) hereof which shall be paid to the account of such LC Issuer by the Co-Borrowers), in Dollars and in immediately available funds not later than 12:00 noon on the date on which such payment is due (or such other time as provided in this Agreement). Any payment made after such time on any day shall be deemed received on the Banking Day after such payment is received. Administrative Agent shall, upon receipt of all required funds promptly disburse to each Lender or each LC Issuer (as the case may be) each such payment received by Administrative Agent for such Lender or such LC Issuer (as the case may be).

2.6.2 *Date*. Whenever any payment due hereunder shall fall due on a day other than a Banking Day, such payment shall be made on the next succeeding Banking Day, and such extension of time shall be included in the computation of interest or fees, as the case may be, without duplication of any interest or fees so paid in the next subsequent calculation of interest or fees payable.

2.6.3 *Default Interest*. Notwithstanding anything to the contrary herein, upon the occurrence and during the continuation of any Event of Default, the outstanding principal amount of all overdue Loans and LC Reimbursement Obligations (without duplication) and, to the extent permitted by applicable Legal Requirements, any Call Premium and accrued and overdue but unpaid interest payments thereon and any accrued and overdue but unpaid fees, and other overdue amounts hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under applicable Bankruptcy Laws) payable upon demand, and the LC Participation Fees shall be increased, at a rate that is (a) 2% per annum in excess of the interest rate or LC Participation Fees, as applicable, then otherwise payable under this Agreement with respect to the applicable Loans and Letters of Credit, or (b) in the case of any such fees and other amounts, at a rate that is 2% per annum in excess of the interest rate then otherwise payable under this Agreement for Base Rate LC Loans (the "Default Rate"); provided that, in the case of LIBOR LC Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective, such LIBOR LC Loans shall thereupon become Base Rate LC Loans and shall thereafter bear interest payable upon demand at a rate that is 2% per annum in excess of the interest rate then otherwise payable under this Agreement for Base Rate LC Loans (it being understood that from and after the date on which all continuing Events of Default have been cured or waived pursuant to Section 9.9, the Default Rate shall no longer apply).

2.6.4 *Net of Taxes, Etc.*

(a) Taxes. Any and all payments to or for the benefit of a Credit Party by or on behalf of any Co-Borrower hereunder or under any other Credit Document shall be made free and clear of and without deduction or withholding, setoff or counterclaim of any kind whatsoever of any present or future taxes, levies, imposts, deductions, charges or withholdings, and all interest, penalties, or other liabilities with respect thereto ((A) excluding net income, franchise and branch profits taxes (which exclusions include taxes imposed on or measured by the net income, net profits or, in the absence of an applicable Change of Law, capital of such Credit Party, or, in each case, alternative minimum taxes or taxes imposed in lieu of such taxes) imposed by any jurisdiction or any political subdivision or taxing authority thereof or therein as a result of a present or former connection between such Credit Party and such jurisdiction or political subdivision, unless such connection results solely from such Credit Party's executing, delivering or performing its obligations or receiving a payment under, or enforcing, this Agreement or any Note or other Credit Document, (B) excluding any U.S. federal withholding tax (i) that is in effect and would apply to amounts payable hereunder to such Credit Party at the time such Credit Party becomes a party to this Agreement (or such Credit Party designates a new lending office) (other than pursuant to an assignment request by any Co-Borrower under Section 2.10.2) except to the extent that such Credit Party (or its assignor, if any) was entitled, at the time of the designation of a new lending office (or assignment) to receive additional amounts from any Co-Borrower with respect to such withholding tax pursuant to this Section 2.6.4(a) or (ii) that is attributable to a Credit Party's failure to comply with Section 2.6.4(f) or Section 2.6.5, (C) excluding any withholding taxes imposed under FATCA and U.S. backup withholding taxes and (D) excluding any interest or penalties imposed upon amounts described in (A), (B) or (C) above) (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "Taxes") unless required by applicable law. If any Taxes are required to be deducted or withheld from or in respect of any sum payable by or on behalf of any Co-Borrower hereunder or under any other Credit Document to any Credit Party, (i) the sum payable shall be increased as may be necessary so that after all required deductions or withholdings (including deductions or withholdings applicable to additional sums payable under this Section 2.6.4), such Credit Party receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) such Co-Borrower shall make (or cause to be made) such deductions or withholdings, and (iii) such Co-Borrower shall pay (or cause to be paid) the full amount deducted or withheld to the relevant taxation authority or other authority in accordance with applicable Legal Requirements. In addition, each Co-Borrower agrees to timely pay to the relevant Governmental Authority any Other Taxes.

(b) Tax Indemnity. The Co-Borrowers shall indemnify each Credit Party for and hold it harmless against the full amount of Taxes and Other Taxes (including any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 2.6.4) payable or paid by any Credit Party or its Affiliate, or any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted by the relevant Governmental Authority; provided that no Co-Borrower shall be obligated to indemnify any Credit Party for any penalties, interest or expenses relating to Taxes or Other Taxes arising from such Credit Party's gross negligence or willful misconduct. Each Credit Party agrees to give written notice to Co-Borrowers of the assertion of any claim against such Credit Party relating to such Taxes or Other Taxes as promptly as is practicable after being notified of such assertion, and in no event later than 180 days after the principal officer of such Credit Party

responsible for administering this Agreement obtains knowledge thereof; provided that any Credit Party's failure to notify Co-Borrowers of such assertion within such 180 day-period shall not relieve any Co-Borrower of its obligation under this Section 2.6.4(b) with respect to Taxes or Other Taxes, regardless of when they arise, and shall not relieve such Co-Borrower of its obligation under this Section 2.6.4(b) with respect to penalties, interest or expenses relating to such Taxes or Other Taxes and arising prior to the end of such period (unless and to the extent the Co-Borrower is adversely impacted by such failure), but shall relieve such Co-Borrower of its obligations under this Section 2.6.4(b) with respect to penalties, interest or expenses relating to such Taxes or Other Taxes and incurred between the end of such period and such time as such Co-Borrower receives notice from such Credit Party as provided herein. Payments by Co-Borrowers pursuant to this indemnification shall be made within 45 days from the date such Credit Party makes written demand therefor (submitted through Administrative Agent), which demand shall be accompanied by a certificate describing in reasonable detail the basis thereof. Each of the Collateral Agent and the Depositary Agent shall be an express third party beneficiary of this Section 2.6.4(b).

(c) Notice. Within 45 days, after the date of any payment of taxes, Taxes or Other Taxes by or on behalf of any Co-Borrower pursuant to this Section 2.6.4, such Co-Borrower shall furnish to Administrative Agent, at its address referred to in Section 11.1, the original or a certified copy of a receipt evidencing payment thereof or, if such receipt is not obtainable, other evidence of such payment reasonably satisfactory to Administrative Agent.

(d) Survival of Obligations. The obligations of each Co-Borrower and each Credit Party under this Section 2.6.4 shall survive the termination of this Agreement and the repayment of Co-Borrowers' Obligations.

(e) Refunds. If any Credit Party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section (including by the payment of additional amounts pursuant to this Section), it shall pay to the applicable Co-Borrower an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such Co-Borrower, upon the request of such Credit Party, shall repay to such Credit Party the amount paid over pursuant to this paragraph (e) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such Credit Party is later required to repay, such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will the Credit Party be required to pay any amount to a Co-Borrower pursuant to this paragraph (e) the payment of which would place the Credit Party in a less favorable net after-Tax position than the Credit Party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any Credit Party to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Co-Borrower or any other Person. For purposes of this Section 2.6.4(e), the term "refund" shall include any credits received in lieu of a refund.

(f) FATCA. If a payment made to a Lender or an LC Issuer under any Credit Document would be subject to U.S. federal withholding tax imposed by FATCA if such Lender or such LC Issuer 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 or such LC Issuer shall deliver to each Co-Borrower and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by such Co-Borrower or 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 such Co-Borrower or Administrative Agent as may be necessary for such Co-Borrower and Administrative Agent to comply with their obligations under FATCA and to determine that such Lender or such LC Issuer has complied with such Lender's or such LC Issuer's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.6.4(f), "FATCA" shall include any amendments made to FATCA after the Closing Date.

2.6.5 *Withholding Exemption Certificates.* Each Lender upon becoming a Lender and each LC Issuer upon becoming an LC Issuer agree that they will deliver to Administrative Agent and Co-Borrowers either (a) if such Lender or such LC Issuer is a United States person (as such term is defined in Section 7701(a)(30) of the Code), an executed copy of a United States Internal Revenue Service Form W-9, or (b) if such Lender or such LC Issuer is not a United States person (as such term is defined in Section 7701(a)(30) of the Code), two duly completed copies of United States Internal Revenue Service Form W-8BEN or W-8BEN-E, W-8EXP, W-8ECI or W-8IMY or successor applicable form, as the case may be (certifying therein an entitlement to an exemption from or reduction in, United States withholding taxes) plus, in the case of a Lender or an LC Issuer using the so-called "portfolio interest exemption," a duly completed and executed non-bank certificate in the form of Exhibit J, if applicable (a "U.S. Tax Compliance Certificate"). Each Lender or each LC Issuer which delivers to Co-Borrowers and Administrative Agent a Form W-9, W-8BEN or W-8BEN-E, W-8EXP, W-8ECI or W-8IMY and a U.S. Tax Compliance Certificate, as the case may be, pursuant to the preceding sentence further undertakes to deliver to Co-Borrowers and Administrative Agent further copies of the Form W-9, W-8BEN or W-8BEN-E, W-8EXP, W-8ECI or W-8IMY, or successor applicable forms, or other manner of certification or procedure, and a U.S. Tax Compliance Certificate, as the case may be, on or before the date that any such form or certificate expires or becomes obsolete or within a reasonable time after gaining knowledge of the occurrence of any event requiring a change in the most recent forms previously delivered by it, and such extensions or renewals thereof as may reasonably be requested by any Co-Borrower or Administrative Agent, certifying in the case of a Form W-9, W-8BEN or W-8BEN-E, W-8EXP, W-8ECI or W-8IMY and a U.S. Tax Compliance Certificate, as the case may be, that such Lender or such LC Issuer is entitled to receive payments under this Agreement without deduction or withholding of any United States federal income taxes, or at a reduced rate, unless in any such cases any change in treaty, law, regulation or the circumstance of any Borrower Party or Affiliate of any Borrower Party (other than an Affiliate that is a Credit Party) or any designation of a new lending office or assignment described in the exception

contained in clause (B) of Section 2.6.4(a) has occurred prior to the date on which any such delivery would otherwise be required which renders all such forms or certificates inapplicable or which would prevent a Lender or an LC Issuer from duly completing and delivering any such form or certificate with respect to it and such Lender or such LC Issuer advises such Co-Borrower that it is not capable of receiving payments without any deduction or withholding of United States federal income tax or at a reduced rate. For the avoidance of doubt, however, no Co-Borrower shall be obligated to pay any additional amounts in respect of United States federal income tax pursuant to Section 2.6.4 (or make an indemnification payment pursuant to Section 2.6.4) to any Lender or any LC Issuer (including any entity to which any Lender or any LC Issuer sells, assigns, grants a participation in, or otherwise transfers its rights under this Agreement) if the obligation to pay such additional amounts (or such indemnification) would not have arisen but for a failure of such Lender or such LC Issuer to comply with its obligations under this Section 2.6.5 to the extent it was legally able to do so. Notwithstanding any other provision of this Section 2.6.5, no Person shall be required to deliver any form pursuant to this Section 2.6.5 that such Person is not legally able to deliver.

2.6.6 [*Reserved.*]

2.6.7 *Defaulting Lender Provisions*. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply to the extent permitted by applicable law for so long as such Lender is a Defaulting Lender:

(a) Fees shall cease to accrue on the unused portion of the Commitment of such Defaulting Lender pursuant to Sections 2.3 and Section 2.4 for any period during which such Lender is a Defaulting Lender (without prejudice to the rights of the Lenders other than Defaulting Lenders in respect of such fees).

(b) Each Defaulting Lender shall be entitled to receive LC Participation Fees for any period during which such Lender is a Defaulting Lender only to the extent allocable to its Proportionate Share of the aggregate amount available to be drawn under the Letters of Credit for which it has provided Cash Collateral.

(c) With respect to any Commitment Fee or LC Participation Fee not required to be paid to any Defaulting Lender pursuant to clause (a) or (b) above, Co-Borrowers shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Total LC Exposure that has been reallocated to such Non-Defaulting Lender pursuant to Section 2.6.7(f) below, (y) pay to the applicable LC Issuer the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such LC Participant's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(d) Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 9.9 and the definition of "Required Lenders".

(e) Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 7.2 or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 2.6 shall be applied at such time or times as may be determined by the Administrative Agent as follows: (i) *first*, to the payment of any amounts owing by such Defaulting Lender to the Agents under the Credit Documents; (ii) *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any LC Issuer; (iii) *third*, to Cash Collateralize each LC Issuer's Fronting Exposure with respect to such Defaulting Lender; (iv) *fourth*, as Co-Borrowers may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; (v) *fifth*, if so determined by the Administrative Agent and Co-Borrowers, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize each LC Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement; (vi) *sixth*, to the payment of any amounts owing to the Lenders or the LC Issuers as a result of any judgment of a court of competent jurisdiction obtained by any Lender or any LC Issuer against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; (vii) *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to Co-Borrowers as a result of any then final and non-appealable judgment of a court of competent jurisdiction obtained by Co-Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and (viii) *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction (provided that, with respect to this clause (viii), if such payment is a prepayment of the principal amount of any Loans in respect of which a Defaulting Lender has funded its participation obligations, such payment shall be applied solely to prepay the Loans of all Non-Defaulting Lenders pro rata prior to being applied to the prepayment of any Loans owed to such Defaulting Lender). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.6.7 shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(f) All or any part of such Defaulting Lender's participation in Total LC Exposure shall be reallocated among the Non-Defaulting Lenders of the same Class as such Defaulting Lender in accordance with their respective Proportionate Shares (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that such reallocation does not cause the aggregate LC Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's LC Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased LC Exposure following such reallocation.

(g) If Administrative Agent and each LC Issuer agree in writing that a Lender is no longer a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit to be held pro rata by the Lenders in accordance with the Commitments under the applicable Facility (without giving effect to Section 2.6.7(f)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Co-Borrowers while that Lender was a Defaulting Lender; provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(h) So long as any Lender is a Defaulting Lender, the LC Issuers shall not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

2.7 PRO RATA TREATMENT.

2.7.1 *Borrowings, Commitment Reductions, Etc.* Except as otherwise provided herein, (a) each Borrowing consisting of Construction Loans or Term Loans and each reduction of the Total Construction Loan Commitment, Total Term Loan Commitment and Total LC Commitment shall be made or allocated among the Lenders pro rata according to their respective Proportionate Shares of such Loans or Commitments, as the case may be, (b) each payment of principal of and interest on Construction Loans, Term Loans or LC Loans (including any Call Premium) shall be made or shared among the Lenders holding such Loans pro rata according to their respective unpaid principal amounts of such Loans held by such Lenders, (c) each payment of Commitment Fees shall be shared among the Lenders pro rata according to (i) their respective Proportionate Shares of the Commitments held by such Lenders to which such fees apply and (ii) in respect of each Lender which becomes a party to this Agreement hereunder after the Closing Date, the date upon which such Lender so became a party hereunder and (d) each payment of LC Participation Fees shall be made or shared among the Lenders holding LC Commitments pro rata according to their respective Proportionate Shares of the LC Commitments held by such Lenders to which such fees apply.

2.7.2 *Sharing of Payments, Etc.* If any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) on account of its Loans resulting in such Lender receiving payment in excess of its pro rata share of the aggregate payments obtained by the Lenders in respect of the Loans, then such Lender shall forthwith purchase from the other Lenders such participations in the Loans as shall be necessary to cause such purchasing Lender to

share the excess payment ratably with each of them; provided that (a) if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from such Lender shall be rescinded and each other Lender shall repay to the purchasing Lender the purchase price to the extent of such recovery together with an amount equal to such other Lender's Proportionate Share of the applicable Facility (according to the proportion of (i) the amount of such other Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered and (b) the provisions of this paragraph shall not be construed to apply to (i) any payment made by Co-Borrowers pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or (ii) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to any Co-Borrower or any Affiliate thereof (as to which the provisions of this paragraph shall apply). Each Co-Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 2.7.2 may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of setoff) with respect to such participation as fully as if such Lender was the direct creditor of Co-Borrowers in the amount of such participation.

2.8 CHANGE OF CIRCUMSTANCES.

2.8.1 *Inability to Determine Rates*. If, in connection with any request for a LIBOR LC Loan or a conversion to or continuation thereof, (a) the Administrative Agent determines that (i) Dollar deposits are not being offered to banks in the London interbank Eurodollar market for the applicable amount and Interest Period of such LIBOR LC Loan, or (ii) adequate and reasonable means do not exist for determining the LIBO Rate for any requested Interest Period with respect to a proposed LIBOR LC Loan or in connection with an existing or proposed Base Rate LC Loan (in each case, "Impacted Loans"), or (b) the Administrative Agent or any LC Issuer or any LC Participant determines in its reasonable discretion that for any reason the LIBO Rate for any requested Interest Period with respect to a proposed LIBOR LC Loan does not adequately and fairly reflect the cost to such LC Issuer or such LC Participant of funding such LIBOR LC Loan, the Administrative Agent will promptly so notify Co-Borrowers, the LC Issuers and the LC Participants. Thereafter, (x) the obligation of the LC Issuers or LC Participants, as applicable, to make or maintain LIBOR LC Loans shall be suspended (to the extent of the affected LIBOR LC Loans or Interest Periods) and (y) in the event of a determination described in the preceding sentence with respect to the LIBO Rate component of the Base Rate, the utilization of the LIBO Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent upon the instruction of the applicable LC Issuer or the applicable LC Participant, as the case may be, revokes such notice. Upon receipt of such notice, Co-Borrowers may revoke any pending request for a borrowing of, conversion to or continuation of LIBOR LC Loans (to the extent of the affected LIBOR LC Loans or Interest Periods)

or, failing that, will be deemed to have converted such request into a request for Base Rate LC Loans in the amount specified therein.

Notwithstanding the foregoing, if the Administrative Agent has made the determination described in clause (a) above, the Administrative Agent, in consultation with Co-Borrowers, the LC Issuers and the LC Participants, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (1) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under clause (a) above, (2) the Administrative Agent notifies or any LC Issuer or any LC Participant notifies the Administrative Agent and Co-Borrowers that such alternative interest rate does not adequately and fairly reflect the cost to the LC Issuer of funding the Impacted Loans or (3) any LC Issuer determines that any law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such LC Issuer or any LC Participant or its lending office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of any LC Issuer or any LC Participant to do any of the foregoing and provides the Administrative Agent and Co-Borrowers written notice thereof.

If at any time (A) the Administrative Agent determines in good faith (which determination shall be conclusive absent manifest error); or (B) the Co-Borrowers or any LC Issuer or any LC Participant notify the Administrative Agent in writing (with, in the case of any LC Issuer or any LC Participant, a copy to the Co-Borrowers) that the Co-Borrowers or such LC Issuer or such LC Participant (as applicable) have determined in good faith that a LIBO Rate Discontinuance Event has occurred, then, at or promptly after the LIBO Rate Discontinuance Event Time, the Administrative Agent, the LC Issuers, the LC Participants and the Co-Borrowers shall endeavor to establish an alternate benchmark rate to replace the LIBO Rate under this Agreement, together with any spread or adjustment to be applied to such alternate benchmark rate to account for the effects of transition from the LIBO Rate to such alternate benchmark rate, giving due consideration to the then prevailing market convention for determining a rate of interest (including the application of a spread and the making of other appropriate adjustments to such alternate benchmark rate and this Agreement to account for the effects of transition from the LIBO Rate to such replacement benchmark, including any changes necessary to reflect the available interest periods and timing for determining such alternate benchmark rate) for syndicated leveraged loans of this type in the United States at such time and any recommendations (if any) therefor by a Relevant Governmental Sponsor; provided that any such alternate benchmark rate and adjustments shall be required to be commercially practicable for the Administrative Agent to administer (as determined by the Administrative Agent in its sole discretion) (any such rate, the "Successor LIBO Rate"). After such determination that a LIBO Rate Discontinuance Event has occurred, promptly following the LIBO Rate Discontinuance Event Time, the Administrative Agent, the LC Issuers, the LC Participants and the Co-Borrowers shall enter into an amendment to this Agreement to reflect such Successor LIBO Rate and such other related changes to this Agreement as may be necessary or appropriate, as the Administrative Agent may determine in good faith (which determination shall be conclusive absent manifest error), to implement and give effect to the Successor LIBO Rate under this Agreement on the LIBO Rate Replacement Date and, notwithstanding anything to the contrary in

Section 9.9, such amendment shall become effective for the LC Loans and LC Participants without any further action or consent of any other party to this Agreement on the fifth Banking Day after the Administrative Agent shall have posted such proposed amendment to all LC Participants unless, prior to such time, any LC Issuer or any LC Participant shall have delivered to the Administrative Agent written notice that it does not accept such amendment; provided that if no Successor LIBO Rate has been determined pursuant to the foregoing and a Scheduled Unavailability Date (as defined in the definition of "LIBO Rate Discontinuance Event") has occurred, the Administrative Agent will promptly so notify the Co-Borrowers, the LC Issuers and the LC Participants and thereafter, until such Successor LIBO Rate has been determined pursuant to this paragraph, (A) any request for a borrowing of, conversion to or continuation of LIBOR LC Loans (to the extent of the affected LIBOR LC Loans or Interest Periods) shall be ineffective; and (B) all outstanding borrowings of LIBOR LC Loans shall be converted to Base Rate LC Loans until a Successor LIBO Rate has been chosen pursuant to this paragraph. Notwithstanding anything else herein, any definition of Successor LIBO Rate shall provide that in no event shall such Successor LIBO Rate be less than zero for purposes of this Agreement.

2.8.2 *Illegality*. If any LC Issuer or any LC Participant determines that any law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such LC Issuer or such LC Participant or its applicable lending office to perform any of its obligations hereunder or to make, maintain or fund or charge interest with respect to any LC Loan or Letter of Credit or to determine or charge interest rates based upon the Adjusted LIBO Rate, or any Governmental Authority has imposed material restrictions on the authority of such LC Issuer or such LC Participant to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such LC Issuer or such LC Participant to Co-Borrowers through the Administrative Agent, (i) any obligation of such LC Issuer or such LC Participant (as applicable) to issue, make, maintain, fund or charge interest with respect to any such LC Loan or Letter of Credit or continue LIBOR LC Loans or to convert Base Rate LC Loans to LIBOR LC Loans, shall be suspended and (ii) if such notice asserts the illegality of such LC Issuer or such LC Participant (as applicable) making or maintaining Base Rate LC Loans the interest rate on which is determined by reference to the LIBO Rate component of the Base Rate, the interest rate on such Base Rate LC Loans of such LC Issuer or such LC Participant (as applicable) shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the LIBO Rate component of the Base Rate, in each case until such LC Issuer or such LC Participant (as applicable) notifies the Administrative Agent and Co-Borrowers that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) Co-Borrowers shall, upon demand from such LC Issuer or such LC Participant (as applicable) (with a copy to the Administrative Agent), prepay or convert all LIBOR LC Loans of such LC Issuer or such LC Participant (as applicable) to Base Rate LC Loans (the interest rate on which Base Rate LC Loans of such LC Issuer or such LC Participant (as applicable) shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the LIBO Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such LC Issuer or such LC Participant (as applicable) may lawfully continue to maintain such LIBOR LC Loans

to such day, or immediately, if such LC Issuer or such LC Participant (as applicable) may not lawfully continue to maintain such LIBOR LC Loans and (y) if such notice asserts the illegality of such LC Issuer or such LC Participant (as applicable) determining or charging interest rates based upon the LIBO Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such LC Issuer or such LC Participant (as applicable) without reference to the LIBO Rate component thereof until the Administrative Agent is advised in writing by such LC Issuer or such LC Participant (as applicable) that it is no longer illegal for such LC Issuer or such LC Participant (as applicable) to determine or charge interest rates based upon the LIBO Rate. Upon any such prepayment or conversion, Co-Borrowers shall also pay accrued interest on the amount so prepaid or converted.

2.8.3 *Increased Costs*. If any Change of Law occurring after the Closing Date:

(a) shall impose, modify or hold applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement (except any such reserve requirement reflected in the Adjusted LIBO Rate) against assets held by, deposits or other liabilities in or for the account of, advances or loans by, or any other acquisition of funds by any Lender, any LC Participant or any LC Issuer;

(b) shall impose on any Lender, any LC Participant or any LC Issuer or the London interbank market any other condition, cost or expense (other than taxes) affecting this Agreement or any Loan, Commitment or participation in any Letter of Credit made by such Lender, such LC Participant or such LC Issuer; or

(c) shall subject any Lender, any LC Participant or any LC Issuer to any taxes on its capital reserves, deposit or other similar requirement reasonably attributable to or directly related to this Agreement or any Loan made by it, but excluding any Taxes or Other Taxes, in each case, that are indemnified pursuant to Section 2.6.4 and taxes expressly excluded from the definition of “Taxes” pursuant to Section 2.6.4(a),

and the effect of any of the foregoing is to increase the cost to such Lender, such LC Participant or such LC Issuer of making, issuing, creating, renewing, participating in (subject to the limitations in Section 9.12) or maintaining any such Loan, Commitment or Letter of Credit in respect thereof or to reduce any amount receivable by such Lender, such LC Participant or such LC Issuer hereunder, then Co-Borrowers shall from time to time, within 30 days after demand by such Lender, such LC Participant or such LC Issuer, pay to such Lender, such LC Participant or such LC Issuer additional amounts sufficient to reimburse such Lender, such LC Participant or such LC Issuer for such increased costs or to compensate such Lender, such LC Participant or the LC Issuer for such reduced amounts. A certificate of a Lender, an LC Participant or an LC Issuer setting forth in reasonable detail the amount of such increased costs or reduced amounts and the basis for determination of such amount, submitted by such Lender, such LC Participant or such LC Issuer to Co-Borrowers, shall, in the absence of manifest error, be conclusive and binding on Co-Borrowers as to the amount of such increased costs or reduced amounts for purposes of this Agreement.

2.8.4 *Capital Requirements*. If any Lender, any LC Participant or any LC Issuer determines that any Change of Law occurring after the Closing Date regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on the capital or liquidity of such Lender, such LC Participant or such LC Issuer, or the Lending Office of such Lender, such LC Participant or such LC Issuer or such Lender's, such LC Participant's or such LC Issuer's Parent Company, if any, as a consequence of the Loans, the Commitments, participation in Letters of Credit to a level below that which such Lender, such LC Participant or such LC Issuer or such Lender's, such LC Participant's or such LC Issuer's Parent Company could have achieved but for such Change of Law (taking into account such Lender's, such LC Participant's or such LC Issuer's or such Person's policies with respect to capital or liquidity adequacy), then Co-Borrowers shall pay to such Lender, such LC Participant, such LC Issuer or such Person, within 30 days after delivery of demand by such Lender, such LC Participant, such LC Issuer or such Person, such amounts as such Lender, such LC Participant, such LC Issuer or such Person shall reasonably determine are necessary to compensate such Lender, such LC Participant, such LC Issuer or such Person for the increased costs to such Lender, such LC Participant, such LC Issuer or such Person of such increased capital or liquidity. A certificate of such Lender, such LC Participant, such LC Issuer or such Person, setting forth in reasonable detail the computation of any such increased costs and the basis for such determination, excluding any information that is legally restricted from being disclosed to the Co-Borrowers, delivered to Co-Borrowers by such Lender, such LC Participant, such LC Issuer or such Person shall, in the absence of manifest error, be conclusive and binding on Co-Borrowers as to the amount of such increased costs or reduced amounts for purposes of this Agreement.

2.8.5 *Notice; Participating Lenders' Rights*. Each Lender, each LC Participant and each LC Issuer shall notify Co-Borrowers of any event occurring after the Closing Date that will entitle such Lender, such LC Participant or such LC Issuer to compensation pursuant to this Section 2.8, promptly, and in no event later than 180 days after the principal officer of such Lender, such LC Participant or such LC Issuer responsible for administering this Agreement obtains knowledge thereof; provided that any Lender's, any LC Participant's or any LC Issuer's failure to notify Co-Borrowers within such 180 day period shall not relieve any Co-Borrower of its obligation under this Section 2.8 with respect to claims arising prior to the end of such period, but shall relieve such Co-Borrower of its obligations under this Section 2.8 with respect to the time between the end of such period and such time as such Co-Borrower receives notice from the indemnitee as provided herein; and provided, further, that if the Change of Law giving rise to such increased costs or reductions is retroactive, then the 180 day period referred to above shall be extended to include the period of retroactive effect thereof. No Person purchasing from a Lender, an LC Participant or an LC Issuer a participation in any Commitment (as opposed to an assignment) shall be entitled to any payment from or on behalf of Co-Borrowers pursuant to Section 2.8.3 or Section 2.8.4 which would be in excess of the applicable proportionate amount (based on the portion of the Commitment in which such Person is participating) which would then be payable to

such Lender, such LC Participant or such LC Issuer if such Lender, such LC Participant or such LC Issuer had not sold a participation in that portion of the Commitment.

2.9 FUNDING LOSSES. If Co-Borrowers shall (a) repay or prepay any LIBOR LC Loans on any day other than the last day of an Interest Period for such LC Loans (whether an Optional Prepayment or a Mandatory Prepayment), (b) fail to make any Borrowing of or to convert any LC Loans into LIBOR LC Loans in accordance with a Notice of Borrowing or Notice of Conversion of LC Loan Type delivered to Administrative Agent (whether as a result of the failure to satisfy any applicable conditions or otherwise) after such Notice of Borrowing or Notice of Conversion of LC Loan Type has become irrevocable, (c) fail to continue a LIBOR LC Loan in accordance with a notice delivered to Administrative Agent in accordance with Section 2.1.5 or (d) fail to make any prepayment in accordance with any notice of prepayment delivered to Administrative Agent, then Co-Borrowers shall, within 30 days after demand by any Lender, any LC Participant or any LC Issuer, reimburse such Lender, such LC Participant or such LC Issuer for all costs, losses and expenses incurred by such Lender, such LC Participant or such LC Issuer as a result of such repayment, prepayment or failure ("Liquidation Costs"). Each Co-Borrower understands that such costs and losses may include losses incurred by an LC Issuer as a result of funding and other contracts entered into by such LC Issuer to fund LIBOR LC Loans (other than non-receipt of the margin applicable to such LIBOR LC Loans). In the case of a LIBOR LC Loan, such loss, cost or expense to such LC Issuer shall be deemed to include an amount determined by such LC Issuer to be the excess, if any, of (i) the amount of interest (other than the applicable margin) that would have accrued on the principal amount of such LC Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such LC Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such LC Loan), over (ii) the amount of interest that would accrue on such principal amount for such period at the interest rate which such LC Issuer would bid were it to bid, at the commencement of such period, for Dollar deposits of a comparable amount and period from other banks in the Eurodollar market. Each Lender, each LC Participant or each LC Issuer demanding payment under this Section 2.9 shall deliver to Co-Borrowers a certificate setting forth in reasonable detail the basis for and the amount of costs and losses for which demand is made. Such a certificate so delivered to Co-Borrowers shall, in the absence of manifest error, be conclusive and binding as to the amount of such loss for purposes of this Agreement.

2.10 ALTERNATE OFFICE; MINIMIZATION OF COSTS.

2.10.1 If any Lender, any LC Participant or any LC Issuer requests compensation under Section 2.8, to the extent reasonably possible upon the request of Co-Borrowers, each LC Issuer shall designate an alternative Lending Office with respect to its LIBOR LC Loans and each Lender, each LC Participant and each LC Issuer shall otherwise take any reasonable actions to reduce any liability of Co-Borrowers to any Lender, any LC Participant or any LC Issuer under Sections 2.6.4, 2.8.3, 2.8.4 and 2.9, and to avoid the unavailability of any Type of LC Loans under Section 2.8.2, so long as (in the case of the designation of an alternative Lending Office) such LC Issuer, in the reasonable judgment of such LC Issuer, determines that (a) such designation is not

disadvantageous to such LC Issuer in any material respect and (b) such actions would eliminate or reduce liability to such LC Issuer; provided, that no LC Issuer shall be required to designate an alternative Lending Office if such designation requires internal credit approval until such time as such LC Issuer receives such internal credit approval. Each Co-Borrower hereby agrees to pay all reasonable costs and expenses incurred by the LC Issuers in connection with any such designation or actions within 30 days of demand thereof to Co-Borrowers.

2.10.2 If and with respect to each occasion that any Lender has failed to consent to a proposed amendment, waiver, discharge or termination which pursuant to the terms of Section 9.9 requires the consent of all of the Lenders affected and with respect to which the Required Lenders shall have granted their consent, a Lender either makes a demand for compensation pursuant to Sections 2.6.4, 2.8.3 or 2.8.4 or a Lender is a Defaulting Lender, then Co-Borrowers may, at their sole expense, upon at least five Banking Days prior irrevocable written notice to each of such Lender and Administrative Agent, in whole permanently replace all of the Loans and Commitments of such Lender and require such Lender to assign and delegate all of its interests, rights (other than its existing rights to payments pursuant to Sections 2.6.4, 2.8.3, 2.8.4 and 2.9) and obligations under this Agreement and the related Credit Documents. Such replacement Lender shall upon the effective date of replacement purchase Co-Borrowers' Obligations hereunder owed to such replaced Lender for the aggregate amount thereof and shall thereupon for all purposes become a "Lender" hereunder. Such notice from Co-Borrowers shall specify an effective date for the replacement of such Lender's Loans and Commitments, which date shall not be later than the fourteenth day after the day such notice is given. On the effective date of any replacement of such Lender's Loans and Commitments pursuant to this Section 2.10.2, Co-Borrowers shall pay to Administrative Agent for the account of such Lender (a) any fees due to such Lender to the date of such replacement, (b) the principal of and accrued interest on the principal amount of outstanding Loans held by such Lender to the date of such replacement (such amount to be represented by the purchase of Co-Borrowers' Obligations hereunder of such replaced Lender by the replacing Lender and not as a prepayment of such Loans) plus (other than in connection with a replacement of a Defaulting Lender) the applicable Call Premium (if any) determined for the replacement date with respect to such assigned Loans and (c) the amount or amounts due to such Lender pursuant to each of Sections 2.6.4, 2.8.3, 2.8.4 and 2.9, as applicable, and any other amount then payable hereunder to such Lender. Co-Borrowers will remain liable to such replaced Lender for any Liquidation Costs that such Lender sustains or incurs as a consequence of the purchase of such Lender's Loans (unless such Lender has defaulted on its obligation to fund a Loan hereunder or is a Defaulting Lender). Upon the effective date of the purchase of any Lender's Loans owed to such Lender and termination of such Lender's Commitments pursuant to this Section 2.10.2, such Lender (the "Terminated Lender") shall cease to be a Lender hereunder. No such termination of any such Terminated Lender's Commitments and the purchase of such Terminated Lender's Loans pursuant to this Section 2.10.2 shall affect (i) any liability or obligation of Co-Borrowers or any other Lender to such Terminated Lender, or any liability or obligation of such Terminated

Lender to any Co-Borrower or any other Lender, which accrued on or prior to the date of such termination, or (ii) such Terminated Lender's rights hereunder in respect of any such liability or obligation. Nothing in this Section shall be deemed to prejudice any rights that any Co-Borrower may have against any Lender that is a Defaulting Lender.

2.10.3 Upon written notice to Administrative Agent, any Lender may designate a Lending Office other than the Lending Office most recently designated to Administrative Agent and may assign all of its interests under the Credit Documents and its Notes (if any) to such Lending Office; provided that such designation and assignment do not at the time of such designation and assignment increase the liability or the reasonably foreseeable liability of Co-Borrowers under Section 2.6.4, 2.8.3, 2.8.4 or 2.9, make an Interest Rate option unavailable pursuant to Section 2.8.2 or otherwise cause Co-Borrowers to breach any applicable law.

2.11 CO-BORROWERS.

2.11.1 *Joint and Several Liability.* Each Borrower Party agrees that it is jointly and severally liable for, and absolutely and unconditionally guarantees to Administrative Agent, the LC Issuers and the Lenders the prompt payment and performance of, all Obligations and all agreements under the Credit Documents. Each Borrower Party agrees that its guaranty obligations hereunder constitute a continuing guaranty of payment and not of collection, that such obligations shall not be discharged until Discharge of First Lien Secured Obligations, and that such obligations are absolute and unconditional, irrespective of (i) the genuineness, validity, regularity, enforceability, subordination, or any future modification of, or change in, any Obligations or Credit Document, or any other document, instrument, or agreement to which any Borrower Party is or may become a party or be bound; (ii) the absence of any action to enforce this Agreement (including this Section) or any other Credit Document, or any waiver, consent, or indulgence of any kind by Administrative Agent or any Lender with respect thereto; (iii) the existence, value, or condition of, or failure to perfect a Lien, or to preserve rights against, any security or guaranty for the Obligations or any action, or the absence of any action, by Administrative Agent or any Lender in respect thereof (including the release of any security or guaranty); (iv) the insolvency of any Borrower Party; (v) any election by Administrative Agent or any Lender in a Bankruptcy Event for the application of Section 1111(b)(2) of the Bankruptcy Code or any provision of comparable state law; (vi) any borrowing or grant of a Lien by any other Borrower Party, as debtor-in-possession under Section 364 of the Bankruptcy Code or otherwise; (vii) the disallowance of any claims of Administrative Agent or any Lender against any Credit Party for the repayment of any Obligations under Section 502 of the Bankruptcy Code or otherwise; or (viii) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except Discharge of First Lien Secured Obligations.

2.11.2 *Waivers.*

(a) Each Co-Borrower expressly waives all rights that it may have now or in the future under any statute, at common law, in equity or otherwise, to compel the Administrative Agent or any other Secured Party to marshal assets or to proceed against any Borrower Party, other Person, or security for the payment or performance of any Obligations before, or as a condition to, proceeding against such Co-Borrower. Each Co-Borrower waives all defenses available to a surety, guarantor, or accommodation co-obligor other than Discharge of First Lien Secured Obligations. It is agreed among each Co-Borrower, the Administrative Agent and the Lenders that the provisions of this Section 2.11 are of the essence of the transaction contemplated by the Credit Documents and that, but for such provisions, the Administrative Agent and the Lenders would decline to make Loans. Each Co-Borrower acknowledges that its guaranty pursuant to this Section 2.11 is necessary to the conduct and promotion of its business and can be expected to benefit such business.

(b) Administrative Agent and Lenders may, in their discretion, pursue such rights and remedies as they deem appropriate, including realization upon Collateral by judicial foreclosure or non-judicial sale or enforcement, without affecting any rights and remedies under this Section 2.11. If, in taking any action in connection with the exercise of any rights or remedies, the Administrative Agent or any Lender shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any Borrower Party or other Person, whether because of any applicable law pertaining to "election of remedies" or otherwise, each Co-Borrower consents to such action and waives any claim based upon it, even if the action may result in loss of any rights of subrogation that any Borrower Party might otherwise have had. Any election of remedies that results in denial or impairment of the right of Administrative Agent or any Lender to seek a deficiency judgment against any Borrower Party shall not impair any Co-Borrower's obligation to pay the full amount of the Obligations. Each Co-Borrower waives all rights and defenses arising out of an election of remedies, such as non-judicial foreclosure with respect to any security for the Obligations, even though that election of remedies destroys such Co-Borrower's rights of subrogation against any other Person.

2.11.3 *Extent of Liability; Contribution.*

(a) Notwithstanding anything herein to the contrary, each Co-Borrower's liability under this Section 2.11 shall be limited to the greater of (A) all amounts for which such Co-Borrower is primarily liable, as described below and (B) such Co-Borrower's Allocable Amount.

(b) If any Co-Borrower makes a payment under this Section 2.11 of any Obligations (other than amounts for which such Co-Borrower is primarily liable) (a "Co-Borrower Payment") that, taking into account all other Co-Borrower Payments previously or concurrently made by any other Co-Borrower, exceeds the amount that such Co-Borrower would otherwise have paid if each Co-Borrower had paid the aggregate Obligations satisfied by such Co-Borrower Payments in the same proportion that such Co-Borrower's Allocable Amount bore to the total Allocable Amounts of all Co-Borrowers, then such Co-Borrower shall be entitled to receive contribution and indemnification payments from, and to be reimbursed by, the other Co-Borrower for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately before such Co-Borrower Payment. The "Allocable Amount" for any Co-Borrower shall be the maximum amount that could then be recovered from such Co-Borrower under this

Section 2.11 without rendering such payment voidable under Section 548 of the Bankruptcy Code or under any other applicable Bankruptcy Law.

(c) Nothing contained in this Section 2.11 shall limit the liability of any Co-Borrower to pay Loans made directly or indirectly to that Co-Borrower (including Loans advanced to any other Co-Borrower and then remade or otherwise transferred to, or for the benefit of, such Co-Borrower) and all accrued interest, fees, expenses, and other related Obligations with respect thereto, for which such Co-Borrower shall be primarily liable for all purposes hereunder. The Administrative Agent and Lenders shall have the right, at any time in their discretion, to condition Loans and to restrict the disbursement and use of such Loans to such Co-Borrower.

2.11.4 *Joint Enterprise.* Each Co-Borrower has requested that the Agent and the Lenders make this credit facility available to Co-Borrowers on a combined basis, to finance Co-Borrowers' business most efficiently and economically. Co-Borrowers' business is a mutual and collective enterprise, and Co-Borrowers believe that combination of their credit facilities will enhance the borrowing power of each Co-Borrower and ease the administration of their relationship with credit providers (including the Agent and the Lenders), all to the mutual advantage of Co-Borrowers. Co-Borrowers acknowledge and agree that Agent and Lenders' willingness to extend credit to Co-Borrowers and to administer the Collateral on a combined basis, as set forth herein, is done solely as an accommodation to Co-Borrowers and at Co-Borrowers' request.

2.11.5 *Administrative Borrower; Allocation of Loans.* Each of GasCo and Holdings hereby appoints PowerCo as its agent, attorney-in-fact and representative for all purposes under the Credit Documents, including for (i) making any borrowing requests or other requests required under this Agreement, (ii) the giving and receipt of notices by and to the Co-Borrowers under this Agreement, (iii) the delivery of all documents, reports, financial statements and written materials required to be delivered by the Co-Borrowers under this Agreement, and (iv) all other purposes incidental to any of the foregoing. PowerCo hereby accepts such appointment. GasCo and each other Borrower Party agree that any action taken by PowerCo as the agent, attorney-in-fact and representative of such Borrower Party shall be binding upon such Borrower Party to the same extent as if directly taken by any of them. The Administrative Agent and the Lenders may give any notice to, or communication with, a Borrower Party hereunder or under any other Credit Document to or with PowerCo on behalf of such Borrower Party. Each Borrower Party agrees that any notice, election, communication, representation, agreement, or undertaking made on its behalf by PowerCo shall be binding upon and enforceable against it. The Administrative Agent and the Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, the terms of this Section 2.11.5; provided that nothing contained herein shall limit the effectiveness of, or the right of the Administrative Agent or any Lender to rely upon, any notice (including without limitation a borrowing or conversion notice), instrument, document, certificate, acknowledgment, consent, direction, certification or any other action delivered by any Borrower Party pursuant to this Agreement or any other Credit

Document. The Loans shall be made to PowerCo as borrower unless a different allocation of the Loans as between PowerCo and GasCo with respect to any borrowing hereunder is included in the applicable Notice of Borrowing delivered pursuant to Section 2.1.1(b) hereof.

2.11.6 *Obligations Absolute.* Each Co-Borrower hereby waives, for the benefit of Administrative Agent and Lenders: (a) any right to require the Administrative Agent or any other Secured Party, as a condition of payment or performance by such Co-Borrower, to (i) proceed against the other Co-Borrower, any other Borrower Party or any other Person, (ii) proceed against or exhaust any security held from the other Co-Borrower, any other Borrower Party or any other Person, (iii) proceed against or have resort to any balance of any deposit account or credit on the books of the Administrative Agent, any Lender or any Secured Party in favor of the other Co-Borrower or any other Person, or (iv) pursue any other remedy in the power of Administrative Agent or any other Secured Party whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of the other Co-Borrower or any other Borrower Party including any defense based on or arising out of the lack of validity or the unenforceability of the Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of the other Co-Borrower or any other Borrower Party from any cause other than payment in full of the Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon the Administrative Agent's or any other Secured Party's errors or omissions in the administration of the Obligations, except behavior which amounts to bad faith, gross negligence or willful misconduct; (e) (i) any legal or equitable discharge of such Co-Borrower's obligations hereunder (other than Discharge of First Lien Secured Obligations), (ii) the benefit of any statute of limitations affecting such Co-Borrower's liability hereunder or the enforcement hereof, (iii) any defense of set offs, recoupments and counterclaims that may be asserted against any Lender, any LC Issuer or any Agent in respect of the Obligations, and (iv) promptness, diligence and any requirement that Administrative Agent or any other Secured Party protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder or under the other Credit Documents or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Obligations or any agreement related thereto, notices of any extension of credit to any Co-Borrower and notices of any of the matters referred to in the Guaranty and Security Agreement and any right to consent to any thereof; and (g) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

2.12 ACKNOWLEDGEMENT AND CONSENT TO BAIL-IN OF EEA FINANCIAL INSTITUTIONS. Notwithstanding anything to the contrary in any Credit Document

or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Credit Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

i. a reduction in full or in part or cancellation of any such liability;

ii. a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Credit Document; or

iii. the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority,

in each case, to the extent that, at the time, the foregoing shall be the general policy or practice of such EEA Financial Institution with respect to similarly situated customers under comparable provisions of similar agreements; provided that nothing in this Section 2.12 shall require any EEA Financial Institution to disclose any confidential information related to similarly situated customers, comparable provisions of similar agreements or otherwise.

ARTICLE 3
CONDITIONS PRECEDENT

3.1 CONDITIONS PRECEDENT TO THE CLOSING DATE. The effectiveness of the Commitments and the occurrence of the Closing Date is subject to the prior satisfaction of each of the following conditions (unless waived in writing by Administrative Agent with the consent of each Lender):

3.1.1 *Resolutions*. Delivery to the Administrative Agent of a copy of one or more resolutions or other authorizations, in form and substance satisfactory to each Lender, of each Borrower Party, certified by a Responsible Officer of such Borrower Party as being in full force and effect on the Closing Date, authorizing, in the case of Co-Borrowers only, the Borrowings herein provided for, and, in the case of other Borrower Parties only, the granting of the Liens or the incurrence of guarantee or contribution obligations under the Collateral Documents to which such Person is a party entered into on or prior to the Closing Date and, in the case of all Borrower Parties, delivery and performance of the Operative Documents to which such Person is a party

entered into on or prior to the Closing Date and any instruments or agreements required thereunder.

3.1.2 *Incumbency*. Delivery to the Administrative Agent of a certificate, in form and substance satisfactory to the Lenders, from each Borrower Party signed by an appropriate Responsible Officer of each such Borrower Party and dated as of the Closing Date, as to the incumbency of the natural Persons authorized to execute and deliver the Credit Documents to which such Borrower Party entered into on or prior to the Closing Date and any instruments or agreements required thereunder.

3.1.3 *Formation Documents*. Delivery to the Administrative Agent of (a) a copy of the articles of incorporation, certificate of incorporation, certificate of formation, charter or other state certified constituent documents of each Borrower Party, certified by the secretary of state of such Borrower Party's state of incorporation or formation, as applicable, and (b) a copy of the bylaws, limited liability company operating agreement or other comparable constituent documents, if applicable, of each Borrower Party, certified by a Responsible Officer of such Borrower Party as being true, correct and complete on the Closing Date.

3.1.4 *Good Standing Certificates*. Delivery to the Administrative Agent of good standing certificates in a form customarily issued by the secretary of state of the state in which each Borrower Party is formed or incorporated, as applicable, in each case dated a date reasonably close prior to the Closing Date.

3.1.5 *Credit Documents, Closing Date Permitted Commodity Hedge Agreements and Project Documents*. Delivery to the Administrative Agent of (a) executed original counterparts of this Agreement and each other Credit Document to be executed on or prior to the Closing Date (and any supplements or amendments thereto), all of which shall be in form and substance satisfactory to the Lenders, (b) a true, correct and complete copy of each Closing Date Permitted Commodity Hedge Agreement and each Major Project Document (other than Major Project Documents expressly contemplated herein to be executed and delivered after the Closing Date, including the O&M Agreement and the Interconnection Construction Service Agreement) (together with any supplements or amendments thereto), which Closing Date Permitted Commodity Hedge Agreement and Major Project Documents shall be in form and substance satisfactory to the Lenders and certified by a Responsible Officer of each Co-Borrower party thereto as being true, complete and correct and in full force and effect on the Closing Date pursuant to the certificate delivered pursuant to Section 3.1.6 and (c) Consents, dated on or prior to the Closing Date, in respect of (i) each of the Closing Date Permitted Commodity Hedge Agreements and (ii) each of the Major Project Documents listed on Exhibit E-2, which Consents shall be in form and substance acceptable to the Lenders and the Collateral Agent. Co-Borrowers shall have delivered (or will deliver substantially concurrently with the Closing Date) evidence reasonably satisfactory to the Lenders that all actions to be taken and deliverables to be provided to the counterparties under Part 3 of the ISDA Schedule with respect to each

Closing Date Permitted Commodity Hedge Agreement have been completed and such conditions have been satisfied on or prior to the Closing Date (or will be completed and such conditions satisfied substantially concurrently with the Closing Date).

3.1.6 *Closing Certificate*. Delivery to the Administrative Agent of a certificate, dated as of the Closing Date, duly executed by a Responsible Officer of each Co-Borrower, in substantially the form of Exhibit F-1.

3.1.7 *Legal Opinions*. Delivery to the Administrative Agent of legal opinions, in form and substance acceptable to the Administrative Agent and the Required Lenders, of (a) Cravath, Swaine & Moore LLP, New York counsel to the Borrower Parties, dated the date hereof and addressed to each Agent and the Lenders, (b) Vorys, Sater, Seymour and Pease LLP, Ohio counsel to PowerCo, dated the date hereof and addressed to each Agent and the Lenders, (c) Morgan, Lewis & Bockius LLP, counsel to the Borrower Parties, dated the date hereof and addressed to each Agent and the Lenders, as to certain FERC matters, (d) Steptoe & Johnson PLLC, counsel to the Borrower Parties, dated the date hereof and addressed to each Agent and the Lenders and (e) Taft Stettinius & Hollister LLP, counsel to the Borrower Parties, dated the date hereof and addressed to each Agent and the Lenders, which opinions shall each permit the Lenders to disclose such opinion to applicable Governmental Authorities.

3.1.8 *Report of Insurance Consultant*. Delivery to the Administrative Agent of the Insurance Consultant Report, in form and substance satisfactory to the Lenders, along with a reliance letter permitting the Administrative Agent and the Credit Parties to rely on such report subject to the limitations set forth in such reliance letter.

3.1.9 *Insurance*. Insurance complying with terms and conditions set forth in Exhibit K shall be in full force and effect and the Administrative Agent and the Insurance Consultant shall have received (a) a certificate from each Co-Borrower's insurance broker(s), dated as of the Closing Date and in form and substance satisfactory to the Lenders, (i) identifying underwriters, type of insurance, insurance limits and policy terms, (ii) listing the endorsements required as set forth in Exhibit K, (iii) describing the insurance obtained and (iv) stating that such insurance is in full force and effect and that all premiums then due thereon have been paid and/or confirming that such premiums are included in the Funds Flow Memorandum and that, in the opinion of such broker(s), such insurance complies with the terms and conditions set forth in Exhibit K, and (b) copies of all policies evidencing such insurance, if available on the Closing Date, or a binder, commitment or certificates signed by the insurer or a broker authorized to bind the insurer, each in form and substance satisfactory to the Lenders.

3.1.10 *Reports of the Independent Engineer, Market Consultant, Petroleum Engineer, Transmission Consultant and PCB Consultant*. Delivery to the Administrative Agent, in each case in form and substance satisfactory to each Lender, of (i) the Independent Engineer Report, along with a use of work product agreement permitting the Administrative Agent and the Credit Parties to rely on such Independent

Engineer Report subject to the limitations set forth in such use of work product agreement, (ii) the Market Consultant's Report, along with a reliance letter permitting the Administrative Agent and the Credit Parties to rely on such Market Consultant's Report subject to the limitations set forth in such reliance letter, (iii) the Reserve Report, along with use of work product agreements permitting the Administrative Agent and the Credit Parties to rely on such Reserve Report subject to the limitations set forth in such use of work product agreements, (iv) the Transmission Consultant Report, along with a use of work product agreement permitting the Administrative Agent and the Credit Parties to rely on such Transmission Consultant Report subject to the limitations set forth in such use of work product agreement and (v) the PCB Report, along with a reliance letter permitting the Administrative Agent and the Credit Parties to rely on such PCB Report subject to the limitations set forth in such reliance letter.

3.1.11 *Environmental Assessment*. Delivery to the Administrative Agent of a "Phase I" environmental site assessment (dated no earlier than six months prior to the Closing Date) with respect to the Generating Project Site prepared by the Environmental Consultant, in form and substance satisfactory to each Lender, together with a reliance letter permitting the Administrative Agent and the Credit Parties to rely on such environmental site assessments subject to the limitations set forth in such reliance letter.

3.1.12 *Financial Statements*. Delivery to the Administrative Agent of an accurate and complete copy of the unaudited balance sheet of Holdings and the Co-Borrowers (on a consolidated basis) at September 30, 2018, and the unaudited consolidated statements of operations, comprehensive loss and cash flow of Holdings and the Co-Borrowers for the fiscal quarter then ended, together with a certificate from a Responsible Officer thereof, dated as of the Closing Date and in substantially the form of Exhibit F-1.

3.1.13 *Collateral; Filings and Recordings.*

(a) Collateral Agent shall have been granted on the Closing Date (other than in respect of the Mortgaged Property, Liens in respect of which shall be granted upon the recording of the Mortgages in the filing office identified in Exhibit D as soon as reasonably practicable on or after the Closing Date but for which (except with respect to any Mortgage over mineral interests) gap title insurance coverage shall be available on the Closing Date), for the benefit of the Secured Parties, first priority perfected Liens on the Collateral (subject only to Permitted Liens).

(b) The Pledged Equity shall have been duly and validly pledged under the Guaranty and Security Agreement to Collateral Agent, for the benefit of the Secured Parties, and certificates and instruments representing the Pledged Equity, accompanied by instruments of transfer indorsed in blank, shall be in the actual possession of Collateral Agent.

(c) Delivery to the Administrative Agent of:

i. appropriately completed UCC financing statements (Form UCC-l), which have been duly authorized for filing by the appropriate Person, naming each Co-Borrower and Holdings as debtors and Collateral Agent as secured party, in form appropriate for filing under each jurisdiction as may be necessary to perfect the security interests purported to be created by the Collateral Documents, covering the applicable Collateral;

ii. copies of UCC, judgment lien, tax lien and litigation lien search reports, which reports will be dated a recent date acceptable to the Administrative Agent, listing all effective financing statements that name a Co-Borrower or Holdings as debtor and that are filed in the jurisdictions in which the UCC-1 financing statements will be filed in respect of the Collateral, none of which shall cover the Collateral except to the extent evidencing Permitted Liens;

iii. appropriately completed copies of all other recordings and filings of, or with respect to, the Collateral Documents as may be necessary to perfect the security interests purported to be created by the Collateral Documents or as may otherwise be reasonably requested by the Administrative Agent; and

iv. evidence that all other actions necessary to perfect and protect the security interests purported to be created by the Collateral Documents entered into on or prior to the Closing Date or as may otherwise be reasonably requested by the Administrative Agent and have been taken or will be taken on the Closing Date.

3.1.14 *Base Case Projections*. Delivery to the Administrative Agent of (a) the Base Case Projections in form and substance satisfactory to the Lenders, which Base Case Projections shall demonstrate compliance, as of the Closing Date, with the Debt Sizing Criteria and with the Second Lien Debt Sizing Criteria; provided that if the weighted average price per megawatt-hour under the Closing Date Permitted Commodity Hedge Agreements through the maturity of each Closing Date Permitted Commodity Hedge Agreement is less than $27.25 the Co-Borrowers shall re-run the Base Case Projections (as so re-run, the "Debt Resizing Projections") on the Closing Date taking into account the actual average price per megawatt-hour through maturity of each Closing Date Permitted Commodity Hedge Agreement under such Closing Date Permitted Commodity Hedge Agreements, and shall (i) increase the cash common equity contributions deposited into the Construction Account pursuant to Section 3.1.26, and (ii) reduce the Term Loan Commitments and the Second Lien Loan Commitments, in each case so that after giving effect to such increase in cash common equity contributions and decrease in the Term Loan Commitments and the Second Lien Loan Commitments, the Debt Sizing Criteria and the Second Lien Debt Sizing Criteria are satisfied on the Closing Date, and (b) an updated Exhibit L in form and substance satisfactory to the Lenders (which updated Exhibit L shall replace in its entirety any previously delivered Exhibit L). The Administrative Agent, the Co-Borrowers and the Lenders shall make such administrative amendments to this Agreement as are necessary to reflect such increased equity and decreased Term Loan Commitments in connection with any Debt Resizing Projections.

3.1.15 *A.L.T.A. Surveys*. The Administrative Agent and Collateral Agent shall have received an A.L.T.A. survey of the Site except that with respect to easements benefitting the Site, such survey may not be A.L.T.A. so long as it is of a quality acceptable to the Title Insurer for purposes of insuring such easements; such survey shall be reasonably current and in form and substance satisfactory to the Lenders and the Title Insurer, shall be certified to Co-Borrowers, Administrative Agent, Collateral Agent and the Title Insurer by a surveyor licensed in the state where the Project is located and satisfactory to the Lenders, and shall show, among other things, (a) as to the Site, the location and dimensions thereof (including (i) the location of all means of access thereto and all recorded easements or encumbrances relating thereto, and (ii) the perimeter within which all visible improvements are located), (b) the existing utility facilities servicing the Project (including water, electricity, fuel, telephone, sanitary sewer and storm water distribution and detention facilities), (c) other than Permitted Liens, that no existing improvements encroach or interfere with adjacent property or existing easements or other rights (whether on, above or below ground), and that there are no material gaps, gores, projections, protrusions or other material survey defects, (d) whether the Site or the Easements, or any portion thereof, are located in a special flood hazard zone and (e) no other matters constituting a defect in title other than Permitted Liens; provided that the matters described in clauses (a)(ii) and (d) above may be shown by separate maps, surveys or other information satisfactory to the Lenders, and (except as described in clause (a)(ii) above) the surveyor shall not be required to certify as to the location of any easements, improvements, encroachments utilities or other matters which do not exist as of the Closing Date.

3.1.16 *Title Policy*.

(a) Delivery to Collateral Agent of an A.L.T.A. Loan Policy - 2006 extended coverage policy of title insurance (the "Title Policy") insuring that each Mortgage (except any Mortgage over mineral interests) creates a valid first priority Lien for the benefit of Collateral Agent on that portion of the Mortgaged Property that consists of land and improvements which constitute real property under applicable law, subject only to such title exceptions as are acceptable to the Lenders, and otherwise in form and substance satisfactory to the Lenders, together with such endorsements thereto as are reasonably required by the Lenders and available in the state where the Project is located, dated as of the Closing Date (or the unconditional and irrevocable commitment of the Title Insurer to issue such Title Policy), in an amount equal to 65% of the Total Term Loan Commitment and the Total LC Commitment.

(b) The Administrative Agent shall have received evidence satisfactory to it that all premiums in respect of the Title Policy, all charges for mortgage recording taxes in connection with the recordation of the Mortgages, and all related expenses, if any, have been paid or will be paid on the Closing Date.

3.1.17 *Compliance with Flood Laws*. With respect to the Site and the Easements, the following:

(a) A completed "life of loan" Federal Emergency Management Agency Standard Flood Hazard Determination;

(b) If any improvement to the Site or the Easements is located in a special flood hazard area, a notification thereof to Co-Borrowers from the Administrative Agent (the "Co-Borrowers Flood Notice"), and (if applicable) the Co-Borrowers Flood Notice shall contain a notification to Co-Borrowers that flood insurance coverage under the National Flood Insurance Program ("NFIP") is not available because the community does not participate in the NFIP;

(c) Documentation evidencing each Co-Borrower's receipt of the Co-Borrowers Flood Notice (e.g., countersigned Co-Borrowers Flood Notice, return receipt of certified U.S. Mail, or overnight delivery); and

(d) If the Co-Borrowers Flood Notice is required to be given and flood insurance is available in the community in which the Site or the Easements is located, a copy of one of the following: the flood insurance policy, Co-Borrowers' application for a flood insurance policy plus proof of premium payment or inclusion of such premium payment in the Funds Flow Memorandum, a declaration page confirming that flood insurance has been provided as a separate policy or within the property insurance program for the Project, or such other evidence of flood insurance satisfactory to the Administrative Agent and the Lenders. To the extent that any improvement to the Site or the Easements is located in a special flood hazard area, such flood insurance arranged by Co-Borrowers shall be in an amount at least equivalent to the amount available under the NFIP.

3.1.18 *Representations and Warranties*. Each representation and warranty of each Borrower Party under the Credit Documents to which it is a party shall be true and correct as of the Closing Date, unless such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct as of such earlier date).

3.1.19 *No Default*. No Event of Default or Inchoate Default shall have occurred and be continuing as of the Closing Date.

3.1.20 *Establishment of Accounts*. The Depositary Accounts required to be open as of the Closing Date under the Depositary Agreement shall have been opened.

3.1.21 *Regulatory Status and Market Status*. Delivery to the Administrative Agent of a copy of a notice of self-certification filed at FERC demonstrating that PowerCo is an Exempt Wholesale Generator.

3.1.22 *Necessary Project Permits.*

(a) Delivery to the Administrative Agent of a copy of each Applicable Permit set forth on Exhibit G-1(a), and each such Applicable Permit shall be in form and substance satisfactory to each Lender.

(b) Except as disclosed in Exhibit G-1(a), the Applicable Permits set forth on Exhibit G-1(a) shall have been issued and be in full force and effect in all material respects and not be subject to current legal proceedings or to any Unsatisfied Conditions that would reasonably be expected to have a Material Adverse Effect, and all applicable administrative and statutory appeal periods with respect thereto shall have expired. The Applicable Permits set forth on Exhibit G-1(a) shall not be subject to any restriction, condition, limitation or other provision which would reasonably be expected to have a Material Adverse Effect or result in the Project being operated in a manner substantially inconsistent with the assumptions underlying the Base Case Projections.

3.1.23 *Construction Budget and Project Schedule; Sources and Uses*. The Administrative Agent shall have received (i) the Construction Budget, (ii) the Project Schedule, and (iii) a sources and uses of funds demonstrating that the Construction Facility and the Second Lien Loan Commitments, together with the equity contributions on the Closing Date and projected revenues from the Production Project, are sufficient to fund anticipated remaining Project Costs, each of which shall be satisfactory to the Lenders.

3.1.24 *Subordination Agreement.* The Subordination Agreement shall have been duly recorded and filed (or will be recorded and filed substantially concurrently with the Closing Date) within the applicable land records of each county or jurisdiction in which any of the Gasco JDA Subject Property or any of the Gasco JOA Subject Property (each as defined in the Subordination Agreement) is located.

3.1.25 *U.S.A. Patriot Act; Beneficial Ownership Regulation*. Each Agent, Lender and LC Issuer shall have received, at least five Banking Days prior to the Closing Date so long as such request was made no less than ten Banking Days prior to the Closing Date, (a) all documentation and other information required by bank regulatory authorities and reasonably requested by it under applicable "know your customer" laws, AML Laws, Sanctions and Anti-Terrorism Laws, including the USA Patriot Act (2001 H.R. 3162 (signed into law October 26, 2001)) (the "Act"), (b) if any Co-Borrower qualifies as a "legal entity customer" within the meaning of the Beneficial Ownership Regulation, a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation (in the form approved by the LSTA) for such Co-Borrower (the "Beneficial Ownership Certification") and (c) a duly executed copy of each Co-Borrower's IRS Form W-9 or such other applicable IRS Form.

3.1.26 *Equity Contributions*. On or prior to the Closing Date, the Borrower Parties shall have caused one or more parent companies of Holdings to have deposited cash common equity contributions to Holdings and, in turn, Holdings shall have contributed such amounts to the Co-Borrowers, and such amounts in an aggregate amount equal to $49,242,000, plus any additional amount required in connection with any Debt Resizing Projections, shall have been deposited in the Construction Account, and such amounts in an aggregate amount equal to $20,000,000 shall have been deposited in the Contingent Equity Account, in each case under the Depositary Agreement.

3.1.27 *Water Line Easement and Operating Agreement*. The Water Line Easement and Operating Agreement or memorandum thereof shall have been duly recorded and filed (or will be recorded and filed substantially concurrently with the Closing Date) within the land records of Monroe County, Ohio in which the Easement Area (as defined in the Water Line Easement and Operating Agreement) is located.

3.1.28 *Payment of Fees*. All taxes, fees and other costs payable in connection with the execution, delivery, recordation and filing of the Credit Documents and due on the Closing Date shall have been paid in full or provided for (including out of the proceeds of the Construction Loans on the Closing Date). Co-Borrowers shall have paid (or caused to be paid) or shall pay out of the proceeds of the Construction Loans on the Closing Date all outstanding amounts due as of the Closing Date and owing to (a) the Lenders, Administrative Agent, Collateral Agent, the LC Issuers or the Arranger under any fee or other letter, including without limitation the Fee Letters or pursuant to Section 2.3.1, (b) the Lenders' attorneys and consultants (including the Independent Consultants) and the Title Insurer for all services rendered and billed prior to the Closing Date, (c) the Depositary Agent under the Depositary Agreement, (d) the attorneys for the Collateral Agent and/or the Depositary Agent and (e) Administrative Agent for any other amounts required to be paid or deposited by Co-Borrowers on the Closing Date.

3.1.29 *Funding of Second Lien Loans; Second Lien Credit Documents.* The Co-Borrowers: (i) shall have concurrently received and deposited into the Second Lien Loan Proceeds Account in accordance with the Depositary Agreement gross cash proceeds from advances under the Second Lien Facility of not less than 50% of the Second Lien Loan Commitments; and (ii) shall have delivered to the Administrative Agent fully-executed copies of all Second Lien Credit Documents, each in form and substance satisfactory to each Lender.

3.1.30 *Solvency Certificate*. The Administrative Agent shall have received a certificate, dated as of the Closing Date, duly executed by a financial officer of each Borrower Party, in substantially the form of Exhibit F-2.

3.1.31 *Pre-Closing Project Costs*. The Administrative Agent shall have received an executed certificate or other written verification from the Independent Engineer that $100,910,112 shall have been applied to the payment of Project Costs included in the Construction Budget prior to the Closing Date, and each Lender shall have received satisfactory evidence of the foregoing.

3.1.32 *Notices to Proceed*. The Administrative Agent shall have received a copy of the Notice to Proceed under and as defined in the EPC Contract, and the Notice to Proceed under and as defined in the PIE Contract, each of which shall have been delivered to the relevant counterparty under and in accordance with the EPC Contract and the PIE Contract, respectively.

3.1.33 *Funds Flow Memorandum*. The Administrative Agent, the Depositary Agent and the Arranger shall have received a copy of the Funds Flow Memorandum, in form and substance satisfactory to such Agents.

3.2 CONDITIONS PRECEDENT TO EACH CONSTRUCTION CREDIT EVENT. The obligation of the Lenders to make each Construction Loan (other than any Construction Loan the proceeds of which are applied in accordance with the Funds Flow Memorandum on the Closing Date, but including, for the avoidance of doubt, any Construction Loan requested by Co-Borrowers as reimbursement for any Drawstop Equity Contribution received by Co-Borrowers, each a "Construction Credit Event") is subject to the satisfaction of each of the following conditions (unless waived in writing by Administrative Agent with the consent of the Required Lenders):

3.2.1 *Construction Requisition and IE Requisition Certificate.*

(a) (x) At least seven Banking Days prior to such date (other than the Closing Date or any date on which Construction Loans are requested only in respect of reimbursement of Drawstop Equity Contributions), Co-Borrowers shall have provided to Administrative Agent, Depositary Agent and Independent Engineer a Construction Requisition certified by a Responsible Officer of the Administrative Borrower (as defined in the Depositary Agreement), dated the date of delivery of such certificate, setting forth the date of the proposed Construction Credit Event (the "Construction Credit Event Date") and completed to the reasonable satisfaction of Administrative Agent (in consultation with the Independent Engineer) and, provided that, the Required Lenders shall not have reasonably objected to such Construction Requisition in writing during such seven Banking Day period stating that (x) such Construction Requisition does not comply with the requirements of this Agreement or the Depositary Agreement, or (y) an Event of Default or Inchoate Default shall have occurred and is continuing (which writing shall set forth the basis for the claim in clause (x) or (y) (as applicable) in reasonable detail), together with, (i) in the case of payments to be made under the Construction and Equipment Contracts, copies of all documentation related to such payments required to be provided by the relevant contractor to the applicable Co-Borrower under the Construction and Equipment Contracts, (ii) in the case of payments to be made to any other vendors or contractors, copies of all documentation related to such payments required to be provided by such Person to the applicable Co-Borrower under the relevant contract, (iii) in the case of payments to be made to the counterparties pursuant to the Interconnection Agreements a schedule of payments or copies of other appropriate documentation or materials reasonably requested by Administrative Agent to enable it to substantiate the withdrawals and transfers specified in such Construction Requisition and the other matters described therein and (iv) the monthly progress report for the period in respect of which payments are being requested in the applicable Construction Requisition (which may be a prior period) and (y) if Construction Loans are requested to be made to reimburse Holdings for any Drawstop Equity Contributions, at least three Banking Days prior to such date, Co-Borrowers shall have provided to Administrative Agent and Independent Engineer a Notice of Borrowing setting forth the proposed Construction Credit Event Date that sets forth the amount that Co-Borrowers seek in reimbursement of Drawstop Equity Contributions (together with a certification that all such equity contributions were applied in payment of Project Costs included in the Construction Budget) together with all documentation that would have been required in connection with a Borrowing to pay such Project Costs directly from the Construction Account pursuant to the foregoing clauses (x)(i), (ii), (iii) and (iv), as applicable, rather than with the proceeds of equity contributions.

(b) At least three Banking Days prior to such date (other than the Closing Date), Administrative Agent shall have received an IE Requisition Certificate, dated the date of delivery of such certificate.

3.2.2 *Title Policy Endorsements*. Title Insurer shall have issued (or shall have irrevocably committed to issue) to Administrative Agent an endorsement to the Title Policy in the form of Exhibit R attached hereto, confirming that Title Insurer has searched the records of the recorder's office for Monroe County, Ohio on the day prior to the then applicable Construction Credit Event, and no Liens are disclosed by the public records as encumbering the Real Property, except for Permitted Liens and any other Liens as are acceptable to Administrative Agent.

3.2.3 *Lien Releases; No Liens*. Each Co-Borrower shall have delivered to Administrative Agent to the extent required to be delivered by the applicable counterparty pursuant to the terms of the applicable Major Project Document, duly executed lien releases or waivers from EPC Contractor and, to the extent the aggregate contract price under any contract entered into with a subcontractor or supplier exceeds $1,000,000 for any interim payment or $1,000,000 for any final payment, from each such subcontractor or supplier under the Construction and Equipment Contracts or any other Major Project Document providing for construction services on, or delivery of any equipment or materials to, any Real Property (including any subcontractor or supplier engaged pursuant to a subcontract with a contractor under the EPC Contract other than any such subcontractor or supplier that is not required to deliver such lien waivers by the terms of the EPC Contract) to be paid from funds requested under the related Borrowing, or to be paid from any other funds on deposit in the Construction Account prior to the date of the next Borrowing hereunder, which lien releases or waivers shall each be dated no earlier than the invoice delivered by the applicable counterparty which is to be paid from the requested Borrowing and shall be substantially consistent with any relevant requirements of the applicable Major Project Document and in the form required pursuant to Ohio law. There has not been filed with or served upon any Co-Borrower or the Project (or any part thereof) notice of any Lien, claim of Lien or attachment upon or claim affecting the right to receive payment of any of the moneys payable to any of the Persons named on such request which has not been released or in respect of which a bond or other security reasonably acceptable to Administrative Agent has not been posted or provided or which will not be released with the payment of such obligation out of such Loan other than Permitted Liens.

3.2.4 *[Reserved]*.

3.2.5 *Application of Prior Construction Loans*. To the extent reasonably requested by Administrative Agent, Co-Borrowers shall have delivered to Administrative Agent and the Independent Engineer evidence reasonably satisfactory to the Independent Engineer that amounts withdrawn from the Construction Account prior to the applicable Credit Event have been applied or set aside to be applied to pay Project Costs.

3.2.6 *Available Construction Funds*. Co-Borrowers shall have certified through delivery of a Construction Requisition that the Available Construction Funds shall not be less than the aggregate unpaid amount required to cause the Completion Date to occur in accordance with all Legal Requirements and the Major Project Documents prior to the Date Certain and the Independent Engineer shall have confirmed through the delivery of the IE Requisition Certificate that the Available Construction Funds shall not be less than the aggregate unpaid amount required to cause the Completion Date to occur in accordance with all Major Project Documents prior to the Date Certain.

3.2.7 *Applicable Permits*. All necessary Applicable Permits with respect to the construction and operation of the Project required to have been obtained by a Co-Borrower by the date of such Construction Credit Event from any Governmental Authority shall have been issued and be in full force and effect and not be subject to current legal proceedings or to any unsatisfied conditions (other than any condition which such Co-Borrower reasonably expects to satisfy or cause to be satisfied on or prior to the date such satisfaction is required) that would reasonably be expected to allow material modification or revocation, and all applicable administrative and statutory appeal periods with respect thereto shall have expired. Except as disclosed in Exhibit G-1(a), the Applicable Permits which have been obtained by a Co-Borrower shall not be subject to any restriction, condition, limitation or other provision that would reasonably be expected to have a Material Adverse Effect.

3.3 CONDITIONS PRECEDENT TO TERM CONVERSION.

The occurrence of the Term Conversion Date shall be subject to the satisfaction of the following conditions (unless waived in writing by Administrative Agent with the consent of the Required Lenders):

3.3.1 *Notice of Term Conversion*. Co-Borrowers shall have delivered a duly executed Notice of Term Conversion to Administrative Agent pursuant to Section 2.1.2(b).

3.3.2 *Completion*. The Project shall have achieved Completion, as certified in writing by a Responsible Officer of each Co-Borrower in a certificate in the form of Exhibit C-6 attached hereto and confirmed in a certificate from the Independent Engineer in the form of Exhibit C-7 attached hereto. Administrative Agent shall have received a copy of the "Certificate of Substantial Completion" delivered by the EPC Contractor under the EPC Contract.

3.3.3 *Acceptable Work; No Liens; Project Costs.*

(a) All work previously done on the Project funded with the proceeds of the Construction Loans has been done in all material respects in accordance with the applicable Major Project Documents. There has not been filed with or served upon any Co-Borrower or the Project (or any part thereof) notice of any Lien or claim of Lien affecting the right to receive payment of

any of the moneys payable to any of the Persons named on such request which has not been released or will not be released on the Term Conversion Date by payment or bonding on terms reasonably satisfactory to the Required Lenders, other than Permitted Liens.

(b) All Project Costs other than Remaining Costs shall have been paid for.

3.3.4 *Insurance*. All of the insurance required to be in place in respect of the Project under the Operative Documents (including with respect to the operational phase of the Project) shall be in full force and effect in accordance with the terms of this Agreement and Administrative Agent shall have received a certificate from Insurance Consultant, in substantially the form of Exhibit C-8.

3.3.5 *Title Policy*. Delivery to Administrative Agent of (a) an endorsement to the Title Policy in the form of Exhibit R attached hereto (subject only to Permitted Liens and any other exceptions to title as are acceptable to Administrative Agent) and (b) a date down endorsement to the Title Policy showing no Liens other than Permitted Liens and in form and substance reasonably acceptable to Administrative Agent.

3.3.6 *Annual Operating Budget*. Co-Borrowers shall have delivered to Administrative Agent and Administrative Agent shall have approved the first Annual Operating Budget in accordance with Section 5.12.2.

3.3.7 *Debt Service Reserve Account*. Co-Borrowers shall have funded or shall fund on the Term Conversion Date the Debt Service Reserve Account in cash in an amount equal to the DSR Required Balance on such date.

3.3.8 *Term Notes*. Co-Borrowers shall have delivered duly executed Term Notes (if any) to any Term Lender that shall have requested such Term Notes pursuant to Section 2.1.6 or 9.13.

3.3.9 *Regulatory Status.* The Administrative Agent shall have received reasonably satisfactory evidence of the effectiveness of PowerCo's MBR Authority and status as an Exempt Wholesale Generator.

3.3.10 *Required Documentation*. The Administrative Agent shall have received on or prior to the Term Conversion Date a copy of each Major Project Document executed after the Closing Date (certified by a Responsible Officer of each Co-Borrower as being true, correct and in full force and effect) and any related Consent to the extent required pursuant to Section 5.14, in each case if and to the extent that a copy thereof has not previously been delivered to Administrative Agent.

3.3.11 *Production Report.* The Administrative Agent shall have received from the Co-Borrowers, no later than 10 Banking Days prior to the Term Conversion Date a certificate (together with reasonable backup information supporting the conclusions stated therein) confirming actual cumulative natural gas production from

the Closing Date to the date of delivery of such certificate from all wells at the Production Project (excluding those completed in the 60 days immediately preceding the Term Conversion Date), comparing such recovery to the production profiles attached hereto as Exhibit Q, adjusted for the region where such wells are located, lateral lengths and the time each such well was actually producing, and confirmed by the Petroleum Engineer. If actual cumulative natural gas production is less than 95% of the expected production derived from such exhibit, then all amounts on deposit in the Contingent Equity Account and any amounts available pursuant to Section 3.1(b)(ii)(F) of the Depositary Agreement, not to exceed in the aggregate $20,000,000 will be deposited in the Operating Reserve Account pursuant to the Depositary Agreement, and otherwise such amounts in the Contingent Equity Account shall be transferred in accordance with Section 3.14(b)(ii)(y) of the Depositary Agreement. For the avoidance of doubt, if the lateral length or time period is not specifically defined on Exhibit Q, the lateral length or time period will be linearly adjusted based on the two nearest data points in Exhibit Q.

3.3.12 *Term Conversion Date Withdrawals.*

(a) Administrative Agent shall have received, at least five Banking Days prior to the proposed Term Conversion Date, Co-Borrowers' reasonably detailed calculations of the amount of the Final Drawing, and the payments and transfers to be applied pursuant to this Section 3.3.12, in each case, in form and substance reasonably satisfactory to Administrative Agent, acting in consultation with the Independent Engineer.

(b) On the Term Conversion Date, Co-Borrowers will make, or cause to be made, the final drawing of Construction Loans in an amount up to the remaining Construction Loan Commitment (such drawing, the "Final Drawing"), and apply such Final Drawing to the transfers and disbursements as provided in, and in accordance with, Section 3.1(b) of the Depositary Agreement.

3.3.13 *Applicable Permits.*

(a) Delivery to the Administrative Agent of a copy of each Applicable Permit not previously delivered pursuant to Section 3.1.22 on the Closing Date, and any modification or reissuance of such Applicable Permits previously delivered pursuant to Section 3.1.22 on the Closing Date.

(b) Each Applicable Permit shall be in full force and effect in all material respects and not be subject to current legal proceedings or to any Unsatisfied Conditions that would reasonably be expected to have a Material Adverse Effect, and all applicable administrative and statutory appeal periods with respect thereto shall have expired. The Applicable Permits shall not be subject to any restriction, condition, limitation or other provision which would reasonably be expected to have a Material Adverse Effect or result in the Project being required to operate in a manner materially inconsistent with the assumptions underlying the Base Case Projections.

3.3.14 *LC Loans.* No LC Loans shall be outstanding.

3.3.15 *As-Built Surveys*. Delivery to Administrative Agent of an A.L.T.A. As-Built Survey (or other survey approved by Administrative Agent (at the direction of the Required Lenders) (such approval not to be unreasonably withheld or delayed) or the most recent draft of any such A.L.T.A. As-Built Survey or other survey approved by the Administrative Agent acting reasonably in the event the final version of such survey is not yet available) of the Site and the Easements (with respect to the Easements, such surveys to be of the same quality as any surveys delivered on or prior to the Closing Date), reasonably satisfactory in form and substance to Administrative Agent (at the direction of the Required Lenders), reasonably current and certified to Administrative Agent, Collateral Agent, Co-Borrowers and Title Insurer by a surveyor licensed in the state where the Project is located and reasonably satisfactory to the Lenders, showing (A) as to the Site and the Easements, the location and dimensions thereof, including (i) the location of all means of access thereto and all easements relating thereto and (ii) showing the perimeter within which all foundations are or are to be located; (B) the existing utility facilities servicing the Project (including water, electricity, gas, telephone, sanitary sewer and storm water distribution and detention facilities); (C) other than Permitted Liens, that the location of the Project is in material compliance with all applicable building and setback lines, that the improvements are in material compliance with all applicable building and setback lines and do not encroach or interfere with adjacent property or existing easements or other rights (whether on, above or below ground) unless such encroachments or interferences are otherwise permitted, and that there are no material gaps, gores, projections, protrusions or other material survey defects; (D) whether the Site or the Easements or any portion thereof is located in a flood hazard zone; and (E) that there are no other matters constituting a material defect in title other than Permitted Liens; provided that the matters described in clauses (A)(ii) and (D) above may be shown by separate maps, surveys or other information reasonably satisfactory to Administrative Agent (at the direction of the Required Lenders).

3.3.16 *Casualty Event and Event of Eminent Domain*. No Casualty Event, Event of Eminent Domain or Title Event shall have occurred and not been resolved or corrected pursuant to a completed Restoration Action (as defined in the Depositary Agreement) in accordance with the Depositary Agreement to the extent that such Casualty Event, Event of Eminent Domain or Title Event would reasonably be expected to have an impact on the Project of more than $25,000,000 or prevent the Project from operating in a safe manner or in all material respects accordance with the requirements of the Project Documents.

3.4 CONDITIONS PRECEDENT TO EACH CREDIT EVENT. Each Construction Credit Event, each Construction Loan requested by Co-Borrowers, the obligation of any LC Issuer to issue or extend (unless such extension is pursuant to Section 2.2.4(c) above) any Letter of Credit, the obligation of any LC Issuer to increase or reinstate the amount of any Letter of Credit and the conversion of the Construction Loans to Term Loans (each, a "Credit Event") is subject to the satisfaction of the following conditions (unless waived in writing by Administrative Agent with the consent of the Required Lenders):

3.4.1 *Notice of Borrowing or Notice of LC Activity*. (i) If such Credit Event is a Borrowing of Construction Loans, Administrative Agent shall have received a Notice of Borrowing as and when required by Section 2.1.1(b) and (ii) if such Credit Event is the issuance of, extension of, or increase in the stated amount of, a Letter of Credit, the applicable LC Issuer and Administrative Agent shall have received a Notice of LC Activity as and when required by Section 2.2.4(a).

3.4.2 *Representations and Warranties*. Each representation and warranty made by a Co-Borrower in any of the Credit Documents shall be true and correct in all material respects (except for any representations and warranties qualified by materiality or Material Adverse Effect in which case such representations and warranties shall be true and correct in all respects) as if made on the date of such Credit Event, unless such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct as of such earlier date).

3.4.3 *No Default*. No Event of Default or Inchoate Default shall have occurred and be continuing or will result from such Credit Event.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES

Each of Holdings and each Co-Borrower makes the following representations and warranties to and in favor of each Agent, each Lender and each LC Issuer as of the Closing Date (unless such representation and warranty expressly relates solely to an earlier date, in which case, such representation and warranty is made as of such earlier date) and as of the date of each Credit Event (unless such representation and warranty expressly relates solely to an earlier date, in which case, such representation and warranty is made as of such earlier date):

4.1 ORGANIZATION; OWNERSHIP OF SECURITIES.

4.1.1 Each such Borrower Party is (a) duly organized or formed, validly existing and in good standing under the laws of its jurisdiction of organization or formation, and (b) is duly qualified as a foreign company, and is in good standing, in each other jurisdiction in which such qualification is required by law, except, in the case of this clause (b) only, where the failure to so qualify or be in good standing would not reasonably be expected to have a Material Adverse Effect. Each such Borrower Party has all requisite limited liability company power and authority to (i) own or hold under lease and operate the property it purports to own or hold under lease, (ii) carry on its business as now being conducted and as now proposed to be conducted, (iii) execute, deliver and perform each Operative Document to which it is a party, including, without limitation, to borrow and otherwise obtain credit under this Agreement, and (iv) take each action as may be necessary to consummate the transactions contemplated under the Operative Documents.

4.1.2 Except to the extent provided in the Depositary Agreement with respect to the Co-Borrowers, (a) each such Borrower Party's funds and assets are not, and will not be, commingled with those of any other entity and (b) no such Borrower Party has entered into any material transactions or conducted any material business unrelated to the transactions contemplated by the Operative Documents and the development, construction, ownership, operation and maintenance of the Project (including the acquisition of gas interests in compliance with the terms of this Agreement).

4.1.3 100% of the Securities of each Co-Borrower are owned directly by Holdings, all of which Securities are owned free and clear of all Liens other than the Liens created pursuant to the Guaranty and Security Agreement, the Liens created pursuant to the Guaranty and Security Agreement (as defined in the Second Lien Credit Agreement) (which Liens shall at all times be subject to the Intercreditor Agreement) and any non-consensual Permitted Liens for Taxes to the extent incurred pursuant to Governmental Rule. Holdings is the sole member of each Co-Borrower.

4.2 AUTHORIZATION; NO CONFLICT.

4.2.1 Each such Borrower Party has duly authorized, executed and delivered each Operative Document to which such Borrower Party is a party and the transactions contemplated thereunder (including, without limitation, the borrowings and the granting of Liens and guarantees pursuant to the Credit Documents) and neither any Borrower Party's execution, delivery or performance of the Operative Documents nor its consummation of the transactions contemplated thereby nor its compliance with the terms thereof (a) does or will contravene or violate any of any such Borrower Party's Governing Documents, (b) does or will contravene or violate in any respect any Legal Requirement applicable to or binding on any such Borrower Party or any of its properties or assets, (c) does or will contravene in any material respect or result in any material breach of or constitute any material default under, or result in or require the creation or imposition of any Lien (other than Permitted Liens) upon any of its property or assets (whether now owned or existing or hereafter acquired or arising) under, any of the Major Project Documents, (d) does or will contravene or result in any breach of or constitute any default under, or result in or require the creation or imposition of any Lien (other than Permitted Liens) upon any of its property or assets (whether now owned or existing or hereafter acquired or arising) under any other agreement or instrument to which it is a party or by which it or any of its properties or assets may be bound or affected, or (e) does or will require any material consent or approval of any Person, and with respect to any Governmental Authority, does or will require any material registration with, or notice to, or any other action of, with or by any applicable Governmental Authority, in each case which has not already been obtained and disclosed in writing to Administrative Agent (except (i) any Permits that are not yet Applicable Permits, (ii) such as are required by securities, regulatory or applicable law in connection with an exercise of remedies, (iii) as set forth on Exhibit G-1(a) or Exhibit G-1(b) and the filing of any applicable renewal, extension or reissuance documentation in respect thereof or (iv) otherwise

provided in Section 4.9) or, in the cases of clauses (b) or (d) above, as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

4.3 ENFORCEABILITY. Each of the Operative Documents to which any such Borrower Party is a party is a legal, valid and binding obligation of such Borrower Party, enforceable against such Borrower Party in accordance with its terms, except to the extent that enforceability may be limited by (a) applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights, (b) the effect of general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law) or (c) implied covenants of good faith and fair dealing.

4.4 COMPLIANCE WITH LAW. (a) (i) As of the Closing Date, there are no material violations by any such Borrower Party of any currently applicable Legal Requirement (other than any Environmental Laws, which such laws are the subject of Section 4.10) and (ii) as of the date of each Credit Event occurring after the Closing Date, there are no violations by any such Borrower Party of any currently applicable Legal Requirement (other than any Environmental Laws, which such laws are the subject of Section 4.10), except in the case of clause (a)(ii) as would not reasonably be expected to result in a Material Adverse Effect, and (b) as of the Closing Date, no notices of any material violation of any currently applicable Legal Requirement (other than any Environmental Laws, which such laws are the subject of Section 4.10) relating to the Project, the Site or the Easements have been issued, entered or received by any Co-Borrower.

4.5 BUSINESS, CONTRACTS, JOINT VENTURES ETC.

4.5.1 No such Borrower Party is a party to, nor is it or any of its properties or assets bound by, any material contract other than the Operative Documents to which it is a party.

4.5.2 No such Borrower Party is a general partner or a limited partner in any general or limited partnership or a joint venturer in any Joint Venture; provided that GasCo shall not be considered to be a joint venturer in any Joint Venture solely because it is party to a Joint Operating Agreement or Joint Development Agreement in respect of Gas Properties.

4.5.3 (a) No Co-Borrower has any Subsidiaries and (b) Holdings has no Subsidiaries other than the Co-Borrowers.

4.5.4 Each Co-Borrower maintains separate books of account from the Holdings and all other Persons. Holdings maintains separate books of account from all other Persons.

4.5.5 Each such Borrower Party conducts its business solely in its own name in a manner not misleading to other Persons as to its identity.

4.5.6 The liabilities of each Co-Borrower are readily distinguishable from the liabilities of Holdings and all other Persons. The liabilities of Holdings are readily distinguishable from the liabilities of all other Persons.

4.5.7 No Co-Borrower has deposit or other accounts other than as created or permitted under the Depositary Agreement (including the Local Checking Accounts) and such accounts are separate from the bank accounts of the Holdings and all other Persons. Holdings has no deposit or other accounts, other than the Holdings Project Account.

4.5.8 No such Borrower Party has any employees.

4.6 ADVERSE CHANGE.

4.6.1 As of the Closing Date, since September 30, 2018, no event or circumstance has occurred and is continuing which has had or could reasonably be expected to have a Material Adverse Effect.

4.6.2 As of the date of each Credit Event made after the Closing Date, since the Closing Date, no event or circumstance has occurred and is continuing which has had or would reasonably be expected to have a Material Adverse Effect.

4.7 INVESTMENT COMPANY ACT. No such Borrower Party is an investment company or a company controlled by an investment company, within the meaning of the Investment Company Act of 1940, as amended.

4.8 ERISA. There are no Plans or Multiemployer Plans. None of the Borrower Parties or any ERISA Affiliate has had a complete or partial withdrawal from any Multiemployer Plan that has resulted or would reasonably be expected to result in a liability under ERISA, except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

4.9 PERMITS.

4.9.1 As of the Closing Date, there are no material Permits under existing Legal Requirements as the Project is currently designed that are or will become Applicable Permits other than the Permits listed in Exhibits G-1(a) and G-1(b).

4.9.2 Except as disclosed in Exhibit G-1(a) (as such Exhibit may be supplemented by Co-Borrowers to reflect any Change of Law or the issuance of any Permit after the Closing Date) or as otherwise would not reasonably be expected to constitute, or result in, a Material Adverse Effect, each Permit listed in Exhibit G-1(a) and required to be obtained by or on behalf of any such Borrower Party in order to construct, develop, maintain and operate the Project is issued in the name of the applicable Co-Borrower (or is specified on Exhibit G-1(a) as being held by an Affiliate of the Co-Borrowers identified therein, and will be transferred to the applicable Co-Borrower no later than three months following the Closing Date), in full force and effect and is not subject to any current legal proceeding or Unsatisfied Condition, and all applicable administrative and statutory appeal periods with respect thereto have expired.

4.9.3 No fact or circumstance exists, to each such Borrower Party's Knowledge, which makes it reasonably expected that any Permit identified in Exhibit G-1(b) shall not be obtainable by or on behalf of any such Borrower Party before it becomes an Applicable Permit without expense to any such Borrower Party materially in excess of amounts provided therefor in the then-current Construction Budget or Annual Operating Budget, as the case may be.

4.9.4 Except as would otherwise reasonably be expected to constitute, or result in, a Material Adverse Effect, each such Borrower Party is in compliance with its respective Applicable Permits.

4.10 HAZARDOUS SUBSTANCES AND ENVIRONMENTAL LAWS.

4.10.1 Except as set forth in Exhibit G-3: (a) no such Borrower Party has received, in the past five years, any unresolved written notice from any Governmental Authority that, with respect to the Project, the Easements, Improvements or other Mortgaged Property, it is or has in the past been in violation of any Environmental Law in any material respect, (b) neither any such Borrower Party nor, to each such Borrower Party's Knowledge, any other Person has used, Released, generated, manufactured, produced or stored in, on, or under the Project, the Easements, Improvements or other Mortgaged Property, or transported thereto or therefrom, any Hazardous Substances in violation in any material respect of or as would not reasonably be expected to result in material liability under Environmental Laws by any Borrower Party, (c) to each such Borrower Party's Knowledge, there are no underground tanks, whether operative or temporarily or permanently closed, asbestos-containing materials, or lead-based paint products located on the Project, the Easements, Improvements or other Mortgaged Property that could reasonably be expected to subject any Secured Party or any Borrower Party to material liability under any Environmental Law, and (d) except as disclosed in writing to Administrative Agent, no such Borrower Party is conducting or funding any material investigation, remediation, remedial action or cleanup of any Hazardous Substances.

4.10.2 Except as set forth on Exhibit G-2, to each such Borrower Party's Knowledge, there is no pending or threatened Environmental Claim by any Governmental Authority (including U.S. Army Corps of Engineers and U.S. Environmental Protection Agency) or any non-governmental third party with respect to the presence or Release of Hazardous Substances in, on, from or to the Site, the Easements, Improvements or other Mortgaged Property, or any alleged noncompliance with Environmental Laws or Permits, in each case that would reasonably be expected to have a Material Adverse Effect.

4.10.3 (A) The Project and the activities of Co-Borrowers with respect to the construction, development and operations of the Project are in compliance with Environmental Laws (including any Permits issued pursuant thereto), (B) the Project and the activities of Co-Borrowers with respect to the construction, development and operations of the Project have been in compliance with Environmental Laws (including

any Permits issued pursuant thereto), and (C) to each such Borrower Party's Knowledge, there are no facts or circumstances that would reasonably be expected to result in a failure to obtain any Permits required under Environmental Law with respect to the Project construction, development and operations, other than, in the case of each of clauses (A) and (B), any failure to so comply where such failure did not have or would not reasonably be expected to have a Material Adverse Effect.

4.11 LITIGATION.

(a) Except as set forth on Exhibit G-2, as of the Closing Date, no legal action, suit, investigation, litigation or proceeding is pending or threatened in writing to a Co-Borrower in any court or before any arbitrator or Governmental Authority against or related to the Project or any Co-Borrower seeking damages in excess of $2,000,000 or injunctive relief or seeking to enjoin or impair the consummation of the transactions consummated by the Operative Documents.

(b) Except as set forth on Exhibit G-2, no such Borrower Party has any Knowledge of any order, judgment or decree that has been issued or proposed to be issued by any Governmental Authority that, as a result of the leasing, ownership, development, construction, operation or maintenance of the Project by any such Borrower Party, the sale of electricity therefrom by any such Borrower Party or the entering into of any Operative Document or any transaction contemplated hereby or thereby, could reasonably be expected to cause or deem the Lenders, Administrative Agent, Collateral Agent, Depositary Agent, the LC Issuers, the Arranger or any Affiliate thereof or any such Borrower Party to be subject to, or not exempted from, regulation under PUHCA, or treated as a public utility under Chapter 4905 of the Ohio Revised Code and any regulations promulgated thereunder, respecting the rates or the financial or organizational regulation of electric utilities, provided that any exercise of remedies under the Credit Documents or the Second Lien Credit Documents that results in the direct or indirect ownership of the Project by any Secured Party or any of its Affiliates may subject such Secured Party and its Affiliates to regulation under PUHCA, the FPA or any state law or regulation respecting the rates of electric utilities or the financial and organizational regulation of electric utilities.

(c) As of the date of each Credit Event occurring after the Closing Date, no action, suit, proceeding or investigation has been instituted or, to each such Borrower Party's Knowledge, threatened in writing against any such Borrower Party, which has had or would reasonably be expected to have a Material Adverse Effect.

4.12 LABOR DISPUTES AND ACTS OF GOD. Neither the business nor the properties of any such Borrower Party are currently affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy, or other casualty (whether or not covered by insurance) that (a) as of the Closing Date, is material to the Borrower Parties, or (b) after the Closing Date, would reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect.

4.13 PROJECT DOCUMENTS. As of the Closing Date, (i) a copy of each Project Document executed on or prior to such date (other than leases and other conveyance instruments in respect of the Gas Properties) has been delivered to Administrative Agent, (ii) the Project

Documents delivered to Administrative Agent as of the Closing Date constitute all the material contracts to which any Co-Borrower is a party on or prior to the Closing Date, (iii) except as set forth on Exhibit G-5, each of the Project Documents is in full force and effect, and no Co-Borrower is in material default of any term or provision thereof and, to each Co-Borrower's Knowledge, no other party is in material default thereunder and (iv) except as set forth on Exhibit G-5 or in the definition of such Project Document, none of the Project Documents as delivered to Administrative Agent has been further amended, modified or terminated. Holdings is not a party to any Project Document.

4.14 DISCLOSURE All information (other than the Project Schedule, Annual Operating Budget, Base Case Projections, other forecasts, prospective budgets, projections and other forward-looking information and information of a general economic or industry nature, and reports prepared by third party consultants (but not the information (for the avoidance of doubt, excluding any professional opinions and conclusions by such third party consultants) on which such reports are based to the extent such information was furnished or prepared by or on behalf of the Co-Borrowers or Parent (or their respective Affiliates)) provided in connection with the transactions contemplated by this Agreement) furnished, made available, prepared or approved by or on behalf of Co-Borrowers, Parent or their respective Affiliates to the Arranger, the Agents, or the Lenders, or to any Independent Consultant in connection with the transactions contemplated by this Agreement or the other Credit Documents when taken as a whole (at the time of delivery or verification thereof), is or will be, when furnished, complete and correct in all material respects and does not or will not, when furnished, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained herein or therein not materially misleading in light of the circumstances under which such statements were made.

4.15 TAXES.

(a) Each Borrower Party has timely filed, or caused to be timely filed, all federal and other material tax returns and reports required to have been filed by it, has paid, or caused to be paid, all material taxes, assessments, utility charges, fees and other governmental charges (including any interest, additions to tax or penalties applicable thereto) it is required to pay to the extent due (other than Permitted Liens) and there is no proposed tax assessment against any such Borrower Party proposed to such Borrower Party in writing or, to any such Borrower Party's Knowledge, threatened;

(b) No Borrower Party has ever been treated as an entity other than a partnership or a disregarded entity for federal, state, local or foreign income or franchise tax purposes and no Borrower Party has ever been subject to any material entity-level tax for federal, state, local or foreign income or franchise tax purposes;

(c) (i) No tax Liens have been filed with respect to the assets of any Borrower Party, and no unresolved claim has been asserted in writing with respect to (y) any taxes as of the Closing Date or (z) any material taxes as of the date of each Credit Event occurring after the Closing Date of any Borrower Party and (ii) as of the Closing Date, no waiver or agreement by any Borrower Party is in force for the extension of time for the assessment or payment of any tax, and no request for any such extension or waiver is currently pending;

(d) As of the Closing Date, there is no ongoing, pending or to any Borrower Party's Knowledge, threatened, audit or investigation by any taxing authority of any Borrower Party, and there has been no adjustment proposed in writing by any taxing authority. As of the date of each Credit Event occurring after the Closing Date, there is no ongoing, pending or, to any Borrower Party's Knowledge, threatened, audit or investigation by any taxing authority of any Borrower Party, and there has been no adjustment proposed in writing by any taxing authority, except in each case as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; and

(e) No Borrower Party is a party to any tax sharing arrangement or similar agreement or arrangement (whether or not written) pursuant to which it may have an obligation to make any payments after the Closing Date other than an agreement, (i) the parties to which include no Person other than the Borrower Parties or (ii) with one or more non-Affiliate third parties made in the ordinary course of business, the primary subject of which is not tax.

4.16 GOVERNMENTAL REGULATION.

4.16.1 None of the Agents or any Lender, nor any Affiliate of any of them will, solely as a result of the construction, ownership, development, maintenance, leasing or operation of the Project by any Borrower Party, the sale of electricity, capacity or ancillary services therefrom by any Co-Borrower or the entering into any Operative Document in respect of the Project or any transaction contemplated hereby or thereby, be subject to, or not exempt from, regulation under the FPA or PUHCA or under state laws and regulations respecting the rates or the financial or organizational regulation of electric utilities, provided that any exercise of remedies under the Credit Documents or the Second Lien Credit Documents that results in the direct or indirect ownership of the Project by any Secured Party or any of its Affiliates may subject such Secured Party and its Affiliates to regulation under PUHCA, the FPA or any state law or regulation respecting the rates of electric utilities or the financial and organizational regulation of electric utilities.

4.16.2 PowerCo is an Exempt Wholesale Generator. None of the Borrower Parties or any of their respective Subsidiaries is (a) subject to, or not exempt from, regulation (i) as a "holding company" or an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" within the meaning of PUHCA or the implementing regulations of FERC, other than, in the case of PowerCo, with respect to the compliance requirements of an Exempt Wholesale Generator or a holding company that is a "holding company" within the meaning of PUHCA solely by virtue of its ownership interests in Exempt Wholesale Generators, or (ii) by FERC as a "natural gas company" under the NGA, or (b) subject to and not exempt from, whether or not a specific exemption has been granted, financial, organizational or rate regulation under Chapter 4905 of the Ohio Revised Code and any regulations promulgated thereunder as a public utility, gas distribution company, electric utility, electric light company or a holding company of any of the foregoing.

4.16.3 Solely with respect to Credit Events occurring before the Generating Project, including related interconnection facilities, is energized or PowerCo has MBR Authority, no Borrower Party is subject to regulation as a public utility under the FPA. Solely with respect to Credit Events occurring upon or after the Generating Project, including related interconnection facilities, is energized: (i) PowerCo is a public utility under the FPA with authorization to sell electric energy, capacity and ancillary services at market-based rates, with all waivers and blanket authorizations typically granted by FERC to generators with market-based rate authorization under Section 205 of the FPA, including blanket authorizations under Section 204 of the FPA ("MBR Authority"); (ii) PowerCo's FERC Electric Tariff is effective, and its MBR Authority is in full force and effect, not subject to any pending challenge, rehearing or appeal, or, to any Borrower Party's Knowledge, any investigation by FERC; (iii) neither GasCo nor Holdings is subject to regulation as a public utility under the FPA or as a "natural gas company" under the NGA; and (iv) to each such Borrower Party's Knowledge, neither any such Borrower Party nor the Project or any portion thereof is subject to a pending investigation by FERC, the Commodity Futures Trading Commission, an independent system operator or regional transmission operator or the market monitor thereof, or any state agency, attorney general or consumer counsel.

4.16.4 As of the Closing Date, except as set forth on Exhibits G-1(a) or G-1(b), no consent, notice, approval or other Governmental Authorization or Permit to be obtained by or on behalf of a Borrower Party necessary for the operation of the Project or any portion thereof or the entering into any Operative Document in respect of the Project or any transaction contemplated hereby or thereby, as such Project is then constructed, is required from FERC or any state Governmental Authority with jurisdiction over (i) sales of electric energy or the transmission of electric energy or (ii) sales or transportation of natural gas in connection with any of the transactions contemplated hereby or by any other Operative Document.

4.16.5 As of the date of each Credit Event occurring after the Closing Date, to each Co-Borrower's Knowledge, there is no order, judgment or decree that has been issued or proposed to be issued by any Governmental Authority that, as a result of the ownership, leasing, development, construction, operation or maintenance of the Project by any Co-Borrower, the sale of electricity therefrom by any Co-Borrower or the entering into of any Operative Document or any transaction contemplated hereby or thereby, would reasonably be expected to cause or deem the Lenders, the Agents, the LC Issuers, the Arranger or any Affiliate of any of them to be subject to, or not exempted from, regulation under PUHCA the FPA, or the NGA or treated as a public utility under Chapter 4905 of the Ohio Revised Code and any regulations promulgated thereunder, respecting the rates or the financial or organizational regulation of electric utilities.

4.17 REGULATION U, ETC. No such Borrower Party is engaged principally, or as one of its principal activities, in the business of extending credit for the purpose of "buying", "carrying" or "purchasing" margin stock (each as defined in Regulations T, U or X of the Federal Reserve Board), and no part of the proceeds of the Loans or the Project Revenues will be used,

directly or indirectly, by any such Borrower Party for the purpose of "buying", "carrying" or "purchasing" any such margin stock or for any other purpose which violates the provisions of the regulations of the Federal Reserve Board.

4.18 PROJECTIONS; RESERVE REPORT.

(a) (i) As of the Closing Date, the Construction Budget, Project Schedule and the Base Case Projections provided in connection with the transactions contemplated by this Agreement that have been made available to the Arranger, the Agents and the Lenders (or any of the foregoing) on or prior to the Closing Date by or on behalf of any Co-Borrower, Holdings, any Affiliate thereof or any representative of the foregoing have been prepared in good faith based upon assumptions that are reasonable at the time made and at the time made available to the Arranger, the Agents and the Lenders, and are consistent in all material respects with the Operative Documents; and (ii) the Annual Operating Budget provided in connection with the transactions contemplated by this Agreement that has been made available to the Arranger, the Agents and the Lenders by or on behalf of any Co-Borrower, Holdings, any Affiliate thereof or any representative of the foregoing after the Closing Date has been prepared in good faith based upon assumptions that are reasonable at the time made and at the time made available to the Arranger, the Agents and the Lenders. and are consistent in all material respects with the Operative Documents;

in each case, it being understood and agreed that such Construction Budget, Project Schedule, Annual Operating Budget, Base Case Projections and other projections are not a guaranty of performance, are based upon a number of estimates and assumptions and are subject to significant uncertainties and contingencies, many of which are beyond the control of the Borrower Parties, and that actual results may differ therefrom and such differences may be material and no Borrower Party makes any representation or warranty as to the attainability of such Construction Budget, Project Schedule, Annual Operating Budget, Base Case Projections and other projections or as to whether such Construction Budget, Project Schedule, Annual Operating Budget, Base Case Projections and other projections will be achieved.

(b) To each such Borrower Party's Knowledge, (i) all factual information furnished by any such Borrower Party to the applicable Independent Consultant for use in the preparation of the Reserve Report was accurate at the time furnished in all material respects, and (ii) there has been no decrease in the amount of the estimated Proved Reserves shown in the Reserve Report since the date thereof, except for changes which have occurred as a result of production in the ordinary course of business.

4.19 FINANCIAL STATEMENTS. In the case of each financial statement of Holdings and each Co-Borrower and accompanying information delivered by Holdings and each Co-Borrower under Section 3.1.12 or Section 5.5, each such financial statement and information has been prepared in conformity with GAAP and fairly presents, in all material respects, the financial position of Holdings and each Co-Borrower, respectively, for the applicable period then ended, subject, if applicable, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments and the absence of footnote disclosure. As of the end of the applicable period presented in the most recent financial statements delivered by Holdings and each Co-Borrower under Section 3.1.12 or Section 5.5, there are no material liabilities, direct or

contingent, of the Co-Borrowers required to be shown under GAAP, except as have been disclosed in such financial statements.

4.20 NO DEFAULT. No Event of Default or Inchoate Default has occurred and is continuing.

4.21 ORGANIZATIONAL ID NUMBERS. PowerCo's organizational identification number is DE #6923400. GasCo's organizational identification number is DE #6675398. Holdings's organizational identification number is #7050851.

4.22 TITLE AND LIENS.

4.22.1 Except as set forth on Exhibit G-9, PowerCo has (i) a good and marketable fee simple interest in the Site, and (ii) a valid easement interest in the Easements, and (iii) good, legal and valid title to or interest in all other material Collateral except for Gas Properties (which are covered solely by Sections 4.22.4, 4.22.5, 4.22.6 and 4.22.7), in each case free and clear of all Liens other than Permitted Liens. As of the Closing Date, (x) no portion of the improvements on the Real Property has suffered any material damage by fire or other casualty loss that has not heretofore been repaired and restored in all material respects and (y) PowerCo has not received any written notice of, nor has any Knowledge of, any pending or threatened condemnation proceeding affecting the Real Property or any sale or disposition thereof in lieu of condemnation. Except as set forth on Exhibit G-9, GasCo owns no Real Property or any interest therein.

4.22.2 Other than pursuant to the terms of the Joint Development Agreement and Joint Operating Agreements, no Co-Borrower is obligated under any right of first refusal, option or other contractual right to sell, assign or otherwise dispose of any Real Property or any interest therein.

4.22.3 No Co-Borrower has suffered, permitted or initiated the joint assessment of any Real Property owned by it with any other real property constituting a separate tax lot. Each parcel of Real Property owned by a Co-Borrower is composed of one or more parcels, each of which constitutes a separate tax lot and none of which constitutes a portion of any other tax lot; provided that, for the avoidance of doubt, it is noted that any easement rights are not separate tax lots.

4.22.4 Each Co-Borrower has defensible title to its Gas Properties which constitute Proved Reserves, except to the extent any lack of defensible title does not in the aggregate detract in any material respect from the value or use of the Gas Properties in connection with the Project, and good and defensible title to all of the Gas Properties which constitute, for applicable state law purposes, "personal" or "movable" property, in each case except for Permitted Liens. The Mortgaged Properties include all Gas Properties owned by Co-Borrowers.

4.22.5 The quantum and nature of any interest in and to the Gas Properties of any Co-Borrower as set forth in the most recent Reserve Report includes

the entire interest of such Co-Borrower in such Gas Properties as of the date of such applicable Reserve Report, and subject to customary limitations and qualifications set forth in the Reserve Report are complete and accurate in all material respects as of the date of such applicable Reserve Report; and there are no “back-in” or “reversionary” interests held by third parties which could materially reduce the interest of such Co-Borrower in such Gas Properties except as reflected in the most recent Reserve Report. The ownership of the Gas Properties by a Co-Borrower entitles such Co-Borrower in all material respects to the share of the Hydrocarbons produced therefrom or attributable thereto set forth as such Co-Borrower’s “net revenue interest” in the most recent Reserve Report and does not in any material respect obligate such Co-Borrower to bear the costs and expenses relating to the maintenance, development or operations of any such Gas Property in an amount materially in excess of the “working interest” of such Co-Borrower in each Gas Property set forth in the most recent Reserve Report.

4.22.6 Each Co-Borrower’s marketing, gathering, transportation, processing and treating facilities and equipment, if any, together with any marketing, gathering, transportation, processing and treating contracts in effect between Co-Borrowers, on the one hand, and any other Person, on the other hand, are sufficient in all material respects to gather, transport, process or treat, reasonably anticipated volumes of production of Hydrocarbons from the Gas Properties, and all related charges are accurately reflected and accounted for in all material respects in each Reserve Report delivered to the Administrative Agent pursuant to this Agreement.

4.22.7 The Hydrocarbon Interests and operating agreements attributable to the Gas Properties are in full force and effect in all material respects in accordance with their terms. All rents, royalties and other payments due and payable under such Hydrocarbon Interests and operating agreements have been properly and timely paid in all material respects.

4.23 INTELLECTUAL PROPERTY. Borrower Parties own, possess or have entered into contracts with others who possess all material licenses, permits, franchises, authorizations, patents, copyrights, service marks, trademarks and trade names, or rights thereto, that are necessary for the ownership and operation of the Project in accordance with the Credit Documents and the Project Documents, without known conflict with the rights of others.

(a) No material product of any such Borrower Party infringes in any material respect any license, permit, franchise, authorization, patent, copyright, service mark, trademark, trade name or other right owned by any other Person.

(b) To each such Borrower Party’s Knowledge, there is no material violation by any Person of any right of any such Borrower Party with respect to any patent, copyright, service mark, trademark, trade name or other right owned or used by any such Borrower Party.

4.24 COLLATERAL. The Liens granted to Collateral Agent (for the benefit of the Secured Parties) pursuant to the Collateral Documents (a) constitute as to personal property included in the Collateral a valid security interest and (b) constitute as to the Mortgaged Property included

in the Collateral, upon recording of the Mortgages in the filing office identified in Exhibit D, a valid lien of record and security interest in the Mortgaged Property. The security interest granted to Collateral Agent (for the benefit of the Secured Parties) pursuant to the Collateral Documents in the Collateral consisting of personal property will be perfected (i) with respect to any property that can be perfected by filing, upon the filing of financing statements in the filing office identified in Exhibit D, (ii) with respect to any property that can be perfected by control, upon execution of the Control Agreements or the Depositary Agreement, as applicable, and (iii) with respect to the Pledged Equity and any other property (if any) that can be perfected by possession, upon Collateral Agent receiving possession thereof, and in each case such security interest will be, as to Collateral perfected under the UCC or otherwise as aforesaid and to the extent provided in the UCC, superior and prior to the rights of all third Persons now existing or hereafter arising whether by way of Lien, assignment or otherwise, except (1) Permitted Liens described in clause (a) of the definition of "Permitted Liens", and (2) to the extent required by Governmental Rule, those matters described in clauses (b), (c), (d), (e), (h), (k), (n), (o), (p), (q) (to the extent such Lien replaces a Lien of the type described in this clause) and (v) of the definition of "Permitted Liens" or pursuant to customary commercial terms in the applicable leases or other contracts, those Permitted Liens described in clauses (f), (g), (h), (i), (j), (l), (q) (to the extent such Lien replaces a Lien of the type described in this clause) and (s) of the definition thereof. Subject to Section 5.13.3, except to the extent possession of portions of the Collateral is required for perfection and except in respect of the Mortgages (which will be recorded along with the associated UCC fixture filings in the recorder's office identified in Exhibit D as soon as reasonably practicable after the Closing Date), all such action as is necessary has been taken to establish and perfect Collateral Agent's rights in and to the Collateral in existence on such date to the extent Collateral Agent's security interest can be perfected by filing, including any recording, filing, registration, giving of notice or other similar action. As of the Closing Date, no filing, recordation, re-filing or re-recording other than those listed on Exhibit D is necessary to perfect and maintain the perfection of the interest, title or Liens of the Collateral Documents, and on the Closing Date (or, in respect of the Mortgages and associated UCC fixture filings, as soon as reasonably practicable thereafter), all such filings or recordings will have been made to the extent Collateral Agent's security interest can be perfected by filing. Each Co-Borrower has properly delivered or caused to be delivered, or provided control, to Collateral Agent or Depositary Agent with respect to all Collateral that permits perfection of the Lien and security interest described above by possession or control.

4.25 SUFFICIENCY OF PROJECT DOCUMENTS.

4.25.1 Except as set forth on Exhibit G-11, PowerCo's interests in the Site and Easements:

(a) comprise all of the real property interests for the ownership, construction, installation, completion, operation and maintenance of the Project in accordance in all material respects with all Legal Requirements, the Project Documents and the Construction Budget;

(b) are sufficient to enable the entire Project to be located, operated and maintained on the Site and Easements;

(c) provide adequate ingress and egress to and from (i) the Site for any reasonable purpose in connection with the ownership, construction, operation and maintenance of the Project for the purposes and on the terms set forth in the applicable Major Project Documents, and (ii) each Easement for the purposes and the terms set forth in the applicable Easement Agreement.

4.25.2 There are no services, materials or rights required for the development, construction, ownership and operation and maintenance of the Project in accordance with the Project Documents and the assumptions that form the basis of the Base Case Projections, other than (a) those to be provided under the Major Project Documents, (b) those that are not material to the construction and operation of the Project and (c) those that can reasonably be expected to be commercially available at or for delivery to the Site or the Easements on commercially reasonable terms consistent with the Construction Budget or then current Annual Operating Budget (as applicable) and the Base Case Projections. This Section 4.25.2 does not apply to the Applicable Permits, which are the subject of Section 4.9.

4.25.3 Other than easements, rights of way, licenses, agreements and other rights that can be reasonably expected to be commercially available on commercially reasonable terms consistent with the Construction Budget or then current Annual Operating Budget (as applicable) and the Base Case Projections, PowerCo possesses, or the counterparties to the Project Documents pursuant to which interconnection facilities will be constructed or operated for the benefit of the Project, possess, and are obligated to provide or make available to PowerCo, all necessary easements, rights of way, licenses, agreements and other property rights for the construction or interconnection and utilization (as applicable) of the interconnection facilities (including fuel, water, wastewater and electrical).

4.26 [RESERVED.]

4.27 FLOOD ZONE DISCLOSURE. Except as set forth on Exhibit G-7, no material portion of the Collateral includes Improvements that are or will be located in an area that has been identified by the Federal Emergency Management Agency as an area having special flood or mudslide hazards unless any applicable requirements imposed by the Federal Emergency Management Agency have been satisfied.

4.28 ANTI-TERRORISM LAWS; SANCTIONS. None of the Borrower Parties or any of their respective directors, officers or employees and Parent or any of its directors, officers or employees, is a Person that, or is owned or controlled by a Person (other than a holder of publicly traded capital stock) that, (a) is described by or designated in any OFAC List or in the Anti-Terrorism Order, (b) is engaging in dealings or transactions with any such Persons or entities described by or designated in any OFAC List or in the Anti-Terrorism Order in violation of any applicable law, (c) is in violation of the Anti-Terrorism Laws, (d) is the subject of any Sanctions or has violated or is violating any Sanctions, (e) is located, organized or resident in a Sanctioned Country, (f) is using or will use the proceeds of the Borrowings or Letters of Credit hereunder for the purpose of financing or making funds available directly or, to their Knowledge, indirectly to any Person described by or designated in any OFAC List or in the Anti-Terrorism Order, to the extent such financing or provision

of funds would be prohibited by Sanctions or would otherwise cause any of the Borrower Parties, Parent or any of their respective directors, officers or employees to be in breach of Sanctions, or (g) is contributing or will contribute or otherwise make available directly or, to their Knowledge, indirectly the proceeds of the Borrowings or Letters of Credit hereunder to any other person or entity for the purpose of financing the activities of any Person described by or designated in any OFAC List or in the Anti-Terrorism Order, to the extent such contribution or provision of proceeds would be prohibited by Sanctions or would otherwise cause any of the Borrower Parties, Parent or any of their respective directors, officers or employees to be in breach of Sanctions.

4.29 SOLVENCY. Immediately after giving effect to the transactions to occur on the Closing Date and immediately following the occurrence of each other Credit Event, (a) the fair value of the assets of each of (i) Holdings and its Subsidiaries (taken as a whole) and (ii) each Co-Borrower, at a fair valuation, will exceed the debts and liabilities, direct, subordinated, contingent or otherwise, of Holdings and its Subsidiaries (taken as a whole) or such Co-Borrower, respectively, (b) the present fair saleable value of the property of Holdings and its Subsidiaries (taken as a whole) and each Co-Borrower, will be greater than the amount that will be required to pay the probable liability of Holdings and its Subsidiaries (taken as a whole) or such Co-Borrower, respectively, on their or its debts and other liabilities, direct, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured, (c) Holdings and its Subsidiaries (taken as a whole) and each Co-Borrower will be able to pay its debts and liabilities, direct, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured (after giving effect to any guarantees and credit support), and (d) Holdings and its Subsidiaries (taken as a whole) and each Co-Borrower will not have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted following the Closing Date. For purposes of this Section 4.29, (i) "able to pay its debts and liabilities, direct, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured (after giving effect to any guarantees and credit support)" means that such Person will be able to generate enough cash from operations, asset dispositions or refinancings, or a combination thereof, to meet its obligations as they become due, and (ii) the amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

4.30 AFFILIATE TRANSACTIONS. Other than the Permitted Affiliate Transactions, no Co-Borrower has engaged or agreed to engage in any transactions with any of its Affiliates.

4.31 AML LAWS; ANTI-CORRUPTION LAWS. Each Borrower Party has implemented and maintains in effect policies and procedures designed to ensure compliance by such Borrower Party, or any of their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable AML Laws. None of any Borrower Party, or any of their respective directors, officers, nor, to the Knowledge of any Borrower Party, any of their respective employees or agents, has violated AML Laws or Anti-Corruption Laws. No Borrowing or Letter of Credit, use of proceeds or other transaction contemplated by this Agreement will cause a violation of AML Laws or Anti-Corruption Laws by any person participating in the transactions contemplated by this Agreement, whether as lender, borrower, agent, underwriter, advisor, investor, hedge provider or otherwise.

4.32 INSURANCE. Each Co-Borrower maintains the insurance required to be maintained by it pursuant to Exhibit K, and such insurance is in full force and effect.

4.33 ACCOUNTS. No Co-Borrower has any accounts other than the Depositary Accounts and Local Checking Accounts subject to a Control Agreement, which Control Agreements are in full force and effect.

4.34 INDEBTEDNESS. No Borrower Party has any Debt other than the Obligations created under the Credit Documents and the Second Lien Credit Documents and (a) as of the Closing Date, as set forth on Exhibit G-6 or (b) at any time after the Closing Date, other than Permitted Debt.

ARTICLE 5
AFFIRMATIVE COVENANTS

Each Co-Borrower and, solely to the extent Holdings is explicitly referred to below, Holdings, covenants and agrees that until the Discharge of First Lien Secured Obligations:

5.1 USE OF PROCEEDS, PROJECT REVENUES AND OTHER PROCEEDS.

5.1.1 Co-Borrowers shall apply the proceeds of the Construction Loans solely (a) with respect to Construction Loans made on the Closing Date, in accordance with the Funds Flow Memorandum and (b) to pay Project Costs in accordance with the Construction Budget.

5.1.2 Co-Borrowers shall use the LC Facility solely to request the issuance of Letters of Credit in accordance with Section 2.2.1(c).

5.1.3 Unless otherwise applied by Administrative Agent or Collateral Agent pursuant to the terms of this Agreement or the other Credit Documents, Co-Borrowers shall apply all Project Revenues, equity contributions, Loan proceeds, Insurance Proceeds, Eminent Domain Proceeds, and damages payments solely for the purpose, and in the order and manner, provided for in the Depositary Agreement.

5.2 PAYMENT.

5.2.1 *Credit Documents*. Each Co-Borrower shall pay all sums due under this Agreement and the other Credit Documents to which it is a party according to the terms hereof and thereof.

5.2.2 *Project Documents*. Each Co-Borrower shall pay all of its material obligations due under the Project Documents to which it is a party, howsoever arising, as and when due and payable, except obligations contested in good faith or as to which a bona fide dispute may exist; provided that adequate reserves have been established in conformity with, and to the extent required by, GAAP, or Administrative Agent is satisfied in its reasonable discretion that non-payment of such obligations pending the resolution of such contest or dispute will not reasonably be expected to

result in a Material Adverse Effect or that provision has been made to the satisfaction of Administrative Agent in its reasonable discretion for the posting of security (other than the Collateral) for the bonding of such obligations or the prompt payment thereof in the event that such obligations are payable.

5.3 WARRANTY OF TITLE. Except as permitted pursuant to Section 6.4, (a) PowerCo shall maintain good, marketable and insurable fee simple interest in the Site, (b) PowerCo shall maintain (i) valid easement interests in the Easements and (ii) valid license interests in each of the licenses set forth on Exhibit G-10, (c) GasCo shall maintain defensible title to the Hydrocarbon Interests, and (d) each Co-Borrower shall maintain good, legal and valid title to or interest in all of its other respective material properties and assets (in each case other than properties and assets disposed of in accordance with this Agreement), in each case free and clear of all Liens other than Permitted Liens.

5.4 NOTICES. Each Co-Borrower shall promptly (but in any event within three Banking Days unless otherwise specified below), upon acquiring written notice or giving notice (except as otherwise specified below), as the case may be, or obtaining Knowledge thereof, give written notice (with copies of any underlying notices, papers, files, reports, financial statements or related documentation) to Administrative Agent (for distribution to the Lenders) of:

5.4.1 any investigation, litigation, suit, arbitration, action or similar proceeding, whether at law or in equity or before any Governmental Authority (including any Environmental Claim) pending or, to such Co-Borrower's Knowledge, threatened in writing against any Borrower Party or relating to the Project which involves claims against such Borrower Party or the Project in excess of $5,000,000 individually or $10,000,000 in the aggregate per calendar year or which would reasonably be expected to have a Material Adverse Effect, such notice to include, if requested in writing by Administrative Agent, copies of all papers filed in such litigation and to be given monthly if any such papers have been filed since the last notice given;

5.4.2 any investigation, dispute or disputes for which written notice has been received by such Co-Borrower which may exist between such Co-Borrower and any Governmental Authority and which (a) claims against such Co-Borrower which exceed $5,000,000 individually or $10,000,000 in the aggregate per calendar year, (b) involve any action for revocation, material modification, failure to renew or expiration of any Applicable Permit, or (c) would otherwise be reasonably expected to have a Material Adverse Effect;

5.4.3 any Event of Default or Inchoate Default (together with a statement of a Responsible Officer of such Co-Borrower setting forth the details of such Event of Default or Inchoate Default and the action which such Co-Borrower has taken and proposes to take with respect thereto other than litigation strategy and documentation subject to attorney-client privilege or similar privilege);

5.4.4 any casualty, damage or loss to the Project, whether or not insured, through fire, theft, other hazard or casualty, or any act or omission of (a) such

Co-Borrower, its employees, agents, contractors, consultants or representatives in excess of $5,000,000 for any one casualty or loss or $10,000,000 in the aggregate for the Project in any calendar year, or (b) to such Co-Borrower's Knowledge, any other Person if such casualty, damage or loss could reasonably be expected to have a Material Adverse Effect;

5.4.5 any early cancellation, suspension or material change in the terms, coverage or amounts of any insurance described in Exhibit K;

5.4.6 any (a) early termination (other than expiration in accordance with its terms and any applicable Consent) or material breach or material default of which such Co-Borrower has Knowledge or written notice under any Major Project Document, and (b) material Project Document Modification (with copies of all such Project Document Modifications whether or not requiring approval of Administrative Agent or the Required Lenders pursuant to Section 6.12);

5.4.7 any event of force majeure asserted in writing under any Major Project Document which persists for more than five consecutive days and, to the extent reasonably requested in writing by Administrative Agent, copies of related invoices or statements which are reasonably available to such Co-Borrower under any Major Project Document, together with a copy of any supporting documentation, schedule, data or affidavit delivered under such Major Project Document;

5.4.8 initiation of any condemnation proceedings involving a material portion of (a) the Project, (b) the Site, (c) the Easements or (d) other Real Property;

5.4.9 promptly, but in no event later than 10 Banking Days after such Co-Borrower has Knowledge of the execution and delivery thereof, a copy of each Additional Project Document;

5.4.10 promptly, but in no event later than 30 days after the receipt thereof by such Co-Borrower, a copy of (a) any Applicable Permit obtained by such Co-Borrower after the Closing Date, (b) any material amendment, supplement or other material modification to any Applicable Permit received by such Co-Borrower after the Closing Date, and (c) all material notices relating to the Project received by such Co-Borrower from, or delivered by such Co-Borrower to, any Governmental Authority (other than routine correspondence given or received in the ordinary course of business relating to routine aspects of owning, developing, constructing, financing, operating, maintaining or using the Project);

5.4.11 any material unscheduled or forced outage of the Generating Project, or any material impairment, reduction or cessation of the production of Hydrocarbons at the Production Project, in each case which continues for more than 48 hours;

5.4.12 the occurrence of any ERISA Event that, individually or together with all other ERISA Events that have occurred, would result in aggregate liability to any Borrower Party or any of their respective ERISA Affiliates in excess of $5,000,000;

5.4.13 promptly upon receipt thereof, any notice from FERC or the FERC staff relating to PowerCo's MBR Authority or status as an Exempt Wholesale Generator;

5.4.14 any material change in accounting policies or financial reporting practices by such Co-Borrower;

5.4.15 promptly upon receipt thereof, a copy of any material schedule or recovery plans provided by the EPC Contractor under the EPC Contract or the PIE Contractor under the PIE Contract, or reports regarding planned material maintenance and collateral damage repairs under the Long Term Service Agreement;

5.4.16 any (a) noncompliance by such Co-Borrower with any Environmental Law, or any material Release of Hazardous Substances by such Co-Borrower on or from the Real Property, in each case that has resulted or would reasonably be expected to have a Material Adverse Effect, or (b) pending or, to such Co-Borrower's Knowledge, threatened in writing, Environmental Claim against such Co-Borrower or, to such Co-Borrower's Knowledge, any of its Affiliates, contractors, lessees or any other Persons, arising in connection with their occupying or conducting construction or operations on or at the Project, the Site, the Easements or other Real Property which, if adversely determined, would reasonably be expected to have a Material Adverse Effect;

5.4.17 any pending or threatened investigation or inquiry regarding PowerCo's participation in the wholesale energy, capacity and ancillary services markets, including by PJM, its Independent Market Monitor or FERC; any material non-compliance by and known to PowerCo with PJM Open Access Transmission Tariff or market rules; any PJM credit event that would result in an increase in or a call on PowerCo's credit posted to enable participation in PJM's energy, capacity and ancillary services markets; any event or circumstance that could prevent the Generating Project's full amount of Unforced Capacity from being in service by the first date of PowerCo's participation in the applicable PJM Base Residual Auction; any event or circumstance that could prevent PowerCo's participation in PJM's energy, capacity and ancillary services markets; any Non-Performance Charge in excess of $250,000 assessed against PowerCo or the Project and reasonable details related thereto; and any other event or occurrence with respect to PowerCo's or the Project's participation in the wholesale energy, capacity and ancillary services markets or compliance with PJM and FERC rules, in each case that would have a Material Adverse Effect;

5.4.18 any notice of material events or third party transactions provided to such Co-Borrower by any energy manager pursuant to any energy management agreement;

5.4.19 any financial statements of a Permitted Commodity Hedge Counterparty received by such Co-Borrower pursuant to the applicable Permitted Commodity Hedge Agreement;

5.4.20 any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in parts (c) or (d) of such certification; and

5.4.21 any event or circumstance specific to such Co-Borrower or the Project that is not a matter of general public knowledge and that would reasonably be expected to have a Material Adverse Effect.

5.4.22 In addition, such Co-Borrower shall provide, with reasonable promptness, to Administrative Agent any customary information with respect to such Co-Borrower, their respective assets, properties or operations or the Project as is reasonably requested by the Administrative Agent (for itself or on behalf of any Lender).

5.4.23 No later than five Banking Days prior to each expected occurrence thereof, notice of the expected occurrence of "Mechanical Completion" and "Substantial Completion" under the EPC Contract and "Substantial Completion" under the PIE Contract.

5.5 FINANCIAL STATEMENTS. Each Borrower Party shall deliver or cause to be delivered to Administrative Agent and the Administrative Agent shall promptly provide a copy of the same to the Lenders:

(a) within 120 days after the close of each applicable fiscal year (commencing from fiscal year 2018), the audited consolidated annual financial statements of Holdings audited by an Acceptable Accountant and the related balance sheet, statements of income, cash flow, and members' equity for such fiscal year, setting forth in each case (other than in the case of the audited annual financial statements for the 2018 fiscal year) in comparative form corresponding audited figures from the preceding fiscal year, all prepared in accordance with GAAP, accompanied by (x) a management report (1) describing the operations and financial condition of Holdings and its Subsidiaries for the fiscal year then ended, (2) setting forth in comparative form the corresponding figures for the corresponding periods of the previous fiscal year and the corresponding figures from the then-current Annual Operating Budget and (3) discussing the reasons for any significant variations, and (y) an opinion of an Acceptable Accountant, which opinion (without a "going concern" or like qualification or exception as to the scope of such audit, other than any such qualification or exception that either (1) results solely from an upcoming maturity date or (2) relates to any potential inability to satisfy a financial maintenance covenant on a future date or in a future period) shall state that such financial statements fairly present, in all material respects, the financial condition and results of operations of the such Borrower Party as at the end of and for such fiscal year in accordance with GAAP;

(b) within 60 days after the end of the first, second and third quarterly accounting periods of its fiscal year, the unaudited quarterly financial statements of such Borrower Party

(commencing from the first quarterly accounting period of fiscal year 2019), together with a management report (1) describing the operations and financial condition of such Borrower Party and its Subsidiaries for the period then ended and the portion of the current fiscal year then elapsed, (2) setting forth in comparative form the corresponding figures for the corresponding periods of the previous fiscal year and the corresponding figures from the then-current Annual Operating Budget and (3) discussing the reasons for any significant variations. Such financial statements shall include the related balance sheet, statements of income and cash flows for such quarterly period and in the case of second and third quarterly accounting periods, for the portion of fiscal year ending with the last day of such quarterly period and, setting forth in each case (other than in the case of the unaudited quarterly financial statements for the first and second quarter of the 2019 fiscal year) in comparative form corresponding unaudited figures from the preceding fiscal year, all prepared in accordance with GAAP (subject to changes resulting from audit and normal year-end adjustments and the absence of footnote disclosure);

(c) along with such financial statements under clauses (a) and (b) above, a certificate signed by a Responsible Officer of such Borrower Party certifying that to such Responsible Officer's knowledge, no Event of Default or Inchoate Default has occurred and is continuing or, if any Event of Default or Inchoate Default has occurred and is continuing, the nature thereof and the corrective actions that such Borrower Party has taken or proposes to take with respect thereto (other than litigation strategy and documentation subject to confidentiality obligations or attorney-client privilege or similar privilege); and

(d) (i) no later than the 60th day after commencement of each calendar year, commencing with 2020, a Reserve Report prepared by the Petroleum Engineer dated as of December 31 of the previous year; (ii) promptly upon written request by the Administrative Agent, a Reserve Report prepared by the Petroleum Engineer dated as of the first day of the month during which a Co-Borrower receives such request, together with an accompanying report on, since the date of the last Reserve Report previously delivered hereunder, Gas Property sales, Gas Property purchases and changes in categories concerning the Gas Properties owned by Co-Borrowers which have attributable to them Proved Reserves and containing information and analysis with respect to the Proved Reserves of Co-Borrowers as of the date of such report; and (iii) together with each such Reserve Report, (A) any updated production history of the Proved Reserves of Co-Borrowers as of such date, (B) the lease operating expenses attributable to the Gas Properties of Co-Borrowers for the prior 12-month period, (C) any other information as to the operations of Co-Borrowers as reasonably requested by the Administrative Agent and (D) such additional data and information concerning pricing, quantities, volume of production and production imbalances from or attributable to the Gas Properties with respect thereto as the Administrative Agent may reasonably request.

5.6 BOOKS, RECORDS, ACCESS. Each Borrower Party shall maintain, or cause to be maintained, adequate books, accounts and records with respect to itself and the Project. Subject to requirements of Governmental Rules, safety requirements and existing confidentiality and other contractual restrictions imposed upon such Borrower Party by any other Person, such Borrower Party shall permit employees or agents of the Administrative Agent and Independent Engineer, at any reasonable times and upon reasonable prior notice to such Borrower Party, to inspect such Borrower Party's properties, including the Site and the Easements, to examine or audit such

Borrower Party's books, accounts and records and make copies and memoranda thereof and to communicate with such Borrower Party's auditors.

5.7 COMPLIANCE WITH LAWS, INSTRUMENTS, APPLICABLE PERMITS, ETC.

5.7.1 Each Co-Borrower shall promptly comply, and cause the Project to be developed, constructed, operated and maintained in compliance, with all applicable Legal Requirements (including Environmental Laws, Legal Requirements and Applicable Permits relating to equal employment opportunity and employee safety), and make, or cause to be made, such alterations to the Project and the Site as may be required for such compliance unless any non-compliance would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.7.2 Each Borrower Party shall maintain in effect and enforce policies and procedures designed to ensure compliance by such Borrower Party and its directors, officers, employees and agents with Anti-Corruption Laws, applicable AML Laws and applicable Sanctions.

5.8 REPORTS; TITLE AND SURVEY MATTERS.

5.8.1 Each Co-Borrower shall, until the Completion Date, deliver or cause to be delivered to Administrative Agent and the Independent Engineer on or before the 30th day following the last day of each calendar month, monthly reports in the form attached hereto as Exhibit N-1 or Exhibit N-2 (together with copies of the most recently available monthly (or other) progress report received by such Co-Borrower under the EPC Contract, the PIE Contract, the contractors and subcontractors under the Interconnection Construction Agreement, pursuant to the Joint Development Agreement or any other construction contract with respect to the Project.

5.8.2 Each Co-Borrower shall deliver to Administrative Agent, within 30 days after the end of each full fiscal quarter after the Term Conversion Date, a reasonably detailed report with respect to such fiscal quarter (and, in the case of the first such report, the period between the Term Conversion Date and the beginning of such fiscal quarter, if any) regarding existing mark-to-market exposure under any Permitted Commodity Hedge Agreements.

5.8.3 PowerCo shall deliver to Administrative Agent, within 45 days after the end of each full fiscal quarter after the Term Conversion Date, a summary operating report with respect to the Generating Project such fiscal quarter (and, in the case of the first such report, the period between the Term Conversion Date and the end of such fiscal quarter, if any) substantially in the form of Exhibit N -1 (with copies of the most recently available operating report received by such Co-Borrower under the Long Term Service Agreement).

5.8.4 GasCo shall deliver to Administrative Agent, within 45 days after the end of each full fiscal quarter, a report, substantially in the form of Exhibit N-2, setting forth a statement of gross and net production from the Production Project and any third party sales proceeds of all Hydrocarbons produced from the Hydrocarbon Interests during such fiscal quarter (and, in the case of the first such report, the period between the Closing Date and the end of such fiscal quarter, if any), together with a comparison against the gross and net production and third party sales proceeds projected for such period in the then-current Annual Operating Budget and such other information as the Administrative Agent may reasonably request in respect of the development, construction, operation and maintenance of the Production Project and the Hydrocarbon Interests.

5.8.5 PowerCo shall on or before the 25th day following the last day of each calendar month provide copies of a monthly operating report in the form provided by the Operator under the O&M Agreement (provided that such form and the substance of such report must be reasonably satisfactory to the Administrative Agent).

5.8.6 Each Co-Borrower shall provide such insurance reports as are required by Exhibit K.

5.8.7 To the extent not delivered pursuant to Section 3.3.15, PowerCo shall, within 90 days after the Term Conversion Date, deliver to Administrative Agent an A.L.T.A. As-Built Survey (or other survey approved by Administrative Agent (such approval not to be unreasonably withheld or delayed)) of the Generating Project's Site and the Easements (or, if a draft survey has been provided pursuant to Section 3.3.15, the final version of such survey), reasonably satisfactory in form and substance to Administrative Agent and satisfying the requirements set forth in Section 3.3.15.

5.8.8 Each Co-Borrower shall, within 90 days after the Term Conversion Date, deliver to Administrative Agent an endorsement to the Title Policy in the form of Exhibit R.

5.8.9 Within 60 days following Final Completion, each Co-Borrower shall deliver final releases of mechanics' and materialmen's liens from (i) in the case of PowerCo, EPC Contractor under the EPC Contract and (ii) Persons of the type that are required to deliver such releases pursuant to Section 3.2.3, except to the extent that such Co-Borrower's failure to obtain any final release required by this clause (x) would not reasonably be expected to result in a Material Adverse Effect and any such resulting mechanics' and materialmen's lien would constitute a Permitted Lien of the type described in clause (c) of the definition thereof.

5.8.10 On the first day of each fiscal quarter following the Term Conversion Date, Co-Borrowers shall deliver a forecast as of such date, attaching reasonable backup information to support the conclusions therein (a "Gas Availability Certificate") of, (x) natural gas production from the Production Project for the ensuing four fiscal quarter period (an "Annual Period") and (y) the Generating Project's natural

gas requirements during such Annual Period, together with a comparison against the forecast of natural gas production and natural gas requirements for such Annual Period in the then-current Annual Operating Budget.

5.9 EXISTENCE, CONDUCT OF BUSINESS, PROPERTIES, ETC.

Except as otherwise expressly permitted under this Agreement, each Borrower Party shall (a) maintain and preserve its existence as a limited liability company in good standing in the State of Delaware, and all material rights, privileges and franchises necessary in the normal conduct of its business, (b) maintain all Applicable Permits, except to the extent that any such failure to maintain would not reasonably be expected to have a Material Adverse Effect, and (c) at or before the time that any Permit becomes an Applicable Permit, obtain such Permit, except to the extent that any such failure to obtain would not reasonably be expected to have a Material Adverse Effect.

5.10 DEBT SERVICE COVERAGE RATIO.

No later than 10 Banking Days after each Quarterly Payment Date occurring at least one full fiscal quarter after the Term Conversion Date, Co-Borrowers shall calculate and deliver to Administrative Agent the Debt Service Coverage Ratio for the Calculation Period most recently ended. The calculation of the Debt Service Coverage Ratio hereunder shall be used in determining compliance with Section 6.30 and the application and distribution of funds pursuant to Section 3.12(b) of the Depositary Agreement. The Co-Borrowers shall promptly provide any information requested by the Administrative Agent to support such calculation.

5.11 LENDER MEETINGS. The Co-Borrowers will, upon the request of Administrative Agent or the Required Lenders, participate in a meeting of Administrative Agent and Lenders once during each fiscal year to be held at Holdings' corporate offices or, at Holdings' option, the corporate headquarters of the manager of Parent in New York (or at such other location as may be agreed to by Co-Borrowers and Administrative Agent) at such time as may be agreed to by Co-Borrowers and Administrative Agent. Participants may attend such meeting by teleconference. All travel and other expenses related to such meeting incurred by any party shall be for such party's own account. The Co-Borrowers will participate in quarterly telephonic update calls with Administrative Agent and the Lenders during any quarter in which the annual meeting described in the preceding sentence is not held, upon the request of Administrative Agent or the Required Lenders.

5.12 OPERATION AND MAINTENANCE OF PROJECT; ANNUAL OPERATING BUDGET.

5.12.1 (a) PowerCo shall construct, keep, operate and maintain the Generating Project (ordinary wear and tear excepted) and make or cause to be made all necessary repairs (structural and non-structural, extraordinary or ordinary) and (b) GasCo shall use commercially reasonable efforts to cause Triad Hunter, LLC or any other operator of any of GasCo's Hydrocarbon Interests to construct, keep, maintain and operate, the Production Project (ordinary wear and tear excepted) and to make or cause to be made all necessary repairs (structural and non-structural, extraordinary or ordinary)

necessary, in each case in a manner consistent in all material respects with this Agreement and Prudent Industry Practices.

5.12.2 Co-Borrowers shall, as a condition precedent to the Term Conversion Date and no later than 45 days before the commencement of each calendar year thereafter, submit a proposed annual operating plan and budget, detailed by month, of anticipated revenues and anticipated expenditures under all applicable waterfall levels set forth in Section 3.2(b) of the Depositary Agreement and anticipated Major Maintenance Expenses (an "Annual Operating Budget"), with respect to such calendar year (or, in the case of the first Annual Operating Budget in respect of the period through the first full calendar year) for the prior review and approval by the Administrative Agent (in consultation with the Independent Engineer), such approval not to be unreasonably withheld or delayed. In the event that, pursuant to the immediately preceding sentence, the Annual Operating Budget (other than the initial Annual Operating Budget) is not approved by the Administrative Agent (which approval shall not be unreasonably withheld or delayed) or Co-Borrowers have not submitted a proposed Annual Operating Budget in accordance with the terms and conditions herein, an operating budget including 115% of the relevant costs set forth in the Annual Operating Budget for the immediately preceding calendar year (other than for fuel, water, chemicals and other consumables, for which the operating budget shall include estimates of actual costs) shall apply until the Annual Operating Budget for the then current fiscal year is approved. Copies of each final Annual Operating Budget adopted shall be furnished to the Independent Engineer and the Administrative Agent promptly upon its adoption.

5.12.3 O&M Costs and Major Maintenance Expenses shall be made in accordance with such Annual Operating Budget, except as set forth in this Section 5.12.3. Co-Borrowers may from time to time adopt an amended Annual Operating Budget for the remainder of any calendar year to which the amended Annual Operating Budget applies, and such amended Annual Operating Budget shall be effective as the Annual Operating Budget for the remainder of such calendar year upon the consent of the Administrative Agent to such amendment (in consultation with the Independent Engineer), such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing and without necessitating any such amendment, the Co-Borrowers may exceed the aggregate annual O&M Costs set forth in any Annual Operating Budget (including reasonable allowances for contingencies and working capital) by an amount not to exceed 10% of the aggregate budgeted amount of fixed O&M Costs for the applicable fiscal year.

5.13 PRESERVATION OF RIGHTS; FURTHER ASSURANCES.

5.13.1 Subject to Section 5.2.2, each Co-Borrower shall maintain in full force and effect, perform (to the extent not excused by force majeure events or the nonperformance of the other party and not subject to a good faith dispute) the obligations of such Co-Borrower under, preserve, protect and defend the material rights of such Co-Borrower under and take all reasonable action necessary to prevent early termination

(except by expiration in accordance with its terms) of each and every Major Project Document, including (where such Co-Borrower in the exercise of its business judgment deems it proper) prosecution of suits to enforce any material right of such Co-Borrower thereunder and enforcement of any material claims with respect thereto, in each case except where failure to do so would not reasonably be expected to have a Material Adverse Effect; provided that the early termination of a Major Project Document resulting from the material breach of the Major Project Document by the relevant counterparty shall not constitute an Event of Default to the extent the Co-Borrowers replace such Major Project Document in accordance with Section 7.1.14(b) or 7.1.14(d). Such Co-Borrower shall enforce all rights to receive liquidated damages from any counterparty to any Major Project Document and enforce all material rights under the PIE Contract.

5.13.2 From time to time, each Co-Borrower shall execute, acknowledge, record, register, deliver and/or file all such notices, statements, instruments and other documents (including any memorandum of lease or other agreement, financing statement, continuation statement, certificate of title or estoppel certificate relating to the Loans stating the interest and charges then due and any known Events of Default or Inchoate Defaults), and take such other steps as may be reasonably necessary or reasonably advisable to render fully valid and enforceable under all applicable laws the rights, liens and priorities of the Secured Parties with respect to all Collateral and other security from time to time furnished under this Agreement and the other Credit Documents or intended to be so furnished, and otherwise in such form and at such times as shall be necessary or as shall be reasonably requested by Collateral Agent, and pay all reasonable fees and expenses (including reasonable attorneys' fees) incident to compliance with this Section 5.13.2.

5.13.3 If either Co-Borrower shall at any time acquire any real property or leasehold or other interest in real property (including any Hydrocarbon Interest) that is necessary or material to the construction and operation of the Project or that has a value in excess of $1,000,000 (other than any types of property that are expressly excluded from the Mortgages by its terms) and is not covered by the Mortgages, then within a reasonable period of time following such acquisition (and in any event no later than 90 days thereafter or such longer period, not to exceed 120 days, as approved by the Administrative Agent (at the direction of the Required Lenders)), execute, deliver and record a supplement or amendment to the Mortgages, reasonably satisfactory in form and substance to Administrative Agent, subjecting the real property or leasehold or other interests to the Lien and security interest created by the Mortgages. If reasonably requested by the Administrative Agent, other than for Hydrocarbon Interests, such Co-Borrower shall obtain an appropriate endorsement or supplement to the Title Policy insuring (i) the Lien of the Secured Parties in such additional property, subject only to Permitted Liens and other exceptions to title approved by Administrative Agent, and (ii) the continuing first priority lien of the Mortgages (subject only to Permitted Liens and any other exceptions to title as are reasonably acceptable to Administrative Agent).

5.13.4 Upon the reasonable request of any Agent, each Borrower Party shall execute and deliver all documents as shall be necessary or that such Agent shall reasonably request in connection with the rights and remedies of such Agent and the Lenders under the Credit Documents, and perform such other reasonable acts as may be necessary to carry out the intent of this Agreement and the other Credit Documents.

5.14 ADDITIONAL CONSENTS. Unless the Administrative Agent (at the direction of the Required Lenders) has waived such requirement in writing, each Co-Borrower shall (i) cause the applicable counterparty to any Replacement Project Document that is a Major Project Document as of the Closing Date and (ii) use commercially reasonable efforts to cause the applicable counterparty to any Major Project Document entered into after the Closing Date (other than any Replacement Project Document that is a Major Project Document and any Major Project Document that is an easement, right of way, license or other agreement in respect of real property rights) to execute and deliver to Administrative Agent a Consent in substantially the form of Exhibit E-1, such other form as the applicable counterparty may have previously delivered to Administrative Agent in connection with this Agreement, or such other form as is prescribed by Governmental Rule, in each case with such changes as are reasonably acceptable to the Administrative Agent.

5.15 MAINTENANCE OF INSURANCE. Each Co-Borrower shall maintain or cause to be maintained in all material respects on its behalf in effect at all times the types of insurance required pursuant to Exhibit K, in the amounts and on the terms and conditions specified therein, from the quality of insurers specified in such Exhibit or other insurance companies of recognized responsibility reasonably satisfactory to the Administrative Agent (as reasonably directed in writing by the Required Lenders).

5.16 TAXES, OTHER GOVERNMENT CHARGES AND UTILITY CHARGES. Each Borrower Party shall timely file all federal and other material tax returns and pay, or cause to be paid, as and when due and prior to delinquency, all material taxes, assessments and governmental charges (including any interest, additions to tax or penalties applicable thereto) of any kind that may at any time be lawfully assessed or levied against or with respect to such Borrower Party or the Project, including material sales and use taxes and real estate taxes, all material utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project, and all material assessments and charges lawfully made by any Governmental Authority for public improvements that may be secured by a Lien on the Project; in each case except to the extent permitted pursuant to clause (b) of the definition of “Permitted Liens”.

5.17 EVENT OF EMINENT DOMAIN. If an Event of Eminent Domain shall occur with respect to any material portion of Collateral, each Co-Borrower shall (a) diligently pursue all its rights to compensation against the relevant Governmental Authority in respect of such Event of Eminent Domain, (b) not, without the written consent of Administrative Agent as directed in writing by the Required Lenders, which consent and direction shall not be unreasonably withheld or delayed, compromise or settle any claim against such Governmental Authority if such compromise or settlement results in payments in excess of $5,000,000 or could reasonably be expected to have a Material Adverse Effect, and (c) pay or apply all Eminent Domain Proceeds in accordance with Section 3.9 of the Depositary Agreement. Such Co-Borrower consents to, and agrees not to object

to or otherwise impede or impair, the participation of Administrative Agent in any eminent domain proceedings, and each Co-Borrower shall from time to time deliver to Administrative Agent all documents and instruments reasonably requested by it to permit such participation.

5.18 [RESERVED].

5.19 SPECIAL PURPOSE ENTITY.

5.19.1 Each Borrower Party shall conduct its business solely in its own name through its duly authorized directors, officers or agents so as not to mislead others as to the identity of the company with which those others are concerned, and particularly will avoid the appearance of conducting business on behalf of any other entity or that its assets or the assets of any other entity are available to pay the creditors of such other entity. Without limiting the generality of the foregoing, all oral and written communications of such Borrower Party, including, without limitation, letters, invoices, purchase orders, contracts and statements, will be made solely in the name of such Borrower Party.

5.19.2 Each Borrower Party shall comply in all material respects with all organizational formalities to maintain its separate existence.

5.19.3 Other than as permitted pursuant to Section 6.8, each Borrower Party shall maintain an arm's-length relationship with all other entities.

5.19.4 Except to the extent provided in the Depositary Agreement, each Borrower Party shall keep its assets and its liabilities wholly separate from those of all other entities.

5.20 THE PATRIOT ACT. Each Co-Borrower shall comply with the disclosure requirements pursuant to Section 11.22.

5.21 PUHCA EXEMPTION AND GOVERNMENT APPROVAL. Each Co-Borrower shall take or cause to be taken all necessary or appropriate actions so that:

(a) (i) PowerCo will be an Exempt Wholesale Generator and (ii) the Generating Project will be an Eligible Facility at all times hereunder,

(b) PowerCo will be in compliance in all material respects with all requirements under PUHCA applicable to an Exempt Wholesale Generator, an owner of an Eligible Facility, an "electric utility company," a "public utility" and a "public-utility company,"

(c) once PowerCo becomes a "public utility" under the FPA, PowerCo will be in compliance in all material respects with all requirements under the FPA applicable to a "public utility" with MBR Authority,

(d) each Borrower Party shall not be subject to, or shall be exempt from, financial, organizational or rate regulation as a public utility under Chapter 4905 of the Ohio Revised Code

and any regulations promulgated thereunder, respecting the rates or the financial or organizational regulation of electric utilities,

(e) (i) No later than 60 days prior to the production of energy from the Generating Project (including for testing), PowerCo shall have filed for MBR Authority and, once such authorization is received, delivered to Administrative Agent evidence thereof and (ii) PowerCo will have MBR Authority from the FERC in a final and binding order no longer subject to rehearing or appeal (including, with respect to the request for blanket approval to issue securities under Section 204 of the FPA, expiration of all notice periods) at least 30 days prior to the date that the Generating Project generates any electricity, including for any testing prior to commercial operation, and

(f) PowerCo shall take or cause to be taken all necessary or appropriate actions so that it is (x) eligible to participate, and the full amount of the Project’s Unforced Capacity clears, in the PJM Base Residual Auction for all future Delivery Years as a Capacity Performance Resource or similar capacity product, (y) in material compliance with the requirements of PJM for market participations, including maintaining sufficient fuel supply to satisfy the requirements and obligations of a Capacity Performance Resource or similar capacity product and maintaining adequate credit support with PJM (or its designee) and (z) eligible to participate in the PJM energy and ancillary services markets.

5.22 MAINTENANCE OF ACCOUNTS. Co-Borrowers shall fund and maintain the Depositary Accounts in accordance with the Depositary Agreement.

5.23 CONSTRUCTION OF THE PROJECT; FINAL COMPLETION.

5.23.1 PowerCo shall construct, or cause the construction of, the Generating Project in all material respects in accordance with the Construction and Equipment Contracts and the approved plans and specifications thereunder, Prudent Industry Practices, Applicable Permits and Legal Requirements.

5.23.2 PowerCo shall cause Final Completion to be achieved prior to the Date Certain.

5.24 INDEPENDENT ENGINEER; PERFORMANCE TESTS. Each Co-Borrower shall permit Administrative Agent (or any agent thereof) and the Independent Engineer to witness and verify the Performance Tests to the extent reasonably requested by Administrative Agent (or any agent thereof) and the Independent Engineer in each case subject to the terms of the Construction and Equipment Contracts. Each Co-Borrower shall give Administrative Agent and the Independent Engineer notice regarding any proposed Performance Test promptly following such Co-Borrower’s receipt of such notice (and, in any event, no less than three Banking Days prior to any Performance Test). Such Co-Borrower shall forward to Administrative Agent and the Independent Engineer the procedures to be used in the conduct of the Performance Test in connection with such notice. If, upon completion of any Performance Test, such Co-Borrower believes that such Performance Test has been satisfied, it shall so notify Administrative Agent and the Independent Engineer and shall deliver a copy of all test results supporting such conclusion, accompanied by reasonable supporting data.

5.25 NATURAL GAS ARRANGEMENTS.

5.25.1 The Co-Borrowers shall use commercially reasonable efforts to implement (or cause to be implemented) a drilling program designed to achieve initial continuous production of 70,000 MCF/day of natural gas from the Production Project no later than the initial Guaranteed Substantial Completion Date (as defined in the EPC Contract), and thereafter use commercially reasonable efforts to maintain (or cause to be maintained) production from the Production Project of 70,000 MCF/day of natural gas.

5.25.2 If any Gas Availability Certificate reflects forecasted production that is less than forecasted requirements (the amount of such shortfall, a "Production Shortfall"), excluding for the avoidance of doubt any Production Shortfall (a) identified in a previously delivered Gas Availability Certificate, and (b) in respect of which the Co-Borrowers have (x) effectuated, or caused to be effectuated, a Gas Cure, and (y) delivered, and continue to use commercially reasonable efforts to implement, an Approved Remedial Plan, then:

(a) the Co-Borrowers shall, no later than 60 days following such first day of the fiscal quarter for which such Gas Availability Certificate was delivered, cause cash equity to be contributed to the Co-Borrowers in an amount (less any amounts in the Operating Reserve Account) necessary to allow the Co-Borrowers to purchase (and the Co-Borrowers shall so purchase no later than such 60th day) on a forward basis (such contribution and purchase, a "Gas Cure") gas sufficient to eliminate the entire Production Shortfall for the full duration of the Annual Period (including any Production Shortfall during the period since the commencement of such Annual Period);

(b) the Co-Borrowers shall, no later than 30 days following such first day of such fiscal quarter, submit a proposed remedial development and drilling plan (which plan may include additional cash equity contributions by Holdings for purchasing additional acreage) to the Administrative Agent, which plan shall be subject to the approval (not to be unreasonably withheld or delayed) by the Administrative Agent (acting in consultation with the Petroleum Engineer), and which remedial plan shall demonstrate the Co-Borrower's ability to achieve production of 70,000 MCF/day from the Production Project for a 365-day period beginning on the date that is 12 months following the Administrative Agent's approval of such plan (as so approved, an "Approved Remedial Plan"). If the Administrative Agent (acting in consultation with the Petroleum Engineer) reasonably requests changes to any such remedial plan proposed by the Co-Borrowers, the Co-Borrowers shall incorporate such changes into its remedial plan, and resubmit such plan to the Administrative Agent, no later than 15 Banking Days following receipt; and

(c) the Co-Borrowers will use commercially reasonable efforts to implement (or cause to be implemented) the Approved Remedial Plan in accordance with its terms.

5.26 RELEASE OF MECHANIC'S LIEN. The Co-Borrowers shall use commercially reasonable efforts to cause the Title Insurer to promptly remove from the Title Policy the exception relating to that certain mechanic's lien in favor of New Leaf Construction Equipment in the amount of $9,148.14 and filed for record June 28, 2018 in Official Record 382, Page 2466.

5.27 O&M AGREEMENT. On or before the 180th day following the Closing Date, PowerCo shall enter into and deliver to Administrative Agent an operation and maintenance agreement (including exhibits and annexes thereto), duly executed and delivered by each of PowerCo and Operator, in form and substance reasonably satisfactory to the Required Lenders (the "O&M Agreement"); provided that no such approval of the Required Lenders shall be necessary if the O&M Agreement is on terms substantially consistent with (or more favorable to the Co-Borrowers than) any of the term sheets for the O&M Agreement attached hereto as Exhibits T-1 and T-2.

ARTICLE 6
NEGATIVE COVENANTS

Each Co-Borrower and, solely to the extent explicitly referred to below, Holdings, covenants and agrees that until the Discharge of First Lien Secured Obligations:

6.1 CONTINGENT LIABILITIES. Except as provided in this Agreement, such Co-Borrower shall not become liable as a surety, guarantor, accommodation endorser or other equivalent backer of the debt obligations of another Person, for or upon the obligation of any other Person, except for the other Co-Borrower; provided that this Section 6.1 shall not be deemed to prohibit or otherwise limit the incurrence of Permitted Debt.

6.2 LIMITATIONS ON LIENS. Such Co-Borrower shall not create, assume or suffer to exist any Lien, securing a charge or obligation of such Co-Borrower or any other Person, on the Project or on any of the Collateral, real or personal, whether now owned or hereafter acquired, except Permitted Liens.

6.3 INDEBTEDNESS. Such Co-Borrower shall not incur, create, assume or permit to exist any Debt except Permitted Debt.

6.4 SALE OR LEASE OF ASSETS. Such Co-Borrower shall not sell, lease, assign, transfer or otherwise dispose of assets, whether now owned or hereafter acquired, except:

(a) in the ordinary course of its business and as contemplated by the Operative Documents (including sales in the "spot" market or merchant sales of any portion or all of the Generating Project's capacity, energy, environmental attributes, ancillary services and other services),

(b) merchant sales of Hydrocarbons, solely to the extent that such Hydrocarbons (i) are property of GasCo, (ii) exceed the amounts then reasonably required by the Generating Project to operate in accordance with the Major Project Documents and (iii) are sold on a spot or as-available basis or are swapped with a counterparty in exchange for Hydrocarbons to be delivered by such counterparty on another future date,

(c) to the extent that such asset is unnecessary, worn out or no longer useful or usable in connection with the operation or maintenance of the Project,

(d) upon any equipment failure, the replacement of such failed equipment with comparable equipment,

(e) the sale, transfer or release, with or without consideration, of real property or interests in real property related to the Project to the extent that such real property or interests in real property is no longer useful in connection with the ownership, operation or maintenance of the Project,

(f) the granting of easements or other interests in real property related to the Project to other Persons so long as such grant is in the ordinary course of business, would constitute a Permitted Lien and does not or would not reasonably be expected to materially detract from the value or use of the affected property or to interfere in any material respect with such Co-Borrower's ability to construct or operate the Project, sell or distribute power therefrom or perform any material obligation under any Operative Document,

(g) sales, transfers or other dispositions of Permitted Investments,

(h) sales, transfers, swaps, exchanges, releases or surrenders (including allowing expiration pursuant to the terms thereof) of Gas Properties that do not individually or in the aggregate detract in any material respect from the value or use of the Gas Properties in connection with the Project, and

(i) any other asset sale or series of related asset sales the proceeds of which shall not exceed $2,000,000 in the aggregate in any calendar year and $10,000,000 in the aggregate during the term of this Agreement, which proceeds shall, in each case, be applied in accordance with the Depositary Agreement.

6.5 CHANGES. Such Co-Borrower shall not change the nature of its business or expand its business beyond the business contemplated in the Operative Documents.

6.6 DISTRIBUTIONS.

6.6.1 *Conditions to Distributions*. Except as provided in Section 6.6.2, no Co-Borrower shall directly or indirectly, make or declare any Restricted Payment except pursuant to and in accordance with Section 3.12(b)(i) of the Depositary Agreement so long as each of the following conditions have been satisfied (such conditions, "Restricted Payment Conditions"):

(a) the Substantial Completion (as defined in the EPC Contract) shall have occurred and the Administrative Agent shall have received a completion certificate of the Independent Engineer, substantially in the form of Exhibit C-7;

(b) no Event of Default or Inchoate Default has occurred and is continuing as of the date of such applicable Restricted Payment, and such Restricted Payment would not cause an Event of Default or Inchoate Default;

(c) the Debt Service Coverage Ratio for the Calculation Period relating to the Principal Repayment Date immediately preceding the proposed date of such Restricted Payment is greater than or equal to 1.2:1.00;

(d) each of the Debt Service Reserve Account and the Major Maintenance Reserve Account is funded in the amount required by the Depositary Agreement;

(e) during the most recently ended calendar quarter, no amounts on deposit in the Operating Reserve Account (as defined in the Depositary Agreement) shall have been used to pay O&M Costs;

(f) the Gas Availability Certificate delivered in the most recently ended calendar quarter shall not have shown a Production Shortfall (other than any Production Shortfall in respect of which the Co-Borrowers have (a) effectuated, or caused to be effectuated, a Gas Cure, and (b) delivered, and are continuing to use commercially reasonable efforts to implement, an Approved Remedial Plan); and

(g) there shall not be more than one Restricted Payment made per fiscal quarter.

6.6.2 *Certain Distributions Permitted*. Nothing in this Section 6.6 shall prohibit or otherwise limit, subject to satisfaction of any applicable conditions contained in the other provisions of this Agreement and the other Credit Documents (which conditions shall not include the Restricted Payment Conditions, but for the avoidance of doubt may include no existing Inchoate Default or Event of Default to the extent provided below), (a) any amounts paid in reimbursement of Drawstop Equity Contributions with proceeds of Construction Loans in accordance with Section 3.1(d) of the Depositary Agreement, (b) Permitted Tax Distributions and Permitted CAT Distributions (as defined in the Depositary Agreement) distributed pursuant to and in accordance with the Depositary Agreement and (c) amounts distributed in accordance with Section 3.3.11 of this Agreement.

6.7 INVESTMENTS. Such Co-Borrower shall not make any investments (whether by purchase of stocks, bonds, notes or other securities, loan, extension of credit, advance or otherwise) other than Permitted Investments.

6.8 TRANSACTIONS WITH AFFILIATES. Such Co-Borrower shall not directly or indirectly enter into any transaction or series of transactions relating to the Project with or for the benefit of an Affiliate without the prior written approval of Administrative Agent, except for Permitted Affiliate Transactions.

6.9 REGULATIONS. Such Co-Borrower shall not directly or indirectly apply any part of the proceeds of any Loan or other extensions of credit hereunder or other revenues to the “buying”, “carrying” or “purchasing” of any margin stock within the meaning of Regulations T, U or X of the Federal Reserve Board, or any regulations, interpretations or rulings thereunder.

6.10 PARTNERSHIPS, ETC. No Borrower Party shall become a general or limited partner in any partnership or a joint venturer in any Joint Venture or create and hold stock in any subsidiary except, in the case of each Co-Borrower, the transactions with the other Co-Borrower contemplated by the Operative Documents; provided that GasCo shall not be considered to be a joint venturer in any Joint Venture solely because it is party to the Joint Operating Agreement, the Joint Development Agreement, or any similar agreement in respect of Gas Properties entered into in accordance with the terms hereof.

6.11 DISSOLUTION; MERGER. Such Co-Borrower shall not liquidate or dissolve, or combine, merge or consolidate with or into any other entity, consummate any Division Transaction, or change its legal form, or implement any material acquisition or purchase of assets consisting of a business or line of business from any Person, or change the nature of its business, or purchase or otherwise acquire all or substantially all of the assets of any Person.

6.12 AMENDMENTS TO AND TERMINATION OF CERTAIN DOCUMENTS. Such Co-Borrower shall not without the prior written consent of the Required Lenders (acting in consultation with the Independent Engineer), such consent not to be unreasonably withheld or delayed so long as no Event of Default has occurred and is continuing, amend or otherwise modify any Major Project Document to which it is a party or give any consent, waiver or approval (other than approvals in the ordinary course of business consistent with past practices for owners or operators of similar businesses, where applicable) (each such amendment or modification, consent, waiver or approval being referred to herein as a "Project Document Modification") thereunder (including any waiver of any default under or breach of any Major Project Document to which it is a party), or agree in any manner to any other amendment, modification or change of any term or condition of any Major Project Document to which it is a party; provided that, subject to the limitations in the succeeding "provided, further", (i) the extension of the term of a Major Project Document on substantially the same terms and conditions then in effect (or on more favorable terms and conditions in the aggregate to Co-Borrowers), (ii) any Project Document Modification which (x) is not, individually or in the aggregate when taken together with previously executed Project Document Modifications, materially adverse to any Co-Borrower, the Project or the interests of the Secured Parties in the Collateral and (y) does not require the expenditure by Co-Borrowers of more than $5,000,000 individually or more than $10,000,000 in the aggregate, in each case, as certified by such Co-Borrower and such Co-Borrower provides to the Administrative Agent a true, correct and complete copy of each such Project Document Modification, (iii) any Project Document Modification for the purposes of incurring any expenditure permitted under 6.26.1, (iv) any change order permitted under Section 6.26.2, (v) any termination by Co-Borrowers of a Major Project Document resulting from the material breach under such Major Project Document by the relevant counterparty shall not constitute an Event of Default to the extent the Co-Borrowers replace such Major Project Document in accordance with Section 7.1.14(b) or (d), or (vi) ministerial or administrative amendments, modifications, waivers, consents and approvals, in each of the cases of clauses (i) through (v), shall not require the consent of the Required Lenders; provided further that any amendment, modification or waiver with respect to any Major Project Document which adversely affects the rights of any LC Issuer shall require the consent of such LC Issuer.

6.12.1 No Co-Borrower shall, without the prior written consent of Administrative Agent as directed in writing by the Required Lenders, such consent and direction not to be unreasonably withheld or delayed so long as no Event of Default has occurred and is continuing, amend, supplement, waive or otherwise modify the organizational documents of such Co-Borrower, if the result would reasonably be expected to have an adverse effect on the Lenders or their rights or remedies under the Credit Documents in any material respect, including, the issuance of any Securities in such Co-Borrower other than such Co-Borrower's issuance of additional common Securities to Holdings.

6.12.2 No Co-Borrower shall, without the prior written consent of Administrative Agent as directed in writing by the Required Lenders, such consent and direction not to be unreasonably withheld or delayed so long as no Event of Default has occurred and is continuing, seek to or petition to amend, modify, supplement or take any similar actions with respect to any Applicable Permit, except for such amendments, modifications, supplements or similar actions that (a) are required by Legal Requirements or (b) would not reasonably be expected to have a Material Adverse Effect.

6.12.3 No Co-Borrower shall, without the prior written consent of Administrative Agent as directed in writing by the Required Lenders, such consent and direction not to be unreasonably withheld or delayed so long as no Event of Default has occurred and is continuing, amend, supplement, waive or otherwise modify any Second Lien Credit Document or any Permitted Second Lien Refinancing Credit Document (a) if the effect of such amendment, supplement, waiver or other modification is or would be to (i) shorten or accelerate the dates (including final maturity) upon which payments of principal or interest are due on the Second Lien Facility or the Permitted Second Lien Refinancing Facility, or otherwise decrease the weighted average life to maturity of the foregoing, (ii) add or change in a manner adverse to the Borrower Parties any event of default or any covenant with respect to the Second Lien Facility or the Permitted Second Lien Refinancing Facility unless and solely to the extent such addition or change (x) has first been made to this Agreement or any other applicable Credit Document and does not relate to a cross-default or cross acceleration with respect to the Second Lien Facility or the Permitted Second Lien Refinancing Facility and (y) is capable of being incorporated into the Second Lien Credit Agreement maintaining the same cushion as between the Credit Documents and the Second Lien Credit Documents (or the Permitted Second Lien Refinancing Credit Documents, as applicable) or (iii) add any mandatory prepayment to, or change in a manner adverse to the Borrower Parties the prepayment provisions of, the Second Lien Facility or the Permitted Second Lien Refinancing Facility unless and solely to the extent (A) such addition or change has first been made to this Agreement or any other applicable Credit Document and (B) such change or addition would not require any prepayment of the Second Lien Facility or the Permitted Second Lien Refinancing Facility prior to a prepayment hereunder, or (b) in any other manner inconsistent with the Intercreditor Agreement.

6.13 NAME AND LOCATION; FISCAL YEAR. No Co-Borrower shall change its name, its jurisdiction of organization, the location of its principal place of business, its organization identification number or its fiscal year without providing 30 days prior written notice to Administrative Agent and Collateral Agent.

6.14 ASSIGNMENT. No Co-Borrower shall assign its rights hereunder or under any Major Project Document to any Person, except (a) in the case of this Agreement only, as permitted by Section 11.18 and (b) in the case of any Major Project Document, with the prior written consent of the Required Lenders.

6.15 ACCOUNTS. No Co-Borrower shall maintain or use any deposit or securities accounts other than the Accounts and the Local Checking Accounts without the prior written consent of Administrative Agent (as reasonably directed in writing by the Required Lenders).

6.16 HAZARDOUS SUBSTANCES. No Co-Borrower shall release into the environment any Hazardous Substances (a) in violation of any Environmental Laws or Permit required under any Environmental Law or (b) in a quantity, type or location that would reasonably be expected to lead to liability of any Co-Borrower pursuant to Environmental Laws or Permits except for, with respect to (a) and (b), any Release that would not reasonably be expected to materially impair the value of the Project, the Easements and the Collateral, taken as a whole, and would not otherwise reasonably be expected to have a Material Adverse Effect.

6.17 ADDITIONAL PROJECT DOCUMENTS. Other than (x) Permitted Commodity Hedge Agreements, (y) any joint operating agreement or joint development agreement entered into in connection with any Gas Property owned or acquired by GasCo in respect of which the Co-Borrowers have delivered to the Administrative Agent at least 10 Banking Days prior to execution and delivery thereof (or, if such joint operating agreement or joint development agreement is in substantially the same form as the Joint Development Agreement or Joint Operating Agreement, as applicable, in effect as of the Closing Date, within 10 Banking Days following the execution and delivery thereof), a true and correct copy of such agreement, together with a certificate of a Responsible Officer of GasCo certifying that the execution, delivery and performance of such agreement and the transactions contemplated thereby (1) are in the best interests of the Project, (2) are not materially adverse to the interests of the Secured Parties to the extent such agreement relates to a Gas Property owned on the Closing Date (or a Gas Property received as consideration in connection with a transfer or other disposition of a Gas Property owned on the Closing Date) and (3) would not reasonably be expected to have a Material Adverse Effect, and (z) those agreements described on Exhibit G-8 or as otherwise expressly provided in the Credit Documents, (a) without the prior written consent of Administrative Agent as directed in writing by the Required Lenders, which consent and direction shall not be unreasonably withheld or delayed, no Co-Borrower shall enter into, become a party to, or become liable under any Additional Project Document, or permit any counterparty to any existing Project Document to enter into on behalf of such Co-Borrower any agreement, other than any Additional Project Document, which, directly or indirectly through the reimbursement of costs, (i) provides for the payment by such Co-Borrower of, or the provision to such Co-Borrower of such goods and services with a value of, $5,000,000 or less per annum, (ii) provides for payment of Emergency Operating Costs, (iii) is a Replacement Project Document,

and (b) without the prior written consent of the Required Lenders, no Co-Borrower shall enter into any Major Project Document. Notwithstanding anything to the contrary herein, nothing in this Section 6.17 shall limit any Co-Borrower's ability to enter into any agreement which is expressly permitted or is entered into to document or give effect to any transaction expressly permitted or required under any provision of the Credit Documents.

6.18 ASSIGNMENT BY THIRD PARTIES. Without prior written consent of the Required Lenders or unless provided in a Consent, no Co-Borrower shall consent to the assignment of any obligations under any Major Project Document by any counterparty thereto other than to a Replacement Obligor.

6.19 ACQUISITION OF REAL PROPERTY. No Co-Borrower shall acquire or lease any material real property or other material interest in real property (excluding the acquisition of Gas Properties that do not include producing wells or other surface or subsurface facilities or improvements on the portion of such Gas Properties being acquired or leased, the acquisition of any easements or licenses and the acquisition (but not the exercise) of any options to acquire any such interests in real property) other than the Site, the Easements and other interests in real property acquired on or prior to the Closing Date, unless such Co-Borrower shall have delivered to Administrative Agent a "Phase I" environmental site assessment with respect to such real property and, if a "Phase II" environmental site assessment is warranted (as reasonably determined by the relevant consultant, who shall be reasonably satisfactory to the Administrative Agent), a "Phase II" environmental site assessment with respect to such property, in each case, along with a corresponding reliance letter from the consultant issuing such site assessment(s), confirming either that (a) no Hazardous Substances were found in, on or under such real property of a nature or concentrations that would reasonably be expected to impose on any Co-Borrower an environmental liability that would be expected to have a Material Adverse Effect or (b) the conditions and risks associated with such Hazardous Substances were otherwise reasonably being addressed.

6.20 ERISA MATTERS. No Co-Borrower shall have any employees nor shall it maintain, sponsor or contribute to any Plan or Multiemployer Plan.

6.21 USE OF SITE AND EASEMENTS. No Co-Borrower shall use the Site or the Easements for any purpose other than for the construction, operation and maintenance of the Project as contemplated by the Operative Documents or to provide access rights to neighboring landowners, easement holders and tenants, in each case to the extent that such access rights constitute Permitted Liens.

6.22 TAX ELECTION; TAX SHARING AGREEMENTS. No Co-Borrower shall make an election to be classified for U.S. federal or applicable state, local or foreign income or franchise tax purposes as an association taxable as a corporation. No Co-Borrower shall enter into any tax sharing agreements with any other entity other than an agreement (i) the parties to which include no Person other than Holdings or the Co-Borrowers or (ii) with one or more non-Affiliate third parties made in the ordinary course of business, the primary subject of which is not tax.

6.23 HEDGING AGREEMENTS. No Co-Borrower shall enter into any Hedging Agreements except any Permitted Commodity Hedge Agreement.

6.24 LEASE TRANSACTIONS. No Co-Borrower shall enter into any transaction after the date hereof for the lease of any assets, whether operating leases, Capital Leases or otherwise, other than any one or more of the following: (a) any lease constituting Permitted Debt, (b) leases of automobiles, office equipment or other real or personal property pursuant to which the annual lease payments by such Co-Borrower do not exceed $5,000,000 in the aggregate in any fiscal year, (c) any transactions contemplated in the then applicable Annual Operating Budget, (d) any lease described on Exhibit G-8, (e) any lease consented to by Administrative Agent (such consent not to be unreasonably withheld or delayed) and (f) leases of Gas Properties made pursuant to the terms of the Joint Development Agreement.

6.25 CAPITAL EXPENDITURES. Prior to Term Conversion, no Co-Borrower shall make any Capital Expenditures other than in accordance with the Construction Budget, as then in effect. After Term Conversion, no Co-Borrower shall make any Capital Expenditures other than Permitted Capital Expenditures, Capital Expenditures consistent with the Annual Operating Budget and Emergency Operating Costs to the extent such costs are Capital Expenditures. Notwithstanding the foregoing, each Co-Borrower may make Capital Expenditures to the extent such Capital Expenditures are funded from (a) additional equity contributions made to such Co-Borrower by an owner of Holdings or (b) amounts in the Distribution Suspense Account subject to satisfaction of the Restricted Payment Conditions.

6.26 CONSTRUCTION BUDGET CONTINGENCY; CHANGE ORDERS; INITIAL BORROWING.

6.26.1 *Changes to Construction Budget*. No Co-Borrower shall amend or modify the Construction Budget without the prior written consent of Administrative Agent at the written direction of the Required Lenders acting in consultation with the Independent Engineer, such consent and direction not to be unreasonably withheld or delayed; provided that any Co-Borrower may, without the prior written consent of Administrative Agent (as directed in writing by the Required Lenders), such consent and direction not to be unreasonably withheld or delayed, (a) amend, revise or modify the Construction Budget to reallocate the “contingency” line item specified in the Construction Budget to any other budget categories (other than any line items pertaining to a transaction with an Affiliate) up to $5,000,000 in the aggregate and thereafter in respect of individual items not exceeding $2,000,000 until the aggregate amount of such reallocations is $10,000,000 and thereafter in respect of individual items not exceeding $100,000, (b) reallocate any savings in any line item specified in the Construction Budget in respect of which the work has been completed to any other line item in the Construction Budget (other than any line items pertaining to a transaction with an Affiliate), and (c) amend, revise or modify the Construction Budget so long as such amendment, revision or modification is required in connection with (i) any actions in respect of any Project Document permitted pursuant to Section 6.12 without the consent of Administrative Agent or (ii) any Additional Project Document permitted to be entered into pursuant to Section 6.17 without the consent of Administrative Agent. Co-Borrowers shall promptly deliver to Administrative Agent a

copy of any revisions to the Construction Budget effected without the consent of Administrative Agent pursuant to this Section 6.26.1.

6.26.2 *Change Orders*. No Co-Borrower shall accept, approve or otherwise enter into any change order (or similar amendment) under any Construction and Equipment Contract without the prior written consent of Administrative Agent as directed in writing by the Required Lenders acting in consultation with the Independent Engineer, such consent and direction not to be unreasonably withheld or delayed so long as no Event of Default has occurred and is continuing, provided that, subject to Section 6.12.1, no such consent shall be required if (x) such change order (or similar amendment) is contemplated in the Construction Budget or is funded solely pursuant to the contingency line item in the Construction Budget to the extent permitted under Section 6.26.1 above without the consent of Administrative Agent, (y) such change order (or similar amendment) is immaterial, is of a technical nature and is without monetary impact or the monetary impact is less than $2,500,000 or (z) such change order (or similar amendment) will not result in any extension of the Completion Date, change to any warranty, performance guarantee or minimum performance levels and guarantees in any Construction and Equipment Contract, change to the procedures for or results of any Performance Tests, amendment of the definition of "Substantial Completion", "Final Completion" or "Event of Default" or the conditions, events or circumstances that give rise to an event of default under any Major Project Document or change to the performance-based liquidated damages payable to such Co-Borrower under the Construction and Equipment Contracts or change the Guaranteed Substantial Completion Date (as defined therein).

6.26.3 *Initial Borrowing*. The Co-Borrowers shall not fail to make the initial Borrowing of Loans hereunder prior to July 31, 2019, in a minimum amount of not less than $7,000,000.

6.27 RECEIVABLES. No Co-Borrower shall extend the maturity of, or agree to any renewal of, any Receivable in excess of $2,000,000 individually or $5,000,000 outstanding at any time, or fail to enforce its rights under any Receivable in excess of $2,000,000 individually or $5,000,000 outstanding at any time without the prior written consent of the Administrative Agent.

6.28 ANTI-TERRORISM; AML LAWS; ANTI-CORRUPTION; SANCTIONS. Each Borrower Party shall:

(a) not lend, contribute or otherwise make available the Loans, directly or indirectly, to any Person that (i) is, or is an Affiliate of a Person that is a Sanctioned Person or Sanctioned Country, or is described by or designated in any Anti-Terrorism Order, (ii) is, or is an Affiliate of a Person that is, in violation of the Sanctions, AML Laws, Anti-Corruption Laws or Anti-Terrorism Laws; or (iii) has, or is an Affiliate of a Person that has, been convicted of money laundering (under any AML Laws, including 18 U.S.C. Sections 1956 or 1957), which conviction has not been overturned, in each case of clauses (i), (ii) and (iii), to the extent that such contribution or provision or making available of Loans would be prohibited by the Sanctions, AML Laws, Anti-Corruption Laws or Anti-Terrorism Laws or would otherwise cause any Person participating in the

transactions contemplated by this Credit Agreement as a lender, participant, arranger, issuing bank, borrower, obligor or agent to be in breach of the Sanctions, AML Laws, Anti-Corruption Laws or Anti-Terrorism Laws;

(b) not fund all or part of any repayment under the Loans out of proceeds derived from transactions which at the time of effecting the applicable transaction would be prohibited by the Sanctions, AML Laws, Anti-Corruption Laws or Anti-Terrorism Laws or would otherwise cause any Person participating in the transactions contemplated by this Agreement as a lender, borrower or agent to be in breach of the Sanctions, AML Laws, Anti-Corruption Laws or Anti-Terrorism Laws;

(c) not request any Borrowing or Letter of Credit, and such Co-Borrower shall not use, and shall procure that its directors, officers and employees shall not use, directly or indirectly, the proceeds of any Borrowing or Letter of Credit (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws or AML Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or involving any goods originating in or with a Sanctioned Person or Sanctioned Country, in each case if such action would be a violation of applicable law, or (iii) in any manner that would result in the violation of any Sanctions by any Person participating in the transactions contemplated by this Agreement as a lender, borrower or agent; and

(d) ensure that appropriate controls and safeguards are in place designed to prevent any proceeds of the Loans from being used contrary to clauses (a) through (c) above.

6.29 PRODUCTION PROJECT. GasCo shall not permit the annual rig limit set forth in Section 5.1(k)(ii) of the Joint Development Agreement and Section 1 of Master JOA Supplemental Agreement applicable to the Joint Operating Agreement to be exceeded.

6.30 FINANCIAL COVENANT. Commencing with the first full fiscal quarter ending following the Term Conversion Date, permit the Debt Service Coverage Ratio to be less than 1.10:1.00 as of the last day of any fiscal quarter (the "Financial Covenant"). For purposes of determining compliance with the Financial Covenant, any common equity contribution (other than Drawstop Equity Contributions) made to the Co-Borrowers after the end of a fiscal quarter and on or prior to the day that is 10 Banking Days after the day on which financial statements are required to be delivered for such fiscal quarter will, at the request of the Co-Borrowers, be included in the calculation of Operating Cash Available for Debt Service solely for the purposes of determining compliance with such Financial Covenant at the end of such fiscal quarter and applicable subsequent periods (any such equity contribution so included in the calculation of Operating Cash Available for Debt Service, a "Specified Equity Contribution"); provided, that (a) in each four consecutive fiscal quarter period, there shall be at least two fiscal quarters in which no Specified Equity Contribution is made, (b) during the term of the Term Facility, no more than five Specified Equity Contributions shall be made, (c) the amount of any Specified Equity Contribution shall be no greater than the amount required to cause the Co-Borrowers to be in compliance with the Financial Covenant, (d) all Specified Equity Contributions shall be disregarded for purposes of determining any baskets with respect to the covenants contained in the Credit Documents and (e) there shall be

no pro forma reduction in Debt with the proceeds of any Specified Equity Contribution for determining compliance with the Financial Covenant; provided, that to the extent such net cash proceeds are actually applied to prepay Debt, such reduction may be credited in any subsequent fiscal quarter.

6.31 PASSIVE HOLDING COMPANY STATUS OF HOLDINGS. Holdings shall not engage in any operating or business activities other than the following: (a) its direct ownership of Capital Stock of the Co-Borrowers, (b) equity issuances, transfers, retirements, exchanges, splits into series and repurchases of the Capital Stock of Holdings (and, for the avoidance of doubt, not of the Co-Borrowers) not prohibited hereunder, (c) the maintenance of its legal existence (including the ability to incur fees, costs and expenses relating to such maintenance), (d) the entering into, and the performance of its obligations under, the Credit Documents and the Second Lien Credit Documents to which it is a party, (e) payment of dividends, and making contributions to the capital of the Co-Borrowers, (f) participating in tax, accounting and other administrative matters as a member of the consolidated group of Holdings and its Subsidiaries or the making and filing of any reports required by Governmental Authority, (g) providing customary indemnification to its officers, managers and directors, and (y) any other activities reasonably incidental to the foregoing and customary for passive holding companies.

6.32 PREPAYMENT OF SECOND LIEN DEBT. No Borrower Party shall (a) voluntarily prepay, in whole or in part, the Second Lien Facility or the Permitted Second Lien Refinancing Facility or (b) make any mandatory prepayment of the Second Lien Facility or the Permitted Second Lien Refinancing Facility except and to the extent required by the Second Lien Credit Agreement or the Permitted Second Lien Refinancing Credit Agreement, in each case, until the Discharge of First Lien Secured Obligations; provided however, that (i) in the case of clause (a), the Borrower Parties may make such prepayments with the proceeds of a Permitted Second Lien Refinancing Facility and (ii) in the case of each of clauses (a) and (b), the Borrower Parties may make such prepayments (x) in lieu of a Restricted Payment if the Restricted Payment Conditions have been met with respect to such amounts or (y) in an amount not to exceed the aggregate amount permitted to be paid or distributed pursuant to Section 6.6.2. For the sake of clarity, the Co-Borrowers may pay, as and when due and payable, non-accelerated payments of interest and principal on account of the Second Lien Facility or the Permitted Second Lien Refinancing Facility pursuant to and in accordance with the Second Lien Credit Agreement, as in effect on the Closing Date or as amended in a manner permitted by the Intercreditor Agreement or the Permitted Second Lien Refinancing Credit Agreement, as in effect on the date entered into or as amended in a manner permitted by the Intercreditor Agreement and subject in all cases to the provisions of Section 3.2(b) of the Depositary Agreement.

ARTICLE 7
EVENTS OF DEFAULT; REMEDIES

7.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall constitute an event of default (each, an "Event of Default") hereunder:

7.1.1 *Failure to Make Payments*. A Co-Borrower shall fail to pay, in accordance with the terms of this Agreement (i) any principal on any Loan or any LC

Reimbursement Obligation on the date that such sum is due, (ii) any interest on any Loan or any LC Reimbursement Obligation or any Commitment Fee or LC Participation Fee within three Banking Days after the date such sum is due, (iii) any scheduled fee, cost, charge or sum due hereunder or under any other Credit Documents within five Banking Days of the date that such sum is due, or (iv) any other fee, cost, charge or other sum due under this Agreement or the other Credit Documents within three Banking Days after Administrative Agent has provided written notice to Co-Borrowers that such sum is due.

7.1.2 *Bankruptcy; Insolvency*. A Borrower Party shall become subject to a Bankruptcy Event.

7.1.3 *Cross Defaults*. Holdings or a Co-Borrower shall default for a period beyond any applicable grace period (a) in the payment of any principal, interest or other amount due under any agreement involving Debt for Borrowed Money (other than Debt under the Credit Documents) and the outstanding amount or amounts payable under any such agreement equals or exceeds $5,000,000 in the aggregate, (b) in the performance of any obligation due under any agreement involving such Debt if pursuant to such default, the holder of the obligation concerned has accelerated the maturity of any such Debt evidenced thereby which equals or exceeds $5,000,000 in the aggregate or (c) on and after Term Conversion, any "event of default" or "termination event" shall occur under any Permitted Commodity Hedge Agreement or any other Hedging Agreement or any other failure to make any payment or to perform of any obligation due under any Permitted Commodity Hedge Agreement or any other Hedging Agreement if the effect thereof is to cause amounts not otherwise payable by such Co-Borrower in the ordinary course thereunder, to become due and payable and (i) in the case of any Hedging Agreement other than a Permitted Commodity Hedge Agreement, such amounts exceed $5,000,000, (ii) if such Co-Borrower's obligations under such Permitted Commodity Hedge Agreement are not secured by a Letter of Credit, such amounts exceed $5,000,000 or (iii) if such Co-Borrower's obligations under such Permitted Commodity Hedge Agreement are secured by any Letter of Credit, the Outstanding Amount (as defined in the Intercreditor Agreement) with respect to such Permitted Commodity Hedge Agreement that becomes due and payable exceeds the Available Amount of the Letter of Credit provided to the Permitted Commodity Hedge Counterparty under such Permitted Commodity Hedge Agreement.

7.1.4 *Judgments*.

(a) A final judgment or judgments shall be entered against any Borrower Party in the amount of $5,000,000 (excluding any amounts covered by insurance or subject to indemnification by a third party) or more in the aggregate (other than, in each case, (a) a judgment which is discharged within 60 days after its entry, or (b) a judgment, the execution of which is effectively stayed within 60 days after its entry, or (c) a judgment is satisfied within 60 days after its entry).

(b) Any non-monetary judgment or order (including any directive, instruction, incident of non-compliance or other order issued by any Governmental Authority) shall be rendered against any Borrower Party that would reasonably be expected to have a Material Adverse Effect, and there shall be any period of 60 consecutive days during which a stay of enforcement of such judgment or, order, by reason of a pending appeal or otherwise, shall not be in effect.

7.1.5 *ERISA*. One or more ERISA Events shall have occurred that, when taken together with all other ERISA Events that have occurred, has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

7.1.6 *Breach of Terms of Agreement.*

(a) Defaults Without Cure Periods. Any Borrower Party shall fail to perform or observe any of the covenants set forth in Sections 5.1 (*Use of Proceeds, Project Revenues and Other Proceeds*), 5.3 (*Warranty of Title*), 5.4.3 (*Notices*), 5.9(a) (*Existence, Conduct of Business Properties, Etc.*), 5.15 (*Maintenance of Insurance*), 5.19 (*Special Purpose Entity*), *5.20 (The Patriot Act)*, 5.22 (*Maintenance of Accounts*) or Article 6 (*Negative Covenants*).

(b) Other Defaults. Any Borrower Party shall fail to perform or observe any of its covenants set forth hereunder or any other Credit Document not otherwise specifically provided for in Section 7.1.6(a) or elsewhere in this Article 7, and such failure shall continue unremedied for a period of 30 days after any Borrower Party has Knowledge thereof or receives written notice thereof from Administrative Agent; provided that, if (i) such failure cannot be cured within such 30 day period, (ii) such failure is susceptible of cure within 90 days, (iii) such Borrower Party is proceeding with diligence and in good faith to cure such failure, (iv) the existence of such failure has not had and would not, after considering the nature of the cure, be reasonably expected to have a Material Adverse Effect, and (v) Administrative Agent shall have received a certificate signed by a Responsible Officer of such Borrower Party to the effect of clauses (i), (ii), (iii) and (iv) above and stating what action such Borrower Party is taking to cure such failure, then such 30 day cure period shall be extended to such date, not to exceed a total of 90 days as shall be necessary for such Borrower Party diligently to cure such failure.

7.1.7 *Loss of Collateral*. Any substantial portion of the Collateral is damaged, seized or appropriated without applicable insurance proceeds (subject to the underlying deductible), indemnity payments received from a third party or without fair value being paid therefor, in each case so as to allow replacement of such Collateral and/or prepayment of Loans and to allow each Borrower Party to continue satisfying its obligations hereunder and under the other Operative Documents to which it is a party, after giving effect to any applicable insurance coverage or other proceeds received or reasonably expected to be received for such event.

7.1.8 *Regulatory Status.*

(a) PowerCo shall have tendered notice to FERC that it has ceased to be an Exempt Wholesale Generator or FERC shall have issued an order determining that PowerCo no

longer meets the criteria of an Exempt Wholesale Generator or takes other action revoking such Exempt Wholesale Generator status.

(b) FERC shall have issued an order determining that PowerCo does not have MBR Authority or otherwise revoking or suspending such MBR Authority, or shall have issued an order subjecting such sales to any materially adverse individual rate cap (whether based on cost or otherwise) or any other materially adverse individual market power mitigation measure, as the term "mitigation" is used under 18 C.F.R. § 35.38.

(c) Any Co-Borrower shall lose its exemption from regulation as an "electric utility company," "public-utility company" or "holding company" under PUHCA or become subject to and not exempt from, whether or not a specific exemption has been granted, financial, organizational or rate regulation as a public utility under Chapter 4905 of the Ohio Revised Code and any regulations promulgated thereunder.

(d) Commencing with the first year that any Co-Borrower is eligible to participate in the PJM Base Residual Auction, any Co-Borrower shall fail to clear the full amount of its Unforced Capacity in the PJM capacity market as a Capacity Performance Resource or similar capacity product or otherwise fail to meet the requirements of a Capacity Performance Resource or similar capacity product and, in each case, such failure would reasonably be expected to have a Material Adverse Effect.

7.1.9 *Abandonment*. (i) Any Co-Borrower shall announce that it is abandoning the Generating Project or the Production Project, or (ii) the construction or operation of the Generating Project or the Production Project shall be abandoned for a period of more than 30 consecutive days for any reason; provided that, none of (A) scheduled maintenance of the Generating Project or the Production Project, (B) repairs to the Generating Project or the Production Project, whether or not scheduled or (C) a force majeure event, forced outage or scheduled outage of the Generating Project or the Production Project shall constitute abandonment, so long as Co-Borrowers are diligently attempting to end any such outage or resolve such event.

7.1.10 *Security; Guaranties*. (i) Any of the Collateral Documents, shall, except as the direct result of the acts of Collateral Agent and other than with respect to an immaterial portion of the Collateral, fail to provide to Collateral Agent, for the benefit of the Secured Parties, the Liens, security interest having the priority required by this Agreement or the relevant Collateral Documents, rights, titles, interest, remedies permitted by law, powers or privileges intended to be created thereby or, except in accordance with its terms, cease to be in full force and effect or be declared null and void, or the validity thereof having the priority required by this Agreement or the relevant Collateral Documents or the applicability thereof to the Loans, the Notes (if any) or any other obligations purported to be secured or guaranteed thereby or any part thereof shall be disaffirmed by or on behalf of a Co-Borrower or, in respect of the Guaranty and Security Agreement, Holdings (other than following the satisfaction in full of the Obligations or any other termination of a Collateral Document in accordance with the terms hereof and thereof); or (ii) any Guaranty for any reason, other than the Discharge

of First Lien Secured Obligations, shall cease to be in full force and effect (other than in accordance with its express terms) or shall be declared to be null and void or any Guarantor shall repudiate its obligations thereunder, or any Guarantor or Affiliate thereof shall contest the validity or enforceability of any Guaranty;

7.1.11 *Change of Control*. A Change of Control shall have occurred.

7.1.12 *Unenforceability or Invalidity of Credit Documents*. At any time after the execution and delivery thereof, any material provision of any Credit Document (including, without limitation, the subordination provisions in the Subordination Agreement) shall cease to be in full force and effect (other than by reason of Discharge of First Lien Secured Obligations or any other termination of a Credit Document expressly permitted in accordance with the terms hereof or thereof) or any Credit Document shall be declared null and void by a Governmental Authority of competent jurisdiction or its validity or enforceability shall be contested or the obligations thereunder repudiated by any Borrower Party or Affiliate thereof (or, in the case of the Subordination Agreement or any Consent, by the subordinated creditor or third party that is a party thereto).

7.1.13 *Misstatements; Omissions*. Any representation or warranty made or deemed made by any Borrower Party in any Credit Document to which such Person is a party or in any separate statement, certificate or document delivered to Administrative Agent, Depositary Agent, Collateral Agent, or any Lender hereunder or under any other Credit Document to which such Person is a party, shall be untrue in any material respect as of the time made or deemed made; provided that, in respect of misrepresentations which are capable of being remedied and are made or deemed made after the Closing Date, and the untruth of which would not reasonably be expected to have a Material Adverse Effect, any such misrepresentation shall not be deemed to be an Event of Default if such misrepresentation is corrected within 30 days of any Borrower Party acquiring Knowledge thereof (or such longer period as is reasonably required, in the discretion of the Administrative Agent).

7.1.14 *Project Document Defaults.*

(a) Co-Borrower Breach. A Co-Borrower shall be in breach in any material respect of, or in default in any material respect under, a Major Project Document and such breach or default shall continue unremedied for the period of time (without giving effect to any extension given to Collateral Agent under any applicable Consent with respect thereto) under such Major Project Document which such Co-Borrower has available to it in which to remedy such breach or default; provided that, if (1) such breach or default cannot be cured within the period of time provided in the applicable Major Project Document, (2) such breach or default is susceptible of cure within 30 days after such breach or default, (3) such Co-Borrower is proceeding with diligence and in good faith to cure such breach or default, (4) the existence of such breach or default has not had and would not, after considering the nature of the cure, be reasonably expected to give rise to a Material Adverse Effect, and (5) Administrative Agent shall have received a certificate of a Responsible Officer of such Co-Borrower to the effect of clauses (1), (2), (3) and (4) above and stating what

action such Co-Borrower is taking to cure such breach or default, then such 30 day cure period (or such lesser period of time, as the case may be) shall be extended to such date, not to exceed a total of 90 days, as shall be necessary for such Co-Borrower diligently to cure such breach or default.

(b) Third Party Breach. Any Person other than a Co-Borrower shall be in breach of, or in default under, a Major Project Document and such breach or default would reasonably be expected to have a Material Adverse Effect; provided that no Event of Default shall occur as a result of any such breach or default if (i) (A) such breach or default is cured within 90 days from the time the applicable Co-Borrower obtains Knowledge of such breach or default or (B) the applicable Co-Borrower obtains a Replacement Obligor for the affected party within such 90 day period or (ii) in the case of breach or default involving a Bankruptcy Event of such Person other than a Co-Borrower, the applicable Person is substantially performing its remaining obligations with respect to the Major Project Documents to which it is a party, if any, and has not rejected the Major Project Documents to which it is a party.

(c) Third Party Consents. (i) Any Major Project Participant other than a Co-Borrower shall disaffirm or repudiate in writing its material obligations under any Consent and such disaffirmation or repudiation is not rescinded and revoked in writing by such Major Project Participant within 90 days thereof, (ii) any representation or warranty made by any Major Project Participant other than a Co-Borrower in a Consent shall be untrue in any material respect as of the time made and such untrue representation or warranty would reasonably be expected to result in a Material Adverse Effect, or (iii) a Major Project Participant other than a Co-Borrower shall breach any material covenant of a Consent and such breach would reasonably be expected to have a Material Adverse Effect; provided, that in the case of each of clauses (i), (ii) and (iii) above, that no Event of Default shall occur as a result thereof if such event is cured within 90 days from the time the applicable Co-Borrower obtains Knowledge of such events (it being understood that the Co-Borrowers shall be considered to have cured any such event if the relevant Major Project Participant is replaced by a Replacement Obligor that does not so trigger this Section 7.1.14(c) and without material liability to any Co-Borrower arising out of such replacement).

(d) Termination. (x) Any Major Project Document shall terminate or shall be declared null and void (except upon fulfillment of such party's obligations thereunder or the scheduled expiration of the term of such Major Project Document) or (y) any provision of any Major Project Document shall for any reason cease to be valid and binding on any party thereto (other than any Co-Borrower), other than any such failure to be valid and binding which would not reasonably be expected to have a Material Adverse Effect and except, in the case of the foregoing clause (x) or (y), to the extent that (1) such provision is restored or replaced by a replacement provision in form and substance reasonably acceptable to Administrative Agent within, or (2) the applicable Co-Borrower enters into a Replacement Project Document within, in each case of clauses (1) and (2), (I) with respect to any Closing Date Permitted Commodity Hedge Agreement, any Interconnection Agreement or the EPC Contract, a 30 day period thereafter or (II) with respect to any other Major Project Document, a 90 day period thereafter.

7.1.15 *Loss of or Failure to Obtain Necessary Project Permits.*

(a) A Co-Borrower shall fail to obtain, maintain or renew any Permit on or after the date that such Permit becomes, or at such other time as such Permit is, an Applicable Permit and such failure would reasonably be expected to have a Material Adverse Effect; provided that no Event of Default shall occur for a period of up to 60 days following any such failure so long as (x) such Co-Borrower or another Person for or on behalf of such Co-Borrower is diligently seeking to remedy such failure (or cause such failure to be remedied), (y) such Co-Borrower continues to construct or operate the Project, or the Project is otherwise constructed or operated, as contemplated by the Credit Documents and the Major Project Documents and (z) at all times during such 60 day period there has not occurred, nor after consideration of the nature of such Co-Borrower's or such other Person's efforts to remedy such failure (or cause such failure to be remedied), would there reasonably be expected to occur, a Material Adverse Effect.

(b) Any Applicable Permit necessary for the construction and operation of the Project and for each Co-Borrower's performance of its obligations under the Major Project Documents shall be materially modified, revoked, canceled or not renewed by the issuing agency or other Governmental Authority having jurisdiction (or otherwise ceases to be in full force and effect) other than any such modification of, revocation of, cancellation of, failure to renew, or failure to maintain in full force and effect such Applicable Permit that would not reasonably be expected to have a Material Adverse Effect.

7.1.16 *Term Conversion*. Term Conversion shall not have occurred by the Date Certain (as such date may be extended pursuant to the definition thereof).

7.2 REMEDIES. Upon the occurrence and during the continuation of an Event of Default, any Agent or Lender may, at the direction of the Required Lenders, without further notice of default, presentment or demand for payment, protest or notice of non-payment or dishonor, or other notices or demands of any kind, all such notices and demands (other than notices expressly required by the Credit Documents) being waived, exercise any or all of the following rights and remedies, in any combination or order that the Required Lenders may elect, in addition to such other rights or remedies as the Secured Parties may have hereunder, under the Collateral Documents or at law or in equity:

7.2.1 *No Further Loans or Letter of Credit*. Subject to Section 2.2.5, cancel all Commitments, refuse, and Administrative Agent, the LC Issuers and the Lenders shall not be obligated, to continue any Loans, make any additional Loans, issue, renew, or extend any Letter of Credit, and no Agent shall be required, to make any payments, or permit the making of payments, from any Account or any Loan proceeds or other funds held by such Agent under the Credit Documents or on behalf of Co-Borrowers; provided that in the case of an Event of Default occurring under Section 7.1.2 with respect to any Co-Borrower, all such Commitments shall be cancelled and terminated without further act of any Agent or any other Secured Party.

7.2.2 *Cure by Agents*. Without any obligation to do so, make disbursements or Loans to or on behalf of Co-Borrowers or disburse amounts from any Account to cure (a) any Event of Default or Inchoate Default hereunder, and (b) any default and render any performance under any Project Document as the Required Lenders

in their sole discretion may consider necessary or appropriate, whether to preserve and protect the Collateral or the Secured Parties' interests therein or for any other reason. All sums so expended, together with interest on such total amount at the Default Rate (but in no event shall the rate exceed the maximum lawful rate), shall be repaid by Co-Borrowers to Administrative Agent or Collateral Agent, as the case may be, on demand and shall be secured by the Credit Documents, notwithstanding that such expenditures may, together with amounts advanced under this Agreement, exceed the aggregate amount of the Total Term Loan Commitment.

7.2.3 *Acceleration*. Declare and make all or a portion of the sums of accrued and outstanding principal and accrued but unpaid interest remaining under this Agreement, together with all accrued and unpaid fees, costs (including Liquidation Costs and the Call Premium) and charges due hereunder or under any other Credit Document, immediately due and payable and require Co-Borrowers immediately, without presentment, demand, protest or other notice of any kind, all of which each Co-Borrower hereby expressly waives, to pay Administrative Agent or the Secured Parties an amount in immediately available funds equal to the aggregate amount of any outstanding Obligations of Co-Borrowers; provided that, if an Event of Default occurs under Section 7.1.2 with respect to any Co-Borrower, all such amounts shall become immediately due and payable without further act of Administrative Agent, the LC Issuers, Collateral Agent, or the other Secured Parties. Upon any principal amount in respect of any Loan becoming due and payable under this Section 7.2.3, whether automatically or by declaration, the Call Premium determined in respect of such principal amount shall all be immediately due and payable in connection therewith, in each and every case without presentment, demand, protest or further notice, all of which are hereby waived by the Co-Borrowers.

7.2.4 *Cash Collateral; Letters of Credit*. Apply or execute upon any amounts on deposit in any Account, or any proceeds or any other moneys of any Co-Borrower on deposit with Administrative Agent, Collateral Agent, Depositary Agent or any other Secured Party in the manner provided in the UCC and other relevant statutes and decisions and interpretations thereunder with respect to cash collateral. Without limiting the foregoing, each of Administrative Agent, Collateral Agent and Depositary Agent shall have all rights and powers with respect to the Loan proceeds, the Accounts and the contents of the Accounts as it has with respect to any other Collateral and may apply, or cause the application of, such amounts to the payment of interest, principal, fees, costs, charges or other amounts due or payable to Administrative Agent, Collateral Agent, Depositary Agent or the Secured Parties with respect to the Loans in accordance with the Intercreditor Agreement. No Co-Borrower shall have any rights or powers with respect to such amounts.

In addition to the foregoing, but subject to the Intercreditor Agreement, Collateral Agent and the other Secured Parties shall, at the direction of the Required Lenders, at any time while an Event of Default has occurred and is continuing be entitled to exercise all remedies under the UCC and any Governmental Rule.

7.3 APPLICATION OF PROCEEDS. All proceeds received by the Collateral Agent shall be applied, and proceeds received by any Secured Party under this Agreement or any Collateral Document shall be turned over to the Collateral Agent to be applied, in full or in part by the Collateral Agent as and when provided in Section 3.4 of the Intercreditor Agreement.

ARTICLE 8
[RESERVED]

ARTICLE 9
ADMINISTRATIVE AGENT; SUBSTITUTION

9.1 APPOINTMENT, POWERS AND IMMUNITIES.

9.1.1 In order to expedite the transactions contemplated by this Agreement, each Lender and each other Secured Party hereby appoints and authorizes (a) AMP Capital Investors Limited, to act as the Arranger, (b) Cortland Capital Market Services LLC to act as Administrative Agent and (c) ING Capital LLC to act as an LC Issuer. None of the Administrative Agent, the Arranger or any of their respective Related Parties shall have any duties or responsibilities except those expressly set forth in this Agreement or in any other Credit Document, or be a trustee or a fiduciary for any Secured Party, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into the Credit Documents or otherwise exist against Administrative Agent (other than those implied as a matter of applicable law that are not capable of being waived). It is understood and agreed that the use of any of the terms “agent,” “arranger” or “bookrunner” herein or in any other Credit Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Legal Requirements. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties. Notwithstanding anything to the contrary contained herein, none of the Administrative Agent, the Arranger or any of their respective Related Parties shall be liable as such for any action taken or omitted by any of them except for its or their own gross negligence or willful misconduct as determined in a final non-appealable decision by a court of competent jurisdiction, or required to take any action which is contrary to this Agreement or any other Credit Documents or any Legal Requirement or that exposes any of the Administrative Agent, the Arranger or any of their respective Related Parties (as the case may be) to any liability. None of the Arranger, the Administrative Agent, the Lenders nor any of their respective Related Parties shall be required to ascertain or to make any inquiry concerning the performance or observance by any Borrower Party of any of the terms, conditions, covenants or agreements contained in any Credit Document, or be responsible for (i) any recitals, statements, representations or warranties made by any other Person contained in this Agreement or the other Credit Documents or the contents of any document delivered in connection herewith or therewith, the other Credit Documents or in any certificate or other document referred to or provided for in, or received by the Arranger, the Administrative Agent, or

any other Secured Party under this Agreement or any other Credit Document, (ii) any failure by any Borrower Party or its Affiliates to perform their respective obligations hereunder or thereunder, or (iii) the failure, delay in performance or breach by any Lender or any LC Issuer of any of its obligations hereunder or as a result of any information provided by any Lender or any LC Issuer, or to any Lender or any LC Issuer on account of the failure of or delay in performance or breach by any other Lender or any other LC Issuer or any Borrower Party of any of their respective obligations hereunder or in connection herewith. The Administrative Agent and the Arranger may execute any and all duties hereunder by or through any agents or employees or any sub-agent appointed by it, and none of the Administrative Agent or Arranger shall be responsible for the negligence or misconduct of any such agents or attorneys-in-fact selected by it with reasonable care.

9.1.2 Without limiting the generality of the foregoing, (a) Administrative Agent may treat the payee of any Note as the holder thereof until Administrative Agent receives written notice of the assignment or transfer thereof signed by such payee and in form satisfactory to Administrative Agent, (b) Administrative Agent may consult with legal counsel (including, without limitation, counsel to the Co-Borrowers), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts, (c) none of the Administrative Agent or Arranger makes any warranty or representation to any other Secured Party for any statements, warranties or representations made in or in connection with any Operative Document, (d) none of the Administrative Agent or Arranger shall have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of any Operative Document on the part of any party thereto, the existence of any Default or Event of Default, to inspect the Collateral or other property (including the books and records) of any Borrower Party or any other Person or to ascertain or determine whether a Material Adverse Effect exists or is continuing (provided that the Administrative Agent shall be required to provide notice (or copies, as applicable) to the Lenders and the LC Issuers of any payments, notices and other matters as provided in this Agreement (including, without limitation, pursuant to Section 9.4) and the other Credit Documents), (e) none of the Administrative Agent or the Arranger shall be responsible to any other Secured Party for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of any Operative Document or any other instrument or document furnished pursuant thereto and (f) the Administrative Agent shall not be deemed to have made any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or any certificate prepared by any Borrower Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Secured Parties for any failure to monitor or maintain any portion of the Collateral. Except as otherwise provided under this Agreement and the other Credit Documents, the Administrative Agent shall take, or omit, such action with respect to the Credit Documents as shall be directed by the Required Lenders or, if expressly so provided, all Lenders. The Administrative Agent shall not be under any

duty to take any discretionary action permitted to be taken by it pursuant to the provisions of this Agreement or the other Credit Documents unless it shall be instructed in writing to do so by the Required Lenders. The other Secured Parties further acknowledge and agree that so long as the Administrative Agent shall make any determination to be made by it hereunder or under any other Credit Document in good faith, the Administrative Agent shall have no liability in respect of such determination to any Secured Party. The Administrative Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees, and may consult with the applicable Independent Consultants in the exercise of such powers, rights and remedies and the performance of such duties.

9.1.3 Arranger shall not have any right, power, obligation, liability, responsibility or duty under this Agreement, other than those applicable to all Secured Parties and those set forth in Section 11.14 and this Article 9. The Arranger shall only have those rights, powers, obligations, liabilities, responsibilities and duties set forth in Section 3.1, this Article 9 and Section 11.14. Without limiting the foregoing, Arranger shall not have or be deemed to have a fiduciary relationship with any Secured Party. Each Secured Party hereby makes the same acknowledgments with respect to the Arranger as it makes with respect to the Administrative Agent in this Article 9. Notwithstanding the foregoing, the parties hereto acknowledge that the Arranger holds such title in name only, and that such title confer no additional rights or obligations relative to those conferred on any Secured Party hereunder.

9.1.4 Each Lender, each LC Participant and each LC Issuer hereby authorizes Administrative Agent to be the agent for and representative of the Lenders, the LC Participants and the LC Issuers with respect to each Guaranty, including, without limitation, enforcement thereof.

9.2 RELIANCE. Each of the Administrative Agent and the Arranger shall be entitled to rely upon, and shall not incur any liability for relying upon, any certificate, notice or other document (including any cable, telegram, electronic mail or telex) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by it. Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person. Each of the Administrative Agent and the Arranger shall in all cases be fully protected in acting, or refraining from acting, in accordance with written instructions signed by the Required Lenders and, except as otherwise specifically provided herein, such instructions and any action or inaction pursuant thereto shall be binding on all the Secured Parties. As to any other matters not expressly provided for by this Agreement, the Administrative Agent shall not be required to take any action or exercise any discretion, but shall be required to act or to refrain from acting upon instructions of the Required Lenders or, where expressly provided, all Lenders (except that the Administrative Agent shall not be required to take any action which exposes the Administrative Agent to personal liability or which is contrary to this Agreement, any other Credit Document or any Legal Requirement). The Administrative Agent shall in all cases (including when any action by the Administrative Agent alone is authorized

hereunder, if the Administrative Agent elects in its sole discretion to obtain instructions from the Required Lenders) be fully protected in acting, or in refraining from acting, hereunder or under any other Credit Document in accordance with the instructions of the Required Lenders (or, where so expressly stated, all Lenders), and such instructions of the Required Lenders (or all Lenders, where applicable) and any action taken or failure to act pursuant thereto shall be binding on all of the Secured Parties. The Administrative Agent shall not be liable for any action taken or refrained from being taken, by it with the consent or at the direction of the Required Lenders.

9.3 NON-RELIANCE. Each Lender represents that it has, independently and without reliance on the Arranger, the Agents, or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of the financial condition and affairs of each Co-Borrower and its own decision to enter into this Agreement and agrees that it will, independently and without reliance upon the Arranger, the Agents, or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own appraisals and decisions in taking or not taking action under this Agreement. Each of the Administrative Agent, the Arranger and any Lender shall not be required to keep informed as to the performance or observance by any Co-Borrower or its Affiliates under this Agreement or the other Credit Documents or any other document referred to or provided for herein or therein to make inquiry of, or to inspect the properties or books of any Co-Borrower or its Affiliates.

9.4 DEFAULTS; MATERIAL ADVERSE EFFECT. None of the Arranger or the Administrative Agent shall be deemed to have knowledge or notice of the occurrence of any Inchoate Default, Event of Default or Material Adverse Effect, unless such Person has received a written notice from a Lender, Secured Party or any Borrower Party, referring to this Agreement, describing such Inchoate Default, Event of Default or Material Adverse Effect and indicating that such notice is a notice of the occurrence of such default or Material Adverse Effect (as the case may be). If Administrative Agent receives such a notice of the occurrence of an Inchoate Default, Event of Default or Material Adverse Effect, Administrative Agent shall give written notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Inchoate Default, Event of Default or Material Adverse Effect as is provided in Article 3, Article 7 or the terms of the Credit Documents, or if not provided for in Article 3, Article 7 or such Credit Documents, as the Administrative Agent shall be reasonably 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 Inchoate Default, Event of Default or Material Adverse Effect as it shall deem advisable in the best interest of the Lenders.

9.5 INDEMNIFICATION. Without limiting the Obligations of any Co-Borrower hereunder, each Lender, severally and not jointly, agrees to indemnify each Agent and their respective officers, directors, shareholders, controlling Persons, employees, agents and servants, ratably in accordance with their Proportionate Shares for any and all liabilities, obligations, losses, damages, penalties, actions, final judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any Agent or such Person in any way relating to or arising out of this Agreement, the other Credit Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated

hereby or thereby or the enforcement of any of the terms hereof or thereof or of any such other documents, or any action taken or omitted by it or any of them under this Agreement or any other Credit Document, to the extent the same shall not have been reimbursed by any Co-Borrower; provided that no Lender shall be liable to any Agent for any portion of such liabilities, obligations, losses, damages, penalties, actions, final judgments, suits, costs, expenses or disbursements found in a final non-appealable judgment by a court of competent jurisdiction to have resulted primarily from the gross negligence or willful misconduct of such Agent. The obligations of the Lenders under this Section 9.5 shall survive payment of all Obligations and the resignation or replacement of any Agent. Each Agent or any such Person shall be fully justified in refusing to take or to continue to take any action hereunder or under any other Credit Document unless it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Without limitation of the foregoing, each Lender agrees to reimburse each Agent or any such Person promptly upon demand for its Proportionate Share of any out-of-pocket expenses (including reasonable counsel fees and compensation of agents and employees paid for services rendered in connection with the Credit Documents) incurred by any Agent or any such Person in connection with the preparation, execution, administration or enforcement of, or legal advice in respect of rights or responsibilities under, the Operative Documents, to the extent that any Agent or any such Person is not reimbursed for such expenses by any Co-Borrower. This Section 9.5 shall not apply to taxes other than any taxes that represent losses or damages arising from any non-tax claim. Each of the Collateral Agent and the Depositary Agent shall be an express third party beneficiary of this Section 9.5.

9.6 SUCCESSOR AGENT. Subject to the appointment and acceptance of a successor Administrative Agent as provided below, the Administrative Agent may resign at any time by notifying the Lenders and Co-Borrowers. The Administrative Agent may be removed involuntarily only for a material breach of its respective duties and obligations hereunder and under the other Credit Documents or for gross negligence or willful misconduct in connection with the performance of its respective duties hereunder or under the other Credit Documents, in each case only upon the affirmative vote of the Required Lenders. Upon any such resignation or removal of Administrative Agent, the Required Lenders shall have the right, with, provided no Event of Default has occurred and is continuing, the consent of Co-Borrowers (such consent not to be unreasonably withheld or delayed) to appoint a successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the Required Lenders and shall have accepted such appointment, within 30 days after the retiring Administrative Agent's giving of notice of resignation or the Required Lenders' removal of the retiring Administrative Agent, the retiring Administrative Agent may, on behalf of the Secured Parties, with, provided no Event of Default has occurred, the consent of Co-Borrowers (such consent not to be unreasonably withheld or delayed), appoint a successor Administrative Agent hereunder, which shall be a Lender, if any Lender shall be willing to serve, and otherwise shall be a commercial bank with an office in the United States having a combined capital and surplus of at least $500,000,000 or an Affiliate of any such bank. Upon the acceptance of any appointment as Administrative Agent under the Operative Documents by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations as Administrative Agent hereunder and under the other Credit Documents. If no successor

Administrative Agent has been appointed pursuant to the preceding sentences by the 30th day after the date such notice of resignation was given by the Administrative Agent, Administrative Agent's resignation shall nonetheless become effective in accordance with such notice and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and the other Credit Documents. After any retiring Administrative Agent's resignation or removal hereunder as Administrative Agent, the provisions of this Article 9, Section 11.4 and Section 11.14 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under the Operative Documents. Anything herein to the contrary notwithstanding, if at any time the Required Lenders determine that the Person serving as Administrative Agent is a Defaulting Lender, the Required Lenders may by notice to Co-Borrowers and such Person remove such Person as Administrative Agent and appoint a replacement Administrative Agent hereunder. Such removal will, to the fullest extent permitted by applicable law, be effective on the earlier of (i) the date a replacement Administrative Agent is appointed and (ii) the date which is five Banking Days after the giving of such notice by the Required Lenders (regardless of whether a replacement Administrative Agent has been appointed).

9.7 AUTHORIZATION. Each of the Lenders and each assignee of any such Lender hereby irrevocably authorizes each of the Administrative Agent and the Arranger to take such actions on behalf of such Lender or assignee and to exercise such powers as are specifically delegated to such Person in such capacity by the terms and provisions hereof and of the other Credit Documents, together with such actions and powers as are reasonably incidental thereto, and each Lender and each assignee of any such Lender hereby agrees to be bound by any such actions. Without limiting the generality of the foregoing, Administrative Agent is hereby expressly authorized by the Lenders and LC Issuers, without hereby limiting any implied authority, (a) to receive on behalf of the Lenders and the LC Issuers all payments of principal of and interest on the Loans, all payments in respect of Drawing Payments and all other amounts due to the Lenders and the LC Issuers hereunder, and promptly to distribute to each Lender or each LC Issuer its proper share of each payment so received; and (b) to distribute to each Lender copies of all notices, financial statements and other materials delivered by any Co-Borrower pursuant to this Agreement as received by Administrative Agent. The Administrative Agent is further authorized by the other Secured Parties to release Liens on property that any Co-Borrower is permitted to sell or transfer pursuant to the terms of this Agreement or the other Credit Documents and to enter into agreements supplemental hereto for the purpose of curing any formal defect, inconsistency, omission or ambiguity in this Agreement or any Credit Document to which it is a party. Without limiting the generality of the foregoing, Administrative Agent is hereby expressly authorized by the Lenders and LC Issuers in case of the pendency of any proceeding under any Bankruptcy Law or any other judicial proceeding relative to any Borrower Party, and the Administrative Agent (irrespective of whether the principal of any Loan or LC Reimbursement Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Co-Borrowers) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise (A) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, LC Reimbursement Obligation and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the LC Issuers and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of

the Lenders, the LC Issuers and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the LC Issuers and the Administrative Agent under this Agreement) allowed in such judicial proceeding and (B) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same, and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each LC Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the LC Issuers, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under this Agreement.

9.8 OTHER ROLES. With respect to its Commitment, the Loans made by it and any Note issued to it, the Arranger, the Administrative Agent and each LC Issuer in its individual capacity shall have the same rights and powers under the Operative Documents as any other Lender and may exercise the same as though it were not an Arranger, Administrative Agent or LC Issuer. Each of the Arranger, the Administrative Agent and each LC Issuer and its respective Affiliates may accept deposits from, lend money to, act as trustee under indentures of, and generally engage in any kind of business with any Co-Borrower or any other Person, without any duty to account therefor to the other Secured Parties. Each of the Secured Parties hereby waives any claim against each of the Arranger, the Administrative Agent, LC Issuers, the Borrower Parties and any of their respective Affiliates based upon any conflict of interest that the Arranger, the Administrative Agent, any LC Issuer or any of their respective Affiliates may have with regard to acting as an agent, arranger or LC issuer hereunder and acting in such other roles.

9.9 AMENDMENTS; WAIVERS.

9.9.1 *Unanimous Consent*. Subject to the provisions of this Section 9.9, unless otherwise specified in this Agreement or another Credit Document, the Required Lenders (or the Administrative Agent upon written direction or consent of the Required Lenders) and any Borrower Party party to the relevant Credit Document may enter into agreements, waivers or supplements (with a copy of such agreement, waiver or supplement provided to the Administrative Agent) hereto for the purpose of adding, modifying or waiving any provisions to the Credit Documents or changing in any manner the rights of the Secured Parties or any Borrower Party hereunder or thereunder or waiving any Inchoate Default or Event of Default; provided that no such agreement, waiver or supplement shall, without the consent of all of the Lenders:

(a) increase the amount of the Commitment of any Lender hereunder;

(b) amend any provision of this Section 9.9;

(c) release all or substantially all of the Collateral from the Lien of any of the Collateral Documents;

(d) cause any Obligations to cease to be secured on a *pari passu* basis with all other Obligations;

(e) extend the Date Certain or the Final Maturity Date or reduce the principal amount of any outstanding Loans or Notes or reduce the rate or change the time of payment of interest due on any Loan; provided that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" (but not to a rate less than zero) or to waive any obligation of Co-Borrowers to pay interest at the Default Rate;

(f) add, modify or waive any provisions to the Credit Documents so as to subordinate the Loans to any other Debt;

(g) except as expressly provided herein, amend the definition of "Required Target Debt Balance Payment" or, "Target Debt Balance" or amend Section 3.2(b)(x) or (xi) of the Depositary Agreement; and

(h) permit any Co-Borrower to assign or otherwise transfer any of its rights or obligations under this Agreement.

9.9.2 *Affected Party*. Notwithstanding anything to the contrary herein, no agreement, waiver or supplement hereto shall add, modify or waive any provisions to the Credit Documents, or change in any manner the rights of the Lenders or any Borrower Party hereunder or thereunder, so as to:

(a) reduce the amount or extend the payment date for any scheduled principal amortization payment, interest amount or fees due hereunder without the prior written consent of each Lender or each LC Issuer adversely affected thereby;

(b) amend or modify any provision set forth in Sections 2.1.9(a)(ii)(B), 2.7.1 or 2.7.2 in a manner that would alter the *pro rata* sharing of payments with respect to the applicable Facility without the prior written consent of each Lender adversely affected thereby;

(c) extend the stated expiration date of a Letter of Credit beyond the LC Maturity Date, without the prior written consent of each Lender directly affected thereby and the applicable LC Issuer;

(d) change the order of priority of payments set forth in Sections 3.2(b), 3.4(b), 3.4(c), 3.5(b), 3.5(c), 3.9(b) or 3.9(c) of the Depositary Agreement, without the prior written consent of each Lender adversely affected thereby;

(e) amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Arranger, an LC Participant or an LC Issuer without the prior written consent of the Administrative Agent, the Arranger, such LC Participant or such LC Issuer, as applicable, acting as such at the effective date of such agreement;

(f) [reserved];

(g) amend the definition of "Lenders" or reduce the percentage specified in the definition "Required Lenders", "Required Class Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the prior written consent of each Lender adversely affected thereby;

(h) waive the obligations of the Co-Borrowers to pay any Call Premium due in respect of any prepayment hereunder without the consent of the each Lender to whom such Call Premium is payable; or

(i) amend or modify the definition of "Call Premium" or any of the provisions in this Agreement for when it is payable without the consent of each Lender.

Notwithstanding the foregoing, (x) no amendment, modification, waiver or consent shall, unless consented in writing by the Administrative Agent, affect the rights or duties of the Administrative Agent (but not in its capacity as a Lender) under this Agreement or any other Credit Document and (y) no amendment, modification, waiver or consent shall that would adversely affect the rights or obligations of Term Lenders, the Construction Lenders or the LC Participants disproportionately to that of any other Class, unless consented in writing by the Required Class Lenders of the adversely affected Class.

9.9.3 *Defaulting Lenders*. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender, (y) the maturity of any Defaulting Lender's Loans may not be extended and no principal or interest owed to any Defaulting Lender in respect of such Lender's Loans may be forgiven or reduced without the consent of such Lender and (z) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely to other affected Lenders shall require the consent of such Defaulting Lender.

9.9.4 *Minor Defects*. Notwithstanding the other provisions of this Section 9.9, the applicable Borrower Parties or the Administrative Agent may (but shall have no obligation to) amend or supplement the Credit Documents without the consent of any other Secured Party for the purpose of (a) curing any ambiguity, defect or inconsistency to correct any typographical errors or other similar mistakes that do not modify the rights and obligations of the parties hereto, (b) subject to Section 2.1 of the Intercreditor Agreement and the lien priority and subordination provisions therein, (i) making any change that would provide any additional rights or benefits to the Secured Parties or (ii) making, completing or confirming any grant of Collateral permitted or required by this Agreement or any of the Credit Documents or any release of any Collateral that is otherwise permitted under the terms of this Agreement and the Credit Documents or any release of any Collateral that is otherwise permitted under the terms

of this Agreement and the Credit Documents (or, if not addressed therein, not prohibited) and (c) making administrative or mechanical amendments to this Agreement or any of the Credit Documents to provide for the addition of obligations secured by the Collateral and the related secured parties and otherwise to effect the intent of Section 3.8 of the Intercreditor Agreement or the addition of any Borrower Party as permitted or required under the Credit Documents so long as such amendments do not modify the rights and obligations of the parties hereto (other than, for the avoidance of doubt, as may result from having additional secured obligations benefiting from the Collateral and additional secured parties voting as provided herein and having other rights of secured parties under this Agreement and under the Credit Documents).

9.10 WITHHOLDING TAX. To the extent required by applicable Legal Requirements, the Administrative Agent may withhold from any interest payment to any Lender or any LC Issuer an amount equivalent to the applicable withholding tax.

9.10.1 If the Internal Revenue Service or any other Governmental Authority asserts a claim that Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender or any LC Issuer (because the appropriate form was not delivered, was not properly executed, or because such Lender or such LC Issuer failed to notify Administrative Agent of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason) or Administrative Agent has paid over to the Internal Revenue Service or other Governmental Authority applicable withholding tax relating to a payment to a Lender but no deduction has been made from such payment, then such Lender or such LC Issuer shall indemnify Administrative Agent fully for all amounts paid, directly or indirectly, by Administrative Agent as tax or otherwise, including penalties and interest, together with all expenses incurred, including legal expenses, allocated staff costs, and any out of pocket expenses. A certificate as to the amount of such payment or liability delivered to any Lender or any LC Issuer by the Administrative Agent shall be conclusive absent manifest error. Each Lender and each LC Issuer hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or such LC Issuer under this Agreement or any other Credit Document against any amount due the Administrative Agent under this Section 9.10.1. The obligations of the Lenders and LC Issuers under this Section 9.10.1 shall survive the payment of all Obligations and the resignation or replacement of Administrative Agent. No Co-Borrower shall be responsible for any amounts paid or required to be paid by a Lender or an LC Issuer under this Section 9.10.1 except as set forth in Section 2.6.4.

9.10.2 If any Lender or any LC Issuer sells, assigns, grants participation in, or otherwise transfers its rights under this Agreement, the purchaser, assignee, participant or transferee, as applicable, shall comply and be bound by the terms of Section 2.6.5 and this Section 9.10 as though it were such Lender or such LC Issuer.

9.11 GENERAL PROVISIONS AS TO PAYMENTS. Administrative Agent shall promptly distribute to each Lender (other than the Defaulting Lenders), subject to the terms of any

separate agreement between Administrative Agent and such Lender, its *pro rata* share of each payment of principal and interest payable to the Lenders on the Loans and of fees hereunder received by Administrative Agent for the account of the Lenders and of any other amounts owing under the Loans. The payments made for the account of each Lender shall be made, and distributed to it, for the account of (a) its domestic lending office in the case of payments of principal of, and interest on, its Loans and (b) its domestic lending office, or such other lending office as it may designate for the purpose from time to time, in the case of payments of fees and other amounts payable hereunder.

9.12 PARTICIPATION.

9.12.1 *Sales of Participation*. Any Lender may, at any time, without the consent of any Co-Borrower, Administrative Agent or any LC Issuer, sell participations to any Person (other than a natural Person or a holding company, investment vehicle or trust for or owned for the benefit of a natural Person, a Defaulting Lender, any Terminated Lender, any Sanctioned Person or any Co-Borrower or any of any Co-Borrower's Affiliates) (each, a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans and Drawing Payments owing to it); provided that (a) no such sale of a participation shall alter such Lender's or such Co-Borrower's obligations hereunder, (b) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (c) any Co-Borrower, Administrative Agent, any LC Issuer and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement, and (d) any agreement or instrument (oral or written) pursuant to which any Lender may grant a participation in its rights with respect to its Commitment (or Loans made hereunder) shall provide that, with respect to such Commitment (or Loans made hereunder), subject to the following proviso, such Lender shall retain the sole right and responsibility to exercise the rights of such Lender, and enforce the obligations of the applicable Co-Borrower relating to such Commitment (or Loans made hereunder), including the right to approve any amendment, modification or waiver of any provision of this Agreement or any other Credit Document and the right to take action to have the Obligations hereunder (or any portion thereof) declared due and payable pursuant to Article 7; provided that (A) such agreement may provide that the Participant may have rights to approve or disapprove decreases in Commitments, interest rates or fees, lengthening of maturity of any Loans to the extent contemplated by Section 9.9.1(e), extend the payment date for any amortization due under Article 2 or release all or substantially all of the Collateral (other than (i) pursuant to Section 6.4, (ii) as contemplated by the definition of Change of Control, (iii) in respect of any Loss Event or (iv) as otherwise expressly permitted hereby or under any other Operative Document) and (B) no other agreement (oral or written) with respect to such Participant may exist between such Lender and such Participant. Each Participant shall be entitled to the benefits of Sections 2.6.4 and 2.8.3 (subject to the requirements and limitations therein, including the requirements under Sections 2.6.4(f) and 2.6.5 (it being understood that the documentation required under such Sections shall be delivered to the participating Lender and not to

Administrative Agent or Co-Borrowers)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 9.13; provided that such Participant (A) agrees to be subject to Section 2.10.2 as if it were an assignee under Section 9.13 and (B) shall not be entitled to receive any greater payment under Sections 2.6.4 or 2.8.3, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change of Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation shall 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 Drawing Payments (or other rights or obligations) held by it; provided that no Lender shall have any obligation to disclose all or any portion of such register (including the identity of any Participant or any information relating to a Participant's interest in any of its obligations under any Credit Document) to any Person except to the extent that such disclosure is necessary to establish that such obligation is in registered form under U.S. Treasury regulations Section 5f.103-1(c) and Proposed U.S. Treasury regulations Section 1.163-5(b) (or, in each case, any amended or successor version). The entries in such register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in such register as the owner of such Loan, Drawing Payments (or other right or obligation) hereunder as the owner thereof for all purposes of this Agreement notwithstanding any notice to the contrary. Any such register shall be available for inspection by the Administrative Agent at any reasonable time and from time to time upon reasonable prior notice.

9.12.2 *Special Purpose Funding Vehicles*. Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle (a "SPC"), identified as such in writing from time to time by the Granting Lender to Administrative Agent and Co-Borrowers, the option to provide to Co-Borrowers all or any part of any Loan that such Granting Lender would otherwise be obligated to make to Co-Borrowers pursuant to this Agreement; provided that (a) nothing herein shall constitute a commitment by any SPC to make any Loan, (b) nothing herein shall alter the Commitments hereunder of any Granting Lender and (c) if a SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. The making of a Loan by a SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is 1 year and 1 day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other Person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any state thereof. In addition, notwithstanding anything to the contrary contained in

this Section 9.12, any SPC may (i) with notice to, but without the prior written consent of, Co-Borrowers or Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender or to any financial institutions (consented to by Co-Borrowers and Administrative Agent) providing liquidity or credit support to or for the account of such SPC to support the funding or maintenance of Loans, and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPC. This Section 9.12.2 may not be amended without the written consent of all SPCs having outstanding Loans or Commitments hereunder.

9.12.3 Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank having jurisdiction over such Lender; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

9.13 TRANSFER OF COMMITMENT. Notwithstanding anything else herein to the contrary (but subject to Section 9.12.2), any Lender (so long as no Specified Event of Default has occurred and is continuing) upon receiving Co-Borrowers' prior written consent (such consent not to be unreasonably withheld or delayed), may from time to time, at its option, sell, assign, transfer, negotiate or otherwise dispose of a portion of one or more of its Commitments (including, for purposes of this Section 9.13, Loans made hereunder) (including the Lender's interest in this Agreement and the other Credit Documents) pursuant to an Assignment and Assumption to any Eligible Assignee; provided that Co-Borrowers shall be deemed to have consented to any such assignment unless they shall object thereto by written notice to Administrative Agent within 10 Banking Days after receiving notice thereof; provided, further, that no Lender (including any assignee of any Lender) may assign any portion of its Commitment (including Loans) (a) in an amount less than $5,000,000 or, if less, the remaining amount of such Lender's Commitment, (unless to another Lender), or (b) in an amount which leaves the assigning Lender with a Commitment (including Loans) of less than $5,000,000 (in each case based on the original principal amount of the Commitment assigned) after giving effect to such assignment and all previous assignments (except that a Lender may be left with no Commitment or Loans if it assigns its entire Commitment); provided, further, that any Lender may assign all or any portion of its Commitments (including Loans) to an Affiliate of such Lender or to any other Lender without the consent of any Person. An assignee shall not be entitled to receive any greater payment under Section 2.6.4, 2.8 or 2.9 than the applicable Lender would have been entitled to receive with respect to the interest assigned to such assignee unless Co-Borrowers shall have consented to such assignment. An assignee shall not be entitled to the benefits of Section 2.6.4 to the extent such assignee fails to comply with Sections 2.6.4(f) and 2.6.5. In the event of any such assignment, (i) the assigning Lender's Proportionate Share shall be reduced and its obligations hereunder released by the amount of the Proportionate Share assigned to the new Lender, (ii) the parties to such assignment shall execute and deliver an appropriate agreement evidencing such sale, assignment, transfer or other disposition, in form and substance reasonably satisfactory to Administrative Agent and Co-Borrowers, (iii) the

parties to the sale, assignment, transfer or other disposition, excluding any Co-Borrower, shall collectively pay to Administrative Agent an administrative fee of $3,500; provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment, (iv) at the assigning Lender's option, Co-Borrowers shall execute and deliver to such new Notes in the forms attached hereto as Exhibit B-1, B-2 or B-3, as applicable, as requested, in a principal amount equal to such assignee new Lender's Commitment, but only if it shall also be executing and exchanging with the assigning Lender a replacement note for any Note(s) in an amount equal to the Commitment retained by the assigning Lender, if any; provided that Co-Borrowers shall have received for cancellation the existing Note(s) held by such assigning Lender, (v) Administrative Agent shall have received from the new Lender all documentation and other information required by bank regulatory authorities and reasonably requested by it under applicable "know your customer" laws, AML Laws, Sanctions and Anti-Terrorism Laws, including the Act, to include a copy of such new Lender's duly executed IRS Form W-9 or such other applicable IRS Form, and (vi) Administrative Agent shall amend Exhibit H to reflect the Proportionate Shares of the Lenders following such assignment. Thereafter, such new Lender shall be deemed to be a Lender and shall have all of the rights and duties of a Lender (except as otherwise provided in this Article 9), in accordance with its Proportionate Share, under each of the Credit Documents. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in Section 2.1.10.

9.14 LAWS. Notwithstanding the foregoing provisions of this Article 9, no sale, assignment, transfer, negotiation or other disposition of the interests of any Lender hereunder or under the other Credit Documents shall be allowed if it would require registration under the federal Securities Act of 1933, as then amended, any other federal securities laws or regulations or the securities laws or regulations of any applicable jurisdiction. Each Co-Borrower shall, from time to time at the reasonable request and expense of Administrative Agent, execute and deliver to Administrative Agent, or to such party or parties as Administrative Agent may designate, any and all further instruments as may in the opinion of Administrative Agent be reasonably necessary or advisable to give full force and effect to such sale, assignment, transfer, negotiation or disposition which would not require any such registration.

9.15 ASSIGNABILITY AS COLLATERAL. Notwithstanding any other provision contained in this Agreement or any other Credit Document to the contrary, any Lender may assign all or any portion of the Loans or Notes held by it to the Federal Reserve Bank and the U.S. Treasury as collateral security pursuant to Regulation A of the Federal Reserve Board and any operating Circular issued by such Federal Reserve Bank or to any central bank as collateral security in accordance with applicable law; provided that any payment in respect of such assigned Loans or Notes made by any Co-Borrower to or for the account of the assigning or pledging Lender in accordance with the terms of this Agreement shall satisfy such Co-Borrower's obligations hereunder in respect of such assigned Loans or Notes to the extent of such payment; provided, further, that no such assignment shall release the assigning Lender from its obligations hereunder and in no event shall the Federal Reserve Bank or any central bank be considered a "Lender" hereunder.

9.16 NOTICES TO LENDERS. Administrative Agent promptly shall deliver all material documents, instruments and notices that it receives hereunder and under the other Operative

Documents to each Lender (other than any Defaulting Lender). Except as expressly provided in this Agreement or the other Credit Documents, no Co-Borrower shall be required to deliver any documents, instruments or notices directly to the Lenders.

ARTICLE 10
INDEPENDENT CONSULTANTS

10.1 REMOVAL AND FEES. Administrative Agent, in its reasonable discretion, may remove from time to time, any one or more of the Independent Consultants and Administrative Agent may appoint replacements, which, so long as no Event of Default shall have occurred and be continuing, shall be reasonably acceptable to Co-Borrowers. Notice of any replacement Independent Consultant shall be given by Administrative Agent to Co-Borrowers, the Lenders and to the Independent Consultant being replaced. All reasonable and documented fees and expenses of the Independent Consultants (whether the original ones or replacements) shall be paid by Co-Borrowers pursuant to agreements reasonably acceptable to Co-Borrowers; provided that no such acceptance shall be required at any time an Event of Default shall have occurred and be continuing.

10.2 CERTIFICATION OF DATES. Administrative Agent will request that the Independent Consultants act diligently in the issuance of all certificates required to be delivered by the Independent Consultants hereunder, if their issuance is appropriate. Co-Borrowers shall use commercially reasonable efforts to provide the Independent Consultants with reasonable notice of the expected occurrence of any dates or events requiring the issuance of such certificates.

ARTICLE 11
MISCELLANEOUS

11.1 ADDRESSES. Any communications between the parties hereto or notices provided herein to be given may be given to the following addresses:

If to Administrative Agent:

Cortland Capital Market Services LLC, as Administrative Agent
225 W. Washington St., 9th Floor
Chicago, IL 60606
Attention: Legal Department and Ryan Morick
Phone: (312) 564-5100
Email: legal@cortlandglobal.com and ryan.morick@cortlandglobal.com

With a copy to:

Holland & Knight LLP
131 S. Dearborn St., 30th Floor
Chicago, Il 60603
Attention: Joshua Spencer
Email: Joshua.spencer@hklaw.com

If to Co-Borrowers:

c/o FIG LLC

1345 Avenue of the Americas, 45th Floor
New York, NY 10105
Attention: Joseph P. Adams, Jr., Chief Executive Officer
E-mail: jadams@fortress.com

With a copy to:

c/o FIG LLC
1345 Avenue of the Americas, 45th Floor
New York, NY 10105
Attention: Ken Nicholson, Managing Director
E-mail: knicholson@fortress.com

With a copy to:

Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, NY 10019
Attention: George E. Zobitz
E-mail: jzobitz@cravath.com

All such notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service (including Federal Express, UPS, ETA, Emery, DHL, AirBorne and other similar overnight delivery services), (c) if mailed by first class United States Mail, postage prepaid, registered or certified with return receipt requested, (d) if sent by direct electronic transmission with receipt confirmed by telephone, or (e) by Electronic Transmission (as defined below). Notice so given shall be effective upon receipt by the addressee, except that communication or notice so transmitted by direct written electronic means shall be deemed to have been validly and effectively given on the day (if a Banking Day and, if not, on the next following Banking Day) on which it is transmitted if transmitted before 4:00 p.m., recipient's time, and if transmitted after that time, on the next following Banking Day; provided that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving of 30 days' notice to the other parties in the manner set forth above.

Any Borrower Party may deliver to Administrative Agent any borrowing certificate, collateral report or other material hereunder or under the other Credit Documents, by e-mail or other electronic transmission (an "Electronic Transmission"), subject to the following terms:

(1) Each Electronic Transmission must be sent by an authorized person of the applicable Borrower Party (or any other authorized representative), and must be addressed to the e-mail address specified above in this Section 11.1 or such other e-mail address, as designated

by Administrative Agent, Collateral Agent or Depositary Agent (as the case may be) from time to time in accordance with this Section 11.1. Unless the applicable Agent otherwise prescribes, (i) notices and other communications sent to an email address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgement) and (ii) notices or communications posted to an internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its email address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, in the case of each of the foregoing clauses (i) and (ii), if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Banking Day for the recipient. If any Electronic Transmission is returned to the sender as undeliverable, the material included in such Electronic Transmission must be delivered to the intended recipient in another manner permitted by this Section 11.1.

(2) Each certificate, collateral report, notice or instruction to the Depositary Agent or Collateral Agent or other material contained in an Electronic Transmission must be in a "pdf" or other imaging format. Any signature on a certificate, collateral report or other material contained in an Electronic Transmission shall constitute a valid signature for purposes hereof. Each Agent may rely upon, and assume the authenticity of, any such signature, and any material containing such signature shall constitute an "authenticated" record for purposes of the UCC and shall satisfy the requirements of any applicable statute of frauds.

(3) Upon the request of any Agent, each Co-Borrower shall maintain the original versions of all certificates, collateral reports and other materials delivered to any Agent by means of an Electronic Transmission and shall use commercially reasonable efforts to furnish to such Agent such original versions within five Banking Days of such Agent's request for such original materials, signed and certified (to the extent required hereunder) by the officer submitting the Electronic Transmission.

11.2 RIGHT TO SET-OFF. Subject to the Intercreditor Agreement, if an Event of Default shall have occurred and be continuing, Collateral Agent, and only Collateral Agent, is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by Collateral Agent to or for the credit or the account of any Co-Borrower, against any and all obligations of any Co-Borrower, now or hereafter existing under this Agreement or any other Credit Document held by Collateral Agent, irrespective of whether or not Collateral Agent shall have made any demand under this Agreement or such other Credit Document and although the obligations may be unmatured. Subject to the Intercreditor Agreement, the rights of Collateral Agent under this Section are in addition to other rights and remedies (including other rights of set-off) that Collateral Agent may have.

11.3 DELAY AND WAIVER. No delay or omission to exercise any right, power or remedy accruing to the Secured Parties upon the occurrence of any Event of Default, Inchoate Default, Material Adverse Effect or any breach or default of any Co-Borrower or unsatisfied

condition precedent under this Agreement or any other Credit Document shall impair any such right, power or remedy of the Secured Parties, nor shall it be construed to be a waiver of any such breach or default or unsatisfied condition precedent, or an acquiescence therein, or of or in any similar breach or default or unsatisfied condition precedent thereafter occurring, nor shall any waiver of any single Event of Default, Inchoate Default, Material Adverse Effect or other breach or default or unsatisfied condition precedent be deemed a waiver of any other Event of Default, Inchoate Default, Material Adverse Effect or other breach or default or unsatisfied condition precedent theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of Administrative Agent or the Secured Parties of any Event of Default, Inchoate Default, Material Adverse Effect or other breach or default or unsatisfied condition precedent under this Agreement or any other Credit Document, or any waiver on the part of Administrative Agent or the Secured Parties of any provision or condition of this Agreement or any other Credit Document, must be in writing and shall be effective only to the extent in such writing specifically set forth. All remedies, either under this Agreement or any other Credit Document or by law or otherwise afforded to the Agents, LC Issuers and the other Secured Parties, shall be cumulative and not alternative or exclusive of any other rights or remedies provided.

11.4 COSTS, EXPENSES AND ATTORNEYS' FEES. Co-Borrowers will pay (or reimburse) each of the Administrative Agent and the Arranger for all of their respective reasonable and documented fees and out-of-pocket costs and expenses (net of any costs and expenses paid prior to the Closing Date) in connection with the preparation, negotiation, closing, delivery, performance and administering of this Agreement, the other Credit Documents and the documents contemplated hereby and thereby, any participation or syndication of the Loans or this Agreement, and the consummation and administration of the transactions contemplated hereby and thereby and any amendments hereto or thereto, including the reasonable fees, expenses and disbursements of Holland & Knight LLP (counsel to Administrative Agent), Latham & Watkins LLP and Cahill Gordon & Reindel LLP and one local counsel in each relevant jurisdiction (and in the case of a conflict of interest, one additional counsel and one additional local (or specialist) counsel to each group of similarly situated affected persons) in connection with the negotiation, preparation, closing, delivery, performance and administering of this Agreement, the other Credit Documents and the documents contemplated hereby and thereby and any amendments hereto or thereto. Co-Borrowers will pay or reimburse (a) Administrative Agent for all reasonable and documented out-of-pocket costs and expenses, including reasonable and documented attorneys' fees, expended or incurred by Administrative Agent for its reasonable and documented out-of-pocket expenses (including, without limitation, fees and disbursements of one general and one local legal counsel), and the Lenders for their reasonable and documented out-of-pocket expenses (including, without limitation, fees and disbursements of one general and one local legal counsel), in (i) the preservation and protections of the Administrative Agent's and Lenders' rights under this Agreement, (ii) the preparation of any amendments, waivers, or consent to this Agreement or the other Credit Documents, (iii) the protection, collection, lease, sale, taking possession of or liquidation of, any Collateral or other security in connection with this Agreement or any other Credit Document, (iv) any attempt to enforce any Lien or security interest in any Collateral or other security in connection with this Agreement or any other Credit Document, (v) any Environmental Claim or any liability under any Environmental Law, and (vi) enforcing this Agreement or the other Credit Documents in connection with an Event of Default or Inchoate Default, in actions for declaratory relief in any way related to

this Agreement or in collecting any sum which becomes due on the Notes or under the Credit Documents or otherwise enforcing or exercising their rights and remedies hereunder and (b) the Administrative Agent for its reasonable out-of-pocket expenses, including reasonable attorney fees and reasonable expert, consultant and advisor fees and expenses, the LC Issuers and the Lenders for their reasonable out-of-pocket expenses, including reasonable attorney fees and reasonable expert, consultant and advisor fees and expenses, in the case of a restructuring of the Loans or otherwise relating to the occurrence of any Inchoate Default or Event of Default. Co-Borrowers shall not be responsible for any counsel fees of the Arranger, the Administrative Agent or the Lenders other than as set forth in this Section 11.4 or in Section 11.14 or as otherwise set forth in a separate agreement (including any other Credit Documents).

11.5 ENTIRE AGREEMENT. This Agreement and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. Except as otherwise expressly provided, in the event of any conflict between the terms, conditions and provisions of this Agreement and any such agreement, document or instrument, the terms, conditions and provisions of this Agreement shall prevail. There are no promises, undertakings, representations or warranties by the Arranger, any Agent or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Credit Documents.

11.6 GOVERNING LAW. THIS AGREEMENT AND ANY OTHER CREDIT DOCUMENT (UNLESS OTHERWISE EXPRESSLY PROVIDED FOR THEREIN), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

11.7 SEVERABILITY. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties hereto shall endeavor in good-faith negotiations to replace any invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

11.8 HEADINGS. Article, Section and Paragraph headings have been inserted in this Agreement as a matter of convenience for reference only and it is agreed that such headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

11.9 ACCOUNTING TERMS. All accounting terms not specifically defined herein shall be construed in accordance with GAAP and practices consistent with those applied in the preparation of the financial statements submitted by each Co-Borrower to Administrative Agent, and all financial data submitted pursuant to this Agreement shall be prepared in accordance with such principles and practices.

11.10 ADDITIONAL FINANCING. The parties hereto acknowledge that as of the date hereof the Lenders have made no agreement or commitment to provide any financing to any Co-Borrower except as set forth herein or in the Second Lien Credit Documents.

11.11 NO PARTNERSHIP, ETC. The Lenders and the LC Issuers, on the one hand, and Co-Borrowers, on the other hand, intend that the relationship between them shall be solely that of creditor and debtor. Nothing contained in this Agreement, the Notes or in any of the other Credit Documents shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership by or among the Lenders and the LC Issuers, on the one hand, and Co-Borrowers or any other Person, on the other hand. None of the Arranger, Administrative Agent, Collateral Agent or the Lenders shall be in any way responsible or liable for the debts, losses, obligations or duties of any Co-Borrower or any other Person with respect to the Project or otherwise. Except as otherwise expressly set forth herein, all obligations to pay real property or other taxes, assessments, insurance premiums, and all other fees and charges arising from the ownership, operation or occupancy of the Project (if any) and to perform all obligations and other agreements and contracts relating to the Project shall be the sole responsibility of Co-Borrowers.

11.12 DEPOSITARY AGREEMENT. Each Lender and each LC Issuer hereby acknowledges that it has received and reviewed a copy of the Depositary Agreement and agrees to be bound by the terms thereof. Without limiting the generality of the foregoing, each Lender (and each Person that becomes a Lender hereunder pursuant to Section 9.13) and each LC Issuer and each other Secured Party hereby (a) authorizes and directs each Agent to execute the Depositary Agreement and the other Credit Documents to which it is a party on behalf of such Lender, LC Issuer or Secured Party and agrees that the Agents may take such actions on behalf of such Lender, LC Issuer or Secured Party as are contemplated by the terms of the Depositary Agreement, and (b) acknowledges that Depositary Agent is acting as Depositary Agent for all of the Secured Parties and not solely the Lenders and LC Issuers.

11.13 LIMITATION ON LIABILITY. No claim shall be made by any Borrower Party against the Arranger, Administrative Agent, Collateral Agent, the Lenders, LC Issuers or any of their respective Affiliates, directors, employees, attorneys or agents for any loss of profits, business or anticipated savings, special or punitive damages or any indirect or consequential loss whatsoever in respect of any breach or wrongful conduct (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or the other Operative Documents or any act or omission or event occurring in connection therewith, and each Borrower Party hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor, in each case, except to the extent such claim is based on gross negligence or willful misconduct of such Person. No claim shall be made by the Arranger, Administrative Agent, Collateral Agent, any Lender, any LC Issuers, or any Secured Party against any Borrower Party or any of their respective Affiliates, directors, employees, attorneys or agents for any loss of profits, business or anticipated savings, special or punitive damages or any indirect or consequential loss whatsoever in respect of any breach or wrongful conduct (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or the other Operative Documents or any act or omission or event occurring in connection therewith, and each Secured Party hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor, in each case, except to the extent such claim is based on gross negligence or willful misconduct of

such Person; provided that nothing in this Section 11.13 shall limit the Co-Borrowers' indemnity or reimbursement obligations to the extent that such indirect, special, incidental, punitive or consequential damages or losses are included in any third party claim in connection with which the relevant Indemnitee is entitled to indemnification under Section 11.14.

11.14 INDEMNITY. Each Co-Borrower agrees to indemnify Arranger, Administrative Agent, the Lenders, LC Issuers (and any sub-agents) and each of their respective partners, directors, trustees, officers, administrators, managers, employees, affiliates, investment advisors and agents (each such Person being called an "Indemnitee") against, and to hold each Indemnitee harmless from, for and against any and all losses, claims, damages, liabilities and related expenses, including reasonable and documented counsel and consultant fees, charges and disbursements, incurred by or asserted against any Indemnitee (collectively, "Subject Claims") arising out of, in any way connected with, or as a result of (i) the execution or delivery of this Agreement or any other Credit Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto or the enforcement or administration of this Agreement or any other Credit Documents and thereto of their respective rights and obligations hereunder or thereunder or the consummation of the other transactions contemplated hereby or any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Agreement, the other Credit Documents and any such other documents, (ii) the use of the proceeds of the Loans or the use of any Letter of Credit, (iii) any Environmental Claim, any Release of Hazardous Substances or any violation of Environmental Law, in each case relating to any Co-Borrower or the Collateral, (iv) the use, financing, development, construction, operation and maintenance of the Project or (v) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto (other than claims solely as between the Lenders and/or the Arranger); provided that such indemnity shall not, as to any Indemnitee, be available to the extent that the applicable Subject Claim results from the gross negligence or willful misconduct of such Indemnitee, as determined by the final judgment of a court of competent jurisdiction. Except with respect to such gross negligence or willful misconduct (as determined by the final judgment of a court of competent jurisdiction), each Co-Borrower and its successors and assigns hereby waive, release and agree not to make any claim or bring any cost recovery action against, any Indemnitee under CERCLA or any state equivalent, or any similar law now existing or hereafter enacted. The provisions of this Section shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Obligations, the invalidity or unenforceability of any term or provision of this Agreement or any other Credit Document, or any investigation made by or on behalf of any Lender. All amounts due under this Section shall be payable within 30 days at the written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested. This Section 11.14 shall not apply to taxes other than any taxes that represent losses, claims, damages, etc. arising from any non-tax claim. The Co-Borrowers shall not be liable for any settlement if such settlement was effected without the Co-Borrowers' consent (which consent shall not be unreasonably withheld, conditioned or delayed), but if settled with the Co-Borrowers' written consent, the indemnification obligations of the Co-Borrowers under this Section 11.14 shall apply in respect thereof. Each Indemnitee (other than the Administrative Agent and the Collateral Agent) agrees to provide Co-Borrowers with written notice of a proposed compromise or settlement of any Subject Claim specifying in detail the nature and amount of such proposed settlement or compromise.

Such Indemnitee (other than the Administrative Agent and the Collateral Agent) shall consult with Co-Borrowers before compromising or settling such Subject Claim for at least 30 days after Co-Borrowers receive such notice of intended compromise or settlement and shall take into consideration any views or issues communicated by Co-Borrowers in connection with such compromise or settlement. Such Indemnitee (other than the Administrative Agent and the Collateral Agent) shall act in good faith and reasonably, taking into account the interests of the Borrower Parties, in agreeing to any compromise or settlement.

11.15 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 11.15 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.

EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT OR ACTION OF ANY PARTY HERETO.

11.16 CONSENT TO JURISDICTION. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING HERETO MAY 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 EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS;

(b) WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY OF THE AFORESAID ACTIONS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT BROUGHT IN THE COURTS REFERRED TO ABOVE AND HEREBY FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM;

(c) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 11.1;

(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 THE ADMINISTRATIVE AGENT, COLLATERAL AGENT AND SECURED PARTIES RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY BORROWER PARTY IN THE COURTS OF ANY OTHER JURISDICTION.

11.17 CERTAIN ERISA MATTERS.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Co-Borrowers or any other Borrower Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) of one or more Benefit Plans in connection with the Loans, Letters of Credit or Commitments,

(ii) the prohibited transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable so as to exempt from the prohibitions of ERISA Section 406 and Code Section 4975 such Lender's entrance

into, participation in, administration of and performance of the Loans, Letters of Credit, Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, Letters of Credit, Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, Letters of Credit, Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Co-Borrowers or any other Borrower Party, that none of the Administrative Agent, the Arranger or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender involved in the Loans, Letters of Credit, Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Credit Document or any documents related to hereto or thereto).

11.18 SUCCESSORS AND ASSIGNS. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. No Co-Borrower may assign or otherwise transfer any of its rights or obligations under this Agreement except with the prior written consent of each Lender, and the Lenders may not assign or otherwise transfer any of their rights under this Agreement except as provided in Article 9.

11.19 COUNTERPARTS. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in one or more duplicate counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Delivery of an executed counterpart to this Agreement by electric transmission in "pdf" or other imaging format shall be as effective as delivery of a manually signed original.

11.20 USURY. Nothing contained in this Agreement or the Notes shall be deemed to require the payment of interest or other charges by any Co-Borrower or any other Person in excess of the amount which the holders of the Notes may lawfully charge under applicable usury laws. In the event that the Lenders shall collect moneys which are deemed to constitute interest which would increase the effective interest rate to a rate in excess of that permitted to be charged by applicable Legal Requirements, all such sums deemed to constitute interest in excess of the legal rate shall, upon such determination, at the option of the Lenders, be returned to Co-Borrower or credited against the principal balance then outstanding.

11.21 SURVIVAL. All representations, warranties, covenants and agreements made herein, in any other Credit Document and in the certificates or other instruments delivered in connection with or pursuant to this Agreement and the other Credit Documents shall be considered to have been relied upon by the parties hereto and shall survive the execution and delivery of this Agreement, the other Credit Documents and the making of the Loans. Notwithstanding anything in this Agreement or implied by law to the contrary, the agreements of Co-Borrowers set forth in Sections 2.6.4, 2.8.3, 2.8.4, 11.4, 11.14, 11.23 and the agreements of the Lenders and Administrative Agent set forth in Sections 9.1, 9.5, 9.8, 9.10 and 11.23 shall survive the payment and performance of the Loans and the other Obligations and the reimbursement of any amounts drawn hereunder, and the termination of this Agreement.

11.22 PATRIOT ACT NOTICE. Each Lender, Collateral Agent (for itself and not on behalf of any other Person, including any Lender), Administrative Agent (for itself and not on behalf of any other Person, including any Lender) and each LC Issuer (for itself and not on behalf of any other Person, including any Lender) hereby notifies each Borrower Party that, pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies each Borrower Party which information includes the name, address, the tax identification number and other identifying information that will allow such Lender, Collateral Agent, Administrative Agent or such LC Issuer, as applicable, to identify such Borrower Party in accordance with the Act. The Borrower Parties shall, promptly following a request by any Lender, any LC Issuer, the Administrative Agent, the Collateral Agent or the Depositary Agent, provide all documentation and other information that such Lender, such LC Issuer, the Administrative Agent, the Collateral Agent and the Depositary Agent, as applicable, requests in order to comply with its ongoing obligations under applicable "know your customer", AML Laws, Anti-Corruption Laws, Anti-Terrorism Laws and any rules or regulations thereunder, including the Act.

11.23 TREATMENT OF CERTAIN INFORMATION; CONFIDENTIALITY. Each Lender, each LC Issuer, the Arranger and the Administrative Agent agrees (on behalf of itself and each of its Affiliates, directors, officers, employees and representatives) to keep confidential any nonpublic information supplied to it by any Borrower Party; provided that nothing herein shall limit the disclosure of any such information: (a) to the extent such information is required to be disclosed by any Governmental Rule or judicial or administrative process, or to any Governmental Authority in connection with a tax audit or dispute or otherwise, (b) to counsel and/or advisors and auditors, affiliates, directors, officers, members, employees, agents, credit risk protection providers and third party service providers to any Lender, any LC Issuer or any Agent, in each case on a confidential basis it being understood and agreed that the Persons to whom such disclosure is made will be

informed of the confidential nature of such information and instructed to keep such information confidential and the disclosing party shall cause such Persons to comply with the obligations of this Section 11.23, (c) to the extent such information is required to be disclosed to any banking, securities exchange or other regulatory or supervisory authorities (including any self-regulatory authority, such as the National Association of Insurance Commissioners or any other 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), auditors or accountants having proper jurisdiction and authority to require such disclosure, (d) to any Agent or any other Lender, (e) to any entity in connection with a securitization or proposed securitization of, among other things, all or a part of any amounts payable to or for the benefit of any Lender or its Affiliates under the Credit Documents so long as such entity agrees to keep such information confidential in a manner consistent with this Section 11.23, it being understood and agreed that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential and the disclosing party shall cause such Persons to comply with the obligations of this Section 11.23, (f) to the extent such information is required to be disclosed in connection with the exercise of any remedies hereunder or under any of the other Credit Documents, including without limitation upon the occurrence of any Event of Default and any enforcement or collection proceedings resulting therefrom or in connection with the negotiation of any restructuring or "work-out", whether or not consummated, of the obligations of Co-Borrowers under this Agreement or any other Operative Document or any suit, action or proceeding relating to this Agreement or any other Credit Document or the enforcement of rights hereunder or thereunder, (g) to any actual or prospective successor Agent so long as such entity agrees to keep such information confidential in a manner consistent with this Section 11.23, or (h) subject to an agreement containing provisions substantially the same (or at least as restrictive) as those of this Section 11.23, to any Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or Participant in, any of its rights or obligations under this Agreement or any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to any Co-Borrower or its obligations (including any credit insurance provider relating to any Co-Borrower and its obligations), in each case, to the extent not included in the previous clauses (a) - (g) of this proviso, it being understood and agreed that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential and the disclosing party shall cause such Persons to comply with the obligations of this Section 11.23; provided that, in the event a Lender receives a summons or subpoena to disclose confidential information to any party, such Lender shall, if legally permitted, endeavor to notify the Co-Borrowers thereof as soon as possible after receipt of such request, summons or subpoena and to afford the Borrower Parties an opportunity to seek protective orders, or such other confidential treatment of such disclosed information, as the Borrower Parties may deem reasonable. In addition, Administrative Agent and the Lenders may disclose (i) the existence of this Agreement, (ii) statistical data about this Agreement without reference to specific terms and conditions of this Agreement, and (iii) the identity of the Lenders (but not the identity of the Borrower Parties) to market data collectors, the CUSIP Service Bureau and similar service providers to the lending industry, Administrative Agent and the Lenders. Notwithstanding the foregoing provisions of this Section 11.23, the foregoing obligation of confidentiality shall not apply to any such information becomes part of the public domain independently of any act of any Lender or Agent not permitted hereunder (through publication or

otherwise). Notwithstanding anything to the contrary set forth herein or in any other agreement to which the parties hereto are parties or by which they are bound, any obligations of confidentiality contained herein and therein, as they relate to the transactions contemplated by this Agreement (the "Loan Transactions"), shall not apply to the U.S. federal tax structure or U.S. federal tax treatment of the Loan Transactions, and each party hereto (and any employee, representative, or agent of any party hereto) may disclose to any and all Persons, without limitation of any kind, the U.S. federal tax structure and U.S. federal tax treatment of the Loan Transactions. The preceding sentence is intended to cause the Loan Transactions not to be treated as having been offered under conditions of confidentiality for purposes of Section 1.6011-4(b)(3) (or any successor provision) of the Treasury regulations promulgated under Section 6011 of the Code and shall be construed in a manner consistent with such purpose.

11.24 COMMUNICATIONS.

11.24.1 *Delivery.*

(a) Each Co-Borrower hereby agrees that it will use all reasonable efforts to provide to Administrative Agent all information, documents and other materials that it is obligated to furnish to Administrative Agent pursuant to this Agreement and any other Credit Document, including all notices, requests, financial statements, financial and other reports, certificates and other information materials (collectively, the "Communications"), by transmitting the Communications by Electronic Transmission or in an electronic/soft medium in a format reasonably acceptable to Administrative Agent at the e-mail address referenced in Section 11.1 or such other e-mail address designated by Administrative Agent from time to time. Nothing in this Section shall prejudice the right of the Arranger, any Credit Party or any Co-Borrower to give any notice or other communication pursuant to this Agreement or any other Credit Document in any other manner specified in this Agreement or any other Credit Document.

(b) Administrative Agent agrees that receipt of the Communications by Administrative Agent at the e-mail address referenced in Section 11.1 or such other e-mail address designated by Administrative Agent from time to time shall constitute effective delivery of the Communications to Administrative Agent for purposes of the Credit Documents. Each Lender agrees that notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform (as defined below) shall constitute effective delivery of the Communications to such Lender for purposes of the Credit Documents; provided that such Lender may access such Platform without any undertaking or condition other than those set forth in this Agreement. Each Lender agrees (A) to notify Administrative Agent in writing (including by electronic communication) from time to time of such Lender's email address to which the foregoing notice may be sent by Electronic Transmission and (B) that the foregoing notice may be sent to such email address.

11.24.2 *Posting*. Each Co-Borrower further agrees that 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").

11.24.3 *The Platform is provided "as is" and "as available"*. The Agent Parties (as defined below) do not warrant the accuracy or completeness of the Communications or the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall any Agent or Arranger or any of their respective Affiliates or any of their respective officers, directors, employees, sub-agents, advisors or representatives (collectively, "Agent Parties") have any liability to any Co-Borrower, any Lender or any other Person or entity for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of such Co-Borrower's or such Person's transmission of Communications through the internet, except to the extent the liability of any Agent Party is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted primarily from such Agent Party's bad faith, gross negligence or willful misconduct.

11.25 INTERCREDITOR AGREEMENT. Each Lender hereby acknowledges and agrees on behalf of itself that the Lien priorities and other matters related to the Credit Documents and the Collateral are subject to and governed by the Intercreditor Agreement. Each Lender and each LC Issuer, by delivering its signature page hereto, funding its Loans or issuing its Letters of Credit (as applicable) and/or executing an Assignment and Assumption, as applicable, shall be deemed to have (a) acknowledged receipt of, consented to and approved of the Intercreditor Agreement, (b) authorized the appointment of Collateral Agent upon the terms and conditions set forth therein and (c) authorized Administrative Agent and Collateral Agent to perform their respective obligations thereunder and under the other Collateral Documents. The Lenders party hereto hereby authorize Collateral Agent to, in accordance with the express provisions of the Intercreditor Agreement and the other Collateral Documents, enter into amendments to such documents (in form and substance reasonably satisfactory to Administrative Agent (as directed by the Required Lenders)).

11.26 USE OF WORK PRODUCTS AGREEMENT. Each Lender hereby authorizes and directs the Administrative Agent to execute and deliver each use of work product agreement set forth in Section 3.1.10 and the reliance letter set forth in Section 3.1.10(ii), and acknowledges and agrees on behalf of itself that each such Lender shall be bound by the terms and conditions of such agreement.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto, by their officers duly authorized, intending to be legally bound, have caused this Agreement to be duly executed and delivered as of the day and year first above written.

OHIO RIVER PP HOLDCO, as Holdings

By: /s/ Demetrios Tserpelis
Name: Demetrios Tserpelis
Title: Chief Financial Officer, Treasurer and Secretary

LONG RIDGE ENERGY GENERATION LLC, as PowerCo

By: /s/ Demetrios Tserpelis
Name: Demetrios Tserpelis
Title: Chief Financial Officer, Treasurer and Secretary

OHIO GASCO LLC, as GasCo

By: /s/ Demetrios Tserpelis
Name: Demetrios Tserpelis
Title: Chief Financial Officer, Treasurer and Secretary

CORTLAND CAPITAL MARKET SERVICES LLC, as Administrative Agent

By: /s/ Matthew Trybula
Name: Matthew Trybula
Title: Associate Counsel

MIRAE ASSET DAEWOO CO., LTD,
as a Lender

By: /s/ Cho Woong-ki
Name: Cho Woong-ki
Title: Chief Executive Officer

ELSDON INVESTMENT PTE LTD,
as a Lender

By: _/s/ Arjun Gupta__
Name: Arjun Gupta
Title: Director

By: _/s/ Ashok Samuel__
Name: Ashok Samuel
Title: Director

ING CAPITAL LLC,
as an LC Participant and LC Issuer

By: /s/ Sven Wellock
Name: Sven Wellock
Title: Director

By: /s/ Scott Hancock
Name: Scott Hancock
Title: Director

EXHIBIT A
to Credit Agreement

DEFINITIONS

"Acceptable Accountant" means each of (i) BDO USA, LLP, (ii) Deloitte LLP, (iii) PwC, LLP, (iv) Ernst & Young LLP, (v) KPMG LLP and (vi) any other nationally recognized independent certified accountant approved by the Administrative Agent (such approval not be unreasonably withheld).

"Acceptable Credit Provider" has the meaning given in the Depositary Agreement.

"Accounts" means, collectively, the Depositary Accounts and each cash collateral account referred to in the Credit Documents, including any sub-accounts within such accounts.

"Act" has the meaning given in Section 3.1.25 of the Credit Agreement.

"Additional Project Documents" means any material contracts or agreements related to the construction, development, maintenance, repair, operation or use of the Project (but excluding any Credit Document and any Second Lien Credit Document and Permitted Second Lien Refinancing Credit Document) entered into by any Co-Borrower and any other Person, or assigned to any Co-Borrower, subsequent to the Closing Date.

"Adjusted LIBO Rate" means, for any Interest Period for any LIBOR LC Loan Borrowing, an interest rate per annum (rounded upwards, if necessary, to the next 1/100th of one percent) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate for such Interest Period; provided that the Adjusted LIBO Rate shall never be less than zero.

"Administrative Agent" has the meaning given in the preamble hereto.

"Administrative Agent's Account" means the account from time to time designated in writing by the Administrative Agent as the account to which payments hereunder are to be directed.

"Affiliate" means as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power (i) to vote 50% or more of the Securities having ordinary voting power for the election of directors of such Person or (ii) to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise. For the purposes of this Agreement, Fortress and its Affiliates and any publicly traded entity managed by Fortress or any of its Affiliates, shall be deemed to be "Affiliates" of each Co-Borrower, Holdings and Parent.

"Agency Fee Letters" means (i) that certain fee letter dated as of even date hereof by and among Co-Borrowers and Cortland Capital Market Services LLC, as Administrative Agent,

as may be amended, restated or modified in accordance therewith; (ii) that certain fee letter dated as of even date hereof by and among Co-Borrowers and Cortland Capital Market Services LLC, as second lien administrative agent, as may be amended, restated, or modified in accordance therewith; and (iii) that certain fee schedule dated as of even date hereof by and among Co-Borrower and The Bank of New York Mellon, as Depositary Agent and Collateral Agent.

"Agent" means Depositary Agent, Collateral Agent or Administrative Agent.

"Agent Parties" has the meaning given in Section 11.24.3 of the Credit Agreement.

"Agreement" has the meaning given in the preamble hereto.

"Allocable Amount" has the meaning given in Section 2.11.3 of the Credit Agreement.

"AML Laws" means all laws, rules, and regulations of any jurisdiction applicable to any Lender, any Co-Borrower, any Subsidiary of any Co-Borrower or any guarantor or any other party providing credit support in respect of any Person's obligations under the Credit Documents from time to time concerning or relating to anti-money laundering.

"Annual Operating Budget" has the meaning given in Section 5.12.2 of the Credit Agreement.

"Annual Period" has the meaning given in Section 5.8.10 of the Credit Agreement.

"Anti-Corruption Laws" means all laws, rules, and regulations of any jurisdiction applicable to any Co-Borrower, any Subsidiary of any Co-Borrower or any guarantor or any other party providing credit support in respect of any Person's obligations under the Operative Documents from time to time concerning or relating to bribery or corruption.

"Anti-Terrorism Laws" means any of the following: (a) the Anti-Terrorism Order; (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 Act; (f) any regulations promulgated pursuant to the laws, orders and regulations listed in the foregoing clauses (a)–(f) of this definition; or (g) comparable laws, rules and directives administered or enforced by the United Nations Security Council, the United Kingdom, the European Union, or a member state of the European Union.

"Anti-Terrorism Order" means Section 1 of Executive Order 13224 of September 24, 2001, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (Title 12, Part 595 of the U.S. Code of Federal Regulations).

"Applicable Permit" means, at any time, any Permit, including any zoning, land use (including public lands), environmental or species protection, pollution (including air, water or noise), sanitation, import, export, safety, siting or building Permit issued by any Governmental Authority, including by not limited to FERC, Public Utilities Commission of Ohio, Ohio Department

of Health, Ohio Environmental Protection Agency, Ohio Department of Natural Resources, Ohio State Emergency Response Commission, Ohio Power Siting Board, U.S. Environmental Protection Agency, Bureau of Land Management, US Army Corps of Engineers, Federal Aviation Administration, Department of Energy, and Ohio State Fire Marshall (a) that is necessary under applicable Legal Requirements to be obtained by or on behalf of any Co-Borrower at such time in light of the stage of development, construction or operation of the Project to construct, test, operate, maintain, repair, lease, own or use the Project as contemplated by the Operative Documents, to sell electricity from the Project or deliver fuel to the Project, or for any Co-Borrower to enter into any Operative Document or to consummate any transaction contemplated thereby, in each case in accordance with all applicable Legal Requirements, or (b) that is necessary so that none of Co-Borrowers, Administrative Agent, Collateral Agent, the Arranger or the Secured Parties nor any Affiliate of any of them may be deemed by any Governmental Authority to be subject to and not exempt from, whether or not a specific exemption has been granted (and any such specific exemption shall not be deemed an Applicable Permit), regulation under the FPA or PUHCA or treated as a public utility under Chapter 4905 of the Ohio Revised Code and any regulations promulgated thereunder, with respect to the regulation of the rates of, or the financial or organizational regulation of, electric utilities solely as a result of the development and construction or operation of the Project or the sale of electricity therefrom, except that each Co-Borrower is subject to (i) regulation as a public utility under the FPA and the requirements under FERC regulations implementing PUHCA for obtaining and maintaining Exempt Wholesale Generator status, and (ii) compliance with various operation and maintenance standards and record keeping and reporting obligations required, if required under the Ohio Revised Code.

"Arranger" has the meaning set forth in the preamble hereto.

"As-Built Survey" means a survey prepared by a licensed Ohio surveyor based on information received from Co-Borrowers, project contractors, and public agencies, but need not be based upon a field verification or investigation of the improvements or grades, unless the surveyor is engaged to provide such field verification services.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.13), and accepted by the Administrative Agent, in the form of Exhibit P or any other form approved by the Administrative Agent.

"Available Amount" means, with respect to any Letter of Credit at any time, the undrawn stated amount of such Letter of Credit, as applicable, in effect at such time; provided that, with respect to any Letter of Credit that, by its terms or the terms of any other agreement or instrument relating thereto, provides for one or more automatic increases in the stated amount thereof, the stated amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time (assuming compliance at such time with all conditions to drawing).

"Available Construction Funds" means, at any time and without duplication, the sum of (a) amounts in the Construction Account, (b) the amount of the undisbursed proceeds, if any, of the then-available Construction Loan Commitments and Second Lien Loan Commitments, (c)

undisbursed Loss Proceeds which are available for payment of Project Costs, (d) amounts in the Second Lien Loan Proceeds Account and (e) any additional capital contribution of a cash amount made to any Co-Borrower from time to time or commitments to provide such funding pursuant to documentation from Persons meeting (or whose obligations in such commitments are supported by a letter of credit in form and substance reasonably satisfactory to the Administrative Agent issued by an issuer meeting) the creditworthiness requirements set forth in the definition of "Acceptable Credit Provider", and otherwise reasonably acceptable to Administrative Agent.

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

"Bail-In Legislation" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"Bank Fee Letters" means each of the certain letter agreements regarding fees, dated as of the Closing Date, between the Co-Borrowers, on the one hand, and each applicable Lender or LC Issuer, on the other.

"Banking 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 the laws of the State of Ohio or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close and, where such term is used in any respect relating to a LIBOR LC Loan, which is also a day on which dealings in Dollar deposits are carried out in the London interbank market.

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

"Bankruptcy Event" shall be deemed to occur, with respect to any Person, if that Person shall institute a voluntary case seeking liquidation or reorganization under the Bankruptcy Law, or shall consent to the institution of an involuntary case thereunder against it; or such Person shall file a petition or consent or shall otherwise institute any similar proceeding under any other applicable federal or state law, or shall consent thereto; or such Person shall apply for, or consent or acquiesce to, the appointment of, a receiver, administrator, administrative receiver, liquidator, sequestrator, trustee or other officer with similar powers for itself or any substantial part of its assets; or such Person shall make a general assignment for the benefit of its creditors; or such Person shall admit in writing its inability to pay its debts generally as they become due; or if an involuntary case shall be commenced seeking liquidation or reorganization of such Person under the Bankruptcy Law or any similar proceedings shall be commenced against such Person under any other applicable federal or state law and (a) the petition commencing the involuntary case is not timely controverted, (b) the petition commencing the involuntary case is not dismissed within 60 days of its filing, (c) an interim trustee is appointed to take possession of all or a portion of the property, and/or to operate all or any part of the business of such Person and such appointment is not vacated within 60 days, or (d) an order for relief shall have been issued or entered therein; or a decree or order of a court

having jurisdiction in the premises for the appointment of a receiver, administrator, administrative receiver, liquidator, sequestrator, trustee or other officer having similar powers, over such Person or all or a part of its property shall have been entered; or any other similar relief shall be granted against such Person under any applicable Bankruptcy Law.

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

"Base Case Projections" means the base case projections of Co-Borrowers' operating results for the Project (over a period ending no sooner than December 31, 2038) delivered to the Lenders on the Closing Date pursuant to Section 3.1.14 of the Credit Agreement.

"Base Rate" means, for any day, a rate per annum equal to the greatest of (a) the per annum rate publicly quoted from time to time by The Wall Street Journal as the "Prime Rate" in the United States (or, if The Wall Street Journal ceases quoting a prime rate of the type described, either (i) the per annum rate quoted as the base rate on such corporate loans in a different national publication as reasonably selected by the Administrative Agent or (ii) the highest per annum rate of interest published by the Federal Reserve Board in Federal Reserve statistical release H.15 (519) entitled "Selected Interest Rates" as the bank prime loan rate or its equivalent), (b) the Federal Funds Rate for such day plus 0.50% or (c) other than with respect to any Base Rate LC Loans made, converted or deemed made or deemed converted pursuant to Section 2.8, the Adjusted LIBO Rate then in effect (assuming a one month Interest Period) plus 1.00%. At no time shall the Base Rate be less than 0%. Any change in the Base Rate due to a change in the prime rate, bank prime rate, the Federal Funds Rate shall be effective from and including the effective date of such change in the prime rate, the bank prime rate or the Federal Funds Rate, as the case may be.

"Base Rate LC Loan" means an LC Loan that shall bear interest at the rate set forth in Section 2.2.9(a) of the Credit Agreement.

"Beneficial Ownership Certification" has the meaning set forth in Section 3.1.25.

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

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

"Borrower Parties" means each Co-Borrower and Holdings.

"Borrowing" means a borrowing by Co-Borrowers of any Loan.

"Breakage Costs" means, with respect to any Loan, interest in respect of which is calculated using the LIBO Rate, the loss (other than the applicable margin), cost and expense attributable to (a) the prepayment of the principal amount of such Loan other than on the last day

of the applicable interest period for such Loan, (b) the revocation by the Co-Borrowers of any notice of borrowing or notice of issuance submitted pursuant to the Credit Agreement after the applicable minimum period for the submission of such notice of borrowing or notice of issuance, as applicable, specified therein or the failure of the conditions precedent to be met after delivery of any such notice of borrowing or notice of issuance or (c) any other amount payable pursuant to Section 2.9 of the Credit Agreement.

"Calculation Period" means, as to a particular date, a rolling period of 12 full calendar months immediately preceding the immediately preceding Quarterly Payment Date.

"Call Premium" means, with respect to any prepayment of any Construction Loan or Term Loan (or any replacement of a Lender pursuant to Section 2.10.2), an amount equal to the excess, if any, of the Discounted Value of the Remaining Specified Payments with respect to the Called Principal of such Construction Loan or Term Loan over the amount of such Called Principal, provided that the Call Premium may in no event be less than zero. For the purposes of determining the Call Premium, the following terms have the following meanings:

"Call Premium Outside Date" means the fifth anniversary of the Closing Date.

"Called Principal" means, with respect to any Construction Loan or Term Loan, the principal of such Construction Loan or Term Loan that is to be prepaid pursuant to Section 2.1.9 or has become or is declared to be immediately due and payable pursuant to Section 7.2.3, as the context requires.

"Discounted Value" means, with respect to the Called Principal of any Construction Loan or Term Loan, the amount obtained by discounting all Remaining Specified Payments with respect to such Called Principal from their respective scheduled due dates to the Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (applied on the same periodic basis as that on which interest on the Construction Loans or Term Loans is payable) equal to the Reinvestment Yield with respect to such Called Principal.

"Reinvestment Yield" means, with respect to the Called Principal of any Construction Loan or Term Loan, 0.50% greater than the yield to maturity implied by the yield(s) reported as of 10:00 a.m. on the second Banking Day preceding the Settlement Date with respect to such Called Principal, on the display designated as "Page PX1" (or such other display as may replace Page PX1) on Bloomberg Financial Markets for the most recently issued actively traded on-the-run U.S. Treasury securities ("Reported") having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date. If there are no such U.S. Treasury securities Reported having a maturity equal to such Remaining Average Life, then such implied yield to maturity will be determined by (a) converting U.S. Treasury bill quotations to bond equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between the yields Reported for

the applicable most recently issued actively traded on-the-run U.S. Treasury securities with the maturities (1) closest to and greater than such Remaining Average Life and (2) closest to and less than such Remaining Average Life. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable Construction Loan or Term Loan.

If such yields are not Reported or the yields Reported as of such time are not ascertainable (including by way of interpolation), then "Reinvestment Yield" means, with respect to the Called Principal of any Construction Loan or Term Loan, the yield to maturity implied by the U.S. Treasury constant maturity yields reported, for the latest day for which such yields have been so reported as of the second Banking Day preceding the Settlement Date with respect to such Called Principal, in Federal Reserve Statistical Release H.15 (or any comparable successor publication) for the U.S. Treasury constant maturity having a term equal to the Remaining Average Life of such Called Principal as of such Settlement Date. If there is no such U.S. Treasury constant maturity having a term equal to such Remaining Average Life, such implied yield to maturity will be determined by interpolating linearly between (1) the U.S. Treasury constant maturity so reported with the term closest to and greater than such Remaining Average Life and (2) the U.S. Treasury constant maturity so reported with the term closest to and less than such Remaining Average Life. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable Construction Loan or Term Loan.

"Remaining Average Life" means, with respect to any Called Principal, the number of years obtained by dividing (i) such Called Principal into (ii) the sum of the products obtained by multiplying (a) the principal component of each Remaining Specified Payment with respect to such Called Principal by (b) the number of years, computed on the basis of a 360-day year composed of twelve 30-day months, that will elapse between the Settlement Date with respect to such Called Principal and the scheduled due date of such Remaining Specified Payment.

"Remaining Specified Payments" means, with respect to the Called Principal of any Construction Loan or Term Loan, all payments of such Called Principal and interest thereon that would be due after the Settlement Date with respect to such Called Principal through and including the Call Premium Outside Date if no payment of such Called Principal were made prior to the Call Premium Outside Date, provided that, if such Settlement Date is not a date on which interest payments are due to be made under the terms of the Construction Loans or Term Loans, then the amount of the next succeeding scheduled interest payment will be reduced by the amount of interest accrued to such Settlement Date and required to be paid on such Settlement Date.

"Settlement Date" means, with respect to the Called Principal of any Construction Loan or Term Loan, the date on which such Called Principal is to be prepaid pursuant to Section 2.1.9 or has become or is declared to be immediately due and payable pursuant to Section 7.2.3, as the context requires.

"Capacity Performance Resource" has the meaning contained in the PJM Open Access Transmission Tariff.

"Capital Expenditures" means expenditures made by any Co-Borrower (or, in the case of GasCo, advanced pursuant to the Joint Development Agreement) to acquire or construct fixed assets, plant and equipment (including renewals, improvements and replacements, but excluding expenditures related to Major Maintenance), which, in accordance with GAAP, are or should be included in "purchase of property and equipment" or similar items reflected in the statement of cash flows of such Co-Borrower (excluding any such expenditures that are paid out of the proceeds of Loss Proceeds or Asset Sale Proceeds (as defined in the Depositary Agreement)).

"Capital Leases" means any and all lease obligations of a Person as lessee under leases that have been or should be, in accordance with GAAP as in effect on the date hereof, recorded as capital leases, without regard to any classification or reclassification as financing or operating leases upon the adoption of leasing standard FASB ASC 842.

"Capital Stock" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation) and any and all warrants, rights or options to purchase any of the foregoing, but excluding debt convertible or exchangeable into such capital stock or equivalent ownership interests.

"Cash Collateralize" means, in respect of an obligation, provide and pledge and deposit with or deliver to Administrative Agent, for the benefit of one or more LC Issuers, as collateral for LC Exposure or obligations of Lenders to fund participations in respect of LC Exposure (as a first priority perfected security interest) cash collateral in Dollars, at a location and pursuant to documentation in form and substance reasonably satisfactory to Administrative Agent (and "Cash Collateralization" has a corresponding meaning). "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"Casualty Event" has the meaning given in the Depositary Agreement.

"Change of Control" means any of the following:

1. Parent and/or any of its respective Affiliates shall, in the aggregate, cease to beneficially own and control, directly or indirectly, more than 50% of the Capital Stock of Holdings (determined on a fully diluted basis).

2. Holdings shall cease to beneficially own and control, directly, 100% of the Capital Stock of each Co-Borrower (determined on a fully diluted basis).

"Change of Law" means the occurrence after the Closing Date of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law, but if not having the force of

law, being of a type with which a Lender customarily complies) by any Governmental Authority; 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 or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case, to the extent having the force of law or, if not having the force of law, if they are of a type with which a Lender customarily complies, be deemed to be a "Change of Law", regardless of the date enacted, adopted or issued.

"Class" (a) when used with respect to any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular Class of Loans or Commitments, (b) when used with respect to Commitments, refers to whether such Commitments are Construction Loan Commitments, Term Loan Commitments, LC Commitments or LC Issuer Commitments, and (c) when used with respect to Loans, refers to whether such Loans are Construction Loans, Term Loans or LC Loans.

"Closing Date" means the date on which the conditions set forth in Section 3.1 of the Credit Agreement were satisfied or waived, which date occurred on February 15, 2019.

"Closing Date Permitted Commodity Hedge Agreements" means agreements, effective as of the Closing Date, hedging at least 457 megawatts of the Generating Project's output, entered with Permitted Commodity Hedge Counterparties identified on Exhibit L, for each such Permitted Commodity Hedge Agreement of no shorter duration, and containing such other terms, in each case with respect to the applicable Permitted Commodity Hedge Counterparty, as set forth on Exhibit L.

"Co-Borrower Payment" has the meaning given in Section 2.11.3(b) of the Credit Agreement.

"Co-Borrowers" has the meaning given in the preamble hereto.

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

"Collateral" means all property which is subject or is intended to become subject to the security interests or liens granted by any of the Collateral Documents.

"Collateral Agent" means The Bank of New York Mellon, acting in its capacity as collateral agent for the Secured Parties under the Collateral Documents.

"Collateral Documents" means the Intercreditor Agreement, the Consents, the Guaranty and Security Agreement, the Depositary Agreement, the Control Agreements, the Subordination Agreement, the Mortgages and each of the security agreements and any fixture filings, financing statements, or other similar documents filed, recorded or delivered in connection with the foregoing.

"Commitment Fees" means the Construction Loan Commitment Fee and the LC Commitment Fee.

"Commitments" means, (i) with respect to any LC Issuer, such LC Issuer's LC Issuer Commitment, (ii) with respect to each Lender and each LC Participant, such Lender's or such LC Participant's Construction Loan Commitment, Term Loan Commitment and LC Commitment, as applicable, (iii) with respect to all Lenders, the Total Construction Loan Commitments, the Total Term Loan Commitments and the Total LC Commitments and (iv) with respect to all LC Issuers, the Total LC Issuer Commitment.

"Communications" has the meaning given in Section 11.24.1(a) of the Credit Agreement.

"Completion" means the satisfaction of each of the following conditions:

(a) Substantial Completion shall have been achieved;

(b) all material work under each of the Interconnection Agreements shall have completed in all material respects in accordance with the terms thereof;

(c) all interconnection facilities necessary for (i) the delivery of natural gas to the Generating Project, and (ii) the transmission of electrical energy produced by the Generating Project shall, in each case, have been completed and shall be operational;

(d) all necessary and material facilities needed for the operation of the Project in accordance with the Base Case Projections, as applicable, shall have been completed and shall be operational; and

(e) Co-Borrowers shall have delivered to the Administrative Agent a certificate signed by a Responsible Officer of each Co-Borrower certifying that (i) the Project is capable of, and authorized to commence, injecting energy into the electric grids operated by PJM, (ii) PowerCo is eligible to receive capacity payments in the PJM Base Residual Auction next commencing and (iii) the Project is able to satisfy all obligations arising under each Permitted Commodity Hedge Agreement in accordance with the terms thereof.

"Completion Date" means the date that Completion is achieved, as certified by a Responsible Officer of each Co-Borrower and confirmed by the Independent Engineer pursuant to Section 3.3.2 of the Credit Agreement.

"Consents" means each consent and agreement specified in Exhibit E-2 to the Credit Agreement, and, with respect to any Additional Project Document, to the extent required pursuant to Section 5.14 of the Credit Agreement, a consent and agreement of each party to such Additional Project Document (other than any Co-Borrower) substantially in the form of Exhibit E-1, with such modifications as may be reasonably acceptable to Administrative Agent.

"Construction Account" has the meaning given in the Depositary Agreement.

"Construction and Equipment Contracts" means the EPC Contract and the PIE Contract.

"Construction Availability Period" means the period from the Closing Date to but excluding the earlier of (a) the Construction Maturity Date and (b) the date of termination of the Construction Loan Commitments pursuant to the provisions of the Credit Agreement.

"Construction Budget" means a budget setting forth all expected Project Costs through Final Completion delivered to the Lenders on the Closing Date pursuant to Section 3.1.23 of the Credit Agreement, and confirmed by the Independent Engineer, as the same may be amended, revised or modified from time to time in accordance with Section 6.26.1.

"Construction Credit Event" has the meaning given in Section 3.2 of the Credit Agreement.

"Construction Credit Event Date" has the meaning given in Section 3.2.1 of the Credit Agreement.

"Construction Facility" means the Construction Loan Commitments and the Construction Loans made thereunder.

"Construction Lender" means a Lender with a Construction Loan Commitment or with outstanding Construction Loans.

"Construction Loan Commitment" means, at any time with respect to such Lender, such Lender's Proportionate Share of the Total Construction Loan Commitment.

"Construction Loan Commitment Fee" has the meaning given in Section 2.3.2(a) of the Credit Agreement.

"Construction Loans" has the meaning given in Section 2.1.1(a) of the Credit Agreement.

"Construction Maturity Date" means the earliest to occur of (a) the date upon which the Loans, together with all unpaid interest, fees, charges and costs (including the Call Premium), are accelerated in accordance with the Credit Agreement, (b) the Term Conversion Date, and (c) the Date Certain.

"Construction Note" has the meaning given in Section 2.1.6 of the Credit Agreement.

"Construction Requisition" has the meaning given in the Depositary Agreement.

"Contingent Equity Account" has the meaning given in the Depositary Agreement.

"Control Agreements" has the meaning given in the Depositary Agreement.

"Credit Agreement" means this First Lien Credit Agreement, dated as of the Closing Date, among Holdings, Co-Borrowers, Administrative Agent, and the Lenders and LC Issuers from time to time party hereto.

"Credit Documents" means this Agreement, the Notes, the Collateral Documents and the Fee Letters; provided that for purposes of Sections 9.9.1, 9.13 and 9.14 only, Credit Documents shall not include the Agency Fee Letters (which may only be amended, assigned or transferred, as applicable, in accordance with their respective terms).

"Credit Event" has the meaning given in Section 3.4 of the Credit Agreement.

"Credit Party" means each Agent, Lender and LC Issuer.

"Date Certain" means June 1, 2022.

"Debt" means of any Person, at any date of determination, (a) all Debt for Borrowed Money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments (other than, for the avoidance of doubt, surety, performance and similar bonds), (c) all obligations of such Person to pay the deferred purchase price of property or services, and other accrued expenses arising in the ordinary course of business which in accordance with GAAP would be shown on the liability side of the balance sheet of such Person, but excluding trade accounts payable and other accrued expenses arising in the ordinary course of business, (d) all obligations of such Person under leases which are or should be, in accordance with GAAP, recorded as Capital Leases in respect of which such Person is liable, (e) all obligations of such Person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property), (f) all deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other instrument, (g) all Debt for Borrowed Money of others secured by a Lien on any asset of such Person, whether or not such Debt is assumed by such Person, (h) all guarantees by such Person of any of the foregoing and (i) obligations in respect of Hedging Agreements.

"Debt for Borrowed Money" means of any Person, at any date of determination, the sum, without duplication, of (a) all items that, in accordance with GAAP, would be classified as indebtedness on a consolidated balance sheet of such Person at such date, and (b) all obligations of such Person under acceptance, letter of credit or similar facilities at such date.

"Debt Resizing Projections" has the meaning given in Section 3.1.14.

"Debt Service" means, for any period, the sum of all interest, fees (including agency fees) and scheduled principal payable during such period in respect of the Loans, Commitments, Second Lien Loans, Permitted Second Lien Refinancing Debt and Second Lien Loan Commitments. For the avoidance of doubt, Debt Service shall not include (i) interest on the Second Lien Loans and Permitted Second Lien Refinancing Debt to the extent not paid in cash, but rather paid "in kind" by addition to the principal amount of the Second Lien Loans or Permitted Second Lien Refinancing Debt pursuant to the terms of the Second Lien Credit Documents or the Permitted Second Lien Refinancing Credit Documents, as applicable, and (ii) mandatory prepayments pursuant to the Credit

Documents (including any Required Target Debt Balance Payments) or the Second Lien Credit Documents or the Permitted Second Lien Refinancing Credit Documents, as applicable.

"Debt Service Coverage Ratio" means, for any Calculation Period, the ratio of (a) Operating Cash Available for Debt Service for such period to (b) Debt Service for such period; provided that if less than 12 full calendar months have elapsed since the Term Conversion Date, the Calculation Period for the calculation of such ratio shall be the actual period of up to 12 full calendar months that have occurred after the Term Conversion Date.

"Debt Service Reserve Account" has the meaning given in the Depositary Agreement.

"Debt Sizing Criteria" means that the Base Case Projections shall demonstrate a projected minimum and average quarterly First Lien Debt Service Coverage Ratio, calculated taking into account any Required Target Debt Balance Payment, of at least 1.50:1:00, from Term Conversion through March 31, 2037, in each case, based solely upon (a) projected cash flow from the Permitted Commodity Hedge Agreements as in effect on the Closing Date, (b) PJM Base Residual Auction capacity payments as forecasted in the "Overbuild Scenario" as set in the Market Consultant's Report and (c) 50% of forecasted merchant energy revenues, in each case net of fixed costs, in each case as projected in the Base Case Projections and determined in a manner consistent in all respects with the Independent Engineer's Report and the Market Consultant's Report.

"Debt to Capitalization Ratio" means, as of any date of determination, the ratio of (a) the aggregate principal amount of Loans outstanding on such date *plus* the aggregate principal amount of loans outstanding under the Second Lien Credit Agreement and any Permitted Second Lien Refinancing Credit Agreement on such date to (b) (i) the aggregate principal amount of Loans outstanding on such date *plus* the aggregate principal amount of loans outstanding under the Second Lien Credit Agreement and any Permitted Second Lien Refinancing Credit Agreement on such date *plus* (ii) the aggregate amount of cash equity contributions (other than Drawstop Equity Contributions and Specified Equity Contributions) that has been irrevocably contributed to the Co-Borrowers by Fortress as of such date *less* any Restricted Payments by Holdings on or prior to such date of determination.

"Declined Proceeds" has the meaning given in Section 2.1.9(c)(ii) of the Credit Agreement.

"Default Rate" has the meaning given in Section 2.6.3 of the Credit Agreement.

"Defaulting Lender" means, subject to Section 2.6.7(g), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Banking Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent, the LC Issuers and the Co-Borrowers in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the LC Issuers or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two

Banking Days of the date when due, (b) has notified the Co-Borrowers, the Administrative Agent or the LC Issuers in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Banking Days after written request by the Administrative Agent, any LC Issuer or the Co-Borrowers, to confirm in writing to the Administrative Agent, the LC Issuers and the Co-Borrowers that it will comply with its prospective funding obligations hereunder (*provided* that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Co-Borrowers) or (d) has, or has a direct or indirect parent company that has, become the subject of a Bankruptcy Event other than by way of an Undisclosed Administration; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States of America or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.6.7(g)) upon delivery of written notice of such determination to the each Co-Borrower, each LC Issuer and each Lender. For purposes of this definition, "Undisclosed Administration" means in relation to a Lender or its direct or indirect parent company the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official by a supervisory authority or regulator under or based on the law in the country where such Lender or its direct or indirect parent company is subject to home jurisdiction supervision if applicable law requires that such appointment is not to be publicly disclosed.

"Delivery Year" has the meaning contained in the PJM Open Access Transmission Tariff.

"Depositary Accounts" has the meaning given in the Depositary Agreement.

"Depositary Agent" means The Bank of New York Mellon, not in its individual capacity but solely as depositary agent, bank and securities intermediary under the Depositary Agreement.

"Depositary Agreement" means the Depositary Agreement, dated as of the date hereof, among Co-Borrowers, Administrative Agent, as first lien administrative agent, Cortland Capital Market Services LLC, as second lien administrative agent, Collateral Agent, as first lien collateral agent and The Bank of New York Mellon, as second lien collateral agent and Depositary Agent.

"Discharge of First Lien Secured Obligations" has the meaning assigned to such term in the Intercreditor Agreement.

"Disposition" has the meaning given in Section 2.1.9(c)(i)(C) of the Credit Agreement.

"Distribution Suspense Account" has the meaning given in the Depositary Agreement.

"Division Transaction" means (a) the division of a limited liability company into two or more limited liability companies pursuant to a "plan of division" or similar method or (b) the creation, or reorganization into, or allocation of its assets to, one or more series, in each case within the meaning of the Delaware Limited Liability Company Act or similar statute in Delaware or any other state.

"Dollars" and "$" means United States dollars or such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts in the United States of America.

"Drawing Payment" means any payment by an LC Issuer honoring a drawing under a Letter of Credit.

"Drawstop Equity Contributions" means contributions of cash equity made to a Co-Borrower during any period in which such Co-Borrower is unable to satisfy the conditions to the making of a Construction Loan set forth in Article 3 of the Credit Agreement (including, without limitation, Section 3.4.3) and/or the release of funds from the Construction Account if and to the extent that such contributions are used solely for the purpose of financing Project Costs (as confirmed by the Independent Engineer), which contributions shall be deposited into the Construction Account.

"DSR Required Balance" has the meaning given in the Depositary Agreement.

"Easement Agreements" has the meaning given in the applicable Mortgage.

"Easements" has the meaning given in the applicable Mortgage.

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

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

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

"Electronic Transmission" has the meaning given in Section 11.1 of the Credit Agreement.

"Eligible Assignee" means (a) any Lender, (b) any LC Issuer, (c) an Affiliate of any Lender or any LC Issuer (as applicable) and (d) any other Person (other than a natural person) that meets the requirements to be an assignee under Section 9.13 (subject to such consents, if any, as may be required under such Section); provided, that, notwithstanding the foregoing, Eligible Assignee shall not include (w) any Defaulting Lender, (x) any Terminated Lender, (y) any Sanctioned Person or (z) any Borrower Party or any Affiliate or Subsidiary thereof.

"Eligible Facility" means an "eligible facility" within the meaning of PUHCA §15 U.S.C. 792-5(a)(2).

"Emergency Operating Costs" means those amounts required to be expended for the purchase of goods and services in order to prevent or mitigate an unforeseeable event or circumstances that, in the good faith judgment of Co-Borrowers (or Operator as operator of the Project) as the case may be, necessitates the taking of immediate measures to prevent or mitigate injury to Persons or injury to or loss of property or environmental contamination.

"Eminent Domain Proceeds" has the meaning given in the Depositary Agreement.

"Environment" means ambient and indoor air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata or sediment, and natural resources such as wildlife, flora and fauna or as otherwise defined in any Environmental Law.

"Environmental Claim" means any and all administrative, regulatory or judicial actions, suits, demands, decrees, claims, liens, judgments, warning notices, notices of noncompliance or violation, proceedings, removal or remedial orders, relating in any way to (a) a violation or alleged violation of Environmental Law or Permit issued (or left unissued due to the negligence of any Co-Borrower) under any Environmental Law, (b) a Release or threatened Release of Hazardous Substances, or (c) any legal or administrative proceedings relating to any of the above.

"Environmental Consultant" means Ramboll US Corporation or such other independent environmental consultant of recognized national standing as may be selected by Co-Borrowers with the prior written consent of the Administrative Agent as directed in writing by the Required Lenders (such consent not to be unreasonably withheld, conditioned or delayed).

"Environmental Law" means any and all foreign or domestic, federal or state (or any subdivision of either of them), statutes, laws (including common law), ordinances, orders, decrees, rules, regulations, judgments, Governmental Authorizations, or any other requirements of Governmental Authorities relating to (i) the protection of the Environment; (ii) the generation, use,

storage, transportation, treatment, processing, removal, remediation or disposal of hazardous or toxic substances; or (iii) occupational safety and health, industrial hygiene or the protection of human, plant or animal health or welfare (as each relates to exposure to hazardous or toxic substances), in each of clauses (i) to (iii) in any manner applicable to any Co-Borrower, the Project or any Real Property, including the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.* ("CERCLA"), the Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.*, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.* ("RCRA"), the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.* ("CWA"), the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.* ("TSCA"), the Emergency Planning and Community Right to Know Act, 42 U.S.C. §§ 11001 *et seq.*, the Safe Drinking Water Act, 40 U.S.C. §§ 300f *et seq.* ("SDWA"), the National Environmental Policy Act, 42 U.S.C. §§ 4321 each as amended, and their foreign, state or local counterparts or equivalents.

"EPC Contract" means the Engineering, Procurement and Construction Agreement, dated as of February 15, 2019, by and between PowerCo and EPC Contractor.

"EPC Contractor" means Kiewit Power Constructors Co., a Delaware corporation.

"EPC Guarantor" means Kiewit Energy Group Inc., a Delaware corporation.

"EPC Parent Guaranty" means the Parent Guaranty, dated as of February 15, 2019, by the EPC Guarantor in favor of PowerCo.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, the rules and regulations promulgated thereunder and any successor thereto.

"ERISA Affiliate" means any corporation, trade or business (whether or not incorporated) that, together with any Borrower Party, is treated as a single employer under Section 414(b) or (c) of the Code, or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414(b), (c), (m) or (o) of the Code.

"ERISA Event" means (a) any Reportable Event; (b) any failure by any Plan to satisfy the applicable minimum funding standards under Section 412 or 430 of the Code or Section 302 or 303 of ERISA, whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan, the failure to make by its due date a required installment under Section 430(j) of the Code with respect to any Plan or the failure to make any required contribution to a Multiemployer Plan; (d) the determination that any Plan is, or is expected to be, in "at–risk" status (as defined in Section 430 of the Code or Section 303 of ERISA); (e) the determination that any Multiemployer Plan is, or is expected to be, in "critical" or "endangered" status (as defined in Section 432 of the Code or Section 305 of ERISA) under circumstances in which any Borrower Party or ERISA Affiliate would reasonably be expected to incur any Withdrawal Liability; (f) the incurrence by any Borrower Party or any ERISA Affiliate of any liability under Title IV of ERISA; (g) the receipt by any Borrower Party or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or to appoint a trustee to administer any

Plan, or the occurrence of any event or condition which would reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Plan; (h) the incurrence by any Borrower Party or any ERISA Affiliate of any Withdrawal Liability; (i) the receipt by any Borrower Party or any ERISA Affiliate of any notice or a determination that a Multiemployer Plan is being terminated by the PBGC; or (j) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which would reasonably be expected to result in liability to any Borrower Party.

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

"Event of Default" has the meaning given in Article 7 of the Credit Agreement.

"Event of Eminent Domain" has the meaning assigned to such term in the Depositary Agreement.

"Excess Cash Flow" means, for any Quarterly Payment Date, the amount remaining on deposit at level ninth of Section 3.2(b) of the Depositary Agreement on such Quarterly Payment Date, after making the payments and transfers described in levels first through eighth of such Section 3.2(b) on such date.

"Exempt Wholesale Generator" means an "exempt wholesale generator" within the meaning of PUHCA and FERC's implementing regulations pertaining thereto.

"Facility" means the Construction Facility, the Term Facility or the LC Facility, as applicable.

"FATCA" means Sections 1471 through 1474 of the Code, effective as of the Closing Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), and current or future regulations promulgated thereunder, official interpretations thereof or published administrative guidance implementing such provisions, any agreement entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

"Federal Funds Rate" means, for any day, the weighted average of the per annum rates on overnight federal funds transactions with member banks of the Federal Reserve System as published by the Federal Reserve Bank of New York for such day (or, if such rate is not so published for any day, the average of the quotations for the day of such transactions received by Administrative Agent from three federal funds brokers of recognized standing selected by it).

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System (or any successor).

"Fee Letters" means each of (i) the Agency Fee Letters and (ii) the Bank Fee Letters.

"FERC" means the Federal Energy Regulatory Commission and its successors.

"Final Completion" means the achievement of "Final Completion" (as defined in the EPC Contract).

"Final Maturity Date" means the earlier of (a) the Scheduled Final Maturity Date and (b) the date on which the entire outstanding principal amount of the Loans, together with all unpaid interest, fees, charges and costs (including the Call Premium), shall be accelerated in accordance with the Credit Agreement.

"First Lien Debt Service" means, for any period, the sum of all interest, fees (including agency fees) and scheduled principal payable during such period in respect of the Loans and the Commitments. For the avoidance of doubt, First Lien Debt Service shall not include mandatory prepayments pursuant to the Credit Documents (including any Required Target Debt Balance Amortization Payments).

"First Lien Debt Service Coverage Ratio" means, for any Calculation Period, the ratio of (a) Operating Cash Available for Debt Service for such period to (b) First Lien Debt Service for such period; provided that if less than 12 full calendar months have elapsed since the Term Conversion Date, the Calculation Period for the calculation of such ratio shall be the actual period of up to 12 full calendar months that have occurred after the Term Conversion Date.

"Fortress" means Fortress Investment Group LLC, a Delaware limited liability company.

"FPA" means the Federal Power Act, as amended.

"Fronting Exposure" means, at any time there is a Defaulting Lender, with respect to an LC Issuer, such Defaulting Lender's Proportionate Share of the outstanding Total LC Exposure with respect to Letters of Credit issued by such LC Issuer other than Total LC Exposure as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

"Funds Flow Memorandum" means the memorandum delivered by Co-Borrowers to Administrative Agent and Depositary Agent with respect to the disbursement of funds on the Closing Date.

"GAAP" means generally accepted accounting principles in effect from time to time in the United States and applied on a consistent basis.

"Gas Availability Certificate" has the meaning given in Section 5.8.10 of the Credit Agreement.

"Gas Gathering Contract" means the Gas Gathering Contract, effective as of the Effective Date (as defined therein) by and between Eureka Midstream, LLC and GasCo.

"Gas Properties" means (a) Hydrocarbon Interests; (b) the properties now or hereafter pooled or unitized with Hydrocarbon Interests; all presently existing or future unitization, pooling agreements and declarations of pooled units and the units created thereby (including all units created

under orders, regulations and rules of any Governmental Authority having jurisdiction) which may affect all or any portion of the Hydrocarbon Interests; (c) all operating agreements, contracts and other agreements which relate to any of the Hydrocarbon Interests or the production, sale, purchase, exchange or processing of Hydrocarbons from or attributable to such Hydrocarbon Interests; (d) all Hydrocarbons in and under and which may be produced and saved or attributable to the Hydrocarbon Interests, the lands covered thereby and all oil in tanks and all rents, issues, profits, proceeds, products, revenues and other incomes from or attributable to the Hydrocarbon Interests; and (e) all tenements, hereditaments, appurtenances and properties in anywise appertaining, belonging, affixed or incidental to the Hydrocarbon Interests, properties, rights, titles, interests and estates described or referred to above, including any and all property, real or personal, now owned or hereafter acquired and situated upon, used, held for use or useful in connection with the operating, working or development of any of such Hydrocarbon Interests or property (excluding drilling rigs, automotive equipment or other personal property which may be on such premises for the purpose of drilling a well or for other similar temporary uses) and including any and all oil wells, gas wells, injection wells or other wells, buildings, structures, fuel separators, liquid extraction plants, plant compressors, pumps, pumping units, field gathering systems, tanks and tank batteries, fixtures, valves, fittings, machinery and parts, engines, boilers, meters, apparatus, equipment, appliances, tools, implements, cables, wires, towers, casing, tubing and rods, surface leases, rights-of-way, easements and servitudes together with all additions, substitutions, replacements, accessions and attachments to any and all of the foregoing. Unless otherwise qualified, all references to a Gas Property or to Gas Properties in this Agreement shall refer solely to a Gas Property or Gas Properties of Co-Borrowers, and solely to the extent of Co-Borrower's ownership of such Gas Property or Gas Properties.

"GasCo" has the meaning given in the preamble hereto.

"Generating Project" means the approximately 485 megawatt natural gas fired, combined cycle power plant to be constructed in Hannibal, Ohio, and all associated real and personal property.

"Generating Project Site" means the 25.443 acre land owned by PowerCo, in and being a part of Sections 14 and 15, Range 3, Town 2, Ohio Township, Monroe County, Ohio.

"Governing Documents" means, with respect to any Person, the certificate or articles of incorporation, bylaws, operating agreement or other organizational or governing documents of such Person.

"Governmental Authority" means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality, political subdivision or any entity or officer thereof exercising executive, legislative, judicial, taxing, 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 a foreign entity or government and shall also include any supra-national body exercising such powers or functions, such as the European Union or the European Central Bank.

"Governmental Authorization" means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

"Governmental Rule" means, with respect to any Person, any law, rule, regulation, ordinance, order, code, treaty, judgment, decree, directive, guideline, policy or similar form of decision of any Governmental Authority binding on such Person.

"Granting Lender" has the meaning given in Section 9.12.2 of the Credit Agreement.

"Guaranty and Security Agreement" means that certain First Lien Guaranty and Security Agreement, dated as of the date hereof, among Holdings, Co-Borrowers and Collateral Agent.

"Guaranty" has the meaning given in the Guaranty and Security Agreement.

"Hazardous Substances" means substances defined as "hazardous substances," "pollutants" or "contaminants" in Section 101 of the CERCLA; those substances defined as "hazardous waste," "hazardous materials" or "regulated substances" by the RCRA; those substances designated as a "hazardous substance", "toxic pollutant" or oil pursuant to Sections 311 or 321 of the CWA; those substances defined as "hazardous materials" in Section 103 of the Hazardous Materials Transportation Act; those substances regulated as a hazardous chemical substance or mixture or as an imminently hazardous chemical substance or mixture pursuant to Section 6 or 7 of the TSCA; those substances defined as "contaminants" by Section 1401 of the SDWA, if present in excess of permissible levels; those substances regulated by the Oil Pollution Act; those substances defined as a pesticide pursuant to Section 2(u) of the Federal Insecticide, Fungicide and Rodenticide Act; those substances defined as a source, special nuclear or by-product material by Section 11 of the Atomic Energy Act; those substances defined as "residual radioactive material" by Section 101 of the Uranium Mill Tailings Radiation Control Act; those substances defined as "toxic materials" or "harmful physical agents" pursuant to Section 6 of the Occupational Safety and Health Act; those substances defined as hazardous wastes in 40 C.F.R. Part 261.3; those substances defined as hazardous waste constituents in 40 C.F.R. Part 260.10, specifically including Appendix VII and VIII of Subpart D of 40 C.F.R. Part 261; those substances designated as hazardous substances in 40 C.F.R. Parts 116.4 and 302.4; those substances defined as hazardous substances or hazardous materials in 49 C.F.R. Part 171.8; those substances regulated as hazardous materials, hazardous substances, or toxic substances in 40 C.F.R. Part 1910; those substances regulated as hazardous materials, hazardous substances, or toxic substances under any other Environmental Laws; and those substances regulated as hazardous materials, hazardous substances, or toxic substances in the regulations adopted and publications promulgated pursuant to said laws, whether or not such regulations or publications are specifically referenced herein.

"Hedging Agreement" means any agreement (other than this Agreement) in respect of any interest rate swap, forward rate transaction, forward commodity transaction, commodity swap, commodity option, interest rate option interest or commodity cap, interest or commodity collar transaction, currency swap agreement, currency future or option contract or other similar agreements.

"Holdings" has the meaning set forth in the preamble hereto.

"Holdings Project Account" means the account of Holdings with the account number 446026620730, which shall be used only for the purposes of receiving equity contributions from the owners of, and Affiliates of, Holdings, and the receipt of (and disbursement of) restricted payments from the Co-Borrowers, in each case in accordance with the terms of the Credit Documents.

"Hydrocarbon Interests" means all presently existing or after-acquired rights, titles and interests in and to gas leases, gas and mineral leases, other Hydrocarbon leases, mineral interests, mineral servitudes, overriding royalty interests, royalty interests, net profits interests, production payment interests and other similar interests. Unless otherwise qualified, all references to a Hydrocarbon Interest or Hydrocarbon Interests in this Agreement shall refer to a Hydrocarbon Interest or Hydrocarbon Interests of GasCo or the other Borrower Parties.

"Hydrocarbons" means collectively, gas, casinghead gas, drip gasoline, natural gasoline and all other liquid or gaseous hydrocarbons and related minerals and all products therefrom, in each case whether in a natural or a processed state.

"IE Requisition Certificate" has the meaning given in the Depositary Agreement.

"Impacted Loans" has the meaning given in Section 2.8.1 of the Credit Agreement.

"Improvements" has the meaning given in the applicable Mortgage.

"Inchoate Default" or "Default" means any occurrence, circumstance or event, or any combination thereof, which, with the lapse of time or the giving of notice or both, would constitute an Event of Default.

"Increase and Joinder Agreement" has the meaning given in Section 2.2.2(d)(v) of the Credit Agreement.

"Incremental LC Commitment" has the meaning given in Section 2.2.2(a) of the Credit Agreement.

"Incremental LC Commitment Date" has the meaning given in Section 2.2.2(b) of the Credit Agreement.

"Incremental LC Commitment Request" has the meaning given in Section 2.2.2(a) of the Credit Agreement.

"Incremental LC Issuer" has the meaning given in Section 2.2.2(b) of the Credit Agreement.

"Indemnitees" has the meaning given in Section 11.14 of the Credit Agreement.

"Independent Consultants" means, collectively, the Insurance Consultant, the Independent Engineer, the Market Consultant, the Petroleum Engineer, the Transmission Consultant, the PCB Consultant and the Environmental Consultant.

"Independent Engineer" means Black & Veatch Management Consulting, LLC or another independent engineer selected in accordance with Section 10.1 of the Credit Agreement.

"Independent Engineer Report" means the report entitled "Long Ridge Power Plant Independent Engineer's Report", dated February 7, 2019, delivered by the Independent Engineer, including all exhibits, appendices and any other attachments.

"Independent Market Monitor" means the independent market monitor for the PJM market.

"Insurance Consultant" means Aon Risk Services Northeast, Inc. or another insurance consultant selected in accordance with Section 10.1 of the Credit Agreement.

"Insurance Consultant Report" means the report entitled "Lender's Insurance Report – Ohio PowerCo LLC", dated October 29, 2018, delivered by the Insurance Consultant, including all exhibits, appendices and any other attachments thereto.

"Insurance Proceeds" has the meaning given in the Depositary Agreement.

"Interconnection Agreements" means, collectively, the Interconnection Service Agreement, the Interconnection Construction Service Agreement, the Switching Station Agreement and the Interconnection Construction Agreement.

"Interconnection Construction Agreement" means the Interconnect Agreement, dated as of February 15, 2019, by and between PowerCo and Eureka Midstream, LLC.

"Interconnection Construction Service Agreement" means the Interconnection Construction Service Agreement to be entered into by and among PowerCo, PJM and AEP Ohio Transmission Company, Inc. and in form and substance reasonably satisfactory to the Administrative Agent.

"Interconnection Service Agreement" means the Interconnection Services Agreement, dated as of February 12, 2019, by and among PowerCo, PJM, and AEP Ohio Transmission Company, Inc.

"Intercreditor Agreement" means that certain Collateral Agency and Intercreditor Agreement, dated as of the Closing Date, by and among Holdings, Co-Borrowers, Administrative Agent, Cortland Capital Market Services LLC, as second lien administrative agent, Collateral Agent, The Bank of New York Mellon, as second lien collateral agent and the other parties from time to time party thereto.

"Interest Expense" means for any period, all interest, commitment fees, letter of credit fees, participation fees, fronting fees and Breakage Costs in respect of outstanding Obligations accrued, capitalized or payable during such period (whether or not actually paid during such period).

"Interest Period" means, with respect to any LIBOR LC Loan, the time period selected by Co-Borrowers or provided for pursuant to the Credit Agreement which commences on the date such LIBOR LC Loan is disbursed, or the effective date of any conversion or continuation (as the case may be) and ends on the last day of such time period.

"Interest Rate" means (i) with respect to Construction Loans or Term Loans, 7.30% per annum and (ii) with respect to LC Loans, the Base Rate or the LIBO Rate, as the case may be.

"Interest Rate Hedge" means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement.

"Joint Development Agreement" means the Joint Development Agreement, dated as of April 11, 2018, by and between Triad Hunter, LLC and GasCo.

"Joint Operating Agreements" means individually or collectively, as the context may require, (a) the Operating Agreement, dated as of April 11, 2018, by and between Triad Hunter, LLC and GasCo, (b) the Master JOA Supplemental Agreement, dated as of April 11, 2018, by and between Triad Hunter, LLC and GasCo, and (c) each joint operating agreement in the form of a "100% JOA" (as defined in the Joint Development Agreement) or a "Third Party JOA" (as defined in the Joint Development Agreement) entered into in connection therewith.

"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.

"Knowledge" means, with respect to the Borrower Parties, the actual knowledge of the Responsible Officer of the applicable Borrower Party upon reasonable investigation and inquiry.

"LC Availability Period" means the period from the Closing Date to but excluding the earlier of (a) the LC Maturity Date and (b) the date of termination of the LC Commitments pursuant to the provisions of the Credit Agreement.

"LC Commitment" means, at any time with respect to each LC Participant, such LC Participant's Proportionate Share of the Total LC Commitment at such time.

"LC Commitment Fee" has the meaning given in Section 2.3.2(b) of the Credit Agreement.

"LC Exposure" means, at any time, with respect to any LC Participant, such LC Participant's Proportionate Share of the Total LC Exposure at such time.

"LC Facility" means the LC Commitments and the LC Issuer Commitments and the extensions of credit made under the Credit Agreement by the LC Issuers and the LC Participants.

"LC Fronting Fees" has the meaning given in Section 2.4 of the Credit Agreement.

"LC Issuer" means each financial institution listed on Exhibit H as an LC Issuer, and any Person that becomes an "LC Issuer" hereunder pursuant to Section 2.2.2 or Section 2.2.13 of the Credit Agreement. An LC Issuer may, in its discretion, arrange for any Letter of Credit to be issued by an Affiliate of such LC Issuer, in which case the term "LC Issuer" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

"LC Issuer Commitment" means, at any time with respect to each LC Issuer, such LC Issuer's Proportionate Share of the Total LC Issuer Commitment at such time.

"LC Loan" has the meaning given in Section 2.2.5(a) of the Credit Agreement.

"LC Maturity Date" means the earliest to occur of (a) the third anniversary of the Closing Date, (b) the date on which the entire outstanding principal amount of the Loans, together with all unpaid interest, fees, charges and costs (including the Call Premium), shall be accelerated in accordance with the Credit Agreement, (c) the Term Conversion Date, and (d) the Date Certain.

"LC Note" has the meaning given in Section 2.1.6 of the Credit Agreement.

"LC Participant" means each Lender with an LC Commitment.

"LC Participation Fees" has the meaning given in Section 2.4 of the Credit Agreement.

"LC Reimbursement Obligation" means the obligation of Co-Borrowers to repay any Drawing Payments relating to a Letter of Credit.

"Legal Requirements" means, as to any Person, any requirement under any Permit or under any Governmental Rule, in each case applicable to or binding upon such Person or any of its properties or to which such Person or any of its property is subject.

"Lender" or "Lenders" means each financial institution listed on Exhibit H as a Lender or an LC Participant, as well as any Person that becomes a "Lender" hereunder pursuant to Section 9.13 of the Credit Agreement. Any Affiliate of any Borrower Party will be deemed not to be a Lender for purposes of Section 9.9 of the Credit Agreement or any other provision of the Credit Agreement requiring the vote of the Lenders.

"Lending Office" means, with respect to any Lender, the office designated in writing as such to Administrative Agent and Co-Borrowers from time to time.

"Letter of Credit" means a letter of credit issued by an LC Issuer under the LC Facility in accordance with Section 2.2.1(c).

"LIBO Rate" means, with respect to any LIBOR LC Loan for any Interest Period, (a) the ICE Benchmark Administration Limited Interest Settlement Rate for deposits in Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period appearing on Bloomberg's L.P.'s service (or on any successor or substitute page or service providing quotations of interest rates applicable to dollar deposits in the London interbank market comparable to those currently provided on such page, as determined by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Banking Days prior to the commencement of such Interest Period; (b) if the rate referenced in clause (a) above does not appear on such page or service or such page or service shall cease to be available, the rate per annum equal to the rate determined by the Administrative Agent to be the offered rate on such other page or other service that displays an average ICE Benchmark Administration Limited Interest Settlement Rate for deposits in Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two Banking Days prior to the first day of such Interest Period; or (c) if the rates referenced in the clauses (a) and (b) above are not available, the rate per annum determined by the Administrative Agent as the rate of interest (rounded upward to the next $1/100^{th}$ of 1%) at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the LIBOR LC Loan being made, continued or converted and with a term equivalent to such Interest Period would be offered by major banks of international repute reasonably satisfactory to the Administrative Agent in the offshore Dollar market at their request at approximately 11:00 a.m., London time, two Banking Days prior to the first day of such Interest Period. At no time shall the LIBO Rate be less than 0%. Each determination by Administrative Agent pursuant to this definition shall be conclusive in the absence of manifest error.

"LIBO Rate Discontinuance Event" means any of the following:

(a) an interest rate is not ascertainable pursuant to the provisions of the definition of "LIBO Rate" and the inability to ascertain such rate is unlikely to be temporary;

(b) the regulatory supervisor for the administrator of the LIBO Rate screen rate, the central bank for the currency of the LIBO Rate, an insolvency official with jurisdiction over the administrator for the LIBO Rate, a resolution authority with jurisdiction over the administrator for the LIBO Rate, or a court or an entity with similar insolvency or resolution authority over the administrator for the LIBO Rate, has made a public statement, or published information, stating that the administrator of the LIBO Rate has ceased or will cease to provide the LIBO Rate permanently or indefinitely on a specific date; provided that, at that time, there is no successor administrator that will continue to provide the LIBO Rate; or

(c) the administrator of the LIBO Rate screen rate or a Governmental Authority having jurisdiction over the Administrative Agent or the administrator of the LIBO Rate screen rate has made a public statement identifying a specific date after which the LIBO Rate or the LIBO Rate screen rate shall no longer be made available, or used for determining the interest rate of loans; provided that, at that time, there is no successor administrator that will continue to provide the LIBO Rate (the date of determination or such specific date in the foregoing clauses (a) through (c), the "Scheduled Unavailability Date").

"LIBO Rate Discontinuance Event Time" means, with respect to any LIBO Rate Discontinuance Event: (a) in the case of an event under clause (a) of such definition, the Banking Day immediately following the date of determination that such interest rate is not ascertainable and such result is unlikely to be temporary; and (b) for purposes of an event under clause (b) or (c) of such definition, on the date on which the LIBO Rate ceases to be provided by the administrator of the LIBO Rate, or is not permitted to be used (or if such statement or information is of a prospective cessation or prohibition, the 90th day prior to the date of such cessation or prohibition (or if such prospective cessation or prohibition is fewer than 90 days later, the date of such statement or announcement)).

"LIBO Rate Replacement Date" means, in respect of any LIBO Rate Borrowing, upon the occurrence of a LIBO Rate Discontinuance Event, the next interest reset date after the relevant amendment in connection therewith becomes effective (unless an alternative date is specified) and all subsequent interest reset dates for which the LIBO Rate would have had to be determined.

"LIBOR LC Loan" means an LC Loan that shall bear interest at the rate set forth in Section 2.2.9(b) of the Credit Agreement.

"Lien" means, with respect to any property or asset, any mortgage, deed of trust, lien, pledge, charge, security interest, covenant, condition or restriction, or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected or effective under applicable law, as well as the interest of a vendor or lessor under any conditional sale agreement, Capital Lease or other title retention agreement relating to such asset.

"Liquidation Costs" has the meaning given in Section 2.9 of the Credit Agreement.

"Loan" means a Construction Loan, a Term Loan or an LC Loan, as the context may require.

"Loan Transactions" has the meaning given in Section 11.23 of the Credit Agreement.

"Loans" means, collectively, the Construction Loans, the Term Loans and the LC Loans.

"Local Checking Accounts" means the Construction Checking Account and the O&M Checking Account (each as defined in the Depositary Agreement).

"Long Term Service Agreement" means the Contractual Service Agreement, dated as of February 15, 2019, by and between PowerCo and General Electric International, Inc.

"Loss Event" has the meaning assigned to such term in the Depositary Agreement.

"Loss Proceeds" has the meaning given in the Depositary Agreement.

"Loss Proceeds Account" has the meaning given in the Depositary Agreement.

"Major Maintenance" means labor, materials and other direct expenses (including any such labor, materials and other direct expenses under or pursuant to the Long Term Service Agreement) for any overhaul of, or major maintenance procedure for, the Project which require significant disassembly or shutdown of the Project, (a) in accordance with Prudent Industry Practices, (b) pursuant to manufacturers' requirements to avoid voiding any such manufacturer's warranty or (c) pursuant to any applicable Legal Requirement.

"Major Maintenance Expenses" has the meaning given in the Depositary Agreement.

"Major Maintenance Reserve Account" has the meaning given in the Depositary Agreement.

"Major Project Documents" means the following:

(a) the Joint Operating Agreements;

(b) the Joint Development Agreement;

(a) each Interconnection Agreement;

(b) the Gas Gathering Contract;

(c) the PIE Contract;

(d) the EPC Contract;

(e) the EPC Parent Guaranty;

(f) the Permitted Commodity Hedge Agreements;

(g) the O&M Agreement;

(h) the Long Term Service Agreement;

(i) the Water Line Easement and Operating Agreement;

(a) each Additional Project Document which provides for the payment by any Co-Borrower of, or the provision to any Co-Borrower of, goods or services with a value

in excess of $5,000,000 in any calendar year or $10,000,000 for the full term of such Additional Project Document; and

(b) each Replacement Project Document for any Major Project Document.

"Major Project Participants" means each counterparty to a Major Project Document.

"Mandatory Prepayment" has the meaning given in Section 2.1.9(c) of the Credit Agreement.

"Market Consultant" means ICF Resources, LLC or another electric market consultant selected in accordance with Section 10.1 of the Credit Agreement.

"Market Consultant's Report" means the report entitled "ICF PJM Forecast – Hannibal Combined Cycle Facility", dated November 15, 2018, delivered by the Market Consultant, including all exhibits, appendices and any other attachments.

"Material Adverse Effect" means (a) a material adverse change in the current business, property, results of operation or financial condition of the Co-Borrowers and Holdings (taken as a whole), (b) any event or occurrence of whatever nature which would reasonably be expected to materially and adversely affect the Co-Borrowers' and Holdings' ability (taken as a whole) to perform its payment or other material obligations under the Credit Documents, and (c) any event or occurrence of whatever nature which would reasonably be expected to materially and adversely affect the rights and remedies of the Lenders and the Agents under the Credit Documents.

"MBR Authority" has the meaning given in Section 4.16.3 of the Credit Agreement.

"Minimum Notice Period" means not later than 12:00 noon, New York City time (a) at least five Banking Days before the date of any issuance or funding (as applicable) of a Letter of Credit or Borrowing, or before the effective date of any continuation or conversion of a Type of LC Loan resulting in whole or in part in one or more LIBOR LC Loans, and (b) at least 1 Banking Day before any Borrowing or conversion of a Type of LC Loan resulting in whole or in part in one or more Base Rate LC Loans.

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

"Mortgage" means each of (a) the Open-End Mortgage, Assignment of Rents and Leases, Fixture Filing, Financing Statement and Security Agreement, dated as of the Closing Date, by and from PowerCo, to the Collateral Agent, and (b) the Open-End Leasehold Mortgage, Assignment of Rents and Leases, Fixture Filing, Financing Statement and Security Agreement, dated as of the Closing Date, by and from GasCo, to the Collateral Agent.

"Mortgaged Property" shall have the meaning given such term in the applicable Mortgage.

"Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA subject to the provisions of Title IV of ERISA and in respect of which any Borrower Party or any ERISA Affiliate is an "employer" as defined in Section 3(5) of ERISA.

"Net Cash Proceeds" means:

(a) in the case of any Project Document Claim, the aggregate gross cash proceeds received by any Co-Borrower or any of its Affiliates in respect of such Project Document Claim net of reasonable and customary costs and expenses actually incurred by such Co-Borrower in connection with the enforcement, negotiation, consummation, settlement, proceedings, administration or other activity related to the receipt or collection of such amount (including reasonable legal and accounting fees and expenses paid or payable as a result thereof), and net of any taxes paid (or reasonably estimated to be payable) in connection with such Project Document Claim, calculated assuming a rate of tax equal to the highest rate applicable to corporations in the State of Ohio (taking into account related deductions, losses and loss carryovers, in each case, subject to any limitations on the use thereof and attributable to the activities and operations of the Co-Borrowers) but without duplication with any applicable Permitted Tax Distributions withdrawn pursuant to the Depositary Agreement for the relevant taxable period;

(b) in the case of any Termination Payment, the aggregate gross cash proceeds received by any Co-Borrower or any of its Affiliates in respect of such Termination Payment, net of reasonable and customary costs and expenses actually incurred by such Co-Borrower in connection with the enforcement, negotiation, consummation, settlement, proceedings, administration or other activity related to the receipt or collection of such amount, and net of any taxes paid (or reasonably estimated to be payable) in connection with such Termination Payment, calculated assuming a rate of tax equal to the highest rate applicable to corporations in the State of Ohio (taking into account related deductions, losses and loss carryovers, in each case, subject to any limitations on the use thereof and attributable to the activities and operations of the Co-Borrowers) but without duplication with any applicable Permitted Tax Distributions withdrawn pursuant to the Depositary Agreement for the relevant taxable period; and

(c) in the case of any Disposition, the aggregate gross cash proceeds received by any Co-Borrower or any of its Affiliates in respect of such Disposition (including any cash payments when received in respect of promissory notes or other non-cash consideration delivered to such Co-Borrower or such Affiliate in respect thereof), net of reasonable and customary costs and expenses actually incurred by such Co-Borrower in connection with the enforcement, negotiation, consummation, settlement, proceedings, administration or other activity related to such Disposition, and net of any taxes paid (or reasonably estimated to be payable) in connection with such Disposition, calculated assuming a rate of tax equal to the highest rate applicable to corporations in the State of Ohio (taking into account related deductions, losses and loss carryovers, in each case, subject to any limitations on the use thereof and attributable to the activities and operations of the Co-Borrowers) but without duplication with any applicable Permitted Tax Distributions withdrawn pursuant to the Depositary Agreement for the relevant taxable period.

"NGA" shall mean the Natural Gas Act, 15 U.S.C. §§ 717, et seq., and FERC's implementing regulations thereunder.

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

"Non-Performance Charge" has the meaning contained in the PJM Open Access Transmission Tariff.

"Notes" means, collectively, any Construction Notes, Term Notes and LC Notes.

"Notice of Borrowing" means a request by Co-Borrowers in accordance with Section 2.1.1(b) of the Credit Agreement and substantially in the form of Exhibit C-1 thereto.

"Notice of Conversion of LC Loan Type" means a request by Co-Borrowers in accordance with Section 2.1.8 of the Credit Agreement and substantially in the form of Exhibit C-3 thereto.

"Notice of LC Activity" means a request by Co-Borrowers in accordance with Section 2.2.4 of the Credit Agreement and substantially in the form of Exhibit C-5 thereto.

"Notice of Term Conversion" means a request by Co-Borrowers in accordance with Section 2.1.2(b) of the Credit Agreement and substantially in the form of Exhibit C-2 thereto.

"O&M Agreement" has the meaning given in Section 5.27 of the Credit Agreement .

"O&M Costs" has the meaning given in the Depositary Agreement.

"Obligations" means and includes, all loans, advances, debts, liabilities, and obligations, howsoever arising, owed by Co-Borrowers to the Arranger, Administrative Agent, Depositary Agent, Collateral Agent, the LC Issuers or the Lenders of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, pursuant to the terms of the Credit Agreement or any of the other Credit Documents, including all interest, Call Premium, fees, charges, expenses, attorneys' fees and accountants fees chargeable to any Co-Borrower and payable by such Co-Borrower hereunder or thereunder.

"OFAC List" means (a) any blocked persons list, designated nationals list, denied persons list, entity list, debarred party list, unverified list, sanctions list, or other list of Persons with whom United States Persons may not conduct business, including any list published and maintained by the Office of Foreign Assets Control of the United States Department of the Treasury, the United States Department of Commerce, or the United States Department of State and (b) any list of Persons subject to general trade, economic or financial restrictions, sanctions or embargoes imposed, administered or enforced from time to time by the United Nations Security Council, the European Union, or Her Majesty's Treasury of the United Kingdom.

"Operating Cash Available for Debt Service" means, for any period, (a) Project Revenues during such period *minus* (b) the sum of (i) O&M Costs paid plus (ii) all ordinary course settlement payments payable by any Co-Borrower in respect of Permitted Commodity Hedge

Agreements plus (iii) any required deposits into the Major Maintenance Reserve Account, in each case during such period.

"Operative Documents" means, collectively, the Credit Documents, the Second Lien Credit Documents and the Project Documents.

"Operator" means EthosEnergy or General Electric International Inc. or a Subsidiary thereof or such other Person with significant experience operating combined-cycle natural gas-fired generating facilities similar to the Project reasonably acceptable to the Required Lenders.

"Optional Prepayment" has the meaning given in Section 2.1.9(b) of the Credit Agreement.

"Other Taxes" means all present or future stamp, recording or documentary taxes and any other excise or property taxes, charges or similar levies (and interest, fines, penalties and additions related thereto) (but excluding, for the avoidance of doubt, any income, branch profits or franchise taxes, or taxes imposed in lieu of such taxes) that arise from any payment made hereunder or under any other Credit Document or from the execution or delivery or otherwise with respect to this Agreement or any other Credit Document, except any such taxes that are imposed with respect to an assignment (other than an assignment made pursuant to Section 2.10) as a result of a present or former connection between the Credit Party and the jurisdiction imposing such taxes.

"Parent" means Fortress Transportation and Infrastructure Investors LLC.

"Parent Company" means, with respect to a Lender, the bank holding company (as defined in Federal Reserve Board Regulation Y), if any, of such Lender, and/or any Person owning, beneficially or of record, directly or indirectly, a majority of the shares of such Lender.

"Participant" has the meaning given in Section 9.12.1 of the Credit Agreement.

"Payment Period" means the period commencing on a Quarterly Payment Date and ending on the day prior to the next Quarterly Payment Date or, in the case of the first Quarterly Payment Date, the period commencing on the Closing Date and ending on the day prior to the first Quarterly Payment Date following the Closing Date.

"PBGC" means the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA or any successor thereto.

"PCB Consultant" means Tetra Tech, Inc. or another PCB consultant selected in accordance with Section 10.1 of the Credit Agreement.

"PCB Report" means (a) the report entitled "PCB Investigation Summary Report", dated October 5, 2018, delivered by Tetra Tech, including all exhibits, appendices and any other attachments and (b) the report entitled "PCB Sampling Summary Report", dated August 28, 2018, delivered by Tetra Tech, including all exhibits, appendices and any other attachments.

"Performance Tests" means (a) the "Performance Test" as defined in the EPC Contract and the "Performance Test(s)" as defined in the PIE Contract or (b) performance tests that are substantially equivalent to the "Performance Test" as defined in the EPC Contract and the "Performance Test(s)" as defined in the PIE Contract.

"Permit" means any and all franchises, licenses, leases, permits, approvals, consents, notifications, certifications, registrations, authorizations, exemptions, variances, qualifications, easements, rights of way, Liens and other rights, privileges and approvals required under any Governmental Rule, including any Governmental Authorizations.

"Permitted Affiliate Transactions" means (a) the Operative Documents in effect on the Closing Date entered into by any Co-Borrower with any or more of its Affiliates, and the transactions expressly contemplated thereby and Replacement Project Documents in respect thereof and the transactions expressly contemplated thereby (provided that such Replacement Project Documents are on substantially similar terms and conditions as the Project Documents they replace or are otherwise approved by the Administrative Agent), (b) transactions on terms no less favorable in the aggregate to any Co-Borrower than would be included in an arm's-length transaction entered into by a prudent Person with a non-Affiliated third party, (c) any employment, noncompetition or confidentiality agreement entered into by any Co-Borrower with any of its employees, officers or directors in the ordinary course of business, (d) the payments expressly permitted by Section 6.6.2 (other than Section 6.6.2(b)), (e) any transaction otherwise expressly permitted or contemplated by Section 6.4(g), (f) arrangement by any Affiliate of any credit support required to be provided under any Permitted Commodity Hedge Agreement so long as claims of such Affiliate arising out of such credit support are treated as equity contributions to any Co-Borrower, (g) transactions for the sale and purchase of natural gas and related services solely among the Co-Borrowers, (h) any payment to Parent or any of its Subsidiaries, at cost, for any and all services provided in connection with the Project by directors, officers, employees and consultants of Parent or any of its Subsidiaries, including the reimbursement of (i) such Person's compensation and benefits (not to exceed the pro rata share for such Person's time spent providing services in connection with the Project), (ii) reasonable out of pocket-costs and (iii) related overhead costs, in each case in the ordinary course of business, in each case such amounts do not exceed for any annual period the amount set forth in the Base Case Projections for such expenses during such period and (i) any other transaction or arrangement otherwise expressly permitted by this Agreement or another Credit Document.

"Permitted Capital Expenditures" means Capital Expenditures incurred by any Co-Borrower in accordance with Prudent Industry Practices that are (a) necessary to operate the Project in compliance with applicable Legal Requirements or (b) incurred in the ordinary course of the operation and maintenance of the Project excluding, for the avoidance of doubt, Major Maintenance.

"Permitted Commodity Hedge Agreement" means any power hedge (financial or physical), power purchase agreement, tolling agreement, capacity purchase agreement, fuel supply agreement, fuel transportation agreement, energy management agreement or other Hedging Agreement with a Permitted Commodity Hedge Counterparty on a non-speculative basis (a) to sell, purchase or hedge against fluctuations in the price of energy, natural gas, ancillary services, capacity or other commodity to which the Co-Borrowers have exposure, (b) with respect to physical sales

of energy or capacity, commit the Co-Borrowers to no more than the anticipated uncommitted available output of the Project, and (c) that are consistent with the Co-Borrowers' then-effective risk management policy; provided that the Co-Borrowers may designate any similar agreement or arrangement that does not satisfy the above criteria as a "Permitted Commodity Hedge Agreement" with the consent of the Required Lenders; provided, further, that, notwithstanding anything to the contrary herein, the Closing Date Permitted Commodity Hedge Agreements entered into in accordance with the terms of this Agreement shall be considered Permitted Commodity Hedge Agreements.

"Permitted Commodity Hedge Counterparty" means:

(a) with respect to each Closing Date Permitted Commodity Hedge Agreement, the counterparty thereto (other than the Borrower Parties) as set forth on Exhibit L as of the Closing Date;

(b) with respect to any other Permitted Commodity Hedge Agreement, any entity that: is (i) a public utility or is in the business of selling, marketing, purchasing or distributing electric energy or transporting, selling or marketing fuel, (ii) a commercial bank, investment bank, insurance company or other similar financial institution or affiliate thereof or (iii) an exchange or a regional system operator; and

(c) any entity that, solely in the case of an entity of the type described in clause (b)(i) or (ii) above that is granted a lien on the Collateral to secure the obligations of the Co-Borrowers under the relevant Permitted Commodity Hedge Agreement, either (i) has, as of the date such Permitted Commodity Hedge Agreement is entered into, a rating of at least (x) in the case of an entity of the type described in clause (b)(i) above, at least BBB- by S&P and at least Baa3 by Moody's (with a stable or positive outlook if such rating is BBB- by S&P or Baa3 by Moody's, as applicable) (or another rating acceptable to the Required Lenders) or (y) in the case of an entity of the type described in clause (b)(ii) above, at least BBB+ by S&P and at least Baa1 by Moody's (with a stable or positive outlook if such rating is BBB+ by S&P or Baa1 by Moody's, as applicable) (or another rating acceptable to the Required Lenders), in either case, for its unsecured long-term senior debt obligations (or whose obligations under such commodity agreement are guaranteed by an entity with such ratings) or (ii) has, as of the date such Permitted Commodity Hedge Agreement is entered into, posted a letter of credit, issued by an entity of the type described in clause (b)(ii) above that has a rating of at least A- by S&P and at least A3 by Moody's (or another rating acceptable to the Required Lenders), collateralizing the net mark-to-market value of all transactions under such Permitted Commodity Hedge Agreement.

"Permitted Debt" means (a) Debt or other obligations incurred under the Credit Documents, (b) to the extent otherwise constituting Debt, obligations incurred pursuant to the terms of a Project Document (but not for Debt for Borrowed Money), either not more than 90 days past due or being contested in good faith, (c) trade or other similar Debt incurred in the ordinary course of business (but not for borrowed money), either not more than 90 days past due or being contested in good faith, (d) contingent liabilities of any Co-Borrower incurred in the ordinary course of business, to the extent otherwise constituting Debt, including those relating to (i) the acquisition of goods, supplies or merchandise in the normal course of business or normal trade credit, (ii) the

endorsement of negotiable instruments received in the normal course of its business, and (iii) contingent liabilities incurred with respect to any Applicable Permit, Credit Document or Project Document, (e) Capital Lease obligations and any other Debt of any Co-Borrower (including purchase money obligations incurred by any Co-Borrower to finance the purchase price of discrete items of equipment not comprising an integral part of the Project that extend only to the equipment being financed) in an aggregate amount of secured principal not exceeding $2,500,000 at any one time outstanding, (f) obligations of any Co-Borrower in respect of surety bonds or similar instruments in an aggregate amount not exceeding $2,500,000 at any one time outstanding, (g) to the extent constituting Debt, Debt 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; provided that the Debt described in this clause (g) is extinguished within 15 Banking Days of its incurrence, (h) ordinary course indemnities under agreements that are not Operative Documents or in connection with the issuance of the Title Policy or endorsements or supplements thereto, (i) to the extent constituting Debt, obligations of any Co-Borrower under Permitted Commodity Hedge Agreements (but not, for the avoidance of doubt, Interest Rate Hedges), provided that any such obligations that are secured by any Collateral shall at all times be subject to the Intercreditor Agreement and the Liens securing such obligations shall be limited to those permitted to be incurred pursuant to clause (a) of the definition of "Permitted Liens", (j) obligations incurred under the Second Lien Credit Documents and any Permitted Second Lien Refinancing Credit Documents, in each case, subject to the Intercreditor Agreement and in an amount not to exceed the Second Lien Debt Cap (as defined in the Intercreditor Agreement), plus the amounts permitted pursuant to clause (c) of the Second Lien Cap (as defined in the Intercreditor Agreement), (k) Debt incurred under any Permitted Replacement LC Facility and (l) other unsecured Debt, not comprising Debt for borrowed money, in an amount not to exceed $2,500,000.

"Permitted Investments" has the meaning given in the Depositary Agreement.

"Permitted Liens" means:

(a) the Lien of Collateral Agent for the benefit of the Secured Parties in the Collateral as provided in the Collateral Documents, subject to the terms of the Intercreditor Agreement; and provided that the obligations secured by first priority Liens in favor of the Secured Parties shall not exceed, with respect to any class of Secured Parties, the applicable First Lien Cap (as defined in the Intercreditor Agreement) for such class of Secured Parties; it being understood and agreed the aggregate amount of obligations incurred pursuant to clause (i) of the definition of "Permitted Debt" and secured by first priority Liens on any Collateral shall in no event exceed the Hedging Cap (as defined in the Intercreditor Agreement);

(b) Liens of any Co-Borrower for any tax, assessment or other governmental charge, either not yet due or the validity or amount thereof is being contested in good faith and by appropriate proceedings and adequately reserved against on such Co-Borrower's books in accordance with GAAP;

(c) Liens for materialmen's, mechanics', workers', repairmen's, employees' or other like Liens, arising in the ordinary course of any Co-Borrower's business or in connection with the

construction, operation and maintenance of the Project, which (i) do not in the aggregate materially detract from the value of the property or assets to which they are attached or materially impair the construction or use thereof, and (ii) are either for amounts not yet due or for amounts being contested in good faith by appropriate proceedings; provided that (A) a bond or other security reasonably acceptable to Administrative Agent has been posted or provided in such manner and amount as to assure Administrative Agent that any amounts determined to be due will be promptly paid in full when such contest is determined or (B) adequate cash reserves are established in accordance with GAAP;

(d) Liens of any Co-Borrower arising out of judgments or awards so long as an appeal or proceeding for review is being prosecuted in good faith and for the payment of which adequate cash reserves are established or bonds or other security reasonably acceptable to Administrative Agent have been provided or are fully covered by insurance (other than any customary deductible);

(e) Liens, deposits or pledges of any Co-Borrower to secure statutory obligations or performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, or for purposes of like general nature in the ordinary course of its business, with any such Lien to be released as promptly as practicable;

(f) involuntary Liens as contemplated by the Credit Documents, the Second Lien Credit Documents, the Permitted Second Lien Refinancing Credit Documents and the Major Project Documents securing a charge or obligation on any Co-Borrower's property, either real or personal, whether now or hereafter owned in the aggregate sum of less than $1,000,000 at any one time outstanding;

(g) Liens in connection with or evidenced by Permitted Debt described in clause (e) in the definition thereof;

(h) all exceptions disclosed in Schedule B of the Title Policy on the Closing Date;

(i) Easements, rights-of-way, restrictions (including zoning restrictions), trackage rights, defects or irregularities in title, restrictions on use of real property and other similar non-monetary encumbrances or liens, in each case that, in the aggregate, do not detract in any material respect from the value or use of the property encumbered thereby in connection with the Project;

(j) any interest or title of a lessor under any lease of real estate permitted hereunder and covering only the assets leased;

(k) any zoning, building and land use or similar Legal Requirement arising in the ordinary course of business;

(l) Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

(m) Liens not otherwise permitted hereunder so long as the aggregate outstanding principal amount of the obligations secured thereby does not exceed $2,000,000 at any one time;

provided that the Liens incurred pursued to this clause (m) shall rank junior in priority to the Liens securing the Obligations hereunder;

(n) Liens of any Co-Borrower arising by virtue of any statutory or common law provision relating to bankers' liens, rights of set-off or similar rights arising in the ordinary course of business;

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

(p) Liens, pledges or deposits under worker's compensation, unemployment insurance or other social security legislation (other than ERISA);

(q) extensions, renewals and replacements of any of the foregoing or following Liens to the extent and for so long as the Debt or other obligations secured thereby remain outstanding; provided that the Liens incurred pursued to this clause (q) shall rank no more senior in priority than the Liens which they are extending, renewing or replacing;

(r) second priority Liens on the Collateral pursuant to the terms of the Second Lien Collateral Documents and the Permitted Second Lien Refinancing Collateral Documents securing any Co-Borrower's Second Lien Secured Obligations (as defined in the Intercreditor Agreement) permitted to be incurred pursuant to clause (j) of the definition of "Permitted Debt", which second priority Liens shall in each case be subject to the terms of the Intercreditor Agreement;

(s) Liens or pledges of deposits of cash securing deductibles, self-insurance, co-payment, co-insurance, retentions or similar obligations to providers of property, casualty or liability insurance in the ordinary course of business;

(t) solely with respect to the Hydrocarbon Interests, all lessors' royalties (and Liens to secure the payment thereof), overriding royalties, net profits interests, carried interests, production payments, reversionary interests and other burdens on or deductions from the proceeds of production with respect to the Production Project Site (in each case) that do not operate to materially reduce the net revenue interest for the Hydrocarbon Interests (if any) in the aggregate, as reflected in any Mortgage or the most recently delivered Reserve Report or materially increase the working interest for such Hydrocarbon Interest (if any) in the aggregate, as reflected in any Mortgage or the most recently delivered Reserve Report without a corresponding increase in the corresponding net revenue interest;

(u) solely with respect to the Hydrocarbon Interests, Liens under the Joint Development Agreement and the Joint Operating Agreement (but not arising out of any default or breach by GasCo thereunder), under any gas leases, farm-out agreements, production sales contracts, division orders, contracts for sale, operating agreements, area of mutual interest agreements, production handling agreements, joint venture agreements, gas partnership agreements, unitization and pooling declarations and agreements, transportation agreements, marketing agreements, processing agreements, development agreements, gas balancing or deferred production agreements,

injection, repressuring and recycling agreements, salt water or other disposal agreements, seismic or other geophysical permits or agreements in each case to the extent the same (i) are ordinary and customary to the oil, gas and other mineral exploration, development, processing or extraction business, (ii) do not otherwise cause any other express representation or warranty of any Borrower Party in any of the Credit Documents to be untrue, (iii) do not operate to materially reduce the net revenue interest for such Hydrocarbon Interests (if any) in the aggregate, as reflected in any Mortgage or the most recently delivered Reserve Report, or materially increase the working interest for such Hydrocarbon Interests (if any) in the aggregate, as reflected in any Mortgage or the most recently delivered Reserve Report without a corresponding increase in the corresponding net revenue interest, and (iv) secure obligations that are not delinquent and do not in any case materially detract from the value of the Hydrocarbon Interests subject thereto; provided that any Liens created by the Joint Development Agreement and the Joint Operating Agreement as in effect on the Closing Date (or in agreed form shared with the Lenders) (but not arising out of any default or breach by GasCo thereunder) shall be considered "Permitted Liens" irrespective of compliance with clauses (i) through (iv) hereof;

(v) Liens for property Taxes on property that either Co-Borrowers or any of the Subsidiaries has determined to abandon (so long as such abandonment is not prohibited by this Agreement or any of the other Credit Documents), if the sole recourse for such Tax is to such property; and

(w) Liens securing Permitted Debt pursuant to clause (k) of the definition of "Permitted Debt," which such Liens may be incurred on a *pari passu* basis with the Obligations subject to secured parties thereof entering into the Intercreditor Agreement.

"Permitted Replacement LC Facility" means a letter of credit facility and Debt incurred by the Co-Borrowers thereunder in replacement of the LC Facility under this Agreement or of any then-existing Permitted Replacement LC Facility, in each case that the Co-Borrowers are permitted under each of the Credit Documents to be secured by (and that is secured by) the Collateral on a *pari passu* basis with the Obligations, and for which, on the date of execution and incurrence thereof, the following conditions are satisfied or waived by the Required Lenders:

(a) the maximum principal amount of the Debt under such replacement letter of credit facility does not exceed (x) during the LC Availability Period, the amount by which the Total LC Issuer Commitment has been reduced pursuant to Section 2.5.2(b) and (y) after the LC Availability Period, $130,000,000;

(b) no Inchoate Default or Event of Default shall have occurred and be continuing and no Inchoate Default or Event of Default shall result from the execution of such replacement letter of credit facility or the incurrence of such Debt thereunder;

(c) concurrently with execution of such replacement letter of credit facility and the incurrence of such Debt thereunder, the Co-Borrowers shall cancel the unfunded commitments of the Refinanced Debt and no other Obligations

(other than contingent indemnity obligations) or commitments with respect to the Refinanced Debt shall otherwise be outstanding;

(d) such replacement letter of credit facility shall be documented pursuant to this Agreement or pursuant to a letter of credit reimbursement agreement in form and substance reasonably satisfactory to the Administrative Agent; *provided* that any lenders and issuing banks thereunder (or an agent on their behalf) shall have executed and delivered to the Administrative Agent and the Collateral Agent a joinder to the Intercreditor Agreement (substantially in the form attached thereto) pursuant to which, among other things, such Person(s) shall have agreed to be bound by the provisions thereof; and

(e) the Administrative Agent shall have received a certificate from Responsible Officer of each Co-Borrower at least 10 Banking Days prior to the execution of such replacement letter of credit Facility, substantially in the form set out in Exhibit S, which certificate shall: (i) provide such information and calculations that are relevant for establishing compliance with clause (a) above; and (ii) certify as to compliance with clauses (a) through (d) above;

provided that letters of credit under any Permitted Replacement LC Facility may be issued solely in support of any Co-Borrower's collateral posting obligations under any Permitted Commodity Hedge Agreements.

"Permitted Second Lien Refinancing Collateral Documents" means all security documents under (and as defined in) the Permitted Second Lien Refinancing Credit Agreement and all other security agreements, pledge agreements, collateral assignments, mortgages (including, without limitation, amended and restated mortgages), depositary agreements, collateral agency agreements, control agreements, deeds of trust or other grants or transfers for security executed and delivered by any obligor creating or perfecting (or purporting to create or perfect) a second lien upon Collateral for the benefit of the Second Lien Secured Parties (as defined in the Intercreditor Agreement), in each case, as amended, amended and restated, supplemented, renewed, extended, replaced, refinanced or otherwise modified, in whole or in part, from time to time, in accordance with its terms, the terms of the Credit Documents and the Intercreditor Agreement.

"Permitted Second Lien Refinancing Credit Agreement" means any credit agreement, loan agreement, indenture or similar instrument evidencing any of the Permitted Second Lien Refinancing Debt.

"Permitted Second Lien Refinancing Credit Documents" means collectively, any agreement, certificate, document or instrument governing, securing or evidencing any of the Permitted Second Lien Refinancing Debt and/or constituting a "Credit Document" under (and as defined in) the Permitted Second Lien Refinancing Credit Agreement, including, without limitation, the Permitted Second Lien Refinancing Collateral Documents.

"Permitted Second Lien Refinancing Debt" means Debt issued, incurred or otherwise obtained (including by means of the extension or renewal of Debt) in exchange for, or

to extend, modify, renew, replace, defease, refund or refinance, in whole or part, existing Debt under the Second Lien Facility (including any successive Permitted Second Lien Refinancing Debt) ("Second Lien Refinanced Debt"); provided that:

(a) the principal amount (or accreted value, if applicable) of such Permitted Second Lien Refinancing Debt does not exceed the principal amount (or accreted value, if applicable) of the Second Lien Refinanced Debt, plus accrued and unpaid interest thereon, and reasonable and customary fees, costs and expenses, commissions or underwriting discounts and premiums incurred in connection therewith;

(b) such Permitted Second Lien Refinancing Debt (i) does not have a maturity date or require commitment reductions prior to the maturity date of the Second Lien Refinanced Debt and (ii) does not have any mandatory prepayment features (other than customary asset sale events, insurance and condemnation proceeds events, change of control offers or events of default and excess cash flow and indebtedness sweeps substantially the same (and in any event no less favorable to the Borrower Parties) as the Debt being replaced), in each case described in this subclause (ii), prior to the date on which any mandatory prepayment would be due under the Second Lien Refinanced Debt;

(c) the average life to maturity of such Permitted Second Lien Refinancing Debt is greater than or equal to that of the Second Lien Refinanced Debt;

(d) such Permitted Second Lien Refinancing Debt does not have any obligors that are not (or would not have been) obligated with respect to the Second Lien Refinanced Debt, or greater guarantees or security, than the Second Lien Refinanced Debt;

(e) such Permitted Second Lien Refinancing Debt does not have terms and conditions that are, taken as a whole, materially more restrictive to the Borrower Parties, or materially more favorable to holders of such Permitted Second Lien Refinancing Debt, than those of the relevant Second Lien Refinanced Debt;

(f) the holders of the Permitted Second Lien Refinancing Debt (or an agent on their behalf) shall have duly executed and delivered to the Administrative Agent and the Collateral Agent a joinder to the Intercreditor Agreement substantially in the form attached thereto, pursuant to which, among other things, such Person(s) shall have agreed to be bound by the Intercreditor Agreement; and

(g) the relevant Second Lien Refinanced Debt shall have been repaid, satisfied and discharged in full on the date such Permitted Second Lien Refinancing Debt is issued, incurred or obtained, all commitments thereunder shall have been terminated and all guarantees, liens and security interests in connection with such Second Lien Refinanced Debt shall have been released, satisfied and discharged in full.

"Permitted Second Lien Refinancing Facility" means the credit facility, notes or other instrument under which Permitted Second Lien Refinancing Debt is issued, incurred or otherwise obtained.

"Permitted Tax Distributions" has the meaning given in the Depositary Agreement.

"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, including any series of any limited liability company and Governmental Authorities.

"Petroleum Engineer" means Wright & Company, Inc. or such other independent petroleum engineers of recognized national standing as may be selected by Co-Borrowers with the prior written consent of the Administrative Agent as directed in writing by the Required Lenders (such consent not to be unreasonably withheld, conditioned or delayed).

"PIE Contract" means the Agreement for the Purchase and Sale of Power Generation Equipment and Related Services, dated as of February 15, 2019, by and between PowerCo and General Electric Company.

"PIE Contractor" means General Electric Company, a New York corporation.

"PJM" means PJM Interconnection, L.L.C., a Delaware limited liability company, and any successor thereto.

"PJM Base Residual Auction" has the meaning contained in the PJM Open Access Transmission Tariff.

"PJM Open Access Transmission Tariff" means the open access transmission tariff of PJM, as accepted for filing by FERC under Section 205 of the FPA, in effect during the term of the Agreement.

"Plan" means any employee pension benefit plan other than a Multiemployer Plan subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA and in respect of which any Borrower Party or any ERISA Affiliate is (or if such plan were terminated any Borrower Party would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Platform" has the meaning given in Section 11.24.2 of the Credit Agreement.

"Pledged Equity" has the meaning given in the Guaranty and Security Agreement.

"PowerCo" has the meaning given in the preamble hereto.

"PowerCo's FERC Electric Tariff" means the electric tariff filed with FERC by PowerCo setting forth the rights and obligations of PowerCo with respect to its authority to make FERC-jurisdictional wholesale sales of electric energy, capacity or ancillary services at market-based rates.

"Principal Repayment Date" means (a) each Quarterly Payment Date occurring on and after the last day of the first full quarter after the Term Conversion Date, and (b) the Final Maturity Date.

"Production Project" means all rights, title and interest to the undivided 40% interest in the approximately 20,000 acres of Hydrocarbon Interests in and around Hannibal, Ohio and associated development, production and drilling rights.

"Production Project Site" has the meaning given to the term "Site" in the Mortgage executed and delivered by GasCo.

"Production Shortfall" has the meaning given in Section 5.25.2 of the Credit Agreement.

"Project" means, collectively the Generating Project and the Production Project.

"Project Costs" means the following costs and expenses incurred or to be incurred on or prior to Final Completion in connection with the ownership, acquisition, development, design, engineering, procurement, construction, installation, equipping, assembly, inspection, testing, completion, start-up, operation and financing of the Project, in accordance with (and to the extent provided in) the Construction Budget (without duplication):

(a) all amounts payable under the EPC Contract, the PIE Contract, the Joint Development Agreement and the other Project Documents (including any reserves established for the payment of Remaining Costs pursuant to the Depositary Agreement), any contractor bonuses, site leasing and preparation costs, any interconnection and transmission upgrade costs payable by any Co-Borrower, costs related to acquisition, development and construction of facilities for the receipt of natural gas, water and other inputs to, and to transport or deliver electricity and other outputs from, the Project, and all other amounts payable under the Project Documents prior to Final Completion, including the contingency provided for in the Construction Budget and amounts payable in order to complete the Punch List;

(b) financing, advisory, legal, accounting and other fees;

(c) all other Project-related costs, including fuel-related costs and prepaid fuel costs, any development costs, management services fees and expenses and costs and expenses to complete the construction and financing of the Project;

(d) contingency funds, required reserves, start-up costs and initial working capital costs;

(e) property and sales taxes due in respect of the Project;

(f) O&M Costs incurred prior to the Term Conversion Date;

(g) payments and fees under the Permitted Commodity Hedge Agreements (other than Termination Payments under the Permitted Commodity Hedge Agreements);

(h) payments to PJM;

(i) costs and expenses incurred with the negotiation and preparation of the Operative Documents and the formation of any Co-Borrower; and

(j) interest (including interest during construction), fees and other amounts payable under the Credit Documents;

provided that Project Costs consisting of drilling Capital Expenditures in respect of the Production Project shall in no event exceed $125,000,000 (exclusive of any funds from the Contingent Equity Account used for such purposes) in the aggregate prior to the Term Conversion Date. For the avoidance of doubt, for purposes of determining the uses of Construction Loans only, Project Costs shall include (i) reimbursement by any Co-Borrower of any Drawstop Equity Contributions made pursuant to clause (b) of the definition thereof (and not previously reimbursed), and (ii) any uses of Construction Loans described in Section 3.3.12 in connection with Term Conversion.

"Project Document Claim" means any payment under any Project Document in respect of liquidated damages for performance or performance guarantees, but excluding all delay-related liquidated damages.

"Project Document Modification" has the meaning given in Section 6.12 of the Credit Agreement.

"Project Document Termination Payment" means any termination payment paid for the benefit of a Borrower Party under a Project Document other than a Permitted Commodity Hedge Agreement.

"Project Documents" means, without duplication, the Major Project Documents and each other agreement related to the development, construction, operation, maintenance, management, administration, ownership or use of the Project, the sale of power therefrom, the provision of gas, electricity and other services thereto and Real Property rights and interests relating to the Project, in each case, entered into by, or assigned to, any Co-Borrower.

"Project Revenues" has the meaning given in the Depositary Agreement.

"Project Schedule" means a schedule setting forth the expected schedule and milestones for construction of the Project through Final Completion delivered to the Lenders on the Closing Date pursuant to Section 3.1.23 of the Credit Agreement.

"Proportionate Share" means the percentage participation of a Lender, an LC Participant or an LC Issuer at any time in the Total Construction Loan Commitment, the Total Term Loan Commitment, the Total LC Commitment or the Total LC Issuer Commitment, respectively,

as set forth on Exhibit H to the Credit Agreement (as such Exhibit may be amended pursuant to Article 9 of the Credit Agreement). Upon any transfer by a Lender, an LC Participant or an LC Issuer of all or part of its Commitments, Administrative Agent shall revise Exhibit H to reflect the Lenders', the LC Participants' or the LC Issuers' applicable Proportionate Shares after giving effect to such transfer. For the avoidance of doubt, after all Commitments have been terminated and the Obligations paid in full, each Lender's, each LC Participant's and each LC Issuer's Proportionate Share shall be determined as of the time immediately prior to such Commitments having been terminated or the date prior to the Obligations being paid in full.

"Proved Reserves" means those Gas Properties designated as proved (in accordance with the definitions for "Gas Reserves" approved by the Board of Directors of the Society of Petroleum Engineers, Inc. from time to time) in the Reserve Report most recently delivered to the Administrative Agent pursuant to this Agreement.

"Prudent Industry Practices" means those practices, methods, equipment, specifications and standards of safety and performance, as the same may change from time to time, as are commonly used by independent operators of natural gas-fired electric generation stations in Ohio of a type and size similar to the Project as good, safe and prudent engineering practices in connection with the operation, maintenance, repair and use of gas turbines, electrical generators and electrical and other equipment, facilities and improvements of such electrical station, with commensurate standards of safety, performance, dependability, efficiency and economy. "Prudent Industry Practices" does not necessarily mean one particular practice, method, equipment specification or standard in all cases, but is instead intended to encompass a broad range of acceptable practices, methods, equipment specifications and standards.

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

"PUHCA" means the Public Utility Holding Company Act of 2005.

"Punch List" has the meaning given in the EPC Contract.

"Quarterly Payment Date" means the last Banking Day of each March, June, September and December.

"Rate Margin" means the applicable rate set forth below:

	LIBOR LC Loan	**Base Rate LC Loan**
From Closing Date until the LC Maturity Date	3.50%	2.50%

"Real Property" means other than Hydrocarbon Interests (which are expressly excluded from the scope of this definition) all right, title and interest of any Co-Borrower in and to any and all parcels of real property (including the Site) owned, leased or operated by such Co-Borrower together with all of such Co-Borrower's interests in all improvements and appurtenant

fixtures, equipment, personal property, easements and other property and rights incidental to the ownership, lease or operation thereof.

"Receivables" has the meaning given in the Guaranty and Security Agreement.

"Refinanced Debt" means the Debt under the LC Facility under this Agreement or the Debt under any existing Permitted Replacement LC Facility that is repaid or prepaid concurrently with the execution of a Permitted Replacement LC Facility.

"Register" has the meaning given in Section 2.1.10 of the Credit Agreement.

"Regulation D" means Regulation D of the Board of Governors of the Federal Reserve System (or any successor).

"Rejection Notice" has the meaning given in Section 2.1.9(c)(ii) of the Credit Agreement.

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

"Release" means any release, spill, emission, leaking, emptying, seeping, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Substance into the Environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Substance), including the movement of any Hazardous Substance through the air, soil, surface water or groundwater.

"Relevant Governmental Sponsor" means any central bank, reserve bank, monetary authority, or similar institution (including any committee or working group sponsored thereby) which shall have selected, endorsed, or recommended a replacement rate, including relevant additional spreads or other adjustments, for LIBO Rate.

"Remaining Costs" has the meaning given in the Depositary Agreement.

"Replacement Obligor" means a Person reasonably acceptable to the Required Lenders; provided that in each case, on the date the applicable Replacement Project Document is entered into, such Person enters into either (i) a consent substantially in the form of the Consent relating to the Major Project Document being replaced or (ii) a Consent.

"Replacement Project Document" means any Project Document entered into by any Co-Borrower with a Replacement Obligor in replacement of a Major Project Document in form and substance reasonably satisfactory to the Required Lenders.

"Reportable Event" means any of the events set forth in Section 4043(b) or (c) of ERISA for which the 30-day notice period to the PBGC has not been waived.

"Required Class Lenders" means, at any time, (a) with respect to the Construction Facility, Construction Lenders holding more than 50% of the sum of (i) the aggregate principal amount of the Construction Loans outstanding, (ii) the aggregate amount of Unutilized Construction Loan Commitments and (iii) Interest Expense related to any of the foregoing, (b) with respect to the Term Facility, Term Lenders holding more than 50% of the sum of (i) the aggregate principal amount of the Term Loans outstanding and (ii) Interest Expense related to the foregoing, and (c) with respect to the LC Facility, LC Participants holding more than 50% of the sum of (i) the aggregate principal amount of the LC Loans outstanding, (ii) the LC Participants' participations in the aggregate Available Amount of all Letters of Credit issued under the LC Facility and outstanding at such time, (iii) the aggregate amount of Unutilized LC Commitments and (iv) Interest Expense related to any of the foregoing. The Loans, Available Amounts and Unutilized Commitments of any Defaulting Lender or any Affiliate of any Borrower Party shall be disregarded in determining Required Class Lenders at any time.

"Required Lenders" means, at any time, Lenders and LC Participants (but not the LC Issuers) holding more than 50% of the sum of (a) the aggregate principal amount of the Loans outstanding, (b) the LC Participants' participations in the aggregate Available Amount of all Letters of Credit issued under the LC Facility and outstanding at such time, (c) the aggregate amount of Unutilized Commitments and (d) Interest Expense related to any of the foregoing. The Loans, Available Amounts and Unutilized Commitments of any Defaulting Lender or any Affiliate of any Borrower Party shall be disregarded in determining Required Lenders at any time.

"Required Target Debt Balance Payment" has the meaning given to the term "Required First Lien Target Debt Balance Payment" in the Depositary Agreement.

"Reserve Report" means (a) the "Review and analysis of Ohio GasCo acreage," dated October 3, 2018, prepared by LP Consulting, LLC and (b) the "Revised Summary Report: Evaluation of Reserves and Resource Potential From the Utica Shale to the Interests of Ohio River Partners Shareholder LLC in Certain Properties Located in Monroe and Washington Counties, Ohio Utilizing Specified Economics," effective October 1, 2018, prepared by the Petroleum Engineer, as updated by any update to the foregoing report prepared by the Petroleum Engineer, regarding the Proved Reserves attributable to the Gas Properties of Co-Borrowers, reasonably satisfactory to the Administrative Agent in both format and content.

"Responsible Officer" has the meaning given in the Depositary Agreement.

"Restricted Payment" has the meaning given in the Depositary Agreement.

"Restricted Payment Conditions" has the meaning given in Section 6.6.1 of the Credit Agreement.

"Revenue Account" has the meaning given in the Depositary Agreement.

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

"Sanctioned Country" means, at any time, a country or territory which is, or whose government is, the subject or target of any Sanctions broadly restricting or prohibiting dealings with such country, territory or government (currently, Cuba, Iran, North Korea, Syria, and the Crimea region of Ukraine).

"Sanctioned Person" means, at any time, any Person with whom dealings are restricted or prohibited under Sanctions, including (a) any Person listed in any Sanctions-related list of designated Persons maintained by the United States (including by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or the U.S. Department of Commerce), the United Nations Security Council, the European Union or any of its member states, Her Majesty's Treasury or Switzerland, (b) any Person located, organized or resident in, or any Governmental Authority or governmental instrumentality of, a Sanctioned Country or (c) any Person 50% or more directly or indirectly owned by, controlled by, or acting for the benefit or on behalf of, any Person described in clauses (a) or (b) hereof.

"Sanctions" means economic or financial sanctions or trade embargoes or restrictive measures enacted, imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or the U.S. Department of Commerce (b) the United Nations Security Council; (c) the European Union or any of its member states; (d) Her Majesty's Treasury; or (e) Switzerland;.

"Scheduled Final Maturity Date" means December 31, 2027.

"Second Lien Collateral Documents" has the meaning given to the term "Collateral Documents" in the Second Lien Credit Agreement.

"Second Lien Credit Agreement" means that certain Second Lien Credit Agreement, dated as of the Closing Date, among Holdings, Co-Borrowers, Cortland Capital Market Services LLC, as second lien administrative agent, the lenders and the other parties listed on the signature pages thereto.

"Second Lien Credit Documents" means has the meaning given to the term "Credit Documents" in the Second Lien Credit Agreement.

"Second Lien Debt Sizing Criteria" has the meaning given to the term "Debt Sizing Criteria" in the Second Lien Credit Agreement.

"Second Lien Facility" has the meaning given in the recitals hereto.

"Second Lien Loan Commitments" has the meaning given to the term "Commitments" in the Second Lien Credit Agreement.

"Second Lien Loan Proceeds Account" has the meaning given in the Depositary Agreement.

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

"Secured Parties" has the meaning assigned to the term "First Lien Secured Parties" in the Intercreditor Agreement.

"Securities" means any stock, shares, partnership interests, limited liability company interests, voting trust certificates, certificates of interest or participation in any profit sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

"Site" means the Generating Project Site.

"SPC" has the meaning given in Section 9.12.2 of the Credit Agreement.

"Specified Event of Default" has the meaning given in Section 2.2.5 of the Credit Agreement.

"Stated Amount" means with respect to any Letter of Credit, the total amount available to be drawn thereunder at the time in question in accordance with the terms of such Letter of Credit (regardless of whether any conditions for drawing could be met at such time).

"Statutory Reserve Rate" means, for any Interest Period for any LIBOR LC Loan Borrowing, a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the arithmetic mean, taken over each day in such Interest Period, of the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Federal Reserve Board for eurocurrency funding (referred to as "Eurodollar liabilities" in Regulation D of the Federal Reserve Board as of the Closing Date). Such reserve percentages shall include those imposed pursuant to such Regulation D. LIBOR LC Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Subject Claims" has the meaning given in Section 11.14 of the Credit Agreement.

"Subordination Agreement" means the Subordination Agreement, dated as of the Closing Date, by and between Triad Hunter, LLC and GasCo, for the benefit of the Collateral Agent and The Bank of New York Mellon, as the second lien collateral agent.

"Subsidiary" means, as to any Person, a corporation, partnership, limited liability company or other entity of which such Person: (a) owns 50% or more of the shares of stock or other

ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers, or similar governing body, of such corporation, partnership, limited liability company or other entity and/or (b) controls the management, directly or indirectly through one or more intermediaries.

"Substantial Completion" means the achievement of "Substantial Completion" as defined in each of the EPC Contract and PIE Contract.

"Switching Station Agreement" means the Supplemental Agreement Relating to the Hannibal Switching Station and Switching Station Site, dated as of February 11, 2019, by and between PowerCo, Ohio River Partners Shareholder LLC and AEP Ohio Transmission Company, Inc.

"Target Debt Balance" means, with respect to each Principal Repayment Date, the amount set forth on Exhibit I with respect to such date, as such Exhibit I is updated from time to time in accordance with Section 2.1.9(a)(iii) of the Credit Agreement.

"Taxes" has the meaning given in Section 2.6.4(a) of the Credit Agreement.

"Term Conversion" means satisfaction or waiver in writing of the conditions set forth in Section 3.3 of the Credit Agreement causing the automatic conversion of the Construction Loans to Term Loans.

"Term Conversion Date" means the date on which Term Conversion occurs.

"Term Facility" means the Term Loan Commitments and the Term Loans made thereunder.

"Term Lender" means a Lender with a Term Loan Commitment or with outstanding Term Loans.

"Term Loan" has the meaning given in Section 2.1.2(a) of the Credit Agreement.

"Term Loan Commitment" means, at any time with respect to each Lender, such Lender's Proportionate Share of the Total Term Loan Commitment at such time.

"Term Note" has the meaning given in Section 2.1.6 of the Credit Agreement.

"Termination Payment" has the meaning given in the Intercreditor Agreement.

"Title Event" has the meaning assigned to such term in the Depositary Agreement.

"Title Insurer" means Chicago Title Insurance Company.

"Title Policy" has the meaning given in Section 3.1.16 of the Credit Agreement.

"Total Construction Loan Commitment" has the meaning given in Section 2.5.1(a) of the Credit Agreement.

"Total LC Commitment" has the meaning given in Section 2.2.1(a) of the Credit Agreement.

"Total LC Exposure" means, at any time the sum of (a) the aggregate principal amount of all LC Loans made in respect of Letters of Credit outstanding at such time and (b) the Stated Amount of all Letters of Credit outstanding at such time.

"Total LC Issuer Commitment" has the meaning given in Section 2.2.1(b) of the Credit Agreement.

"Total Term Loan Commitment" has the meaning given in Section 2.5.1(b) of the Credit Agreement.

"Transmission Consultant" means Leidos Engineering, LLC or another transmission consultant selected in accordance with Section 10.1 of the Credit Agreement.

"Transmission Consultant Report" means the report entitled "Independent Transmission Assessment – Long Ridge Energy Terminal PJM Interconnection", dated October 29, 2018, delivered by the Transmission Consultant, including all exhibits, appendices and any other attachments.

"Treasury" means the U.S. Department of the Treasury.

"Type" when used in reference to any LC Loan or Borrowing, refers to whether the rate of interest on such LC Loan, or on the LC Loans constituting such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Base Rate.

"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 mandatory 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 Collateral 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 applicable Credit Document and any filing statement relating to such perfection or effect of perfection or non-perfection.

"Unforced Capacity" has the meaning contained in the PJM Open Access Transmission Tariff.

"Unsatisfied Condition" means a condition in a Permit that has not been satisfied and that either (a) must be satisfied before such Permit can become effective, (b) must be satisfied as of the date on which a representation is made or a condition precedent must be satisfied under the Credit Agreement, or (c) must be satisfied as of a future date but with respect to which facts or

circumstances exist which, to any Co-Borrower's Knowledge, would reasonably be expected to result in a failure to satisfy such Permit condition.

"Unutilized Commitments" means the Unutilized Construction Loan Commitments and the Unutilized LC Commitments.

"Unutilized Construction Loan Commitment" means (a) the Total Construction Loan Commitment *minus* the aggregate principal amount of outstanding Construction Loans or (b) when used with respect to an individual Construction Lender, such Construction Lender's Construction Loan Commitment *minus* such Construction Lender's Proportionate Share of outstanding Construction Loans.

"Unutilized LC Commitment" means (a) the aggregate amount of the Total LC Commitment *minus* the Total LC Exposure or (b) when used with respect to an individual LC Participant, such LC Participant's LC Commitment *minus* such LC Participant's LC Exposure.

"Water Line Easement and Operating Agreement" means that certain Easement and Operating Agreement, dated as of February 12, 2019, between Ohio River Partners Shareholder LLC and PowerCo.

"Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part 1 of Subtitle E of Title IV of ERISA.

"Write-Down and Conversion Powers" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

RULES OF INTERPRETATION

1. The singular includes the plural and the plural includes the singular.

2. The word “or” is not exclusive.

3. A reference to a Governmental Rule (except as otherwise provided in this Agreement) includes any amendment or modification to such Governmental Rule, and all regulations, rulings and other Governmental Rules promulgated under such Governmental Rule.

4. A reference to a Person includes its permitted successors, permitted replacements and permitted assigns.

5. Accounting terms have the meanings assigned to them by GAAP, as applied by the accounting entity to which they refer.

6. The words “include”, “includes” and “including” are not limiting.

7. A reference in a document to an Article, Section, Exhibit, Schedule, Annex or Appendix is to the Article, Section, Exhibit, Schedule, Annex or Appendix of such document unless otherwise indicated. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed incorporated by reference in such document. In the event of any conflict between the provisions of the Credit Agreement (exclusive of the Exhibits, Schedules, Annexes and Appendices thereto) and any Exhibit, Schedule, Annex or Appendix thereto, the provisions of the Credit Agreement shall control.

8. Unless otherwise expressly provided, references to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, amended and restated, modified and supplemented from time to time and in effect at any given time.

9. Unless otherwise specified, all references herein to times of day (including references to “close of business”) shall be references to Eastern time (daylight or standard, as applicable).

10. The words “hereof”, “herein” and “hereunder” and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.

11. References to “days” shall mean calendar days, unless the term “Banking Days” shall be used. References to a time of day shall mean such time in New York, New York, unless otherwise specified.

12. If, at any time after the Closing Date, Moody’s or S&P shall change its respective system of classifications, then any Moody’s or S&P “rating” referred to herein shall be considered

to be at or above a specified level if it is at or above the new rating which most closely corresponds to the specified level under the old rating system.

13. The Credit Documents are the result of negotiations between, and have been reviewed by each Co-Borrower, each Borrower Party party to any such Credit Document, Administrative Agent, the Arranger, each Lender and their respective counsel. Accordingly, the Credit Documents shall be deemed to be the product of all parties thereto, and no ambiguity shall be construed in favor of or against any Co-Borrower, any Borrower Party party to any such Credit Document, Administrative Agent or any Lender solely as a result of any such party having drafted or proposed the ambiguous provision.

Exhibit 10.20

Execution Version

SECOND LIEN CREDIT AGREEMENT

dated as of February 15, 2019

among

OHIO RIVER PP HOLDCO LLC,
as Holdings,

LONG RIDGE ENERGY GENERATION LLC and **OHIO GASCO LLC,**
as Co-Borrowers,

THE LENDERS PARTY HERETO FROM TIME TO TIME

and

CORTLAND CAPITAL MARKET SERVICES LLC,
as Administrative Agent,

AMP CAPITAL INVESTORS LIMITED,
as Arranger

$143,000,000 Senior Secured Second Lien Credit Facilities

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This SECOND LIEN CREDIT AGREEMENT, dated as of February 15, 2019 (this "Agreement"), is entered into among OHIO RIVER PP HOLDCO LLC, a Delaware limited liability company ("Holdings"), LONG RIDGE ENERGY GENERATION LLC (formerly known as Ohio PowerCo LLC), a Delaware limited liability company ("PowerCo"), OHIO GASCO LLC, a Delaware limited liability company ("GasCo" and, together with PowerCo, the "Co-Borrowers"), THE LENDERS PARTY HERETO FROM TIME TO TIME and CORTLAND CAPITAL MARKET SERVICES LLC, as administrative agent for the Lenders referred to herein (together with its successors and permitted assigns in such capacity, "Administrative Agent"), with AMP CAPITAL INVESTORS LIMITED ("AMP Capital"), as lead arranger and lead bookrunner (in such capacities, "Arranger").

RECITALS

A. Capitalized terms used in these recitals and not otherwise defined shall have the respective meanings set forth for such terms in Exhibit A.

B. The Lenders have severally but not jointly agreed to extend a second lien term loan credit facility to the Co-Borrowers in an aggregate principal amount not to exceed the Total Construction Loan Commitment or the Total Term Loan Commitment, as applicable.

C. The Co-Borrowers will incur First Lien Loans and First Lien LC Commitments pursuant to the First Lien Credit Documents on the Closing Date in an aggregate principal amount, excluding any interest accrued and capitalized per the terms of such First Lien Credit Documents, of up to $445,000,000 and $154,000,000, respectively (collectively, the "First Lien Facilities").

D. The proceeds of the Loans hereunder will be used, together with the proceeds of the First Lien Loans, to fund the Project Costs.

AGREEMENT

In consideration of the agreements herein and in the other Credit Documents and in reliance upon the representations and warranties set forth herein and therein, the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

1.1 DEFINITIONS. Except as otherwise expressly provided, capitalized terms used in this Agreement (including its exhibits and schedules) shall have the meanings given to such terms in Exhibit A.

1.2 RULES OF INTERPRETATION. Except as otherwise expressly provided herein or therein, the rules of interpretation set forth in Exhibit A shall apply to this Agreement.

ARTICLE 2
THE CREDIT FACILITIES

2.1 LOAN FACILITIES.

2.1.1 *Construction Loan Facility.*

(a) Availability. Subject to the terms and conditions set forth in this Agreement and in reliance upon the representations and warranties of Borrower Parties set forth herein, each Construction Lender severally, but not jointly, agrees to advance to Co-Borrowers from time to time during the Construction Availability Period such loans as Co-Borrowers may request pursuant to this Section 2.1.1 (individually, a "Construction Loan" and, collectively, the "Construction Loans"), in an aggregate principal amount which, when added to the aggregate principal amount of all prior Construction Loans made by such Lender under this Agreement, does not exceed such Lender's Construction Loan Commitment.

(b) Notice of Borrowing. Co-Borrowers shall request Construction Loans by delivering to Administrative Agent a Notice of Borrowing, which contains or specifies, among other things:

i. the aggregate principal amount of the requested Construction Loan, which shall be in the minimum amount of $5,000,000 or, if the remaining Construction Loan Commitments are less than $5,000,000, such remaining amount;

ii. the proposed date of the requested Construction Loan (which shall be a Banking Day);

iii. the account into which the proceeds of the Construction Loan will be deposited; and

iv. a certification by Co-Borrowers that, as of the date such requested Construction Loan is proposed to be made, the Construction Loan proposed to be made on such date, when added together with all other Construction Loans made under this Agreement, does not exceed the Total Construction Loan Commitment.

Co-Borrowers shall request (i) on the Closing Date, a loan in an aggregate principal amount of $71,500,000 (the "Initial Construction Loan") and (ii) on or prior to the date that is twelve

(12) months after the Closing Date (the "Construction Loan Commitment Outside Date"), at the Co-Borrowers' election, one additional loan (the "Additional Construction Loan") in an amount equal to the Unutilized Construction Loan Commitment as of such date. In the event that any portion of the Unutilized Construction Loan Commitment is outstanding on the Construction Loan Commitment Outside Date, the Co-Borrowers shall be obligated to make a borrowing of an Additional Construction Loan in the amount of the Unutilized Construction Loan Commitment then outstanding. The Initial Construction Loan and the Additional Construction Loan shall constitute separate series of Loans hereunder; however, all such Loans shall constitute "Construction Loans" hereunder. Upon the funding of the Additional Construction Loan, Administrative Agent shall revise Exhibit H to reflect the Lenders' applicable Proportionate Shares of all outstanding Loans hereunder after giving effect to such funding. Co-Borrowers shall give each Notice of Borrowing to Administrative Agent so as to provide not less than the Minimum Notice Period applicable to the Initial Construction Loan or the Additional Construction Loan, as applicable. Any Notice of Borrowing may be modified or revoked by Co-Borrowers through the Banking Day prior to the Minimum Notice Period, and shall thereafter be irrevocable. Each Notice of Borrowing shall be delivered in the manner provided in Section 11.1.

If no account is specified for the deposit of the proceeds of such Construction Loan, the proceeds of the Construction Loan shall be deposited into the Second Lien Loan Proceeds Account.

(c) Construction Loan Interest.

i. Subject to Section 2.6.3 and Section 2.1.1(c)(ii), Co-Borrowers shall pay interest on the unpaid principal amount of each (x) Initial Construction Loan from the date of Borrowing of such Initial Construction Loan until the maturity or prepayment thereof at a fixed rate equal to the Treasury Rate on the date on which the Notice of Borrowing with respect to such Initial Construction Loan is delivered *plus* 7.50% *per annum* (such fixed rate, with respect to such Initial Construction Loan, the "Initial Cash Rate") and (y) Additional Construction Loan from the date of Borrowing of such Additional Construction Loan until the maturity or prepayment thereof at a fixed rate equal to the Treasury Rate on the date on which the Notice of Borrowing with respect to such Additional Construction Loan is delivered plus 7.50% per annum (such fixed rate, with respect to such Additional Construction Loan, the "Additional Cash Rate" and together with the Initial Cash Rate, the "Cash Rate").

ii. On any Quarterly Payment Date, the Co-Borrowers may, at their option, elect to pay accrued interest on the Initial Construction Loan and the Additional Construction Loan (x) in cash (such election, a "Cash Election") or (y) 50% in cash and the remainder by increasing the outstanding principal amount of the Initial Construction Loan and the Additional Construction Loan, as applicable, (such election, a "PIK Election") by an amount equal to 50% of the interest accrued on the Initial Construction Loan or the Additional Construction Loan, as applicable, during the Payment Period ending on the day prior to such Quarterly Payment Date (such increased principal amount, "Construction PIK Principal"); provided that if Co-Borrowers make a PIK Election pursuant to the preceding clause (y), Co-Borrowers shall be required to make such PIK Election with respect to both the Initial Construction Loan and the Additional Construction Loan. The Co-

Borrowers shall make a PIK Election with respect to each Quarterly Payment Date by providing notice to the Administrative Agent at least five (5) Banking Days prior to such Quarterly Payment Date. If a PIK Election is not made by the Co-Borrowers by such deadline, the Co-Borrowers will be deemed to have made a Cash Election for such Quarterly Payment Date. Any Construction PIK Principal created hereunder as a result of a PIK Election with respect to the Initial Construction Loans shall be documented as an increase in the amount of the outstanding Initial Construction Loans. Any Construction PIK Principal created hereunder as a result of a PIK Election with respect to the Additional Construction Loans shall be documented as an increase in the amount of the outstanding Additional Construction Loans. Upon any increase in the amount of any Initial Construction Loan or any Additional Construction Loan, the Administrative Agent shall revise Exhibit H to reflect the Lenders' applicable Proportionate Shares of all outstanding Loans hereunder after giving effect to such increase.

(d) Construction Loan Principal Payments. Construction Loans shall automatically convert to Term Loans upon Term Conversion pursuant to Section 2.1.2(b). Co-Borrowers shall repay to Administrative Agent, for the account of each Lender, in full on the Construction Maturity Date the outstanding principal amount of any Construction Loan made by such Lender which have not been converted to Term Loans pursuant to Section 2.1.2(b).

(e) Cancellation and Return of Construction Notes. Upon the Term Conversion and payment in full of any principal amount of Construction Loans not converted to Term Loans and all accrued and unpaid interest thereon and fees in respect thereof, each such Lender shall promptly mark as canceled any Construction Notes issued to it under Section 2.1.6 or 9.13 then outstanding and return such canceled Construction Notes to Co-Borrowers.

2.1.2 *Term Loan Facility.*

(a) Availability. Subject to the terms and conditions set forth in this Agreement and in reliance upon the representations and warranties of Co-Borrowers set forth herein, each Term Lender severally, but not jointly, agrees to make to Co-Borrowers on the Term Conversion Date, at the request of Co-Borrowers, a term loan under this Section 2.1.2 (individually a "Term Loan" and, collectively, the "Term Loans") in an aggregate principal amount equal to the aggregate principal amount of outstanding Construction Loans made by such Lender, not to exceed such Lender's Term Loan Commitment, or, to the extent elected by Co-Borrowers in the applicable Notice of Term Conversion, any lesser amount. Each Lender shall make its Term Loan by converting the principal amount of outstanding Construction Loans made by such Lender (or such lesser amount) to a Term Loan and the Administrative Agent shall deem such Term Loans so converted as fully funded and shall record them in the Register. Construction Loans and Term Loans shall not be simultaneously outstanding. Each Term Loan created via the Term Conversion of an Initial Construction Loan shall be referred to herein as an "Initial Term Loan," and each Term Loan created via the Term Conversion of an Additional Construction Loan shall be referred to herein as an "Additional Term Loan."

(b) Notice of Term Conversion. Co-Borrowers shall request Term Conversion by delivering to Administrative Agent a Notice of Term Conversion, which contains or specifies:

i. the aggregate principal amount of the requested Term Loans, which shall not exceed the lesser of (A) the aggregate principal amount of all Construction Loans outstanding as of the Term Conversion Date (including, for the avoidance of doubt, the principal amount of any Construction Loans made on such date) and (B) the Total Term Loan Commitment; and

ii. the proposed Term Conversion Date (which shall be a Banking Day on or before the Date Certain (as such date may be extended in accordance with the definition thereof)).

Co-Borrowers shall deliver the Notice of Term Conversion, together with evidence, if then available, documenting that the conditions to Term Conversion will be satisfied by the proposed Term Conversion Date, to Administrative Agent (with a copy to the Lenders) so as to provide at least five Banking Days' notice of Term Conversion. The Notice of Term Conversion may be modified or revoked by Co-Borrowers through the Banking Day prior to the applicable Minimum Notice Period, and shall thereafter be irrevocable. The Notice of Term Conversion shall be delivered in the manner provided in Section 11.1.

(c) Term Loan Interest.

i. Subject to Section 2.6.3 and Section 2.1.2(c)(ii), Co-Borrowers shall pay interest on the unpaid principal amount of each (x) Initial Term Loan entirely in cash, at the Initial Cash Rate and (y) Additional Term Loan entirely in cash, at the Additional Cash Rate.

ii. Solely to the extent there are insufficient funds in the Revenue Account (after giving effect to the required payments under the waterfall provisions set forth in Section 3.2(b) of the Depositary Agreement) to pay required interest on each Term Loan in cash, Co-Borrowers may pay interest on each Term Loan by increasing the outstanding principal amount on each Term Loan by an amount equal to the amount of interest necessary to cure such insufficiency (a "Term PIK Election"; the resulting increased principal amount of such Term Loans, "Term PIK Principal"); provided that no such increase in principal amount with respect to any Term Loan shall exceed 50% of the amount of interest that would have been payable in cash in respect of such Term Loan but for such insufficiency of funds in the Revenue Account; provided, further, that Co-Borrowers shall be permitted to exercise such Term PIK Election on no more than four (4) Quarterly Payment Dates in the aggregate. The Co-Borrowers shall make a Term PIK Election with respect to each Quarterly Payment Date by providing notice to the Administrative Agent at least five (5) Banking Days prior to such Quarterly Payment Date. If a Term PIK Election is not made by the Co-Borrowers by such deadline, the Co-Borrowers will be deemed to have made a Cash Election for such Quarterly Payment Date. Any Term PIK Principal created hereunder as a result of a Term PIK Election with respect to the Initial Term Loans shall be documented as new series of Loans referred to hereunder as "Initial Term PIK Loans." Any Term PIK Principal created hereunder as a result of a Term PIK Election with respect to the Additional Term Loans shall be documented as new series of Loans referred to hereunder as "Additional Term PIK Loans." Each Initial Term PIK Loan created hereunder shall form part of the same series of Loans as any other Initial Term PIK Loans created hereunder and shall be documented as an increase in the amount of the outstanding Initial Term PIK Loans. Each Additional Term PIK Loan created hereunder shall form part of the

same series of Loans as any other Additional Term PIK Loans created hereunder and shall be documented as an increase in the amount of the outstanding Additional Term PIK Loans. The Initial Term Loans, the Additional Term Loans, the Initial Term PIK Loans and the Additional Term PIK Loans shall each constitute separate series of Loans hereunder; however, all such Loans shall constitute "Term Loans" hereunder. Upon the creation of, or increase in the amount of, any Initial Term PIK Loan or any Additional Term PIK Loan, the Administrative Agent shall revise Exhibit H to reflect the Lenders' applicable Proportionate Shares of all outstanding Loans hereunder after giving effect to such creation or increase.

iii. Co-Borrowers shall pay interest on the unpaid principal amount of each (x) Initial Term PIK Loan at a fixed rate equal to the Initial Cash Rate plus 2.00% per annum (such rate, with respect to such Loan, the "Initial Term PIK Rate") and (y) Additional Term PIK Loan at a fixed rate equal to the Additional Cash Rate plus 2.00% per annum (such rate, with respect to such Loan, the "Additional Term PIK Rate" and together with the Initial Term PIK Rate, the "Term PIK Rate"). All such interest payable pursuant to this Section 2.1.2(c)(iii) shall be payable in cash.

iv. If any Term Loan would otherwise constitute an "applicable high-yield discount obligation" within the meaning of section 163(i) of the Code (or any successor provisions), on each Quarterly Payment Date ending after the fifth anniversary of the Closing Date, Co-Borrowers shall redeem a portion of such Term Loan (which, for the avoidance of doubt, shall include the Initial Term PIK Loan or Additional Term PIK Loan, as applicable, attributable to such Term Loan) to the extent necessary to ensure that such Term Loan shall not be considered an applicable high yield discount obligation.

2.1.3 *[Reserved].*

2.1.4 *[Reserved].*

2.1.5 *Interest Provisions Relating to All Loans.*

(a) Interest Payment Dates. Co-Borrowers shall pay accrued interest on the unpaid principal amount of (i) each Construction Loan or Term Loan on each Quarterly Payment Date, and (ii) in all cases, upon repayment or prepayment (to the extent thereof and including any Optional Prepayments or Mandatory Prepayments), at maturity (whether by acceleration or otherwise).

(b) [Reserved].

(c) Interest Computations. All computations of interest on Construction Loans or Term Loans shall be based upon a year of 365 days or, in the case of a leap year, 366 days, and shall be payable for the actual days elapsed (including the first day but excluding the last day). Each Co-Borrower agrees that all computations by Administrative Agent, as applicable, of interest shall be conclusive and binding in the absence of manifest error.

2.1.6 *Promissory Notes*. The obligation of Co-Borrowers to repay the Loans made by a Lender and to pay interest thereon at the rates provided herein shall, upon the written request of such Lender, be evidenced by promissory notes in the form of Exhibit B-1 (individually, a "Construction Note" and, collectively, the "Construction Notes") and Exhibit B-2 (individually, a "Term Note" and, collectively, the "Term Notes"), each payable to such requesting Lender or its registered assigns and in the principal amount of such Lender's Construction Loan Commitment or Term Loan Commitment, respectively. Co-Borrowers authorize each such requesting Lender to record on the schedule annexed to such Lender's Note or Notes, the date and amount of each Loan made by such requesting Lender, and each payment or prepayment of principal thereunder and agrees that all such notations shall constitute prima facie evidence of the matters noted; provided that in the event of any inconsistency between the records or books of Administrative Agent and any Lender's records or Notes, the records of Administrative Agent shall be conclusive and binding in the absence of manifest error. Co-Borrowers further authorize each such requesting Lender to attach to and make a part of such requesting Lender's Note or Notes continuations of the schedule attached thereto as necessary. No failure to make any such notations, nor any errors in making any such notations, shall affect the validity of Co-Borrowers' obligations to repay the full unpaid principal amount of the Loans or the duties of Co-Borrowers hereunder or thereunder. Upon the payment in full in cash of the aggregate principal amount of, and all accrued and unpaid interest on, the Loans, or in the case of Construction Loans, upon Term Conversion, the Lenders holding such Notes shall promptly mark the applicable Notes cancelled and return such cancelled Notes to Co-Borrowers. Term Notes (if any) shall be delivered to the applicable Term Lenders on the Term Conversion Date in accordance with Section 3.3.8.

2.1.7 *Loan Funding.*

(a) Notice. Each Notice of Borrowing and Notice of Term Conversion shall be delivered to Administrative Agent in accordance with Sections 2.1.1(b) and 2.1.2(b), respectively. Administrative Agent shall promptly notify each Lender of the contents of each Notice of Borrowing or Notice of Term Conversion and of each Lender's portion of a requested Borrowing, if applicable.

(b) Lender Funding. Subject to the satisfaction or waiver (such waiver to be in writing by Administrative Agent with the consent of each Lender, with respect to closing conditions set forth in Section 3.1, or the Required Lenders, with respect to conditions set forth in Sections 3.2, 3.3 or 3.4 and any such waiver shall be binding on each Lender) of the conditions precedent specified herein, each Lender shall, before 1:00 p.m. New York City time on the date of each Borrowing specified in the respective Notice of Borrowing, make available to Administrative Agent by wire transfer of immediately available funds in Dollars to the account of Administrative Agent most recently designated by it for such purpose, such Lender's Proportionate Share of the Loan to be made on such date. The failure of any Lender to make the Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation hereunder to make its Loan on the date of each Borrowing specified in the respective Notice of Borrowing. No Lender shall be

responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing.

(c) Failure of Lender to Fund. Unless Administrative Agent shall have been notified by any Lender prior to the applicable date of a Borrowing of a Loan that such Lender does not intend to make available to Administrative Agent such Lender's Proportionate Share of the Loan (as the case may be) requested on such date, Administrative Agent may assume that such Lender has made such amount available to Administrative Agent on such date in accordance with the prior paragraph and Administrative Agent may, but shall not have obligation to, in its sole discretion and in reliance upon such assumption, make available to Co-Borrowers a corresponding amount on such date. If such corresponding amount is not in fact made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such corresponding amount on demand (and, in any event, within two Banking Days from the applicable date of such Borrowing) from such Lender together with interest thereon, for each day from the applicable date of such Borrowing until the date such amount is paid to Administrative Agent, at the Federal Funds Rate for the first two Banking Days after such date. If such Lender pays such amount to Administrative Agent, then such amount (excluding any interest paid to Administrative Agent thereon) shall constitute such Lender's Proportionate Share of such Loan. If such Lender does not pay such corresponding amount forthwith upon Administrative Agent's demand therefor or within two Banking Days from the applicable date of such Borrowing of a Loan, Administrative Agent may notify Co-Borrowers and Co-Borrowers shall immediately pay such corresponding amount to Administrative Agent together with interest thereon, for each day from the applicable date of such Borrowing until the date such amount is paid to Administrative Agent, at the rate then payable under this Agreement for such Loans. Nothing in this Section 2.1.7(c) shall be deemed to relieve any Lender from its obligation to fulfill its obligations hereunder or to prejudice any rights that Co-Borrowers may have against any Lender as a result of any default by such Lender hereunder.

(d) Account. No later than 2:00 p.m. New York City time on the date specified in each Notice of Borrowing, if the applicable conditions precedent listed in Section 3.2 have been satisfied or waived in accordance with the terms thereof and, subject to Section 2.1.7(c), Administrative Agent shall, after receipt of all funds from the Lenders, promptly make available the Construction Loans requested in such Notice of Borrowing in Dollars and in immediately available funds, at Administrative Agent's Account, by wire transfer, the proceeds of any such Construction Loans into the Construction Account (other than with respect to Construction Loans made on the Closing Date in accordance with the Funds Flow Memorandum and as permitted by Section 3.1(d) of the Depositary Agreement).

2.1.8 *[Reserved]*.

2.1.9 *Prepayments.*

(a) Terms of All Prepayments.

i. Upon the prepayment of any Loan (whether such prepayment is an Optional Prepayment or a Mandatory Prepayment), Co-Borrowers shall pay to Administrative Agent for the account of each Lender which made such Loan (A) all accrued interest to the date of such

prepayment on the principal amount of such Loan prepaid, (B) all accrued fees to the date of such prepayment relating to the principal amount of such Loan being prepaid and (C) the applicable Call Premium determined for the prepayment date with respect to such Loan prepaid, if any.

ii. (A) All Optional Prepayments shall be applied, on a *pro rata* basis, to prepay outstanding Initial Construction Loans, Additional Construction Loans, Initial Term Loans, Additional Term Loans, Initial Term PIK Loans or Additional Term PIK Loans, as applicable, (B) except as otherwise specifically set forth herein (including in clause (c)(i) below), any Mandatory Prepayment shall be applied, on a *pro rata* basis, to prepay outstanding Initial Construction Loans, Additional Construction Loans, Initial Term Loans, Additional Term Loans, Initial Term PIK Loans or Additional Term PIK Loans, as applicable, together with accrued but unpaid interest and applicable Call Premium payable in connection with such prepayment; provided that, notwithstanding anything to the contrary herein, the Co-Borrowers may direct, by the inclusion of such direction in the written notice pursuant to Section 2.1.9(b), that prepayments of principal hereunder be applied (x) *first*, to prepay, on a *pro rata* basis, all outstanding Initial Term PIK Loans and Additional Term PIK Loans outstanding on such date and (y) *second*, to prepay, on a *pro rata* basis, other outstanding Initial Term Loans and Additional Term Loans.

iii. In the event of any Mandatory Prepayment made pursuant to Section 2.1.9(c)(i)(F) with the proceeds of any performance liquidated damages or with Loss Proceeds in accordance with Section 3.9 of the Depositary Agreement, each quarterly Target Debt Balance amount set forth on Exhibit I occurring on or after the date of such prepayment shall be reduced by the percentage that represents the ratio of (x) the amount prepaid pursuant to Section 2.1.9(c)(i)(F) or pursuant to the Depositary Agreement, as applicable divided by (y) the aggregate principal amount of the Construction Loans or Term Loans, as applicable, outstanding immediately prior to such prepayment. Within five Banking Days after any such prepayment, the Co-Borrowers shall deliver to Administrative Agent a proposed revised Exhibit I implementing the adjustment described by this Section, together with reasonably detailed supporting calculations therefor, which revised exhibit, once approved by the Required Lenders, shall be deemed to replace the existing Exhibit I for all purposes under this Agreement.

(b) Optional Prepayments.

i. Co-Borrowers may, at their option, upon five Banking Days' written notice to Administrative Agent (which notice may state that it is conditioned upon the effectiveness of another credit facility or facilities or other agreement(s) providing the source of funds for such Optional Prepayment, in which case such notice may be revoked by Co-Borrowers by providing written notice to Administrative Agent at least one Banking Day prior to the proposed date of the Optional Prepayment if one or more of such conditions is not satisfied), prepay (A)(i) any Construction Loans in whole or from time to time in part in minimum amounts of $1,000,000 or an incremental multiple of $100,000 in excess thereof (provided that such minimum amounts shall not apply to a prepayment of all outstanding Construction Loans) or (ii) any Term Loans in whole or from time to time in part in minimum amounts of $1,000,000 or an incremental multiple of $100,000 in excess thereof (provided that such minimum amounts shall not apply to a prepayment of all outstanding Term Loans) (each, an "Optional Prepayment") plus (B) solely to the extent such

Optional Prepayment occurs on or prior to the Call Premium Outside Date, the Call Premium determined for the prepayment date with respect to such Loan amount. Each such notice shall specify such prepayment date, the aggregate principal amount of the Loans to be prepaid on such prepayment date and the interest to be paid on such prepayment date with respect to such principal amount being prepaid, and, if applicable, shall be accompanied by a certificate of a Responsible Officer as to the estimated Call Premium due in connection with such prepayment (calculated as if the date of such notice were the date of the prepayment), setting forth the details of such computation.

(c) Mandatory Prepayments.

i. Co-Borrowers shall prepay the Term Loans as follows (each, a "Mandatory Prepayment"):

(A) [reserved];

(B) on each Quarterly Payment Date occurring on and after the last day of the first quarter after the Term Conversion Date, in an amount necessary to cause the outstanding principal amount of the Loans to equal the Target Debt Balance for such Quarterly Payment Date, which amount shall in no event exceed 100% of Excess Cash Flow remaining on deposit in the Revenue Account as of such Quarterly Payment Date (the "Target Debt Balance Excess Cash Flow Sweep");

(C) not later than ten Banking Days following the receipt by any Borrower Party of the proceeds of any conveyance, sale, lease, transfer or other disposition of assets or property other than pursuant to Section 6.4(a) through (g) (each, a "Disposition") exceeding $2,000,000, in the aggregate, the Co-Borrowers shall prepay the Loans then outstanding (together with accrued and unpaid interest, accrued and unpaid fees and the applicable Call Premium on the Term Loans) in an amount equal to 100% of the Net Cash Proceeds in excess of $2,000,000 applicable to such Disposition; provided that, if the Co-Borrowers notify the Administrative Agent in writing of their intention to reinvest such Net Cash Proceeds in assets necessary or useful for the business of the Project (excluding, for the avoidance of doubt, assets that would be reflected as "current assets" on the balance sheet, which will be pledged as Collateral hereunder) pursuant to a transaction not prohibited under this Agreement, then the Co-Borrowers shall not be required to make such prepayment to the extent that such Net Cash Proceeds are so reinvested within 12 months following receipt thereof; provided, further that, to the extent such Net Cash Proceeds have not been so reinvested prior to the expiration of the foregoing 12-month period, the Co-Borrowers shall prepay the Loans upon the expiration of such period in an amount equal to such Net Cash Proceeds; provided that such prepayment shall include the applicable Call Premium;

(D) within ten Banking Days of receipt thereof by any Borrower Party, the Co-Borrowers shall prepay the Loans then outstanding (together with accrued and unpaid interest, accrued and unpaid fees and the applicable Call Premium on the Term Loans) in an amount equal to 100% of the cash proceeds from the incurrence or issuance received by any Borrower Party of any Debt other than Permitted Debt, net of all Taxes and reasonable and customary fees, underwriting discounts, commissions, costs and other expenses, in each case actually incurred by

the applicable Co-Borrower in connection with such issuance or incurrence; provided that such prepayment shall include the applicable Call Premium;

(E) within five Banking Days of receipt by any Borrower Party of the proceeds of any Project Document Claim, the Co-Borrowers shall prepay the Loans then outstanding (together with accrued and unpaid interest and accrued and unpaid fees on such Loans) in an aggregate amount equal to 100% of the Net Cash Proceeds of such Project Document Claim;

(F) within five Banking Days of receipt by any Borrower Party of any (i) Termination Payment or series of related Termination Payments exceeding $2,000,000, or (ii) any Project Document Termination Payment, the Co-Borrowers shall prepay the Loans then outstanding (together with accrued and unpaid interest and accrued and unpaid fees on such Loans) in an aggregate amount equal to 100% of the Net Cash Proceeds of such Termination Payment in excess of $2,000,000 or Project Document Termination Payment; provided that, with respect to any Termination Payment (but, for the avoidance of doubt, not any Project Document Termination Payment) exceeding $2,000,000 received by the Co-Borrowers pursuant to and following the termination of any Permitted Commodity Hedge Agreement, if the Co-Borrowers notify the Administrative Agent in writing of their intention to enter into a replacement Permitted Commodity Hedge Agreement pursuant to a transaction not prohibited under this Agreement, the Co-Borrowers shall not be required to make such prepayment to the extent that such Net Cash Proceeds are actually used within 90 days from receipt of such Termination Payment to replace such terminated Permitted Commodity Hedge Agreement with a replacement agreement substantially similar to or on terms more economically favorable to the applicable Co-Borrower than the Permitted Commodity Hedge Agreement it replaces and substantially similar to or on more favorable non-economic terms (taken as a whole) than the Permitted Commodity Hedge Agreement it replaces; provided, further, that if the applicable Co-Borrower has not entered into such a replacement contract with respect to such Permitted Commodity Hedge Agreement within such 90-day period, the Co-Borrowers shall prepay the Loans then outstanding in an aggregate amount equal to 100% of the Net Cash Proceeds of such Termination Payment in excess of $2,000,000;

(G) as, when and to the extent contemplated by Sections 3.9(b)(ii), 3.9(b)(iii), 3.9(b)(v), 3.9(c)(ii) and 3.11(b)(i) of the Depositary Agreement or any other applicable provision of this Agreement or any other Credit Document; and

(H) on the Term Conversion Date, the Co-Borrowers shall prepay the Term Loans then outstanding (together with accrued and unpaid interest, and accrued and unpaid fees on such Term Loans) in an amount equal to the lesser of (x) the amount necessary to cause the Debt to Capitalization Ratio on such date to equal 0.75:1.00 and (y) the aggregate amount then remaining on deposit in the Construction Account.

Each such prepayment shall (i) be reduced on a dollar-for-dollar basis by the amounts prepaid pursuant to the corresponding prepayment provisions in the First Lien Credit Agreement and (ii) be applied on a pro rata basis to the outstanding Term Loans, together with accrued and unpaid interest payable in connection with such prepayment, and together with any applicable Call Premium in connection with such prepayment.

ii. Co-Borrowers shall give Administrative Agent written notice of prepayment under Section 2.1.9(c)(i) not less than five Banking Days prior to such prepayment date. Each such notice shall specify such prepayment date, the aggregate principal amount of the Loans to be prepaid on such prepayment date and the interest to be paid on such prepayment date with respect to such principal amount being prepaid, and, if applicable, shall be accompanied by a certificate of a Responsible Officer as to the estimated Call Premium due in connection with such prepayment (calculated as if the date of such notice were the date of the prepayment), setting forth the details of such computation. The Administrative Agent will promptly notify each Lender of the contents of the Co-Borrowers' prepayment notice and of such Lender's pro rata share of the prepayment. Each Lender may reject all or a portion of its pro rata share of any Mandatory Prepayment (such declined amounts, the "Declined Proceeds") of Term Loans required to be made pursuant to Section 2.1.9(c)(i)(C) or Section 2.1.9(c)(i)(D) by providing written notice (each, a "Rejection Notice") to the Administrative Agent and the Co-Borrowers no later than 5:00 p.m. (New York City time) three Banking Days after the date of such Lender's receipt of notice from the Administrative Agent regarding such prepayment. Each Rejection Notice from a given Lender shall specify the principal amount of the mandatory prepayment of Term Loans to be rejected by such Lender. If a Lender fails to deliver a Rejection Notice to the Administrative Agent within the time frame specified above or such Rejection Notice fails to specify the principal amount of the Term Loans to be rejected, any such failure will be deemed an acceptance of the total amount of such mandatory prepayment of Term Loans. Any Declined Proceeds shall be first offered to the applicable Lenders that have not submitted a Rejection Notice, and any remaining Declined Proceeds shall be deposited into the Revenue Account.

2.1.10 *Register*. Administrative Agent, acting solely for this purpose as a non-fiduciary agent of Co-Borrowers, shall maintain, at its address referred to in Section 11.1, a register for the recordation of the names and addresses of the Lenders (including any Person that becomes a Lender in accordance with Section 9.13), the Commitments and Loans (and stated interest) of each Lender from time to time and the name of each Lender which holds a Note (the "Register"). The Register shall be available for inspection by Co-Borrowers or any Lender at any reasonable time and from time to time upon reasonable prior written notice. Administrative Agent shall record in the Register (a) the Commitments and the Loans from time to time of each Lender, (b) the interest rates applicable to all Loans and the effective dates of all changes thereto, (c) [reserved], (d) the date and amount of any principal or interest due and payable or to become due and payable from Co-Borrowers to each Lender hereunder, (e) each repayment or prepayment in respect of the principal amount of the Loans of each Lender, (f) the amount of any sum received by Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof, and (g) such other information as Administrative Agent may determine is necessary for the administering of the Loans and this Agreement. Any such recording shall be conclusive and binding in the absence of manifest error; provided that neither the failure to make any such recordation, nor any error in such recordation, shall affect Co-Borrowers' Obligations in respect of any applicable Loans or otherwise; and provided, further, that in the event of any inconsistency between the Register and any Lender's records, the Register shall govern absent manifest error. This provision is intended to constitute a "book entry system"

within the meaning of Treasury Regulations Section 5f.103-1(c)(1)(ii) and Proposed Treasury Regulations Section 1.163-5(b) (or, in each case, any amended or successor version) and shall be interpreted consistently with such intent.

2.1.11 *Re-Borrowing*. No Co-Borrower may re-borrow the principal amount of any Construction Loan or Term Loan repaid or prepaid.

2.2 [RESERVED].

2.3 FEES.

2.3.1 *Agents' Fees*. Co-Borrowers shall pay to each applicable Agent for the account of such Agent, the fees payable to such Agent set forth in the applicable Agency Fee Letter.

2.3.2 *Construction Loan Commitment Fee.*

(a) On each Quarterly Payment Date, Co-Borrowers shall pay to Administrative Agent, for the benefit of the Construction Lenders (other than any Defaulting Lender), accruing during the Payment Period ending on the day prior to such Quarterly Payment Date, a commitment fee (a "Construction Loan Commitment Fee") for such Payment Period equal to the product of (1) the sum of the daily average Unutilized Construction Loan Commitment of each Construction Lender (other than any Defaulting Lender) for such Payment Period *multiplied by* (2) a fraction, the numerator of which is the actual number of days in that Payment Period and the denominator of which is 360 *multiplied by* (3) 1.00%.

(b) [Reserved].

(c) Construction Loan Commitment Fees shall cease to accrue for a Lender on the date on which the Construction Loan Commitment of such Lender shall terminate or be terminated.

2.4 [RESERVED].

2.5 TOTAL COMMITMENTS.

2.5.1 *Loan Commitment Amounts.*

(a) Total Construction Loan Commitment. Notwithstanding anything that may be construed to the contrary in this Agreement, the aggregate principal amount of all Construction Loans made by the Lenders shall not exceed the sum of (x) the lesser of (i) $143,000,000 and (ii) if such total amount is reduced by Co-Borrowers pursuant to Section 2.5.2, such lower amount plus (y) any Construction PIK Principal outstanding at any time (such amount, as it may be reduced from time to time, the "Total Construction Loan Commitment").

(b) Total Term Loan Commitment. Notwithstanding anything that may be construed to the contrary in this Agreement, the aggregate principal amount of all Term Loans

outstanding at any time shall not exceed the aggregate amount of Construction Loans outstanding as of the Term Conversion Date plus any Term PIK Principal outstanding at any time (such maximum amount, the "Total Term Loan Commitment").

2.5.2 *Reductions and Cancellations.*

(a) Co-Borrowers may at any time and from time to time by providing written notice to the Administrative Agent not less than the Minimum Notice Period permanently reduce (without premium or penalty) the Construction Loan Commitment, by an amount of $1,000,000 or an integral multiple of $500,000 in excess thereof (or, if less, the remaining Construction Loan Commitment) or cancel (without premium or penalty) in its entirety the Total Construction Loan Commitment, subject to the provisions of Section 2.5.2(c). Co-Borrowers may not reduce or cancel the Total Construction Loan Commitment if, after giving effect to such reduction or cancellation, (i) the aggregate principal amount of all Construction Loans then outstanding would exceed the Total Construction Loan Commitment, (ii) the Available Construction Funds would not equal or exceed the aggregate unpaid amount required to cause the Completion Date to occur by the Date Certain and to pay (x) the Remaining Costs and (y) any anticipated Call Premium arising from any prepayment related to such reduction or cancellation (as verified by the Independent Engineer), or (iii) such reduction or cancellation (including any corresponding required reduction or cancellation of the First Lien Loan Commitments pursuant to Section 2.5.2(c)) could reasonably be expected to cause a Default, an Event of Default or result in the Co-Borrowers being unable to make the certifications set forth in Section 3.2.6. Once reduced or canceled, the Total Construction Loan Commitment may not be increased or reinstated.

(b) [Reserved].

(c) Co-Borrowers shall notify Administrative Agent in writing of any election to terminate or reduce Commitments at least three Banking Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any such notice, Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by Co-Borrowers pursuant to this clause (c) shall be irrevocable; provided that a notice of termination of Commitments delivered by Co-Borrowers may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by Co-Borrowers (by written notice to Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Each reduction of Commitments pursuant to this Section 2.5.2 shall be made ratably among the Commitments of the Lenders participating in the applicable Facility in accordance with their respective Proportionate Shares. In addition, the First Lien Loan Commitments shall be ratably reduced upon each reduction of the Construction Loan Commitment pursuant to this Section 2.5.2.

2.6 OTHER PAYMENT TERMS.

2.6.1 *Place and Manner*. Co-Borrowers shall make all payments due to any Lender, or Administrative Agent hereunder free and clear and without setoff or counterclaim of any kind to Administrative Agent, for the account of such Lender or Administrative Agent (as the case may be), to the account of the Administrative Agent

as identified to the Co-Borrowers from time to time in Dollars and in immediately available funds not later than 12:00 noon on the date on which such payment is due (or such other time as provided in this Agreement). Any payment made after such time on any day shall be deemed received on the Banking Day after such payment is received. Administrative Agent shall, upon receipt of all required funds promptly disburse to each Lender each such payment received by Administrative Agent for such Lender.

2.6.2 *Date*. Whenever any payment due hereunder shall fall due on a day other than a Banking Day, such payment shall be made on the next succeeding Banking Day, and such extension of time shall be included in the computation of interest or fees, as the case may be, without duplication of any interest or fees so paid in the next subsequent calculation of interest or fees payable.

2.6.3 *Default Interest*. Notwithstanding anything to the contrary herein, upon the occurrence and during the continuation of any Event of Default, the outstanding principal amount of all overdue Loans and, to the extent permitted by applicable Legal Requirements, any Call Premium and accrued and overdue but unpaid interest payments thereon and any accrued and overdue but unpaid fees, and other overdue amounts hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under applicable Bankruptcy Laws) payable upon demand at a rate that is (a) 2% per annum in excess of the interest rate then otherwise payable under this Agreement with respect to the applicable Loans, or (b) in the case of any such fees and other amounts, at a rate that is 2% per annum in excess of the interest rate then otherwise payable under this Agreement for with respect to the Loans such fees or other amounts relate thereto (the "Default Rate").

2.6.4 *Net of Taxes, Etc.*

(a) Taxes. Any and all payments to or for the benefit of a Credit Party by or on behalf of any Co-Borrower hereunder or under any other Credit Document shall be made free and clear of and without deduction or withholding, setoff or counterclaim of any kind whatsoever of any present or future taxes, levies, imposts, deductions, charges or withholdings, and all interest, penalties, or other liabilities with respect thereto ((A) excluding net income, franchise and branch profits taxes (which exclusions include taxes imposed on or measured by the net income, net profits or, in the absence of an applicable Change of Law, capital of such Credit Party, or, in each case, alternative minimum taxes or taxes imposed in lieu of such taxes) imposed by any jurisdiction or any political subdivision or taxing authority thereof or therein as a result of a present or former connection between such Credit Party and such jurisdiction or political subdivision, unless such connection results solely from such Credit Party's executing, delivering or performing its obligations or receiving a payment under, or enforcing, this Agreement or any Note or other Credit Document, (B) excluding any U.S. federal withholding tax (i) that is in effect and would apply to amounts payable hereunder to such Credit Party at the time such Credit Party becomes a party to this Agreement (or such Credit Party designates a new lending office) (other than pursuant to an assignment request by any Co-Borrower under Section 2.10.2) except to the extent that such Credit Party (or its assignor, if any) was entitled, at the time of the designation of a new lending office (or

assignment) to receive additional amounts from any Co-Borrower with respect to such withholding tax pursuant to this Section 2.6.4(a) or (ii) that is attributable to a Credit Party's failure to comply with Section 2.6.4(f) or Section 2.6.5, (C) excluding any withholding taxes imposed under FATCA and U.S. backup withholding taxes and (D) excluding any interest or penalties imposed upon amounts described in (A), (B) or (C) above) (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "Taxes") unless required by applicable law. If any Taxes are required to be deducted or withheld from or in respect of any sum payable by or on behalf of any Co-Borrower hereunder or under any other Credit Document to any Credit Party, (i) the sum payable shall be increased as may be necessary so that after all required deductions or withholdings (including deductions or withholdings applicable to additional sums payable under this Section 2.6.4), such Credit Party receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) such Co-Borrower shall make (or cause to be made) such deductions or withholdings, and (iii) such Co-Borrower shall pay (or cause to be paid) the full amount deducted or withheld to the relevant taxation authority or other authority in accordance with applicable Legal Requirements. In addition, each Co-Borrower agrees to timely pay to the relevant Governmental Authority any Other Taxes.

(b) Tax Indemnity. The Co-Borrowers shall indemnify each Credit Party for and hold it harmless against the full amount of Taxes and Other Taxes (including any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 2.6.4) payable or paid by any Credit Party or its Affiliate, or any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted by the relevant Governmental Authority; provided that no Co-Borrower shall be obligated to indemnify any Credit Party for any penalties, interest or expenses relating to Taxes or Other Taxes arising from such Credit Party's gross negligence or willful misconduct. Each Credit Party agrees to give written notice to Co-Borrowers of the assertion of any claim against such Credit Party relating to such Taxes or Other Taxes as promptly as is practicable after being notified of such assertion, and in no event later than 180 days after the principal officer of such Credit Party responsible for administering this Agreement obtains knowledge thereof; provided that any Credit Party's failure to notify Co-Borrowers of such assertion within such 180 day-period shall not relieve any Co-Borrower of its obligation under this Section 2.6.4(b) with respect to Taxes or Other Taxes, regardless of when they arise, and shall not relieve such Co-Borrower of its obligation under this Section 2.6.4(b) with respect to penalties, interest or expenses relating to such Taxes or Other Taxes and arising prior to the end of such period (unless and to the extent the Co-Borrower is adversely impacted by such failure), but shall relieve such Co-Borrower of its obligations under this Section 2.6.4(b) with respect to penalties, interest or expenses relating to such Taxes or Other Taxes and incurred between the end of such period and such time as such Co-Borrower receives notice from such Credit Party as provided herein. Payments by Co-Borrowers pursuant to this indemnification shall be made within 45 days from the date such Credit Party makes written demand therefor (submitted through Administrative Agent), which demand shall be accompanied by a certificate describing in reasonable detail the basis thereof. Each of the Collateral Agent and the Depositary Agent shall be an express third party beneficiary of this Section 2.6.4(b).

(c) Notice. Within 45 days, after the date of any payment of taxes, Taxes or Other Taxes by or on behalf of any Co-Borrower pursuant to this Section 2.6.4, such Co-Borrower

shall furnish to Administrative Agent, at its address referred to in Section 11.1, the original or a certified copy of a receipt evidencing payment thereof or, if such receipt is not obtainable, other evidence of such payment reasonably satisfactory to Administrative Agent.

(d) Survival of Obligations. The obligations of each Co-Borrower and each Credit Party under this Section 2.6.4 shall survive the termination of this Agreement and the repayment of Co-Borrowers' Obligations.

(e) Refunds. If any Credit Party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section (including by the payment of additional amounts pursuant to this Section), it shall pay to the applicable Co-Borrower an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such Co-Borrower, upon the request of such Credit Party, shall repay to such Credit Party the amount paid over pursuant to this paragraph (e) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such Credit Party is later required to repay, such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will the Credit Party be required to pay any amount to a Co-Borrower pursuant to this paragraph (e) the payment of which would place the Credit Party in a less favorable net after-Tax position than the Credit Party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any Credit Party to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Co-Borrower or any other Person. For purposes of this Section 2.6.4(e), the term "refund" shall include any credits received in lieu of a refund.

(f) FATCA. If a payment made to a Lender under any Credit Document would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to each Co-Borrower and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by such Co-Borrower or 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 such Co-Borrower or Administrative Agent as may be necessary for such Co-Borrower and Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.6.4(f), "FATCA" shall include any amendments made to FATCA after the Closing Date.

2.6.5 *Withholding Exemption Certificates*Each Lender upon becoming a Lender agrees that it will deliver to Administrative Agent and Co-Borrowers

either (a) if such Lender is a United States person (as such term is defined in Section 7701(a)(30) of the Code), an executed copy of a United States Internal Revenue Service Form W-9, or (b) if such Lender is not a United States person (as such term is defined in Section 7701(a)(30) of the Code), two duly completed copies of United States Internal Revenue Service Form W-8BEN or W-8BEN-E, W-8EXP, W-8ECI or W-8IMY or successor applicable form, as the case may be (certifying therein an entitlement to an exemption from or reduction in, United States withholding taxes) plus, in the case of a Lender using the so-called "portfolio interest exemption," a duly completed and executed non-bank certificate in the form of Exhibit J, if applicable (a "U.S. Tax Compliance Certificate"). Each Lender that delivers to Co-Borrowers and Administrative Agent a Form W-9, W-8BEN or W-8BEN-E, W-8EXP, W-8ECI or W-8IMY and a U.S. Tax Compliance Certificate, as the case may be, pursuant to the preceding sentence further undertakes to deliver to Co-Borrowers and Administrative Agent further copies of the Form W-9, W-8BEN or W-8BEN-E, W-8EXP, W-8ECI or W-8IMY, or successor applicable forms, or other manner of certification or procedure, and a U.S. Tax Compliance Certificate, as the case may be, on or before the date that any such form or certificate expires or becomes obsolete or within a reasonable time after gaining knowledge of the occurrence of any event requiring a change in the most recent forms previously delivered by it, and such extensions or renewals thereof as may reasonably be requested by any Co-Borrower or Administrative Agent, certifying in the case of a Form W-9, W-8BEN or W-8BEN-E, W-8EXP, W-8ECI or W-8IMY and a U.S. Tax Compliance Certificate, as the case may be, that such Lender is entitled to receive payments under this Agreement without deduction or withholding of any United States federal income taxes, or at a reduced rate, unless in any such cases any change in treaty, law, regulation or the circumstance of any Borrower Party or Affiliate of any Borrower Party (other than an Affiliate that is a Credit Party) or any designation of a new lending office or assignment described in the exception contained in clause (B) of Section 2.6.4(a) has occurred prior to the date on which any such delivery would otherwise be required which renders all such forms or certificates inapplicable or which would prevent a Lender from duly completing and delivering any such form or certificate with respect to it and such Lender advises such Co-Borrower that it is not capable of receiving payments without any deduction or withholding of United States federal income tax or at a reduced rate. For the avoidance of doubt, however, no Co-Borrower shall be obligated to pay any additional amounts in respect of United States federal income tax pursuant to Section 2.6.4 (or make an indemnification payment pursuant to Section 2.6.4) to any Lender (including any entity to which any Lender sells, assigns, grants a participation in, or otherwise transfers its rights under this Agreement) if the obligation to pay such additional amounts (or such indemnification) would not have arisen but for a failure of such Lender to comply with its obligations under this Section 2.6.5 to the extent it was legally able to do so. Notwithstanding any other provision of this Section 2.6.5, no Person shall be required to deliver any form pursuant to this Section 2.6.5 that such Person is not legally able to deliver.

2.6.6 [*Reserved*].

2.6.7 *Defaulting Lender Provisions*. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply to the extent permitted by applicable law for so long as such Lender is a Defaulting Lender:

(a) Fees shall cease to accrue on the unused portion of the Commitment of such Defaulting Lender pursuant to Section 2.3 for any period during which such Lender is a Defaulting Lender (without prejudice to the rights of the Lenders other than Defaulting Lenders in respect of such fees).

(b) [Reserved].

(c) [Reserved].

(d) Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 9.9 and the definition of "Required Lenders".

(e) Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 7.2 or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 2.6 shall be applied at such time or times as may be determined by the Administrative Agent as follows: (i) *first*, to the payment of any amounts owing by such Defaulting Lender to the Agents under the Credit Documents; (ii) *second*, as Co-Borrowers may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; (iii) *third*, if so determined by the Administrative Agent and Co-Borrowers, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; (iv) *fourth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; (v) *fifth*, so long as no Default or Event of Default exists, to the payment of any amounts owing to Co-Borrowers as a result of any then final and non-appealable judgment of a court of competent jurisdiction obtained by Co-Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and (vi) *sixth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction (provided that, with respect to this clause (vi), if such payment is a prepayment of the principal amount of any Loans in respect of which a Defaulting Lender has funded its participation obligations, such payment shall be applied solely to prepay the Loans of all Non-Defaulting Lenders pro rata prior to being applied to the prepayment of any Loans owed to such Defaulting Lender). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender pursuant to this Section 2.6.7 shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(f) [Reserved].

(g) If Administrative Agent agrees in writing that a Lender is no longer a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans to be held pro rata by the Lenders in accordance with the Commitments under the applicable Facility, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Co-Borrowers while that Lender was a Defaulting Lender; provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

2.7 PRO RATA TREATMENT.

2.7.1 *Borrowings, Commitment Reductions, Etc.* Except as otherwise provided herein, (a) each Borrowing consisting of Construction Loans or Term Loans and each reduction of the Total Construction Loan Commitment and Total Term Loan Commitment shall be made or allocated among the Lenders pro rata according to their respective Proportionate Shares of such Loans or Commitments, as the case may be, (b) each payment of principal of and interest on Construction Loans and Term Loans (including any Call Premium) shall be made or shared among the Lenders holding such Loans pro rata according to their respective unpaid principal amounts of such Loans held by such Lenders and (c) each payment of Construction Loan Commitment Fees shall be shared among the Lenders pro rata according to (i) their respective Proportionate Shares of the Commitments held by such Lenders to which such fees apply and (ii) in respect of each Lender which becomes a party to this Agreement hereunder after the Closing Date, the date upon which such Lender so became a party hereunder.

2.7.2 *Sharing of Payments, Etc.* If any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) on account of its Loans resulting in such Lender receiving payment in excess of its pro rata share of the aggregate payments obtained by the Lenders in respect of the Loans, then such Lender shall forthwith purchase from the other Lenders such participations in the Loans as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; provided that (a) if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from such Lender shall be rescinded and each other Lender shall repay to the purchasing Lender the purchase price to the extent of such recovery together with an amount equal to such other Lender's Proportionate Share of the applicable Facility (according to the proportion of (i) the amount of such other Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered and (b) the provisions of this paragraph shall not be construed to apply to (i) any payment made by Co-Borrowers pursuant to and in accordance with the express

terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or (ii) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to any Co-Borrower or any Affiliate thereof (as to which the provisions of this paragraph shall apply). Each Co-Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 2.7.2 may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of setoff) with respect to such participation as fully as if such Lender was the direct creditor of Co-Borrowers in the amount of such participation.

2.8 CHANGE OF CIRCUMSTANCES.

2.8.1 *[Reserved]*.

2.8.2 *[Reserved]*.

2.8.3 *Increased Costs*. If any Change of Law occurring after the Closing Date:

(a) shall impose, modify or hold applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets held by, deposits or other liabilities in or for the account of, advances or loans by, or any other acquisition of funds by any Lender;

(b) shall impose on any Lender any other condition, cost or expense (other than taxes) affecting this Agreement or any Loan or Commitment made by such Lender; or

(c) shall subject any Lender to any taxes on its capital reserves, deposit or other similar requirement reasonably attributable to or directly related to this Agreement or any Loan made by it, but excluding any Taxes or Other Taxes, in each case, that are indemnified pursuant to Section 2.6.4 and taxes expressly excluded from the definition of “Taxes” pursuant to Section 2.6.4(a),

and the effect of any of the foregoing is to increase the cost to such Lender of making (subject to the limitations in Section 9.12) or maintaining any such Loan or Commitment in respect thereof or to reduce any amount receivable by such Lender, then Co-Borrowers shall from time to time, within 30 days after demand by such Lender, pay to such Lender additional amounts sufficient to reimburse such Lender for such increased costs or to compensate such Lender for such reduced amounts. A certificate of a Lender setting forth in reasonable detail the amount of such increased costs or reduced amounts and the basis for determination of such amount, submitted by such Lender to Co-Borrowers, shall, in the absence of manifest error, be conclusive and binding on Co-Borrowers as to the amount of such increased costs or reduced amounts for purposes of this Agreement.

2.8.4 *Capital Requirements*. If any Lender determines that any Change of Law occurring after the Closing Date regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on the capital

or liquidity of such Lender, or the Lending Office of such Lender, or such Lender's Parent Company, if any, as a consequence of the Loan or the Commitments to a level below that which such Lender or such Lender's Parent Company could have achieved but for such Change of Law (taking into account such Lender's or such Person's policies with respect to capital or liquidity adequacy), then Co-Borrowers shall pay to such Lender or such Person, within 30 days after delivery of demand by such Lender or such Person, such amounts as such Lender or such Person shall reasonably determine are necessary to compensate such Lender or such Person for the increased costs to such Lender or such Person of such increased capital or liquidity. A certificate of such Lender or such Person, setting forth in reasonable detail the computation of any such increased costs and the basis for such determination, excluding any information that is legally restricted from being disclosed to the Co-Borrowers, delivered to Co-Borrowers by such Lender or such Person shall, in the absence of manifest error, be conclusive and binding on Co-Borrowers as to the amount of such increased costs or reduced amounts for purposes of this Agreement.

2.8.5 *Notice; Participating Lenders' Rights*. Each Lender shall notify Co-Borrowers of any event occurring after the Closing Date that will entitle such Lender to compensation pursuant to this Section 2.8, promptly, and in no event later than 180 days after the principal officer of such Lender responsible for administering this Agreement obtains knowledge thereof; provided that any Lender's failure to notify Co-Borrowers within such 180 day period shall not relieve any Co-Borrower of its obligation under this Section 2.8 with respect to claims arising prior to the end of such period, but shall relieve such Co-Borrower of its obligations under this Section 2.8 with respect to the time between the end of such period and such time as such Co-Borrower receives notice from the indemnitee as provided herein; and provided, further, that if the Change of Law giving rise to such increased costs or reductions is retroactive, then the 180 day period referred to above shall be extended to include the period of retroactive effect thereof. No Person purchasing from a Lender a participation in any Commitment (as opposed to an assignment) shall be entitled to any payment from or on behalf of Co-Borrowers pursuant to Section 2.8.3 or Section 2.8.4 which would be in excess of the applicable proportionate amount (based on the portion of the Commitment in which such Person is participating) which would then be payable to such Lender if such Lender had not sold a participation in that portion of the Commitment.

2.9 [RESERVED].

2.10 ALTERNATE OFFICE; MINIMIZATION OF COSTS.

2.10.1 [Reserved].

2.10.2 If and with respect to each occasion that any Lender has failed to consent to a proposed amendment, waiver, discharge or termination which pursuant to the terms of Section 9.9 requires the consent of all of the Lenders affected and with respect to which the Required Lenders shall have granted their consent, a Lender either makes a demand for compensation pursuant to Sections 2.6.4, 2.8.3 or 2.8.4 or a Lender

is a Defaulting Lender, then Co-Borrowers may, at their sole expense, upon at least five Banking Days prior irrevocable written notice to each of such Lender and Administrative Agent, in whole permanently replace all of the Loans and Commitments of such Lender and require such Lender to assign and delegate all of its interests, rights (other than its existing rights to payments pursuant to Sections 2.6.4, 2.8.3 and 2.8.4) and obligations under this Agreement and the related Credit Documents. Such replacement Lender shall upon the effective date of replacement purchase Co-Borrowers' Obligations hereunder owed to such replaced Lender for the aggregate amount thereof and shall thereupon for all purposes become a "Lender" hereunder. Such notice from Co-Borrowers shall specify an effective date for the replacement of such Lender's Loans and Commitments, which date shall not be later than the fourteenth day after the day such notice is given. On the effective date of any replacement of such Lender's Loans and Commitments pursuant to this Section 2.10.2, Co-Borrowers shall pay to Administrative Agent for the account of such Lender (a) any fees due to such Lender to the date of such replacement, (b) the principal of and accrued interest on the principal amount of outstanding Loans held by such Lender to the date of such replacement (such amount to be represented by the purchase of Co-Borrowers' Obligations hereunder of such replaced Lender by the replacing Lender and not as a prepayment of such Loans) plus (other than in connection with a replacement of a Defaulting Lender) the applicable Call Premium (if any) determined for the replacement date with respect to such assigned Loans and (c) the amount or amounts due to such Lender pursuant to each of Sections 2.6.4, 2.8.3, and 2.8.4, as applicable, and any other amount then payable hereunder to such Lender. Upon the effective date of the purchase of any Lender's Loans owed to such Lender and termination of such Lender's Commitments pursuant to this Section 2.10.2, such Lender (the "Terminated Lender") shall cease to be a Lender hereunder. No such termination of any such Terminated Lender's Commitments and the purchase of such Terminated Lender's Loans pursuant to this Section 2.10.2 shall affect (i) any liability or obligation of Co-Borrowers or any other Lender to such Terminated Lender, or any liability or obligation of such Terminated Lender to any Co-Borrower or any other Lender, which accrued on or prior to the date of such termination, or (ii) such Terminated Lender's rights hereunder in respect of any such liability or obligation. Nothing in this Section shall be deemed to prejudice any rights that any Co-Borrower may have against any Lender that is a Defaulting Lender.

2.10.3 Upon written notice to Administrative Agent, any Lender may designate a Lending Office other than the Lending Office most recently designated to Administrative Agent and may assign all of its interests under the Credit Documents and its Notes (if any) to such Lending Office; provided that such designation and assignment do not at the time of such designation and assignment increase the liability or the reasonably foreseeable liability of Co-Borrowers under Section 2.6.4, 2.8.3 or 2.8.4 or otherwise cause Co-Borrowers to breach any applicable law.

2.11 CO-BORROWERS.

2.11.1 *Joint and Several Liability.* Each Borrower Party agrees that it is jointly and severally liable for, and absolutely and unconditionally guarantees to Administrative Agent and the Lenders the prompt payment and performance of, all Obligations and all agreements under the Credit Documents. Each Borrower Party agrees that its guaranty obligations hereunder constitute a continuing guaranty of payment and not of collection, that such obligations shall not be discharged until Discharge of Second Lien Secured Obligations, and that such obligations are absolute and unconditional, irrespective of (i) the genuineness, validity, regularity, enforceability, subordination, or any future modification of, or change in, any Obligations or Credit Document, or any other document, instrument, or agreement to which any Borrower Party is or may become a party or be bound; (ii) the absence of any action to enforce this Agreement (including this Section) or any other Credit Document, or any waiver, consent, or indulgence of any kind by Administrative Agent or any Lender with respect thereto; (iii) the existence, value, or condition of, or failure to perfect a Lien, or to preserve rights against, any security or guaranty for the Obligations or any action, or the absence of any action, by Administrative Agent or any Lender in respect thereof (including the release of any security or guaranty); (iv) the insolvency of any Borrower Party; (v) any election by Administrative Agent or any Lender in a Bankruptcy Event for the application of Section 1111(b)(2) of the Bankruptcy Code or any provision of comparable state law; (vi) any borrowing or grant of a Lien by any other Borrower Party, as debtor-in-possession under Section 364 of the Bankruptcy Code or otherwise; (vii) the disallowance of any claims of Administrative Agent or any Lender against any Credit Party for the repayment of any Obligations under Section 502 of the Bankruptcy Code or otherwise; or (viii) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except Discharge of Second Lien Secured Obligations.

2.11.2 *Waivers.*

(a) Each Co-Borrower expressly waives all rights that it may have now or in the future under any statute, at common law, in equity or otherwise, to compel the Administrative Agent or any other Secured Party to marshal assets or to proceed against any Borrower Party, other Person, or security for the payment or performance of any Obligations before, or as a condition to, proceeding against such Co-Borrower. Each Co-Borrower waives all defenses available to a surety, guarantor, or accommodation co-obligor other than Discharge of Second Lien Secured Obligations. It is agreed among each Co-Borrower, the Administrative Agent and the Lenders that the provisions of this Section 2.11 are of the essence of the transaction contemplated by the Credit Documents and that, but for such provisions, the Administrative Agent and the Lenders would decline to make Loans. Each Co-Borrower acknowledges that its guaranty pursuant to this Section 2.11 is necessary to the conduct and promotion of its business and can be expected to benefit such business.

(b) Administrative Agent and Lenders may, in their discretion, pursue such rights and remedies as they deem appropriate, including realization upon Collateral by judicial foreclosure or non-judicial sale or enforcement, without affecting any rights and remedies under this Section 2.11. If, in taking any action in connection with the exercise of any rights or remedies, the

Administrative Agent or any Lender shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any Borrower Party or other Person, whether because of any applicable law pertaining to "election of remedies" or otherwise, each Co-Borrower consents to such action and waives any claim based upon it, even if the action may result in loss of any rights of subrogation that any Borrower Party might otherwise have had. Any election of remedies that results in denial or impairment of the right of Administrative Agent or any Lender to seek a deficiency judgment against any Borrower Party shall not impair any Co-Borrower's obligation to pay the full amount of the Obligations. Each Co-Borrower waives all rights and defenses arising out of an election of remedies, such as non-judicial foreclosure with respect to any security for the Obligations, even though that election of remedies destroys such Co-Borrower's rights of subrogation against any other Person.

2.11.3 *Extent of Liability; Contribution.*

(a) Notwithstanding anything herein to the contrary, each Co-Borrower's liability under this Section 2.11 shall be limited to the greater of (A) all amounts for which such Co-Borrower is primarily liable, as described below and (B) such Co-Borrower's Allocable Amount.

(b) If any Co-Borrower makes a payment under this Section 2.11 of any Obligations (other than amounts for which such Co-Borrower is primarily liable) (a "Co-Borrower Payment") that, taking into account all other Co-Borrower Payments previously or concurrently made by any other Co-Borrower, exceeds the amount that such Co-Borrower would otherwise have paid if each Co-Borrower had paid the aggregate Obligations satisfied by such Co-Borrower Payments in the same proportion that such Co-Borrower's Allocable Amount bore to the total Allocable Amounts of all Co-Borrowers, then such Co-Borrower shall be entitled to receive contribution and indemnification payments from, and to be reimbursed by, the other Co-Borrower for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately before such Co-Borrower Payment. The "Allocable Amount" for any Co-Borrower shall be the maximum amount that could then be recovered from such Co-Borrower under this Section 2.11 without rendering such payment voidable under Section 548 of the Bankruptcy Code or under any other applicable Bankruptcy Law.

(c) Nothing contained in this Section 2.11 shall limit the liability of any Co-Borrower to pay Loans made directly or indirectly to that Co-Borrower (including Loans advanced to any other Co-Borrower and then remade or otherwise transferred to, or for the benefit of, such Co-Borrower) and all accrued interest, fees, expenses, and other related Obligations with respect thereto, for which such Co-Borrower shall be primarily liable for all purposes hereunder. The Administrative Agent and Lenders shall have the right, at any time in their discretion, to condition Loans and to restrict the disbursement and use of such Loans to such Co-Borrower.

2.11.4 *Joint Enterprise.* Each Co-Borrower has requested that the Agent and the Lenders make this credit facility available to Co-Borrowers on a combined basis, to finance Co-Borrowers' business most efficiently and economically. Co-Borrowers' business is a mutual and collective enterprise, and Co-Borrowers believe that combination of their credit facilities will enhance the borrowing power of each Co-Borrower and ease the administration of their relationship with credit providers

(including the Agent and the Lenders), all to the mutual advantage of Co-Borrowers. Co-Borrowers acknowledge and agree that Agent and Lenders' willingness to extend credit to Co-Borrowers and to administer the Collateral on a combined basis, as set forth herein, is done solely as an accommodation to Co-Borrowers and at Co-Borrowers' request.

2.11.5 *Administrative Borrower; Allocation of Loans.* Each of GasCo and Holdings hereby appoints PowerCo as its agent, attorney-in-fact and representative for all purposes under the Credit Documents, including for (i) making any borrowing requests or other requests required under this Agreement, (ii) the giving and receipt of notices by and to the Co-Borrowers under this Agreement, (iii) the delivery of all documents, reports, financial statements and written materials required to be delivered by the Co-Borrowers under this Agreement, and (iv) all other purposes incidental to any of the foregoing. PowerCo hereby accepts such appointment. GasCo and each other Borrower Party agree that any action taken by PowerCo as the agent, attorney-in-fact and representative of such Borrower Party shall be binding upon such Borrower Party to the same extent as if directly taken by any of them. The Administrative Agent and the Lenders may give any notice to, or communication with, a Borrower Party hereunder or under any other Credit Document to or with PowerCo on behalf of such Borrower Party. Each Borrower Party agrees that any notice, election, communication, representation, agreement, or undertaking made on its behalf by PowerCo shall be binding upon and enforceable against it. The Administrative Agent and the Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, the terms of this Section 2.11.5; provided that nothing contained herein shall limit the effectiveness of, or the right of the Administrative Agent or any Lender to rely upon, any notice (including without limitation a borrowing or conversion notice), instrument, document, certificate, acknowledgment, consent, direction, certification or any other action delivered by any Borrower Party pursuant to this Agreement or any other Credit Document. The Loans shall be made to PowerCo as borrower unless a different allocation of the Loans as between PowerCo and GasCo with respect to any borrowing hereunder is included in the applicable Notice of Borrowing delivered pursuant to Section 2.1.1(b).

2.11.6 *Obligations Absolute.* Each Co-Borrower hereby waives, for the benefit of Administrative Agent and Lenders: (a) any right to require the Administrative Agent or any other Secured Party, as a condition of payment or performance by such Co-Borrower, to (i) proceed against the other Co-Borrower, any other Borrower Party or any other Person, (ii) proceed against or exhaust any security held from the other Co-Borrower, any other Borrower Party or any other Person, (iii) proceed against or have resort to any balance of any deposit account or credit on the books of the Administrative Agent, any Lender or any Secured Party in favor of the other Co-Borrower or any other Person, or (iv) pursue any other remedy in the power of Administrative Agent or any other Secured Party whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of the other Co-Borrower or any other Borrower Party including any defense based on or arising out of the lack of validity or the unenforceability of the Obligations or any agreement

or instrument relating thereto or by reason of the cessation of the liability of the other Co-Borrower or any other Borrower Party from any cause other than payment in full of the Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon the Administrative Agent's or any other Secured Party's errors or omissions in the administration of the Obligations, except behavior which amounts to bad faith, gross negligence or willful misconduct; (e) (i) any legal or equitable discharge of such Co-Borrower's obligations hereunder (other than Discharge of Second Lien Secured Obligations), (ii) the benefit of any statute of limitations affecting such Co-Borrower's liability hereunder or the enforcement hereof, (iii) any defense of set offs, recoupments and counterclaims that may be asserted against any Lender or any Agent in respect of the Obligations, and (iv) promptness, diligence and any requirement that Administrative Agent or any other Secured Party protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder or under the other Credit Documents or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Obligations or any agreement related thereto, notices of any extension of credit to any Co-Borrower and notices of any of the matters referred to in the Guaranty and Security Agreement and any right to consent to any thereof; and (g) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

2.12 ACKNOWLEDGEMENT AND CONSENT TO BAIL-IN OF EEA FINANCIAL INSTITUTIONS. Notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Credit Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

i. a reduction in full or in part or cancellation of any such liability;

ii. a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Credit Document; or

iii. the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority,

in each case, to the extent that, at the time, the foregoing shall be the general policy or practice of such EEA Financial Institution with respect to similarly situated customers under comparable provisions of similar agreements; provided that nothing in this Section 2.12 shall require any EEA Financial Institution to disclose any confidential information related to similarly situated customers, comparable provisions of similar agreements or otherwise.

ARTICLE 3
CONDITIONS PRECEDENT

3.1 CONDITIONS PRECEDENT TO THE CLOSING DATE. The effectiveness of the Commitments and the occurrence of the Closing Date is subject to the prior satisfaction of each of the following conditions (unless waived in writing by Administrative Agent with the consent of each Lender):

3.1.1 *Resolutions*. Delivery to the Administrative Agent of a copy of one or more resolutions or other authorizations, in form and substance satisfactory to each Lender, of each Borrower Party, certified by a Responsible Officer of such Borrower Party as being in full force and effect on the Closing Date, authorizing, in the case of Co-Borrowers only, the Borrowings herein provided for, and, in the case of other Borrower Parties only, the granting of the Liens or the incurrence of guarantee or contribution obligations under the Collateral Documents to which such Person is a party entered into on or prior to the Closing Date and, in the case of all Borrower Parties, delivery and performance of the Operative Documents to which such Person is a party entered into on or prior to the Closing Date and any instruments or agreements required thereunder.

3.1.2 *Incumbency*. Delivery to the Administrative Agent of a certificate, in form and substance satisfactory to the Lenders, from each Borrower Party signed by an appropriate Responsible Officer of each such Borrower Party and dated as of the Closing Date, as to the incumbency of the natural Persons authorized to execute and deliver the Credit Documents to which such Borrower Party entered into on or prior to the Closing Date and any instruments or agreements required thereunder.

3.1.3 *Formation Documents*. Delivery to the Administrative Agent of (a) a copy of the articles of incorporation, certificate of incorporation, certificate of formation, charter or other state certified constituent documents of each Borrower Party, certified by the secretary of state of such Borrower Party's state of incorporation or formation, as applicable, and (b) a copy of the bylaws, limited liability company operating agreement or other comparable constituent documents, if applicable, of each Borrower Party, certified by a Responsible Officer of such Borrower Party as being true, correct and complete on the Closing Date.

3.1.4 *Good Standing Certificates*. Delivery to the Administrative Agent of good standing certificates in a form customarily issued by the secretary of state of the state in which each Borrower Party is formed or incorporated, as applicable, in each case dated a date reasonably close prior to the Closing Date.

3.1.5 *Credit Documents, Closing Date Permitted Commodity Hedge Agreements and Project Documents*. Delivery to the Administrative Agent of (a) executed original counterparts of this Agreement and each other Credit Document to be executed on or prior to the Closing Date (and any supplements or amendments thereto), all of which shall be in form and substance satisfactory to the Lenders, (b) a true, correct and complete copy of each Closing Date Permitted Commodity Hedge Agreement and each Major Project Document (other than Major Project Documents expressly contemplated herein to be executed and delivered after the Closing Date, including the O&M Agreement and the Interconnection Construction Service Agreement) (together with any supplements or amendments thereto), which Closing Date Permitted Commodity Hedge Agreement and Major Project Documents shall be in form and substance satisfactory to the Lenders and certified by a Responsible Officer of each Co-Borrower party thereto as being true, complete and correct and in full force and effect on the Closing Date pursuant to the certificate delivered pursuant to Section 3.1.6 and (c) Consents, dated on or prior to the Closing Date, in respect of (i) each of the Closing Date Permitted Commodity Hedge Agreements and (ii) each of the Major Project Documents listed on Exhibit E-2, which Consents shall be in form and substance acceptable to the Lenders and the Collateral Agent. Co-Borrowers shall have delivered (or will deliver substantially concurrently with the Closing Date) evidence reasonably satisfactory to the Lenders that all actions to be taken and deliverables to be provided to the counterparties under Part 3 of the ISDA Schedule with respect to each Closing Date Permitted Commodity Hedge Agreement have been completed and such conditions have been satisfied on or prior to the Closing Date (or will be completed and such conditions satisfied substantially concurrently with the Closing Date).

3.1.6 *Closing Certificate*. Delivery to the Administrative Agent of a certificate, dated as of the Closing Date, duly executed by a Responsible Officer of each Co-Borrower, in substantially the form of Exhibit F-1.

3.1.7 *Legal Opinions*. Delivery to the Administrative Agent of legal opinions, in form and substance acceptable to the Administrative Agent and the Required Lenders, of (a) Cravath, Swaine & Moore LLP, New York counsel to the Borrower Parties, dated the date hereof and addressed to each Agent and the Lenders, (b) Vorys, Sater, Seymour and Pease LLP, Ohio counsel to PowerCo, dated the date hereof and addressed to each Agent and the Lenders, (c) Morgan, Lewis & Bockius LLP, counsel to the Borrower Parties, dated the date hereof and addressed to each Agent and the Lenders, as to certain FERC matters, (d) Steptoe & Johnson PLLC, counsel to the Borrower Parties, dated the date hereof and addressed to each Agent and the Lenders and (e) Taft Stettinius & Hollister LLP, counsel to the Borrower Parties, dated the date

hereof and addressed to each Agent and the Lenders, which opinions shall each permit the Lenders to disclose such opinion to applicable Governmental Authorities.

3.1.8 *Report of Insurance Consultant*. Delivery to the Administrative Agent of the Insurance Consultant Report, in form and substance satisfactory to the Lenders, along with a reliance letter permitting the Administrative Agent and the Credit Parties to rely on such report subject to the limitations set forth in such reliance letter.

3.1.9 *Insurance*. Insurance complying with terms and conditions set forth in Exhibit K shall be in full force and effect and the Administrative Agent and the Insurance Consultant shall have received (a) a certificate from each Co-Borrower's insurance broker(s), dated as of the Closing Date and in form and substance satisfactory to the Lenders, (i) identifying underwriters, type of insurance, insurance limits and policy terms, (ii) listing the endorsements required as set forth in Exhibit K, (iii) describing the insurance obtained and (iv) stating that such insurance is in full force and effect and that all premiums then due thereon have been paid and/or confirming that such premiums are included in the Funds Flow Memorandum and that, in the opinion of such broker(s), such insurance complies with the terms and conditions set forth in Exhibit K, and (b) copies of all policies evidencing such insurance, if available on the Closing Date, or a binder, commitment or certificates signed by the insurer or a broker authorized to bind the insurer, each in form and substance satisfactory to the Lenders.

3.1.10 *Reports of the Independent Engineer, Market Consultant, Petroleum Engineer, Transmission Consultant and PCB Consultant*. Delivery to the Administrative Agent, in each case in form and substance satisfactory to each Lender, of (i) the Independent Engineer Report, along with a use of work product agreement permitting the Administrative Agent and the Credit Parties to rely on such Independent Engineer Report subject to the limitations set forth in such use of work product agreement, (ii) the Market Consultant's Report, along with a reliance letter permitting the Administrative Agent and the Credit Parties to rely on such Market Consultant's Report subject to the limitations set forth in such reliance letter, (iii) the Reserve Report, along with use of work product agreements permitting the Administrative Agent and the Credit Parties to rely on such Reserve Report subject to the limitations set forth in such use of work product agreements, (iv) the Transmission Consultant Report, along with a use of work product agreement permitting the Administrative Agent and the Credit Parties to rely on such Transmission Consultant Report subject to the limitations set forth in such use of work product agreement and (v) the PCB Report, along with a reliance letter permitting the Administrative Agent and the Credit Parties to rely on such PCB Report subject to the limitations set forth in such reliance letter.

3.1.11 *Environmental Assessment*. Delivery to the Administrative Agent of a "Phase I" environmental site assessment (dated no earlier than six months prior to the Closing Date) with respect to the Generating Project Site prepared by the Environmental Consultant, in form and substance satisfactory to each Lender, together

with a reliance letter permitting the Administrative Agent and the Credit Parties to rely on such environmental site assessments subject to the limitations set forth in such reliance letter.

3.1.12 *Financial Statements*. Delivery to the Administrative Agent of an accurate and complete copy of the unaudited balance sheet of Holdings and the Co-Borrowers (on a consolidated basis) at September 30, 2018, and the unaudited consolidated statements of operations, comprehensive loss and cash flow of Holdings and the Co-Borrowers for the fiscal quarter then ended, together with a certificate from a Responsible Officer thereof, dated as of the Closing Date and in substantially the form of Exhibit F-1.

3.1.13 *Collateral; Filings and Recordings.*

(a) Collateral Agent shall have been granted on the Closing Date (other than in respect of the Mortgaged Property, Liens in respect of which shall be granted upon the recording of the Mortgages in the filing office identified in Exhibit D as soon as reasonably practicable on or after the Closing Date but for which (except with respect to any Mortgage over mineral interests) gap title insurance coverage shall be available on the Closing Date), for the benefit of the Secured Parties, second priority perfected Liens on the Collateral (subject only to Permitted Liens).

(b) The Pledged Equity shall have been duly and validly pledged under the Guaranty and Security Agreement to Collateral Agent, for the benefit of the Secured Parties, and certificates and instruments representing the Pledged Equity, accompanied by instruments of transfer indorsed in blank, shall be in the actual possession of the "Collateral Agent" under, and as defined in, the First Lien Credit Agreement (the "First Lien Collateral Agent"), subject to the terms of the Intercreditor Agreement.

(c) Delivery to the Administrative Agent of:

i. appropriately completed UCC financing statements (Form UCC-l), which have been duly authorized for filing by the appropriate Person, naming each Co-Borrower and Holdings as debtors and Collateral Agent as secured party, in form appropriate for filing under each jurisdiction as may be necessary to perfect the security interests purported to be created by the Collateral Documents, covering the applicable Collateral;

ii. copies of UCC, judgment lien, tax lien and litigation lien search reports, which reports will be dated a recent date acceptable to the Administrative Agent, listing all effective financing statements that name a Co-Borrower or Holdings as debtor and that are filed in the jurisdictions in which the UCC-1 financing statements will be filed in respect of the Collateral, none of which shall cover the Collateral except to the extent evidencing Permitted Liens;

iii. appropriately completed copies of all other recordings and filings of, or with respect to, the Collateral Documents as may be necessary to perfect the security interests purported to be created by the Collateral Documents or as may otherwise be reasonably requested by the Administrative Agent; and

iv. evidence that all other actions necessary to perfect and protect the security interests purported to be created by the Collateral Documents entered into on or prior to the Closing Date or as may otherwise be reasonably requested by the Administrative Agent and have been taken or will be taken on the Closing Date.

3.1.14 *Base Case Projections*. Delivery to the Administrative Agent of (a) the Base Case Projections in form and substance satisfactory to the Lenders, which Base Case Projections shall demonstrate compliance, as of the Closing Date, with the Debt Sizing Criteria and with the First Lien Debt Sizing Criteria; provided that if the weighted average price per megawatt-hour under the Closing Date Permitted Commodity Hedge Agreements through the maturity of each Closing Date Permitted Commodity Hedge Agreement is less than $27.25 the Co-Borrowers shall re-run the Base Case Projections (as so re-run, the "Debt Resizing Projections") on the Closing Date taking into account the actual average price per megawatt-hour through maturity of each Closing Date Permitted Commodity Hedge Agreement under such Closing Date Permitted Commodity Hedge Agreements, and shall (i) increase the cash common equity contributions deposited into the Construction Account pursuant to Section 3.1.26, and (ii) reduce the Term Loan Commitments and the Second Lien Loan Commitments, in each case so that after giving effect to such increase in cash common equity contributions and decrease in the Term Loan Commitments and the Second Lien Loan Commitments, the Debt Sizing Criteria and the First Lien Debt Sizing Criteria are satisfied on the Closing Date, and (b) an updated Exhibit L in form and substance satisfactory to the Lenders (which updated Exhibit L shall replace in its entirety any previously delivered Exhibit L). The Administrative Agent, the Co-Borrowers and the Lenders shall make such administrative amendments to this Agreement as are necessary to reflect such increased equity and decreased Term Loan Commitments in connection with any Debt Resizing Projections.

3.1.15 *A.L.T.A. Surveys*. The Administrative Agent and Collateral Agent shall have received an A.L.T.A. survey of the Site except that with respect to easements benefitting the Site, such survey may not be A.L.T.A. so long as it is of a quality acceptable to the Title Insurer for purposes of insuring such easements; such survey shall be reasonably current and in form and substance satisfactory to the Lenders and the Title Insurer, shall be certified to Co-Borrowers, Administrative Agent, Collateral Agent and the Title Insurer by a surveyor licensed in the state where the Project is located and satisfactory to the Lenders, and shall show, among other things, (a) as to the Site, the location and dimensions thereof (including (i) the location of all means of access thereto and all recorded easements or encumbrances relating thereto, and (ii) the perimeter within which all visible improvements are located), (b) the existing utility facilities servicing the Project (including water, electricity, fuel, telephone, sanitary sewer and storm water distribution and detention facilities), (c) other than Permitted Liens, that no existing improvements encroach or interfere with adjacent property or existing easements or other rights (whether on, above or below ground), and that there are no material gaps, gores, projections, protrusions or other material survey defects, (d) whether the Site or the Easements, or any portion thereof, are located in a special

flood hazard zone and (e) no other matters constituting a defect in title other than Permitted Liens; provided that the matters described in clauses (a)(ii) and (d) above may be shown by separate maps, surveys or other information satisfactory to the Lenders, and (except as described in clause (a)(ii) above) the surveyor shall not be required to certify as to the location of any easements, improvements, encroachments utilities or other matters which do not exist as of the Closing Date.

3.1.16 *Title Policy*.

(a) Delivery to Collateral Agent of an A.L.T.A. Loan Policy - 2006 extended coverage policy of title insurance (the "Title Policy") insuring that each Mortgage (except any Mortgage over mineral interests) creates a valid second priority Lien for the benefit of Collateral Agent on that portion of the Mortgaged Property that consists of land and improvements which constitute real property under applicable law, subject only to such title exceptions as are acceptable to the Lenders, and otherwise in form and substance satisfactory to the Lenders, together with such endorsements thereto as are reasonably required by the Lenders and available in the state where the Project is located, dated as of the Closing Date (or the unconditional and irrevocable commitment of the Title Insurer to issue such Title Policy), in an amount equal to 65% of the Total Term Loan Commitment.

(b) The Administrative Agent shall have received evidence satisfactory to it that all premiums in respect of the Title Policy, all charges for mortgage recording taxes in connection with the recordation of the Mortgages, and all related expenses, if any, have been paid or will be paid on the Closing Date.

3.1.17 *Compliance with Flood Laws*. With respect to the Site and the Easements, the following:

(a) A completed "life of loan" Federal Emergency Management Agency Standard Flood Hazard Determination;

(b) If any improvement to the Site or the Easements is located in a special flood hazard area, a notification thereof to Co-Borrowers from the Administrative Agent (the "Co-Borrowers Flood Notice"), and (if applicable) the Co-Borrowers Flood Notice shall contain a notification to Co-Borrowers that flood insurance coverage under the National Flood Insurance Program ("NFIP") is not available because the community does not participate in the NFIP;

(c) Documentation evidencing each Co-Borrower's receipt of the Co-Borrowers Flood Notice (e.g., countersigned Co-Borrowers Flood Notice, return receipt of certified U.S. Mail, or overnight delivery); and

(d) If the Co-Borrowers Flood Notice is required to be given and flood insurance is available in the community in which the Site or the Easements is located, a copy of one of the following: the flood insurance policy, Co-Borrowers' application for a flood insurance policy plus proof of premium payment or inclusion of such premium payment in the Funds Flow Memorandum, a declaration page confirming that flood insurance has been provided as a separate policy or within

the property insurance program for the Project, or such other evidence of flood insurance satisfactory to the Administrative Agent and the Lenders. To the extent that any improvement to the Site or the Easements is located in a special flood hazard area, such flood insurance arranged by Co-Borrowers shall be in an amount at least equivalent to the amount available under the NFIP.

3.1.18 *Representations and Warranties*. Each representation and warranty of each Borrower Party under the Credit Documents to which it is a party shall be true and correct as of the Closing Date, unless such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct as of such earlier date).

3.1.19 *No Default*. No Event of Default or Inchoate Default shall have occurred and be continuing as of the Closing Date.

3.1.20 *Establishment of Accounts*. The Depositary Accounts required to be open as of the Closing Date under the Depositary Agreement shall have been opened.

3.1.21 *Regulatory Status and Market Status*. Delivery to the Administrative Agent of a copy of a notice of self-certification filed at FERC demonstrating that PowerCo is an Exempt Wholesale Generator.

3.1.22 *Necessary Project Permits.*

(a) Delivery to the Administrative Agent of a copy of each Applicable Permit set forth on Exhibit G-1(a), and each such Applicable Permit shall be in form and substance satisfactory to each Lender.

(b) Except as disclosed in Exhibit G-1(a), the Applicable Permits set forth on Exhibit G-1(a) shall have been issued and be in full force and effect in all material respects and not be subject to current legal proceedings or to any Unsatisfied Conditions that would reasonably be expected to have a Material Adverse Effect, and all applicable administrative and statutory appeal periods with respect thereto shall have expired. The Applicable Permits set forth on Exhibit G-1(a) shall not be subject to any restriction, condition, limitation or other provision which would reasonably be expected to have a Material Adverse Effect or result in the Project being operated in a manner substantially inconsistent with the assumptions underlying the Base Case Projections.

3.1.23 *Construction Budget and Project Schedule; Sources and Uses*. The Administrative Agent shall have received (i) the Construction Budget, (ii) the Project Schedule, and (iii) a sources and uses of funds demonstrating that the Construction Facility and the First Lien Loan Commitments, together with the equity contributions on the Closing Date and projected revenues from the Production Project, are sufficient to fund anticipated remaining Project Costs, each of which shall be satisfactory to the Lenders.

3.1.24 *Subordination Agreement.* The Subordination Agreement shall have been duly recorded and filed (or will be recorded and filed substantially concurrently with the Closing Date) within the applicable land records of each county or jurisdiction in which any of the Gasco JDA Subject Property or any of the Gasco JOA Subject Property (each as defined in the Subordination Agreement) is located.

3.1.25 *U.S.A. Patriot Act; Beneficial Ownership Regulation*. Each Agent and Lender shall have received, at least five Banking Days prior to the Closing Date so long as such request was made no less than ten Banking Days prior to the Closing Date, (a) all documentation and other information required by bank regulatory authorities and reasonably requested by it under applicable "know your customer" laws, AML Laws, Sanctions and Anti-Terrorism Laws, including the USA Patriot Act (2001 H.R. 3162 (signed into law October 26, 2001)) (the "Act"), (b) if any Co-Borrower qualifies as a "legal entity customer" within the meaning of the Beneficial Ownership Regulation, a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation (in the form approved by the LSTA) for such Co-Borrower (the "Beneficial Ownership Certification") and (c) a duly executed copy of each Co-Borrower's IRS Form W-9 or such other applicable IRS Form.

3.1.26 *Equity Contributions*. On or prior to the Closing Date, the Borrower Parties shall have caused one or more parent companies of Holdings to have deposited cash common equity contributions to Holdings and, in turn, Holdings shall have contributed such amounts to the Co-Borrowers, and such amounts in an aggregate amount equal to $49,242,000, plus any additional amount required in connection with any Debt Resizing Projections, shall have been deposited in the Construction Account, and such amounts in an aggregate amount equal to $20,000,000 shall have been deposited in the Contingent Equity Account, in each case under the Depositary Agreement.

3.1.27 *Water Line Easement and Operating Agreement*. The Water Line Easement and Operating Agreement or memorandum thereof shall have been duly recorded and filed (or will be recorded and filed substantially concurrently with the Closing Date) within the land records of Monroe County, Ohio in which the Easement Area (as defined in the Water Line Easement and Operating Agreement) is located.

3.1.28 *Payment of Fees*. All taxes, fees and other costs payable in connection with the execution, delivery, recordation and filing of the Credit Documents and due on the Closing Date shall have been paid in full or provided for (including out of the proceeds of the Construction Loans on the Closing Date). Co-Borrowers shall have paid (or caused to be paid) or shall pay out of the proceeds of the Construction Loans on the Closing Date all outstanding amounts due as of the Closing Date and owing to (a) the Lenders, Administrative Agent, Collateral Agent or the Arranger under any fee or other letter, including without limitation the Fee Letters or pursuant to Section 2.3.1, (b) the Lenders' attorneys and consultants (including the Independent Consultants) and the Title Insurer for all services rendered and billed prior to the Closing Date, (c) the

Depositary Agent under the Depositary Agreement, (d) the attorneys for the Collateral Agent and/or the Depositary Agent and (e) Administrative Agent for any other amounts required to be paid or deposited by Co-Borrowers on the Closing Date.

3.1.29 *First Lien Credit Documents.* The Co-Borrowers shall have delivered to the Administrative Agent fully-executed copies of all First Lien Credit Documents, each in form and substance satisfactory to each Lender.

3.1.30 *Solvency Certificate*. The Administrative Agent shall have received a certificate, dated as of the Closing Date, duly executed by a financial officer of each Borrower Party, in substantially the form of Exhibit F-2.

3.1.31 *Pre-Closing Project Costs*. The Administrative Agent shall have received an executed certificate or other written verification from the Independent Engineer that $100,910,112 shall have been applied to the payment of Project Costs included in the Construction Budget prior to the Closing Date, and each Lender shall have received satisfactory evidence of the foregoing.

3.1.32 *Notices to Proceed*. The Administrative Agent shall have received a copy of the Notice to Proceed under and as defined in the EPC Contract, and the Notice to Proceed under and as defined in the PIE Contract, each of which shall have been delivered to the relevant counterparty under and in accordance with the EPC Contract and the PIE Contract, respectively.

3.1.33 *Funds Flow Memorandum*. The Administrative Agent, the Depositary Agent and the Arranger shall have received a copy of the Funds Flow Memorandum, in form and substance satisfactory to such Agents.

3.2 CONDITIONS PRECEDENT TO EACH CONSTRUCTION CREDIT EVENT. The obligation of the Lenders to make each Construction Loan (other than any Construction Loan the proceeds of which are applied in accordance with the Funds Flow Memorandum on the Closing Date) (each a "Construction Credit Event") is subject to the satisfaction of each of the following conditions (unless waived in writing by Administrative Agent with the consent of the Required Lenders):

3.2.1 *[Reserved].*

3.2.2 *Title Policy Endorsements*. Title Insurer shall have issued (or shall have irrevocably committed to issue) to Administrative Agent an endorsement to the Title Policy in the form of Exhibit R attached hereto, confirming that Title Insurer has searched the records of the recorder's office for Monroe County, Ohio on the day prior to the then applicable Construction Credit Event, and no Liens are disclosed by the public records as encumbering the Real Property, except for Permitted Liens and any other Liens as are acceptable to Administrative Agent.

3.2.3 *Lien Releases; No Liens*. Each Co-Borrower shall have delivered to Administrative Agent to the extent required to be delivered by the applicable counterparty pursuant to the terms of the applicable Major Project Document, duly executed lien releases or waivers from EPC Contractor and, to the extent the aggregate contract price under any contract entered into with a subcontractor or supplier exceeds $1,000,000 for any interim payment or $1,000,000 for any final payment, from each such subcontractor or supplier under the Construction and Equipment Contracts or any other Major Project Document providing for construction services on, or delivery of any equipment or materials to, any Real Property (including any subcontractor or supplier engaged pursuant to a subcontract with a contractor under the EPC Contract other than any such subcontractor or supplier that is not required to deliver such lien waivers by the terms of the EPC Contract) to be paid from funds requested under the related Borrowing, or to be paid from any other funds on deposit in the Construction Account prior to the date of the next Borrowing hereunder, which lien releases or waivers shall each be dated no earlier than the invoice delivered by the applicable counterparty which is to be paid from the requested Borrowing and shall be substantially consistent with any relevant requirements of the applicable Major Project Document and in the form required pursuant to Ohio law. There has not been filed with or served upon any Co-Borrower or the Project (or any part thereof) notice of any Lien, claim of Lien or attachment upon or claim affecting the right to receive payment of any of the moneys payable to any of the Persons named on such request which has not been released or in respect of which a bond or other security reasonably acceptable to Administrative Agent has not been posted or provided or which will not be released with the payment of such obligation out of such Loan other than Permitted Liens.

3.2.4 *[Reserved]*.

3.2.5 *[Reserved]*.

3.2.6 *Available Construction Funds*. Co-Borrowers shall have certified through delivery of a Construction Requisition that the Available Construction Funds shall not be less than the aggregate unpaid amount required to cause the Completion Date to occur in accordance with all Legal Requirements and the Major Project Documents prior to the Date Certain and the Independent Engineer shall have confirmed through the delivery of the IE Requisition Certificate that the Available Construction Funds shall not be less than the aggregate unpaid amount required to cause the Completion Date to occur in accordance with all Major Project Documents prior to the Date Certain.

3.2.7 *Applicable Permits*. All necessary Applicable Permits with respect to the construction and operation of the Project required to have been obtained by a Co-Borrower by the date of such Construction Credit Event from any Governmental Authority shall have been issued and be in full force and effect and not be subject to current legal proceedings or to any unsatisfied conditions (other than any condition which such Co-Borrower reasonably expects to satisfy or cause to be satisfied on or

prior to the date such satisfaction is required) that would reasonably be expected to allow material modification or revocation, and all applicable administrative and statutory appeal periods with respect thereto shall have expired. Except as disclosed in Exhibit G-1(a), the Applicable Permits which have been obtained by a Co-Borrower shall not be subject to any restriction, condition, limitation or other provision that would reasonably be expected to have a Material Adverse Effect.

3.3 CONDITIONS PRECEDENT TO TERM CONVERSION.

The occurrence of the Term Conversion Date shall be subject to the satisfaction of the following conditions (unless waived in writing by Administrative Agent with the consent of the Required Lenders):

3.3.1 *Notice of Term Conversion*. Co-Borrowers shall have delivered a duly executed Notice of Term Conversion to Administrative Agent pursuant to Section 2.1.2(b).

3.3.2 *Completion*. The Project shall have achieved Completion, as certified in writing by a Responsible Officer of each Co-Borrower in a certificate in the form of Exhibit C-6 attached hereto and confirmed in a certificate from the Independent Engineer in the form of Exhibit C-7 attached hereto. Administrative Agent shall have received a copy of the “Certificate of Substantial Completion” delivered by the EPC Contractor under the EPC Contract.

3.3.3 *Acceptable Work; No Liens; Project Costs.*

(a) All work previously done on the Project funded with the proceeds of the Construction Loans has been done in all material respects in accordance with the applicable Major Project Documents. There has not been filed with or served upon any Co-Borrower or the Project (or any part thereof) notice of any Lien or claim of Lien affecting the right to receive payment of any of the moneys payable to any of the Persons named on such request which has not been released or will not be released on the Term Conversion Date by payment or bonding on terms reasonably satisfactory to the Required Lenders, other than Permitted Liens.

(b) All Project Costs other than Remaining Costs shall have been paid for.

3.3.4 *Insurance*. All of the insurance required to be in place in respect of the Project under the Operative Documents (including with respect to the operational phase of the Project) shall be in full force and effect in accordance with the terms of this Agreement and Administrative Agent shall have received a certificate from Insurance Consultant, in substantially the form of Exhibit C-8.

3.3.5 *Title Policy*. Delivery to Administrative Agent of (a) an endorsement to the Title Policy in the form of Exhibit R attached hereto (subject only to Permitted Liens and any other exceptions to title as are acceptable to Administrative Agent) and (b) a date down endorsement to the Title Policy showing no Liens other than

Permitted Liens and in form and substance reasonably acceptable to Administrative Agent.

3.3.6 *Annual Operating Budget*. Co-Borrowers shall have delivered to Administrative Agent and Administrative Agent shall have approved the first Annual Operating Budget in accordance with Section 5.12.2.

3.3.7 *[Reserved]*.

3.3.8 *Term Notes*. Co-Borrowers shall have delivered duly executed Term Notes (if any) to any Term Lender that shall have requested such Term Notes pursuant to Section 2.1.6 or 9.13.

3.3.9 *Regulatory Status.* The Administrative Agent shall have received reasonably satisfactory evidence of the effectiveness of PowerCo's MBR Authority and status as an Exempt Wholesale Generator.

3.3.10 *Required Documentation*. The Administrative Agent shall have received on or prior to the Term Conversion Date a copy of each Major Project Document executed after the Closing Date (certified by a Responsible Officer of each Co-Borrower as being true, correct and in full force and effect) and any related Consent to the extent required pursuant to Section 5.14, in each case if and to the extent that a copy thereof has not previously been delivered to Administrative Agent.

3.3.11 *Production Report.* The Administrative Agent shall have received from the Co-Borrowers, no later than 10 Banking Days prior to the Term Conversion Date a certificate (together with reasonable backup information supporting the conclusions stated therein) confirming actual cumulative natural gas production from the Closing Date to the date of delivery of such certificate from all wells at the Production Project (excluding those completed in the 60 days immediately preceding the Term Conversion Date), comparing such recovery to the production profiles attached hereto as Exhibit Q, adjusted for the region where such wells are located, lateral lengths and the time each such well was actually producing, and confirmed by the Petroleum Engineer. If actual cumulative natural gas production is less than 95% of the expected production derived from such exhibit, then all amounts on deposit in the Contingent Equity Account and any amounts available pursuant to Section 3.1(b)(ii)(F) of the Depositary Agreement, not to exceed in the aggregate $20,000,000 will be deposited in the Operating Reserve Account pursuant to the Depositary Agreement, and otherwise such amounts in the Contingent Equity Account shall be transferred in accordance with Section 3.14(b)(ii)(y) of the Depositary Agreement. For the avoidance of doubt, if the lateral length or time period is not specifically defined on Exhibit Q, the lateral length or time period will be linearly adjusted based on the two nearest data points in Exhibit Q.

3.3.12 *[Reserved]*.

3.3.13 *Applicable Permits.*

(a) Delivery to the Administrative Agent of a copy of each Applicable Permit not previously delivered pursuant to Section 3.1.22 on the Closing Date, and any modification or reissuance of such Applicable Permits previously delivered pursuant to Section 3.1.22 on the Closing Date.

(b) Each Applicable Permit shall be in full force and effect in all material respects and not be subject to current legal proceedings or to any Unsatisfied Conditions that would reasonably be expected to have a Material Adverse Effect, and all applicable administrative and statutory appeal periods with respect thereto shall have expired. The Applicable Permits shall not be subject to any restriction, condition, limitation or other provision which would reasonably be expected to have a Material Adverse Effect or result in the Project being required to operate in a manner materially inconsistent with the assumptions underlying the Base Case Projections.

3.3.14 *[Reserved].*

3.3.15 *As-Built Surveys*. Delivery to Administrative Agent of an A.L.T.A. As-Built Survey (or other survey approved by Administrative Agent (at the direction of the Required Lenders) (such approval not to be unreasonably withheld or delayed) or the most recent draft of any such A.L.T.A. As-Built Survey or other survey approved by the Administrative Agent acting reasonably in the event the final version of such survey is not yet available) of the Site and the Easements (with respect to the Easements, such surveys to be of the same quality as any surveys delivered on or prior to the Closing Date), reasonably satisfactory in form and substance to Administrative Agent (at the direction of the Required Lenders), reasonably current and certified to Administrative Agent, Collateral Agent, Co-Borrowers and Title Insurer by a surveyor licensed in the state where the Project is located and reasonably satisfactory to the Lenders, showing (A) as to the Site and the Easements, the location and dimensions thereof, including (i) the location of all means of access thereto and all easements relating thereto and (ii) showing the perimeter within which all foundations are or are to be located; (B) the existing utility facilities servicing the Project (including water, electricity, gas, telephone, sanitary sewer and storm water distribution and detention facilities); (C) other than Permitted Liens, that the location of the Project is in material compliance with all applicable building and setback lines, that the improvements are in material compliance with all applicable building and setback lines and do not encroach or interfere with adjacent property or existing easements or other rights (whether on, above or below ground) unless such encroachments or interferences are otherwise permitted, and that there are no material gaps, gores, projections, protrusions or other material survey defects; (D) whether the Site or the Easements or any portion thereof is located in a flood hazard zone; and (E) that there are no other matters constituting a material defect in title other than Permitted Liens; provided that the matters described in clauses (A)(ii) and (D) above may be shown by separate maps, surveys or other information reasonably satisfactory to Administrative Agent (at the direction of the Required Lenders).

3.3.16 *Casualty Event and Event of Eminent Domain*. No Casualty Event, Event of Eminent Domain or Title Event shall have occurred and not been resolved or corrected pursuant to a completed Restoration Action (as defined in the Depositary Agreement) in accordance with the Depositary Agreement to the extent that such Casualty Event, Event of Eminent Domain or Title Event would reasonably be expected to have an impact on the Project of more than $28,750,0000 or prevent the Project from operating in a safe manner or in all material respects accordance with the requirements of the Project Documents.

3.4 CONDITIONS PRECEDENT TO EACH CREDIT EVENT. Each Construction Credit Event, each Construction Loan requested by Co-Borrowers and the conversion of the Construction Loans to Term Loans (each, a "Credit Event") is subject to the satisfaction of the following conditions (unless waived in writing by Administrative Agent with the consent of the Required Lenders):

3.4.1 *Notice of Borrowing*. If such Credit Event is a Borrowing of Construction Loans, Administrative Agent shall have received a Notice of Borrowing as and when required by Section 2.1.1(b).

3.4.2 *Representations and Warranties*. Each representation and warranty made by a Co-Borrower in any of the Credit Documents shall be true and correct in all material respects (except for any representations and warranties qualified by materiality or Material Adverse Effect in which case such representations and warranties shall be true and correct in all respects) as if made on the date of such Credit Event, unless such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct as of such earlier date).

3.4.3 *No Default*. No Event of Default or Inchoate Default shall have occurred and be continuing or will result from such Credit Event.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES

Each of Holdings and each Co-Borrower makes the following representations and warranties to and in favor of each Agent and each Lender as of the Closing Date (unless such representation and warranty expressly relates solely to an earlier date, in which case, such representation and warranty is made as of such earlier date) and as of the date of each Credit Event (unless such representation and warranty expressly relates solely to an earlier date, in which case, such representation and warranty is made as of such earlier date):

4.1 ORGANIZATION; OWNERSHIP OF SECURITIES.

4.1.1 Each such Borrower Party is (a) duly organized or formed, validly existing and in good standing under the laws of its jurisdiction of organization or formation, and (b) is duly qualified as a foreign company, and is in good standing, in

each other jurisdiction in which such qualification is required by law, except, in the case of this clause (b) only, where the failure to so qualify or be in good standing would not reasonably be expected to have a Material Adverse Effect. Each such Borrower Party has all requisite limited liability company power and authority to (i) own or hold under lease and operate the property it purports to own or hold under lease, (ii) carry on its business as now being conducted and as now proposed to be conducted, (iii) execute, deliver and perform each Operative Document to which it is a party, including, without limitation, to borrow and otherwise obtain credit under this Agreement, and (iv) take each action as may be necessary to consummate the transactions contemplated under the Operative Documents.

4.1.2 Except to the extent provided in the Depositary Agreement with respect to the Co-Borrowers, (a) each such Borrower Party's funds and assets are not, and will not be, commingled with those of any other entity and (b) no such Borrower Party has entered into any material transactions or conducted any material business unrelated to the transactions contemplated by the Operative Documents and the development, construction, ownership, operation and maintenance of the Project (including the acquisition of gas interests in compliance with the terms of this Agreement).

4.1.3 100% of the Securities of each Co-Borrower are owned directly by Holdings, all of which Securities are owned free and clear of all Liens other than the Liens created pursuant to the Guaranty and Security Agreement, the Liens created pursuant to the Guaranty and Security Agreement (as defined in the First Lien Credit Agreement) (which Liens shall at all times be subject to the Intercreditor Agreement) and any non-consensual Permitted Liens for Taxes to the extent incurred pursuant to Governmental Rule. Holdings is the sole member of each Co-Borrower.

4.2 AUTHORIZATION; NO CONFLICT.

4.2.1 Each such Borrower Party has duly authorized, executed and delivered each Operative Document to which such Borrower Party is a party and the transactions contemplated thereunder (including, without limitation, the borrowings and the granting of Liens and guarantees pursuant to the Credit Documents) and neither any Borrower Party's execution, delivery or performance of the Operative Documents nor its consummation of the transactions contemplated thereby nor its compliance with the terms thereof (a) does or will contravene or violate any of any such Borrower Party's Governing Documents, (b) does or will contravene or violate in any respect any Legal Requirement applicable to or binding on any such Borrower Party or any of its properties or assets, (c) does or will contravene in any material respect or result in any material breach of or constitute any material default under, or result in or require the creation or imposition of any Lien (other than Permitted Liens) upon any of its property or assets (whether now owned or existing or hereafter acquired or arising) under, any of the Major Project Documents, (d) does or will contravene or result in any breach of or constitute any default under, or result in or require the creation or imposition of any Lien (other

than Permitted Liens) upon any of its property or assets (whether now owned or existing or hereafter acquired or arising) under any other agreement or instrument to which it is a party or by which it or any of its properties or assets may be bound or affected, or (e) does or will require any material consent or approval of any Person, and with respect to any Governmental Authority, does or will require any material registration with, or notice to, or any other action of, with or by any applicable Governmental Authority, in each case which has not already been obtained and disclosed in writing to Administrative Agent (except (i) any Permits that are not yet Applicable Permits, (ii) such as are required by securities, regulatory or applicable law in connection with an exercise of remedies, (iii) as set forth on Exhibit G-1(a) or Exhibit G-1(b) and the filing of any applicable renewal, extension or reissuance documentation in respect thereof or (iv) otherwise provided in Section 4.9) or, in the cases of clauses (b) or (d) above, as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

4.3 ENFORCEABILITY. Each of the Operative Documents to which any such Borrower Party is a party is a legal, valid and binding obligation of such Borrower Party, enforceable against such Borrower Party in accordance with its terms, except to the extent that enforceability may be limited by (a) applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights, (b) the effect of general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law) or (c) implied covenants of good faith and fair dealing.

4.4 COMPLIANCE WITH LAW. (a) (i) As of the Closing Date, there are no material violations by any such Borrower Party of any currently applicable Legal Requirement (other than any Environmental Laws, which such laws are the subject of Section 4.10) and (ii) as of the date of each Credit Event occurring after the Closing Date, there are no violations by any such Borrower Party of any currently applicable Legal Requirement (other than any Environmental Laws, which such laws are the subject of Section 4.10), except in the case of clause (a)(ii) as would not reasonably be expected to result in a Material Adverse Effect, and (b) as of the Closing Date, no notices of any material violation of any currently applicable Legal Requirement (other than any Environmental Laws, which such laws are the subject of Section 4.10) relating to the Project, the Site or the Easements have been issued, entered or received by any Co-Borrower.

4.5 BUSINESS, CONTRACTS, JOINT VENTURES ETC.

4.5.1 No such Borrower Party is a party to, nor is it or any of its properties or assets bound by, any material contract other than the Operative Documents to which it is a party.

4.5.2 No such Borrower Party is a general partner or a limited partner in any general or limited partnership or a joint venturer in any Joint Venture; provided that GasCo shall not be considered to be a joint venturer in any Joint Venture solely because it is party to a Joint Operating Agreement or Joint Development Agreement in respect of Gas Properties.

4.5.3 (a) No Co-Borrower has any Subsidiaries and (b) Holdings has no Subsidiaries other than the Co-Borrowers.

4.5.4 Each Co-Borrower maintains separate books of account from the Holdings and all other Persons. Holdings maintains separate books of account from all other Persons.

4.5.5 Each such Borrower Party conducts its business solely in its own name in a manner not misleading to other Persons as to its identity.

4.5.6 The liabilities of each Co-Borrower are readily distinguishable from the liabilities of Holdings and all other Persons. The liabilities of Holdings are readily distinguishable from the liabilities of all other Persons.

4.5.7 No Co-Borrower has deposit or other accounts other than as created or permitted under the Depositary Agreement (including the Local Checking Accounts) and such accounts are separate from the bank accounts of the Holdings and all other Persons. Holdings has no deposit or other accounts, other than the Holdings Project Account.

4.5.8 No such Borrower Party has any employees.

4.6 ADVERSE CHANGE.

4.6.1 As of the Closing Date, since September 30, 2018, no event or circumstance has occurred and is continuing which has had or could reasonably be expected to have a Material Adverse Effect.

4.6.2 As of the date of each Credit Event made after the Closing Date, since the Closing Date, no event or circumstance has occurred and is continuing which has had or would reasonably be expected to have a Material Adverse Effect.

4.7 INVESTMENT COMPANY ACT. No such Borrower Party is an investment company or a company controlled by an investment company, within the meaning of the Investment Company Act of 1940, as amended.

4.8 ERISA. There are no Plans or Multiemployer Plans. None of the Borrower Parties or any ERISA Affiliate has had a complete or partial withdrawal from any Multiemployer Plan that has resulted or would reasonably be expected to result in a liability under ERISA, except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

4.9 PERMITS.

4.9.1 As of the Closing Date, there are no material Permits under existing Legal Requirements as the Project is currently designed that are or will become Applicable Permits other than the Permits listed in Exhibits G-1(a) and G-1(b).

4.9.2 Except as disclosed in Exhibit G-1(a) (as such Exhibit may be supplemented by Co-Borrowers to reflect any Change of Law or the issuance of any Permit after the Closing Date) or as otherwise would not reasonably be expected to constitute, or result in, a Material Adverse Effect, each Permit listed in Exhibit G-1(a) and required to be obtained by or on behalf of any such Borrower Party in order to construct, develop, maintain and operate the Project is issued in the name of the applicable Co-Borrower (or is specified on Exhibit G-1(a) as being held by an Affiliate of the Co-Borrowers identified therein, and will be transferred to the applicable Co-Borrower no later than three months following the Closing Date), in full force and effect and is not subject to any current legal proceeding or Unsatisfied Condition, and all applicable administrative and statutory appeal periods with respect thereto have expired.

4.9.3 No fact or circumstance exists, to each such Borrower Party's Knowledge, which makes it reasonably expected that any Permit identified in Exhibit G-1(b) shall not be obtainable by or on behalf of any such Borrower Party before it becomes an Applicable Permit without expense to any such Borrower Party materially in excess of amounts provided therefor in the then-current Construction Budget or Annual Operating Budget, as the case may be.

4.9.4 Except as would otherwise reasonably be expected to constitute, or result in, a Material Adverse Effect, each such Borrower Party is in compliance with its respective Applicable Permits.

4.10 HAZARDOUS SUBSTANCES AND ENVIRONMENTAL LAWS.

4.10.1 Except as set forth in Exhibit G-3: (a) no such Borrower Party has received, in the past five years, any unresolved written notice from any Governmental Authority that, with respect to the Project, the Easements, Improvements or other Mortgaged Property, it is or has in the past been in violation of any Environmental Law in any material respect, (b) neither any such Borrower Party nor, to each such Borrower Party's Knowledge, any other Person has used, Released, generated, manufactured, produced or stored in, on, or under the Project, the Easements, Improvements or other Mortgaged Property, or transported thereto or therefrom, any Hazardous Substances in violation in any material respect of or as would not reasonably be expected to result in material liability under Environmental Laws by any Borrower Party, (c) to each such Borrower Party's Knowledge, there are no underground tanks, whether operative or temporarily or permanently closed, asbestos-containing materials, or lead-based paint products located on the Project, the Easements, Improvements or other Mortgaged Property that could reasonably be expected to subject any Secured Party or any Borrower Party to material liability under any Environmental Law, and (d) except as disclosed in writing to Administrative Agent, no such Borrower Party is conducting or funding any material investigation, remediation, remedial action or cleanup of any Hazardous Substances.

4.10.2 Except as set forth on Exhibit G-2, to each such Borrower Party's Knowledge, there is no pending or threatened Environmental Claim by any

Governmental Authority (including U.S. Army Corps of Engineers and U.S. Environmental Protection Agency) or any non-governmental third party with respect to the presence or Release of Hazardous Substances in, on, from or to the Site, the Easements, Improvements or other Mortgaged Property, or any alleged noncompliance with Environmental Laws or Permits, in each case that would reasonably be expected to have a Material Adverse Effect.

4.10.3 (A) The Project and the activities of Co-Borrowers with respect to the construction, development and operations of the Project are in compliance with Environmental Laws (including any Permits issued pursuant thereto), (B) the Project and the activities of Co-Borrowers with respect to the construction, development and operations of the Project have been in compliance with Environmental Laws (including any Permits issued pursuant thereto), and (C) to each such Borrower Party's Knowledge, there are no facts or circumstances that would reasonably be expected to result in a failure to obtain any Permits required under Environmental Law with respect to the Project construction, development and operations, other than, in the case of each of clauses (A) and (B), any failure to so comply where such failure did not have or would not reasonably be expected to have a Material Adverse Effect.

4.11 LITIGATION.

(a) Except as set forth on Exhibit G-2, as of the Closing Date, no legal action, suit, investigation, litigation or proceeding is pending or threatened in writing to a Co-Borrower in any court or before any arbitrator or Governmental Authority against or related to the Project or any Co-Borrower seeking damages in excess of $2,000,000 or injunctive relief or seeking to enjoin or impair the consummation of the transactions consummated by the Operative Documents.

(b) Except as set forth on Exhibit G-2, no such Borrower Party has any Knowledge of any order, judgment or decree that has been issued or proposed to be issued by any Governmental Authority that, as a result of the leasing, ownership, development, construction, operation or maintenance of the Project by any such Borrower Party, the sale of electricity therefrom by any such Borrower Party or the entering into of any Operative Document or any transaction contemplated hereby or thereby, could reasonably be expected to cause or deem the Lenders, Administrative Agent, Collateral Agent, Depositary Agent, the Arranger or any Affiliate thereof or any such Borrower Party to be subject to, or not exempted from, regulation under PUHCA, or treated as a public utility under Chapter 4905 of the Ohio Revised Code and any regulations promulgated thereunder, respecting the rates or the financial or organizational regulation of electric utilities, provided that any exercise of remedies under the Credit Documents or the First Lien Credit Documents that results in the direct or indirect ownership of the Project by any Secured Party or any of its Affiliates may subject such Secured Party and its Affiliates to regulation under PUHCA, the FPA or any state law or regulation respecting the rates of electric utilities or the financial and organizational regulation of electric utilities.

(c) As of the date of each Credit Event occurring after the Closing Date, no action, suit, proceeding or investigation has been instituted or, to each such Borrower Party's

Knowledge, threatened in writing against any such Borrower Party, which has had or would reasonably be expected to have a Material Adverse Effect.

4.12 LABOR DISPUTES AND ACTS OF GOD. Neither the business nor the properties of any such Borrower Party are currently affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy, or other casualty (whether or not covered by insurance) that (a) as of the Closing Date, is material to the Borrower Parties, or (b) after the Closing Date, would reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect.

4.13 PROJECT DOCUMENTS. As of the Closing Date, (i) a copy of each Project Document executed on or prior to such date (other than leases and other conveyance instruments in respect of the Gas Properties) has been delivered to Administrative Agent, (ii) the Project Documents delivered to Administrative Agent as of the Closing Date constitute all the material contracts to which any Co-Borrower is a party on or prior to the Closing Date, (iii) except as set forth on Exhibit G-5, each of the Project Documents is in full force and effect, and no Co-Borrower is in material default of any term or provision thereof and, to each Co-Borrower's Knowledge, no other party is in material default thereunder and (iv) except as set forth on Exhibit G-5 or in the definition of such Project Document, none of the Project Documents as delivered to Administrative Agent has been further amended, modified or terminated. Holdings is not a party to any Project Document.

4.14 DISCLOSURE All information (other than the Project Schedule, Annual Operating Budget, Base Case Projections, other forecasts, prospective budgets, projections and other forward-looking information and information of a general economic or industry nature, and reports prepared by third party consultants (but not the information (for the avoidance of doubt, excluding any professional opinions and conclusions by such third party consultants) on which such reports are based to the extent such information was furnished or prepared by or on behalf of the Co-Borrowers or Parent (or their respective Affiliates)) provided in connection with the transactions contemplated by this Agreement) furnished, made available, prepared or approved by or on behalf of Co-Borrowers, Parent or their respective Affiliates to the Arranger, the Agents, or the Lenders, or to any Independent Consultant in connection with the transactions contemplated by this Agreement or the other Credit Documents when taken as a whole (at the time of delivery or verification thereof), is or will be, when furnished, complete and correct in all material respects and does not or will not, when furnished, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained herein or therein not materially misleading in light of the circumstances under which such statements were made.

4.15 TAXES.

(a) Each Borrower Party has timely filed, or caused to be timely filed, all federal and other material tax returns and reports required to have been filed by it, has paid, or caused to be paid, all material taxes, assessments, utility charges, fees and other governmental charges (including any interest, additions to tax or penalties applicable thereto) it is required to pay to the extent due (other than Permitted Liens) and there is no proposed tax assessment against any such

Borrower Party proposed to such Borrower Party in writing or, to any such Borrower Party's Knowledge, threatened;

(b) No Borrower Party has ever been treated as an entity other than a partnership or a disregarded entity for federal, state, local or foreign income or franchise tax purposes and no Borrower Party has ever been subject to any material entity-level tax for federal, state, local or foreign income or franchise tax purposes;

(c) (i) No tax Liens have been filed with respect to the assets of any Borrower Party, and no unresolved claim has been asserted in writing with respect to (y) any taxes as of the Closing Date or (z) any material taxes as of the date of each Credit Event occurring after the Closing Date of any Borrower Party and (ii) as of the Closing Date, no waiver or agreement by any Borrower Party is in force for the extension of time for the assessment or payment of any tax, and no request for any such extension or waiver is currently pending;

(d) As of the Closing Date, there is no ongoing, pending or to any Borrower Party's Knowledge, threatened, audit or investigation by any taxing authority of any Borrower Party, and there has been no adjustment proposed in writing by any taxing authority. As of the date of each Credit Event occurring after the Closing Date, there is no ongoing, pending or, to any Borrower Party's Knowledge, threatened, audit or investigation by any taxing authority of any Borrower Party, and there has been no adjustment proposed in writing by any taxing authority, except in each case as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; and

(e) No Borrower Party is a party to any tax sharing arrangement or similar agreement or arrangement (whether or not written) pursuant to which it may have an obligation to make any payments after the Closing Date other than an agreement, (i) the parties to which include no Person other than the Borrower Parties or (ii) with one or more non-Affiliate third parties made in the ordinary course of business, the primary subject of which is not tax.

4.16 GOVERNMENTAL REGULATION.

4.16.1 None of the Agents or any Lender, nor any Affiliate of any of them will, solely as a result of the construction, ownership, development, maintenance, leasing or operation of the Project by any Borrower Party, the sale of electricity, capacity or ancillary services therefrom by any Co-Borrower or the entering into any Operative Document in respect of the Project or any transaction contemplated hereby or thereby, be subject to, or not exempt from, regulation under the FPA or PUHCA or under state laws and regulations respecting the rates or the financial or organizational regulation of electric utilities, provided that any exercise of remedies under the Credit Documents or the First Lien Credit Documents that results in the direct or indirect ownership of the Project by any Secured Party or any of its Affiliates may subject such Secured Party and its Affiliates to regulation under PUHCA, the FPA or any state law or regulation respecting the rates of electric utilities or the financial and organizational regulation of electric utilities.

4.16.2 PowerCo is an Exempt Wholesale Generator. None of the Borrower Parties or any of their respective Subsidiaries is (a) subject to, or not exempt from, regulation (i) as a "holding company" or an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" within the meaning of PUHCA or the implementing regulations of FERC, other than, in the case of PowerCo, with respect to the compliance requirements of an Exempt Wholesale Generator or a holding company that is a "holding company" within the meaning of PUHCA solely by virtue of its ownership interests in Exempt Wholesale Generators, or (ii) by FERC as a "natural gas company" under the NGA, or (b) subject to and not exempt from, whether or not a specific exemption has been granted, financial, organizational or rate regulation under Chapter 4905 of the Ohio Revised Code and any regulations promulgated thereunder as a public utility, gas distribution company, electric utility, electric light company or a holding company of any of the foregoing.

4.16.3 Solely with respect to Credit Events occurring before the Generating Project, including related interconnection facilities, is energized or PowerCo has MBR Authority, no Borrower Party is subject to regulation as a public utility under the FPA. Solely with respect to Credit Events occurring upon or after the Generating Project, including related interconnection facilities, is energized: (i) PowerCo is a public utility under the FPA with authorization to sell electric energy, capacity and ancillary services at market-based rates, with all waivers and blanket authorizations typically granted by FERC to generators with market-based rate authorization under Section 205 of the FPA, including blanket authorizations under Section 204 of the FPA ("MBR Authority"); (ii) PowerCo's FERC Electric Tariff is effective, and its MBR Authority is in full force and effect, not subject to any pending challenge, rehearing or appeal, or, to any Borrower Party's Knowledge, any investigation by FERC; (iii) neither GasCo nor Holdings is subject to regulation as a public utility under the FPA or as a "natural gas company" under the NGA; and (iv) to each such Borrower Party's Knowledge, neither any such Borrower Party nor the Project or any portion thereof is subject to a pending investigation by FERC, the Commodity Futures Trading Commission, an independent system operator or regional transmission operator or the market monitor thereof, or any state agency, attorney general or consumer counsel.

4.16.4 As of the Closing Date, except as set forth on Exhibits G-1(a) or G-1(b), no consent, notice, approval or other Governmental Authorization or Permit to be obtained by or on behalf of a Borrower Party necessary for the operation of the Project or any portion thereof or the entering into any Operative Document in respect of the Project or any transaction contemplated hereby or thereby, as such Project is then constructed, is required from FERC or any state Governmental Authority with jurisdiction over (i) sales of electric energy or the transmission of electric energy or (ii) sales or transportation of natural gas in connection with any of the transactions contemplated hereby or by any other Operative Document.

4.16.5 As of the date of each Credit Event occurring after the Closing Date, to each Co-Borrower's Knowledge, there is no order, judgment or decree that has

been issued or proposed to be issued by any Governmental Authority that, as a result of the ownership, leasing, development, construction, operation or maintenance of the Project by any Co-Borrower, the sale of electricity therefrom by any Co-Borrower or the entering into of any Operative Document or any transaction contemplated hereby or thereby, would reasonably be expected to cause or deem the Lenders, the Agents, the Arranger or any Affiliate of any of them to be subject to, or not exempted from, regulation under PUHCA the FPA, or the NGA or treated as a public utility under Chapter 4905 of the Ohio Revised Code and any regulations promulgated thereunder, respecting the rates or the financial or organizational regulation of electric utilities.

4.17 REGULATION U, ETC. No such Borrower Party is engaged principally, or as one of its principal activities, in the business of extending credit for the purpose of "buying", "carrying" or "purchasing" margin stock (each as defined in Regulations T, U or X of the Federal Reserve Board), and no part of the proceeds of the Loans or the Project Revenues will be used, directly or indirectly, by any such Borrower Party for the purpose of "buying", "carrying" or "purchasing" any such margin stock or for any other purpose which violates the provisions of the regulations of the Federal Reserve Board.

4.18 PROJECTIONS; RESERVE REPORT.

(a) (i) As of the Closing Date, the Construction Budget, Project Schedule and the Base Case Projections provided in connection with the transactions contemplated by this Agreement that have been made available to the Arranger, the Agents and the Lenders (or any of the foregoing) on or prior to the Closing Date by or on behalf of any Co-Borrower, Holdings, any Affiliate thereof or any representative of the foregoing have been prepared in good faith based upon assumptions that are reasonable at the time made and at the time made available to the Arranger, the Agents and the Lenders, and are consistent in all material respects with the Operative Documents; and (ii) the Annual Operating Budget provided in connection with the transactions contemplated by this Agreement that has been made available to the Arranger, the Agents and the Lenders by or on behalf of any Co-Borrower, Holdings, any Affiliate thereof or any representative of the foregoing after the Closing Date has been prepared in good faith based upon assumptions that are reasonable at the time made and at the time made available to the Arranger, the Agents and the Lenders. and are consistent in all material respects with the Operative Documents;

in each case, it being understood and agreed that such Construction Budget, Project Schedule, Annual Operating Budget, Base Case Projections and other projections are not a guaranty of performance, are based upon a number of estimates and assumptions and are subject to significant uncertainties and contingencies, many of which are beyond the control of the Borrower Parties, and that actual results may differ therefrom and such differences may be material and no Borrower Party makes any representation or warranty as to the attainability of such Construction Budget, Project Schedule, Annual Operating Budget, Base Case Projections and other projections or as to whether such Construction Budget, Project Schedule, Annual Operating Budget, Base Case Projections and other projections will be achieved.

(b) To each such Borrower Party's Knowledge, (i) all factual information furnished by any such Borrower Party to the applicable Independent Consultant for use in the

preparation of the Reserve Report was accurate at the time furnished in all material respects, and (ii) there has been no decrease in the amount of the estimated Proved Reserves shown in the Reserve Report since the date thereof, except for changes which have occurred as a result of production in the ordinary course of business.

4.19 FINANCIAL STATEMENTS. In the case of each financial statement of Holdings and each Co-Borrower and accompanying information delivered by Holdings and each Co-Borrower under Section 3.1.12 or Section 5.5, each such financial statement and information has been prepared in conformity with GAAP and fairly presents, in all material respects, the financial position of Holdings and each Co-Borrower, respectively, for the applicable period then ended, subject, if applicable, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments and the absence of footnote disclosure. As of the end of the applicable period presented in the most recent financial statements delivered by Holdings and each Co-Borrower under Section 3.1.12 or Section 5.5, there are no material liabilities, direct or contingent, of the Co-Borrowers required to be shown under GAAP, except as have been disclosed in such financial statements.

4.20 NO DEFAULT. No Event of Default or Inchoate Default has occurred and is continuing.

4.21 ORGANIZATIONAL ID NUMBERS. PowerCo's organizational identification number is DE #6923400. GasCo's organizational identification number is DE #6675398. Holdings's organizational identification number is #7050851.

4.22 TITLE AND LIENS.

4.22.1 Except as set forth on Exhibit G-9, PowerCo has (i) a good and marketable fee simple interest in the Site, and (ii) a valid easement interest in the Easements, and (iii) good, legal and valid title to or interest in all other material Collateral except for Gas Properties (which are covered solely by Sections 4.22.4, 4.22.5, 4.22.6 and 4.22.7), in each case free and clear of all Liens other than Permitted Liens. As of the Closing Date, (x) no portion of the improvements on the Real Property has suffered any material damage by fire or other casualty loss that has not heretofore been repaired and restored in all material respects and (y) PowerCo has not received any written notice of, nor has any Knowledge of, any pending or threatened condemnation proceeding affecting the Real Property or any sale or disposition thereof in lieu of condemnation. Except as set forth on Exhibit G-9, GasCo owns no Real Property or any interest therein.

4.22.2 Other than pursuant to the terms of the Joint Development Agreement and Joint Operating Agreements, no Co-Borrower is obligated under any right of first refusal, option or other contractual right to sell, assign or otherwise dispose of any Real Property or any interest therein.

4.22.3 No Co-Borrower has suffered, permitted or initiated the joint assessment of any Real Property owned by it with any other real property constituting a separate tax lot. Each parcel of Real Property owned by a Co-Borrower is composed

of one or more parcels, each of which constitutes a separate tax lot and none of which constitutes a portion of any other tax lot; provided that, for the avoidance of doubt, it is noted that any easement rights are not separate tax lots.

4.22.4 Each Co-Borrower has defensible title to its Gas Properties which constitute Proved Reserves, except to the extent any lack of defensible title does not in the aggregate detract in any material respect from the value or use of the Gas Properties in connection with the Project, and good and defensible title to all of the Gas Properties which constitute, for applicable state law purposes, "personal" or "movable" property, in each case except for Permitted Liens. The Mortgaged Properties include all Gas Properties owned by Co-Borrowers.

4.22.5 The quantum and nature of any interest in and to the Gas Properties of any Co-Borrower as set forth in the most recent Reserve Report includes the entire interest of such Co-Borrower in such Gas Properties as of the date of such applicable Reserve Report, and subject to customary limitations and qualifications set forth in the Reserve Report are complete and accurate in all material respects as of the date of such applicable Reserve Report; and there are no "back-in" or "reversionary" interests held by third parties which could materially reduce the interest of such Co-Borrower in such Gas Properties except as reflected in the most recent Reserve Report. The ownership of the Gas Properties by a Co-Borrower entitles such Co-Borrower in all material respects to the share of the Hydrocarbons produced therefrom or attributable thereto set forth as such Co-Borrower's "net revenue interest" in the most recent Reserve Report and does not in any material respect obligate such Co-Borrower to bear the costs and expenses relating to the maintenance, development or operations of any such Gas Property in an amount materially in excess of the "working interest" of such Co-Borrower in each Gas Property set forth in the most recent Reserve Report.

4.22.6 Each Co-Borrower's marketing, gathering, transportation, processing and treating facilities and equipment, if any, together with any marketing, gathering, transportation, processing and treating contracts in effect between Co-Borrowers, on the one hand, and any other Person, on the other hand, are sufficient in all material respects to gather, transport, process or treat, reasonably anticipated volumes of production of Hydrocarbons from the Gas Properties, and all related charges are accurately reflected and accounted for in all material respects in each Reserve Report delivered to the Administrative Agent pursuant to this Agreement.

4.22.7 The Hydrocarbon Interests and operating agreements attributable to the Gas Properties are in full force and effect in all material respects in accordance with their terms. All rents, royalties and other payments due and payable under such Hydrocarbon Interests and operating agreements have been properly and timely paid in all material respects.

4.23 INTELLECTUAL PROPERTY. Borrower Parties own, possess or have entered into contracts with others who possess all material licenses, permits, franchises, authorizations, patents, copyrights, service marks, trademarks and trade names, or rights thereto, that are necessary

for the ownership and operation of the Project in accordance with the Credit Documents and the Project Documents, without known conflict with the rights of others.

(a) No material product of any such Borrower Party infringes in any material respect any license, permit, franchise, authorization, patent, copyright, service mark, trademark, trade name or other right owned by any other Person.

(b) To each such Borrower Party's Knowledge, there is no material violation by any Person of any right of any such Borrower Party with respect to any patent, copyright, service mark, trademark, trade name or other right owned or used by any such Borrower Party.

4.24 COLLATERAL. The Liens granted to Collateral Agent (for the benefit of the Secured Parties) pursuant to the Collateral Documents (a) constitute as to personal property included in the Collateral a valid security interest and (b) constitute as to the Mortgaged Property included in the Collateral, upon recording of the Mortgages in the filing office identified in Exhibit D, a valid lien of record and security interest in the Mortgaged Property. The security interest granted to Collateral Agent (for the benefit of the Secured Parties) pursuant to the Collateral Documents in the Collateral consisting of personal property will be perfected (i) with respect to any property that can be perfected by filing, upon the filing of financing statements in the filing office identified in Exhibit D, (ii) with respect to any property that can be perfected by control, upon execution of the Control Agreements or the Depositary Agreement, as applicable, and (iii) with respect to the Pledged Equity and any other property (if any) that can be perfected by possession, upon Collateral Agent (or the First Lien Collateral Agent in accordance with the Intercreditor Agreement) receiving possession thereof, and in each case such security interest will be, as to Collateral perfected under the UCC or otherwise as aforesaid and to the extent provided in the UCC, superior and prior to the rights of all third Persons now existing or hereafter arising whether by way of Lien, assignment or otherwise, except (1) Permitted Liens described in clause (a), (r) or (w) of the definition of "Permitted Liens", and (2) to the extent required by Governmental Rule, those matters described in clauses (b), (c), (d), (e), (h), (k), (n), (o), (p), (q) (to the extent such Lien replaces a Lien of the type described in this clause) and (v) of the definition of "Permitted Liens" or pursuant to customary commercial terms in the applicable leases or other contracts, those Permitted Liens described in clauses (f), (g), (h), (i), (j), (l), (q) (to the extent such Lien replaces a Lien of the type described in this clause) and (s) of the definition thereof. Subject to Section 5.13.3, except to the extent possession of portions of the Collateral is required for perfection and except in respect of the Mortgages (which will be recorded along with the associated UCC fixture filings in the recorder's office identified in Exhibit D as soon as reasonably practicable after the Closing Date), all such action as is necessary has been taken to establish and perfect Collateral Agent's rights in and to the Collateral in existence on such date to the extent Collateral Agent's security interest can be perfected by filing, including any recording, filing, registration, giving of notice or other similar action. As of the Closing Date, no filing, recordation, re-filing or re-recording other than those listed on Exhibit D is necessary to perfect and maintain the perfection of the interest, title or Liens of the Collateral Documents, and on the Closing Date (or, in respect of the Mortgages and associated UCC fixture filings, as soon as reasonably practicable thereafter), all such filings or recordings will have been made to the extent Collateral Agent's security interest can be perfected by filing. Each Co-Borrower has properly delivered or caused to be delivered, or provided control, to Collateral Agent (or the First Lien

Collateral Agent in accordance with the Intercreditor Agreement) or Depositary Agent with respect to all Collateral that permits perfection of the Lien and security interest described above by possession or control.

4.25 SUFFICIENCY OF PROJECT DOCUMENTS.

4.25.1 Except as set forth on Exhibit G-11, PowerCo's interests in the Site and Easements:

(a) comprise all of the real property interests for the ownership, construction, installation, completion, operation and maintenance of the Project in accordance in all material respects with all Legal Requirements, the Project Documents and the Construction Budget;

(b) are sufficient to enable the entire Project to be located, operated and maintained on the Site and Easements;

(c) provide adequate ingress and egress to and from (i) the Site for any reasonable purpose in connection with the ownership, construction, operation and maintenance of the Project for the purposes and on the terms set forth in the applicable Major Project Documents, and (ii) each Easement for the purposes and the terms set forth in the applicable Easement Agreement.

4.25.2 There are no services, materials or rights required for the development, construction, ownership and operation and maintenance of the Project in accordance with the Project Documents and the assumptions that form the basis of the Base Case Projections, other than (a) those to be provided under the Major Project Documents, (b) those that are not material to the construction and operation of the Project and (c) those that can reasonably be expected to be commercially available at or for delivery to the Site or the Easements on commercially reasonable terms consistent with the Construction Budget or then current Annual Operating Budget (as applicable) and the Base Case Projections. This Section 4.25.2 does not apply to the Applicable Permits, which are the subject of Section 4.9.

4.25.3 Other than easements, rights of way, licenses, agreements and other rights that can be reasonably expected to be commercially available on commercially reasonable terms consistent with the Construction Budget or then current Annual Operating Budget (as applicable) and the Base Case Projections, PowerCo possesses, or the counterparties to the Project Documents pursuant to which interconnection facilities will be constructed or operated for the benefit of the Project, possess, and are obligated to provide or make available to PowerCo, all necessary easements, rights of way, licenses, agreements and other property rights for the construction or interconnection and utilization (as applicable) of the interconnection facilities (including fuel, water, wastewater and electrical).

4.26 [RESERVED].

4.27 FLOOD ZONE DISCLOSURE. Except as set forth on Exhibit G-7, no material portion of the Collateral includes Improvements that are or will be located in an area that has been identified by the Federal Emergency Management Agency as an area having special flood or mudslide hazards unless any applicable requirements imposed by the Federal Emergency Management Agency have been satisfied.

4.28 ANTI-TERRORISM LAWS; SANCTIONS. None of the Borrower Parties or any of their respective directors, officers or employees and Parent or any of its directors, officers or employees, is a Person that, or is owned or controlled by a Person (other than a holder of publicly traded capital stock) that, (a) is described by or designated in any OFAC List or in the Anti-Terrorism Order, (b) is engaging in dealings or transactions with any such Persons or entities described by or designated in any OFAC List or in the Anti-Terrorism Order in violation of any applicable law, (c) is in violation of the Anti-Terrorism Laws, (d) is the subject of any Sanctions or has violated or is violating any Sanctions, (e) is located, organized or resident in a Sanctioned Country, (f) is using or will use the proceeds of the Borrowings or Letters of Credit hereunder for the purpose of financing or making funds available directly or, to their Knowledge, indirectly to any Person described by or designated in any OFAC List or in the Anti-Terrorism Order, to the extent such financing or provision of funds would be prohibited by Sanctions or would otherwise cause any of the Borrower Parties, Parent or any of their respective directors, officers or employees to be in breach of Sanctions, or (g) is contributing or will contribute or otherwise make available directly or, to their Knowledge, indirectly the proceeds of the Borrowings or Letters of Credit hereunder to any other person or entity for the purpose of financing the activities of any Person described by or designated in any OFAC List or in the Anti-Terrorism Order, to the extent such contribution or provision of proceeds would be prohibited by Sanctions or would otherwise cause any of the Borrower Parties, Parent or any of their respective directors, officers or employees to be in breach of Sanctions.

4.29 SOLVENCY. Immediately after giving effect to the transactions to occur on the Closing Date and immediately following the occurrence of each other Credit Event, (a) the fair value of the assets of each of (i) Holdings and its Subsidiaries (taken as a whole) and (ii) each Co-Borrower, at a fair valuation, will exceed the debts and liabilities, direct, subordinated, contingent or otherwise, of Holdings and its Subsidiaries (taken as a whole) or such Co-Borrower, respectively, (b) the present fair saleable value of the property of Holdings and its Subsidiaries (taken as a whole) and each Co-Borrower, will be greater than the amount that will be required to pay the probable liability of Holdings and its Subsidiaries (taken as a whole) or such Co-Borrower, respectively, on their or its debts and other liabilities, direct, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured, (c) Holdings and its Subsidiaries (taken as a whole) and each Co-Borrower will be able to pay its debts and liabilities, direct, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured (after giving effect to any guarantees and credit support), and (d) Holdings and its Subsidiaries (taken as a whole) and each Co-Borrower will not have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted following the Closing Date. For purposes of this Section 4.29, (i) "able to pay its debts and liabilities, direct, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured (after giving effect to any guarantees and credit support)" means that such Person will be able to generate enough cash from operations, asset dispositions or refinancings, or a combination thereof,

to meet its obligations as they become due, and (ii) the amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

4.30 AFFILIATE TRANSACTIONS. Other than the Permitted Affiliate Transactions, no Co-Borrower has engaged or agreed to engage in any transactions with any of its Affiliates.

4.31 AML LAWS; ANTI-CORRUPTION LAWS. Each Borrower Party has implemented and maintains in effect policies and procedures designed to ensure compliance by such Borrower Party, or any of their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable AML Laws. None of any Borrower Party, or any of their respective directors, officers, nor, to the Knowledge of any Borrower Party, any of their respective employees or agents, has violated AML Laws or Anti-Corruption Laws. No Borrowing use of proceeds or other transaction contemplated by this Agreement will cause a violation of AML Laws or Anti-Corruption Laws by any person participating in the transactions contemplated by this Agreement, whether as lender, borrower, agent, underwriter, advisor, investor, hedge provider or otherwise.

4.32 INSURANCE. Each Co-Borrower maintains the insurance required to be maintained by it pursuant to Exhibit K, and such insurance is in full force and effect.

4.33 ACCOUNTS. No Co-Borrower has any accounts other than the Depositary Accounts and Local Checking Accounts subject to a Control Agreement, which Control Agreements are in full force and effect.

4.34 INDEBTEDNESS. No Borrower Party has any Debt other than the Obligations created under the Credit Documents and the First Lien Credit Documents and (a) as of the Closing Date, as set forth on Exhibit G-6 or (b) at any time after the Closing Date, other than Permitted Debt.

ARTICLE 5
AFFIRMATIVE COVENANTS

Each Co-Borrower and, solely to the extent Holdings is explicitly referred to below, Holdings, covenants and agrees that until the Discharge of Second Lien Secured Obligations:

5.1 USE OF PROCEEDS, PROJECT REVENUES AND OTHER PROCEEDS.

5.1.1 Co-Borrowers shall apply the proceeds of the Construction Loans solely (a) with respect to Construction Loans made on the Closing Date, in accordance with the Funds Flow Memorandum and (b) to pay Project Costs in accordance with the Construction Budget.

5.1.2 [Reserved].

5.1.3 Unless otherwise applied by Administrative Agent or Collateral Agent pursuant to the terms of this Agreement or the other Credit Documents, Co-Borrowers shall apply all Project Revenues, equity contributions, Loan proceeds,

Insurance Proceeds, Eminent Domain Proceeds, and damages payments solely for the purpose, and in the order and manner, provided for in the Depositary Agreement.

5.2 PAYMENT.

5.2.1 *Credit Documents*. Each Co-Borrower shall pay all sums due under this Agreement and the other Credit Documents to which it is a party according to the terms hereof and thereof.

5.2.2 *Project Documents*. Each Co-Borrower shall pay all of its material obligations due under the Project Documents to which it is a party, howsoever arising, as and when due and payable, except obligations contested in good faith or as to which a bona fide dispute may exist; provided that adequate reserves have been established in conformity with, and to the extent required by, GAAP, or Administrative Agent is satisfied in its reasonable discretion that non-payment of such obligations pending the resolution of such contest or dispute will not reasonably be expected to result in a Material Adverse Effect or that provision has been made to the satisfaction of Administrative Agent in its reasonable discretion for the posting of security (other than the Collateral) for the bonding of such obligations or the prompt payment thereof in the event that such obligations are payable.

5.3 WARRANTY OF TITLE. Except as permitted pursuant to Section 6.4, (a) PowerCo shall maintain good, marketable and insurable fee simple interest in the Site, (b) PowerCo shall maintain (i) valid easement interests in the Easements and (ii) valid license interests in each of the licenses set forth on Exhibit G-10, (c) GasCo shall maintain defensible title to the Hydrocarbon Interests, and (d) each Co-Borrower shall maintain good, legal and valid title to or interest in all of its other respective material properties and assets (in each case other than properties and assets disposed of in accordance with this Agreement), in each case free and clear of all Liens other than Permitted Liens.

5.4 NOTICES. Each Co-Borrower shall promptly (but in any event within three Banking Days unless otherwise specified below), upon acquiring written notice or giving notice (except as otherwise specified below), as the case may be, or obtaining Knowledge thereof, give written notice (with copies of any underlying notices, papers, files, reports, financial statements or related documentation) to Administrative Agent (for distribution to the Lenders) of:

5.4.1 any investigation, litigation, suit, arbitration, action or similar proceeding, whether at law or in equity or before any Governmental Authority (including any Environmental Claim) pending or, to such Co-Borrower's Knowledge, threatened in writing against any Borrower Party or relating to the Project which involves claims against such Borrower Party or the Project in excess of $5,000,000 individually or $10,000,000 in the aggregate per calendar year or which would reasonably be expected to have a Material Adverse Effect, such notice to include, if requested in writing by Administrative Agent, copies of all papers filed in such litigation and to be given monthly if any such papers have been filed since the last notice given;

5.4.2 any investigation, dispute or disputes for which written notice has been received by such Co-Borrower which may exist between such Co-Borrower and any Governmental Authority and which (a) claims against such Co-Borrower which exceed $5,000,000 individually or $10,000,000 in the aggregate per calendar year, (b) involve any action for revocation, material modification, failure to renew or expiration of any Applicable Permit, or (c) would otherwise be reasonably expected to have a Material Adverse Effect;

5.4.3 any Event of Default or Inchoate Default (together with a statement of a Responsible Officer of such Co-Borrower setting forth the details of such Event of Default or Inchoate Default and the action which such Co-Borrower has taken and proposes to take with respect thereto other than litigation strategy and documentation subject to attorney-client privilege or similar privilege);

5.4.4 any casualty, damage or loss to the Project, whether or not insured, through fire, theft, other hazard or casualty, or any act or omission of (a) such Co-Borrower, its employees, agents, contractors, consultants or representatives in excess of $5,000,000 for any one casualty or loss or $10,000,000 in the aggregate for the Project in any calendar year, or (b) to such Co-Borrower's Knowledge, any other Person if such casualty, damage or loss could reasonably be expected to have a Material Adverse Effect;

5.4.5 any early cancellation, suspension or material change in the terms, coverage or amounts of any insurance described in Exhibit K;

5.4.6 any (a) early termination (other than expiration in accordance with its terms and any applicable Consent) or material breach or material default of which such Co-Borrower has Knowledge or written notice under any Major Project Document, and (b) material Project Document Modification (with copies of all such Project Document Modifications whether or not requiring approval of Administrative Agent or the Required Lenders pursuant to Section 6.12);

5.4.7 any event of force majeure asserted in writing under any Major Project Document which persists for more than five consecutive days and, to the extent reasonably requested in writing by Administrative Agent, copies of related invoices or statements which are reasonably available to such Co-Borrower under any Major Project Document, together with a copy of any supporting documentation, schedule, data or affidavit delivered under such Major Project Document;

5.4.8 initiation of any condemnation proceedings involving a material portion of (a) the Project, (b) the Site, (c) the Easements or (d) other Real Property;

5.4.9 promptly, but in no event later than 10 Banking Days after such Co-Borrower has Knowledge of the execution and delivery thereof, a copy of each Additional Project Document;

5.4.10 promptly, but in no event later than 30 days after the receipt thereof by such Co-Borrower, a copy of (a) any Applicable Permit obtained by such Co-Borrower after the Closing Date, (b) any material amendment, supplement or other material modification to any Applicable Permit received by such Co-Borrower after the Closing Date, and (c) all material notices relating to the Project received by such Co-Borrower from, or delivered by such Co-Borrower to, any Governmental Authority (other than routine correspondence given or received in the ordinary course of business relating to routine aspects of owning, developing, constructing, financing, operating, maintaining or using the Project);

5.4.11 any material unscheduled or forced outage of the Generating Project, or any material impairment, reduction or cessation of the production of Hydrocarbons at the Production Project, in each case which continues for more than 48 hours;

5.4.12 the occurrence of any ERISA Event that, individually or together with all other ERISA Events that have occurred, would result in aggregate liability to any Borrower Party or any of their respective ERISA Affiliates in excess of $5,000,000;

5.4.13 promptly upon receipt thereof, any notice from FERC or the FERC staff relating to PowerCo's MBR Authority or status as an Exempt Wholesale Generator;

5.4.14 any material change in accounting policies or financial reporting practices by such Co-Borrower;

5.4.15 promptly upon receipt thereof, a copy of any material schedule or recovery plans provided by the EPC Contractor under the EPC Contract or the PIE Contractor under the PIE Contract, or reports regarding planned material maintenance and collateral damage repairs under the Long Term Service Agreement;

5.4.16 any (a) noncompliance by such Co-Borrower with any Environmental Law, or any material Release of Hazardous Substances by such Co-Borrower on or from the Real Property, in each case that has resulted or would reasonably be expected to have a Material Adverse Effect, or (b) pending or, to such Co-Borrower's Knowledge, threatened in writing, Environmental Claim against such Co-Borrower or, to such Co-Borrower's Knowledge, any of its Affiliates, contractors, lessees or any other Persons, arising in connection with their occupying or conducting construction or operations on or at the Project, the Site, the Easements or other Real Property which, if adversely determined, would reasonably be expected to have a Material Adverse Effect;

5.4.17 any pending or threatened investigation or inquiry regarding PowerCo's participation in the wholesale energy, capacity and ancillary services markets, including by PJM, its Independent Market Monitor or FERC; any material non-compliance by and known to PowerCo with PJM Open Access Transmission Tariff or

market rules; any PJM credit event that would result in an increase in or a call on PowerCo's credit posted to enable participation in PJM's energy, capacity and ancillary services markets; any event or circumstance that could prevent the Generating Project's full amount of Unforced Capacity from being in service by the first date of PowerCo's participation in the applicable PJM Base Residual Auction; any event or circumstance that could prevent PowerCo's participation in PJM's energy, capacity and ancillary services markets; any Non-Performance Charge in excess of $250,000 assessed against PowerCo or the Project and reasonable details related thereto; and any other event or occurrence with respect to PowerCo's or the Project's participation in the wholesale energy, capacity and ancillary services markets or compliance with PJM and FERC rules, in each case that would have a Material Adverse Effect;

5.4.18 any notice of material events or third party transactions provided to such Co-Borrower by any energy manager pursuant to any energy management agreement;

5.4.19 any financial statements of a Permitted Commodity Hedge Counterparty received by such Co-Borrower pursuant to the applicable Permitted Commodity Hedge Agreement;

5.4.20 any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in parts (c) or (d) of such certification; and

5.4.21 any event or circumstance specific to such Co-Borrower or the Project that is not a matter of general public knowledge and that would reasonably be expected to have a Material Adverse Effect.

5.4.22 In addition, such Co-Borrower shall provide, with reasonable promptness, to Administrative Agent any customary information with respect to such Co-Borrower, their respective assets, properties or operations or the Project as is reasonably requested by the Administrative Agent (for itself or on behalf of any Lender).

5.4.23 No later than five Banking Days prior to each expected occurrence thereof, notice of the expected occurrence of "Mechanical Completion" and "Substantial Completion" under the EPC Contract and "Substantial Completion" under the PIE Contract.

5.5 FINANCIAL STATEMENTS.

Each Borrower Party shall deliver or cause to be delivered to Administrative Agent and the Administrative Agent shall promptly provide a copy of the same to the Lenders:

(a) within 120 days after the close of each applicable fiscal year (commencing from fiscal year 2018), the audited consolidated annual financial statements of Holdings audited by an Acceptable Accountant and the related balance sheet, statements of income, cash flow, and

members' equity for such fiscal year, setting forth in each case (other than in the case of the audited annual financial statements for the 2018 fiscal year) in comparative form corresponding audited figures from the preceding fiscal year, all prepared in accordance with GAAP, accompanied by (x) a management report (1) describing the operations and financial condition of Holdings and its Subsidiaries for the fiscal year then ended, (2) setting forth in comparative form the corresponding figures for the corresponding periods of the previous fiscal year and the corresponding figures from the then-current Annual Operating Budget and (3) discussing the reasons for any significant variations, and (y) an opinion of an Acceptable Accountant, which opinion (without a "going concern" or like qualification or exception as to the scope of such audit, other than any such qualification or exception that either (1) results solely from an upcoming maturity date or (2) relates to any potential inability to satisfy a financial maintenance covenant on a future date or in a future period) shall state that such financial statements fairly present, in all material respects, the financial condition and results of operations of the such Borrower Party as at the end of and for such fiscal year in accordance with GAAP;

(b) within 60 days after the end of the first, second and third quarterly accounting periods of its fiscal year, the unaudited quarterly financial statements of such Borrower Party (commencing from the first quarterly accounting period of fiscal year 2019), together with a management report (1) describing the operations and financial condition of such Borrower Party and its Subsidiaries for the period then ended and the portion of the current fiscal year then elapsed, (2) setting forth in comparative form the corresponding figures for the corresponding periods of the previous fiscal year and the corresponding figures from the then-current Annual Operating Budget and (3) discussing the reasons for any significant variations. Such financial statements shall include the related balance sheet, statements of income and cash flows for such quarterly period and in the case of second and third quarterly accounting periods, for the portion of fiscal year ending with the last day of such quarterly period and, setting forth in each case (other than in the case of the unaudited quarterly financial statements for the first and second quarter of the 2019 fiscal year) in comparative form corresponding unaudited figures from the preceding fiscal year, all prepared in accordance with GAAP (subject to changes resulting from audit and normal year-end adjustments and the absence of footnote disclosure);

(c) along with such financial statements under clauses (a) and (b) above, a certificate signed by a Responsible Officer of such Borrower Party certifying that to such Responsible Officer's knowledge, no Event of Default or Inchoate Default has occurred and is continuing or, if any Event of Default or Inchoate Default has occurred and is continuing, the nature thereof and the corrective actions that such Borrower Party has taken or proposes to take with respect thereto (other than litigation strategy and documentation subject to confidentiality obligations or attorney-client privilege or similar privilege); and

(d) (i) no later than the 60th day after commencement of each calendar year, commencing with 2020, a Reserve Report prepared by the Petroleum Engineer dated as of December 31 of the previous year; (ii) promptly upon written request by the Administrative Agent, a Reserve Report prepared by the Petroleum Engineer dated as of the first day of the month during which a Co-Borrower receives such request, together with an accompanying report on, since the date of the last Reserve Report previously delivered hereunder, Gas Property sales, Gas Property purchases

and changes in categories concerning the Gas Properties owned by Co-Borrowers which have attributable to them Proved Reserves and containing information and analysis with respect to the Proved Reserves of Co-Borrowers as of the date of such report; and (iii) together with each such Reserve Report, (A) any updated production history of the Proved Reserves of Co-Borrowers as of such date, (B) the lease operating expenses attributable to the Gas Properties of Co-Borrowers for the prior 12-month period, (C) any other information as to the operations of Co-Borrowers as reasonably requested by the Administrative Agent and (D) such additional data and information concerning pricing, quantities, volume of production and production imbalances from or attributable to the Gas Properties with respect thereto as the Administrative Agent may reasonably request.

5.6 BOOKS, RECORDS, ACCESS. Each Borrower Party shall maintain, or cause to be maintained, adequate books, accounts and records with respect to itself and the Project. Subject to requirements of Governmental Rules, safety requirements and existing confidentiality and other contractual restrictions imposed upon such Borrower Party by any other Person, such Borrower Party shall permit employees or agents of the Administrative Agent and Independent Engineer, at any reasonable times and upon reasonable prior notice to such Borrower Party, to inspect such Borrower Party's properties, including the Site and the Easements, to examine or audit such Borrower Party's books, accounts and records and make copies and memoranda thereof and to communicate with such Borrower Party's auditors.

5.7 COMPLIANCE WITH LAWS, INSTRUMENTS, APPLICABLE PERMITS, ETC.

5.7.1 Each Co-Borrower shall promptly comply, and cause the Project to be developed, constructed, operated and maintained in compliance, with all applicable Legal Requirements (including Environmental Laws, Legal Requirements and Applicable Permits relating to equal employment opportunity and employee safety), and make, or cause to be made, such alterations to the Project and the Site as may be required for such compliance unless any non-compliance would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.7.2 Each Borrower Party shall maintain in effect and enforce policies and procedures designed to ensure compliance by such Borrower Party and its directors, officers, employees and agents with Anti-Corruption Laws, applicable AML Laws and applicable Sanctions.

5.8 REPORTS; TITLE AND SURVEY MATTERS.

5.8.1 Each Co-Borrower shall, until the Completion Date, deliver or cause to be delivered to Administrative Agent and the Independent Engineer on or before the 30th day following the last day of each calendar month, monthly reports in the form attached hereto as Exhibit N-1 or Exhibit N-2 (together with copies of the most recently available monthly (or other) progress report received by such Co-Borrower under the EPC Contract, the PIE Contract, the contractors and subcontractors under the Interconnection Construction Agreement, pursuant to the Joint Development Agreement or any other construction contract with respect to the Project.

5.8.2 Each Co-Borrower shall deliver to Administrative Agent, within 30 days after the end of each full fiscal quarter after the Term Conversion Date, a reasonably detailed report with respect to such fiscal quarter (and, in the case of the first such report, the period between the Term Conversion Date and the beginning of such fiscal quarter, if any) regarding existing mark-to-market exposure under any Permitted Commodity Hedge Agreements.

5.8.3 PowerCo shall deliver to Administrative Agent, within 45 days after the end of each full fiscal quarter after the Term Conversion Date, a summary operating report with respect to the Generating Project such fiscal quarter (and, in the case of the first such report, the period between the Term Conversion Date and the end of such fiscal quarter, if any) substantially in the form of Exhibit N-1 (with copies of the most recently available operating report received by such Co-Borrower under the Long Term Service Agreement).

5.8.4 GasCo shall deliver to Administrative Agent, within 45 days after the end of each full fiscal quarter, a report, substantially in the form of Exhibit N-2, setting forth a statement of gross and net production from the Production Project and any third party sales proceeds of all Hydrocarbons produced from the Hydrocarbon Interests during such fiscal quarter (and, in the case of the first such report, the period between the Closing Date and the end of such fiscal quarter, if any), together with a comparison against the gross and net production and third party sales proceeds projected for such period in the then-current Annual Operating Budget and such other information as the Administrative Agent may reasonably request in respect of the development, construction, operation and maintenance of the Production Project and the Hydrocarbon Interests.

5.8.5 PowerCo shall on or before the 25th day following the last day of each calendar month provide copies of a monthly operating report in the form provided by the Operator under the O&M Agreement (provided that such form and the substance of such report must be reasonably satisfactory to the Administrative Agent).

5.8.6 Each Co-Borrower shall provide such insurance reports as are required by Exhibit K.

5.8.7 To the extent not delivered pursuant to Section 3.3.15, PowerCo shall, within 90 days after the Term Conversion Date, deliver to Administrative Agent an A.L.T.A. As-Built Survey (or other survey approved by Administrative Agent (such approval not to be unreasonably withheld or delayed)) of the Generating Project's Site and the Easements (or, if a draft survey has been provided pursuant to Section 3.3.15, the final version of such survey), reasonably satisfactory in form and substance to Administrative Agent and satisfying the requirements set forth in Section 3.3.15.

5.8.8 Each Co-Borrower shall, within 90 days after the Term Conversion Date, deliver to Administrative Agent an endorsement to the Title Policy in the form of Exhibit R.

5.8.9 Within 60 days following Final Completion, each Co-Borrower shall deliver final releases of mechanics' and materialmen's liens from (i) in the case of PowerCo, EPC Contractor under the EPC Contract and (ii) Persons of the type that are required to deliver such releases pursuant to Section 3.2.3, except to the extent that such Co-Borrower's failure to obtain any final release required by this clause (x) would not reasonably be expected to result in a Material Adverse Effect and any such resulting mechanics' and materialmen's lien would constitute a Permitted Lien of the type described in clause (c) of the definition thereof.

5.8.10 On the first day of each fiscal quarter following the Term Conversion Date, Co-Borrowers shall deliver a forecast as of such date, attaching reasonable backup information to support the conclusions therein (a "Gas Availability Certificate") of, (x) natural gas production from the Production Project for the ensuing four fiscal quarter period (an "Annual Period") and (y) the Generating Project's natural gas requirements during such Annual Period, together with a comparison against the forecast of natural gas production and natural gas requirements for such Annual Period in the then-current Annual Operating Budget.

5.9 EXISTENCE, CONDUCT OF BUSINESS, PROPERTIES, ETC.

Except as otherwise expressly permitted under this Agreement, each Borrower Party shall (a) maintain and preserve its existence as a limited liability company in good standing in the State of Delaware, and all material rights, privileges and franchises necessary in the normal conduct of its business, (b) maintain all Applicable Permits, except to the extent that any such failure to maintain would not reasonably be expected to have a Material Adverse Effect, and (c) at or before the time that any Permit becomes an Applicable Permit, obtain such Permit, except to the extent that any such failure to obtain would not reasonably be expected to have a Material Adverse Effect.

5.10 DEBT SERVICE COVERAGE RATIO.

No later than 10 Banking Days after each Quarterly Payment Date occurring at least one full fiscal quarter after the Term Conversion Date, Co-Borrowers shall calculate and deliver to Administrative Agent the Debt Service Coverage Ratio for the Calculation Period most recently ended. The calculation of the Debt Service Coverage Ratio hereunder shall be used in determining compliance with Section 6.30 and the application and distribution of funds pursuant to Section 3.12(b) of the Depositary Agreement. The Co-Borrowers shall promptly provide any information requested by the Administrative Agent to support such calculation.

5.11 LENDER MEETINGS. The Co-Borrowers will, upon the request of Administrative Agent or the Required Lenders, participate in a meeting of Administrative Agent and Lenders once during each fiscal year to be held at Holdings' corporate offices or, at Holdings' option, the corporate headquarters of the manager of Parent in New York (or at such other location as may be agreed to by Co-Borrowers and Administrative Agent) at such time as may be agreed to by Co-Borrowers and Administrative Agent. Participants may attend such meeting by teleconference. All travel and other expenses related to such meeting incurred by any party shall be for such party's own account. The Co-Borrowers will participate in quarterly telephonic update

calls with Administrative Agent and the Lenders during any quarter in which the annual meeting described in the preceding sentence is not held, upon the request of Administrative Agent or the Required Lenders.

5.12 OPERATION AND MAINTENANCE OF PROJECT; ANNUAL OPERATING BUDGET.

5.12.1 (a) PowerCo shall construct, keep, operate and maintain the Generating Project (ordinary wear and tear excepted) and make or cause to be made all necessary repairs (structural and non-structural, extraordinary or ordinary) and (b) GasCo shall use commercially reasonable efforts to cause Triad Hunter, LLC or any other operator of any of GasCo's Hydrocarbon Interests to construct, keep, maintain and operate, the Production Project (ordinary wear and tear excepted) and to make or cause to be made all necessary repairs (structural and non-structural, extraordinary or ordinary) necessary, in each case in a manner consistent in all material respects with this Agreement and Prudent Industry Practices.

5.12.2 Co-Borrowers shall, as a condition precedent to the Term Conversion Date and no later than 45 days before the commencement of each calendar year thereafter, submit a proposed annual operating plan and budget, detailed by month, of anticipated revenues and anticipated expenditures under all applicable waterfall levels set forth in Section 3.2(b) of the Depositary Agreement and anticipated Major Maintenance Expenses (an "Annual Operating Budget"), with respect to such calendar year (or, in the case of the first Annual Operating Budget in respect of the period through the first full calendar year) for the prior review and approval by the Administrative Agent (in consultation with the Independent Engineer), such approval not to be unreasonably withheld or delayed. In the event that, pursuant to the immediately preceding sentence, the Annual Operating Budget (other than the initial Annual Operating Budget) is not approved by the Administrative Agent (which approval shall not be unreasonably withheld or delayed) or Co-Borrowers have not submitted a proposed Annual Operating Budget in accordance with the terms and conditions herein, an operating budget including 115% of the relevant costs set forth in the Annual Operating Budget for the immediately preceding calendar year (other than for fuel, water, chemicals and other consumables, for which the operating budget shall include estimates of actual costs) shall apply until the Annual Operating Budget for the then current fiscal year is approved. Copies of each final Annual Operating Budget adopted shall be furnished to the Independent Engineer and the Administrative Agent promptly upon its adoption.

5.12.3 O&M Costs and Major Maintenance Expenses shall be made in accordance with such Annual Operating Budget, except as set forth in this Section 5.12.3. Co-Borrowers may from time to time adopt an amended Annual Operating Budget for the remainder of any calendar year to which the amended Annual Operating Budget applies, and such amended Annual Operating Budget shall be effective as the Annual Operating Budget for the remainder of such calendar year upon the consent of the Administrative Agent to such amendment (in consultation with the Independent

Engineer), such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing and without necessitating any such amendment, the Co-Borrowers may exceed the aggregate annual O&M Costs set forth in any Annual Operating Budget (including reasonable allowances for contingencies and working capital) by an amount not to exceed 10% of the aggregate budgeted amount of fixed O&M Costs for the applicable fiscal year.

5.13 PRESERVATION OF RIGHTS; FURTHER ASSURANCES.

5.13.1 Subject to Section 5.2.2, each Co-Borrower shall maintain in full force and effect, perform (to the extent not excused by force majeure events or the nonperformance of the other party and not subject to a good faith dispute) the obligations of such Co-Borrower under, preserve, protect and defend the material rights of such Co-Borrower under and take all reasonable action necessary to prevent early termination (except by expiration in accordance with its terms) of each and every Major Project Document, including (where such Co-Borrower in the exercise of its business judgment deems it proper) prosecution of suits to enforce any material right of such Co-Borrower thereunder and enforcement of any material claims with respect thereto, in each case except where failure to do so would not reasonably be expected to have a Material Adverse Effect; provided that the early termination of a Major Project Document resulting from the material breach of the Major Project Document by the relevant counterparty shall not constitute an Event of Default to the extent the Co-Borrowers replace such Major Project Document in accordance with Section 7.1.14(b) or 7.1.14(d). Such Co-Borrower shall enforce all rights to receive liquidated damages from any counterparty to any Major Project Document and enforce all material rights under the PIE Contract.

5.13.2 From time to time, each Co-Borrower shall execute, acknowledge, record, register, deliver and/or file all such notices, statements, instruments and other documents (including any memorandum of lease or other agreement, financing statement, continuation statement, certificate of title or estoppel certificate relating to the Loans stating the interest and charges then due and any known Events of Default or Inchoate Defaults), and take such other steps as may be reasonably necessary or reasonably advisable to render fully valid and enforceable under all applicable laws the rights, liens and priorities of the Secured Parties with respect to all Collateral and other security from time to time furnished under this Agreement and the other Credit Documents or intended to be so furnished, and otherwise in such form and at such times as shall be necessary or as shall be reasonably requested by Collateral Agent, and pay all reasonable fees and expenses (including reasonable attorneys' fees) incident to compliance with this Section 5.13.2.

5.13.3 If either Co-Borrower shall at any time acquire any real property or leasehold or other interest in real property (including any Hydrocarbon Interest) that is necessary or material to the construction and operation of the Project or that has a value in excess of $1,000,000 (other than any types of property that are

expressly excluded from the Mortgages by its terms) and is not covered by the Mortgages, then within a reasonable period of time following such acquisition (and in any event no later than 90 days thereafter or such longer period, not to exceed 120 days, as approved by the Administrative Agent (at the direction of the Required Lenders)), execute, deliver and record a supplement or amendment to the Mortgages, reasonably satisfactory in form and substance to Administrative Agent, subjecting the real property or leasehold or other interests to the Lien and security interest created by the Mortgages. If reasonably requested by the Administrative Agent, other than for Hydrocarbon Interests, such Co-Borrower shall obtain an appropriate endorsement or supplement to the Title Policy insuring (i) the Lien of the Secured Parties in such additional property, subject only to Permitted Liens and other exceptions to title approved by Administrative Agent, and (ii) the continuing second priority lien of the Mortgages (subject only to Permitted Liens and any other exceptions to title as are reasonably acceptable to Administrative Agent).

5.13.4 Upon the reasonable request of any Agent, each Borrower Party shall execute and deliver all documents as shall be necessary or that such Agent shall reasonably request in connection with the rights and remedies of such Agent and the Lenders under the Credit Documents, and perform such other reasonable acts as may be necessary to carry out the intent of this Agreement and the other Credit Documents.

5.14 ADDITIONAL CONSENTS. Unless the Administrative Agent (at the direction of the Required Lenders) has waived such requirement in writing, each Co-Borrower shall (i) cause the applicable counterparty to any Replacement Project Document that is a Major Project Document as of the Closing Date and (ii) use commercially reasonable efforts to cause the applicable counterparty to any Major Project Document entered into after the Closing Date (other than any Replacement Project Document that is a Major Project Document and any Major Project Document that is an easement, right of way, license or other agreement in respect of real property rights) to execute and deliver to Administrative Agent a Consent in substantially the form of Exhibit E-1, such other form as the applicable counterparty may have previously delivered to Administrative Agent in connection with this Agreement, or such other form as is prescribed by Governmental Rule, in each case with such changes as are reasonably acceptable to the Administrative Agent.

5.15 MAINTENANCE OF INSURANCE. Each Co-Borrower shall maintain or cause to be maintained in all material respects on its behalf in effect at all times the types of insurance required pursuant to Exhibit K, in the amounts and on the terms and conditions specified therein, from the quality of insurers specified in such Exhibit or other insurance companies of recognized responsibility reasonably satisfactory to the Administrative Agent (as reasonably directed in writing by the Required Lenders).

5.16 TAXES, OTHER GOVERNMENT CHARGES AND UTILITY CHARGES. Each Borrower Party shall timely file all federal and other material tax returns and pay, or cause to be paid, as and when due and prior to delinquency, all material taxes, assessments and governmental charges (including any interest, additions to tax or penalties applicable thereto) of any kind that may at any time be lawfully assessed or levied against or with respect to such Borrower Party or the Project, including material sales and use taxes and real estate taxes, all material utility and other

charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project, and all material assessments and charges lawfully made by any Governmental Authority for public improvements that may be secured by a Lien on the Project; in each case except to the extent permitted pursuant to clause (b) of the definition of "Permitted Liens".

5.17 EVENT OF EMINENT DOMAIN. If an Event of Eminent Domain shall occur with respect to any material portion of Collateral, each Co-Borrower shall (a) diligently pursue all its rights to compensation against the relevant Governmental Authority in respect of such Event of Eminent Domain, (b) not, without the written consent of Administrative Agent as directed in writing by the Required Lenders, which consent and direction shall not be unreasonably withheld or delayed, compromise or settle any claim against such Governmental Authority if such compromise or settlement results in payments in excess of $5,000,000 or could reasonably be expected to have a Material Adverse Effect, and (c) pay or apply all Eminent Domain Proceeds in accordance with Section 3.9 of the Depositary Agreement. Such Co-Borrower consents to, and agrees not to object to or otherwise impede or impair, the participation of Administrative Agent in any eminent domain proceedings, and each Co-Borrower shall from time to time deliver to Administrative Agent all documents and instruments reasonably requested by it to permit such participation.

5.18 [RESERVED].

5.19 SPECIAL PURPOSE ENTITY.

5.19.1 Each Borrower Party shall conduct its business solely in its own name through its duly authorized directors, officers or agents so as not to mislead others as to the identity of the company with which those others are concerned, and particularly will avoid the appearance of conducting business on behalf of any other entity or that its assets or the assets of any other entity are available to pay the creditors of such other entity. Without limiting the generality of the foregoing, all oral and written communications of such Borrower Party, including, without limitation, letters, invoices, purchase orders, contracts and statements, will be made solely in the name of such Borrower Party.

5.19.2 Each Borrower Party shall comply in all material respects with all organizational formalities to maintain its separate existence.

5.19.3 Other than as permitted pursuant to Section 6.8, each Borrower Party shall maintain an arm's-length relationship with all other entities.

5.19.4 Except to the extent provided in the Depositary Agreement, each Borrower Party shall keep its assets and its liabilities wholly separate from those of all other entities.

5.20 THE PATRIOT ACT. Each Co-Borrower shall comply with the disclosure requirements pursuant to Section 11.22.

5.21 PUHCA EXEMPTION AND GOVERNMENT APPROVAL. Each Co-Borrower shall take or cause to be taken all necessary or appropriate actions so that:

(a) (i) PowerCo will be an Exempt Wholesale Generator and (ii) the Generating Project will be an Eligible Facility at all times hereunder,

(b) PowerCo will be in compliance in all material respects with all requirements under PUHCA applicable to an Exempt Wholesale Generator, an owner of an Eligible Facility, an "electric utility company," a "public utility" and a "public-utility company,"

(c) once PowerCo becomes a "public utility" under the FPA, PowerCo will be in compliance in all material respects with all requirements under the FPA applicable to a "public utility" with MBR Authority,

(d) each Borrower Party shall not be subject to, or shall be exempt from, financial, organizational or rate regulation as a public utility under Chapter 4905 of the Ohio Revised Code and any regulations promulgated thereunder, respecting the rates or the financial or organizational regulation of electric utilities,

(e) (i) No later than 60 days prior to the production of energy from the Generating Project (including for testing), PowerCo shall have filed for MBR Authority and, once such authorization is received, delivered to Administrative Agent evidence thereof and (ii) PowerCo will have MBR Authority from the FERC in a final and binding order no longer subject to rehearing or appeal (including, with respect to the request for blanket approval to issue securities under Section 204 of the FPA, expiration of all notice periods) at least 30 days prior to the date that the Generating Project generates any electricity, including for any testing prior to commercial operation, and

(f) PowerCo shall take or cause to be taken all necessary or appropriate actions so that it is (x) eligible to participate, and the full amount of the Project's Unforced Capacity clears, in the PJM Base Residual Auction for all future Delivery Years as a Capacity Performance Resource or similar capacity product, (y) in material compliance with the requirements of PJM for market participations, including maintaining sufficient fuel supply to satisfy the requirements and obligations of a Capacity Performance Resource or similar capacity product and maintaining adequate credit support with PJM (or its designee) and (z) eligible to participate in the PJM energy and ancillary services markets.

5.22 MAINTENANCE OF ACCOUNTS. Co-Borrowers shall fund and maintain the Depositary Accounts in accordance with the Depositary Agreement.

5.23 CONSTRUCTION OF THE PROJECT; FINAL COMPLETION.

5.23.1 PowerCo shall construct, or cause the construction of, the Generating Project in all material respects in accordance with the Construction and Equipment Contracts and the approved plans and specifications thereunder, Prudent Industry Practices, Applicable Permits and Legal Requirements.

5.23.2 PowerCo shall cause Final Completion to be achieved prior to the Date Certain.

5.24 INDEPENDENT ENGINEER; PERFORMANCE TESTS. Each Co-Borrower shall permit Administrative Agent (or any agent thereof) and the Independent Engineer to witness and verify the Performance Tests to the extent reasonably requested by Administrative Agent (or any agent thereof) and the Independent Engineer in each case subject to the terms of the Construction and Equipment Contracts. Each Co-Borrower shall give Administrative Agent and the Independent Engineer notice regarding any proposed Performance Test promptly following such Co-Borrower's receipt of such notice (and, in any event, no less than three Banking Days prior to any Performance Test). Such Co-Borrower shall forward to Administrative Agent and the Independent Engineer the procedures to be used in the conduct of the Performance Test in connection with such notice. If, upon completion of any Performance Test, such Co-Borrower believes that such Performance Test has been satisfied, it shall so notify Administrative Agent and the Independent Engineer and shall deliver a copy of all test results supporting such conclusion, accompanied by reasonable supporting data.

5.25 NATURAL GAS ARRANGEMENTS.

5.25.1 The Co-Borrowers shall use commercially reasonable efforts to implement (or cause to be implemented) a drilling program designed to achieve initial continuous production of 70,000 MCF/day of natural gas from the Production Project no later than the initial Guaranteed Substantial Completion Date (as defined in the EPC Contract), and thereafter use commercially reasonable efforts to maintain (or cause to be maintained) production from the Production Project of 70,000 MCF/day of natural gas.

5.25.2 If any Gas Availability Certificate reflects forecasted production that is less than forecasted requirements (the amount of such shortfall, a "Production Shortfall"), excluding for the avoidance of doubt any Production Shortfall (a) identified in a previously delivered Gas Availability Certificate, and (b) in respect of which the Co-Borrowers have (x) effectuated, or caused to be effectuated, a Gas Cure, and (y) delivered, and continue to use commercially reasonable efforts to implement, an Approved Remedial Plan, then:

(a) the Co-Borrowers shall, no later than 60 days following such first day of the fiscal quarter for which such Gas Availability Certificate was delivered, cause cash equity to be contributed to the Co-Borrowers in an amount (less any amounts in the Operating Reserve Account) necessary to allow the Co-Borrowers to purchase (and the Co-Borrowers shall so purchase no later than such 60th day) on a forward basis (such contribution and purchase, a "Gas Cure") gas sufficient to eliminate the entire Production Shortfall for the full duration of the Annual Period (including any Production Shortfall during the period since the commencement of such Annual Period);

(b) the Co-Borrowers shall, no later than 30 days following such first day of such fiscal quarter, submit a proposed remedial development and drilling plan (which plan may include additional cash equity contributions by Holdings for purchasing additional acreage) to the

Administrative Agent, which plan shall be subject to the approval (not to be unreasonably withheld or delayed) by the Administrative Agent (acting in consultation with the Petroleum Engineer), and which remedial plan shall demonstrate the Co-Borrower's ability to achieve production of 70,000 MCF/day from the Production Project for a 365-day period beginning on the date that is 12 months following the Administrative Agent's approval of such plan (as so approved, an "Approved Remedial Plan"). If the Administrative Agent (acting in consultation with the Petroleum Engineer) reasonably requests changes to any such remedial plan proposed by the Co-Borrowers, the Co-Borrowers shall incorporate such changes into its remedial plan, and resubmit such plan to the Administrative Agent, no later than 15 Banking Days following receipt; and

(c) the Co-Borrowers will use commercially reasonable efforts to implement (or cause to be implemented) the Approved Remedial Plan in accordance with its terms.

5.26 RELEASE OF MECHANIC'S LIEN. The Co-Borrowers shall use commercially reasonable efforts to cause the Title Insurer to promptly remove from the Title Policy the exception relating to that certain mechanic's lien in favor of New Leaf Construction Equipment in the amount of $9,148.14 and filed for record June 28, 2018 in Official Record 382, Page 2466.

5.27 O&M AGREEMENT. On or before the 180th day following the Closing Date, PowerCo shall enter into and deliver to Administrative Agent an operation and maintenance agreement (including exhibits and annexes thereto), duly executed and delivered by each of PowerCo and Operator, in form and substance reasonably satisfactory to the Required Lenders (the "O&M Agreement"); provided that no such approval of the Required Lenders shall be necessary if the O&M Agreement is on terms substantially consistent with (or more favorable to the Co-Borrowers than) any of the term sheets for the O&M Agreement attached hereto as Exhibits T-1 and T-2.

ARTICLE 6
NEGATIVE COVENANTS

Each Co-Borrower and, solely to the extent explicitly referred to below, Holdings, covenants and agrees that until the Discharge of Second Lien Secured Obligations:

6.1 CONTINGENT LIABILITIES. Except as provided in this Agreement, such Co-Borrower shall not become liable as a surety, guarantor, accommodation endorser or other equivalent backer of the debt obligations of another Person, for or upon the obligation of any other Person, except for the other Co-Borrower; provided that this Section 6.1 shall not be deemed to prohibit or otherwise limit the incurrence of Permitted Debt.

6.2 LIMITATIONS ON LIENS. Such Co-Borrower shall not create, assume or suffer to exist any Lien, securing a charge or obligation of such Co-Borrower or any other Person, on the Project or on any of the Collateral, real or personal, whether now owned or hereafter acquired, except Permitted Liens.

6.3 INDEBTEDNESS. Such Co-Borrower shall not incur, create, assume or permit to exist any Debt except Permitted Debt.

6.4 SALE OR LEASE OF ASSETS. Such Co-Borrower shall not sell, lease, assign, transfer or otherwise dispose of assets, whether now owned or hereafter acquired, except:

(a) in the ordinary course of its business and as contemplated by the Operative Documents (including sales in the "spot" market or merchant sales of any portion or all of the Generating Project's capacity, energy, environmental attributes, ancillary services and other services),

(b) merchant sales of Hydrocarbons, solely to the extent that such Hydrocarbons (i) are property of GasCo, (ii) exceed the amounts then reasonably required by the Generating Project to operate in accordance with the Major Project Documents and (iii) are sold on a spot or as-available basis or are swapped with a counterparty in exchange for Hydrocarbons to be delivered by such counterparty on another future date,

(c) to the extent that such asset is unnecessary, worn out or no longer useful or usable in connection with the operation or maintenance of the Project,

(d) upon any equipment failure, the replacement of such failed equipment with comparable equipment,

(e) the sale, transfer or release, with or without consideration, of real property or interests in real property related to the Project to the extent that such real property or interests in real property is no longer useful in connection with the ownership, operation or maintenance of the Project,

(f) the granting of easements or other interests in real property related to the Project to other Persons so long as such grant is in the ordinary course of business, would constitute a Permitted Lien and does not or would not reasonably be expected to materially detract from the value or use of the affected property or to interfere in any material respect with such Co-Borrower's ability to construct or operate the Project, sell or distribute power therefrom or perform any material obligation under any Operative Document,

(g) sales, transfers or other dispositions of Permitted Investments,

(h) sales, transfers, swaps, exchanges, releases or surrenders (including allowing expiration pursuant to the terms thereof) of Gas Properties that do not individually or in the aggregate detract in any material respect from the value or use of the Gas Properties in connection with the Project, and

(i) any other asset sale or series of related asset sales the proceeds of which shall not exceed $2,300,000 in the aggregate in any calendar year and $11,500,000 in the aggregate during the term of this Agreement, which proceeds shall, in each case, be applied in accordance with the Depositary Agreement.

6.5 CHANGES. Such Co-Borrower shall not change the nature of its business or expand its business beyond the business contemplated in the Operative Documents.

6.6 DISTRIBUTIONS.

6.6.1 *Conditions to Distributions*. Except as provided in Section 6.6.2, no Co-Borrower shall directly or indirectly, make or declare any Restricted Payment except pursuant to and in accordance with Section 3.12(b)(i) of the Depositary Agreement so long as each of the following conditions have been satisfied (such conditions, "Restricted Payment Conditions"):

(a) the Substantial Completion (as defined in the EPC Contract) shall have occurred and the Administrative Agent shall have received a completion certificate of the Independent Engineer, substantially in the form of Exhibit C-7;

(b) no Event of Default or Inchoate Default has occurred and is continuing as of the date of such applicable Restricted Payment, and such Restricted Payment would not cause an Event of Default or Inchoate Default;

(c) the Debt Service Coverage Ratio for the Calculation Period relating to the Quarterly Payment Date immediately preceding the proposed date of such Restricted Payment is greater than or equal to 1.2:1.00;

(d) the Major Maintenance Reserve Account is funded in the amount required by the Depositary Agreement;

(e) during the most recently ended calendar quarter, no amounts on deposit in the Operating Reserve Account (as defined in the Depositary Agreement) shall have been used to pay O&M Costs;

(f) the Gas Availability Certificate delivered in the most recently ended calendar quarter shall not have shown a Production Shortfall (other than any Production Shortfall in respect of which the Co-Borrowers have (a) effectuated, or caused to be effectuated, a Gas Cure, and (b) delivered, and are continuing to use commercially reasonable efforts to implement, an Approved Remedial Plan); and

(g) there shall not be more than one Restricted Payment made per fiscal quarter.

6.6.2 *Certain Distributions Permitted*. Nothing in this Section 6.6 shall prohibit or otherwise limit, subject to satisfaction of any applicable conditions contained in the other provisions of this Agreement and the other Credit Documents (which conditions shall not include the Restricted Payment Conditions, but for the avoidance of doubt may include no existing Inchoate Default or Event of Default to the extent provided below), (a) any amounts paid in reimbursement of Drawstop Equity Contributions (as defined in the First Lien Credit Agreement) with proceeds of Construction Loans (as defined in the First Lien Credit Agreement) in accordance with Section 3.1(d) of the Depositary Agreement, (b) Permitted Tax Distributions and Permitted CAT Distributions (as defined in the Depositary Agreement) distributed

pursuant to and in accordance with the Depositary Agreement and (c) amounts distributed in accordance with Section 3.3.11 of this Agreement.

6.7 INVESTMENTS. Such Co-Borrower shall not make any investments (whether by purchase of stocks, bonds, notes or other securities, loan, extension of credit, advance or otherwise) other than Permitted Investments.

6.8 TRANSACTIONS WITH AFFILIATES. Such Co-Borrower shall not directly or indirectly enter into any transaction or series of transactions relating to the Project with or for the benefit of an Affiliate without the prior written approval of Administrative Agent, except for Permitted Affiliate Transactions.

6.9 REGULATIONS. Such Co-Borrower shall not directly or indirectly apply any part of the proceeds of any Loan or other extensions of credit hereunder or other revenues to the "buying", "carrying" or "purchasing" of any margin stock within the meaning of Regulations T, U or X of the Federal Reserve Board, or any regulations, interpretations or rulings thereunder.

6.10 PARTNERSHIPS, ETC. No Borrower Party shall become a general or limited partner in any partnership or a joint venturer in any Joint Venture or create and hold stock in any subsidiary except, in the case of each Co-Borrower, the transactions with the other Co-Borrower contemplated by the Operative Documents; provided that GasCo shall not be considered to be a joint venturer in any Joint Venture solely because it is party to the Joint Operating Agreement, the Joint Development Agreement, or any similar agreement in respect of Gas Properties entered into in accordance with the terms hereof.

6.11 DISSOLUTION; MERGER. Such Co-Borrower shall not liquidate or dissolve, or combine, merge or consolidate with or into any other entity, consummate any Division Transaction, or change its legal form, or implement any material acquisition or purchase of assets consisting of a business or line of business from any Person, or change the nature of its business, or purchase or otherwise acquire all or substantially all of the assets of any Person.

6.12 AMENDMENTS TO AND TERMINATION OF CERTAIN DOCUMENTS. Such Co-Borrower shall not without the prior written consent of the Required Lenders (acting in consultation with the Independent Engineer), such consent not to be unreasonably withheld or delayed so long as no Event of Default has occurred and is continuing, amend or otherwise modify any Major Project Document to which it is a party or give any consent, waiver or approval (other than approvals in the ordinary course of business consistent with past practices for owners or operators of similar businesses, where applicable) (each such amendment or modification, consent, waiver or approval being referred to herein as a "Project Document Modification") thereunder (including any waiver of any default under or breach of any Major Project Document to which it is a party), or agree in any manner to any other amendment, modification or change of any term or condition of any Major Project Document to which it is a party; provided that, subject to the limitations in the succeeding "provided, further", (i) the extension of the term of a Major Project Document on substantially the same terms and conditions then in effect (or on more favorable terms and conditions in the aggregate to Co-Borrowers), (ii) any Project Document Modification which (x) is not, individually or in the aggregate when taken together with previously executed Project

Document Modifications, materially adverse to any Co-Borrower, the Project or the interests of the Secured Parties in the Collateral and (y) does not require the expenditure by Co-Borrowers of more than $5,750,000 individually or more than $11,250,000 in the aggregate, in each case, as certified by such Co-Borrower and such Co-Borrower provides to the Administrative Agent a true, correct and complete copy of each such Project Document Modification, (iii) any Project Document Modification for the purposes of incurring any expenditure permitted under Section 6.26.1, (iv) any change order permitted under Section 6.26.2, (v) any termination by Co-Borrowers of a Major Project Document resulting from the material breach under such Major Project Document by the relevant counterparty shall not constitute an Event of Default to the extent the Co-Borrowers replace such Major Project Document in accordance with Section 7.1.14(b) or (d), or (vi) ministerial or administrative amendments, modifications, waivers, consents and approvals, in each of the cases of clauses (i) through (v), shall not require the consent of the Required Lenders.

6.12.1 No Co-Borrower shall, without the prior written consent of Administrative Agent as directed in writing by the Required Lenders, such consent and direction not to be unreasonably withheld or delayed so long as no Event of Default has occurred and is continuing, amend, supplement, waive or otherwise modify the organizational documents of such Co-Borrower, if the result would reasonably be expected to have an adverse effect on the Lenders or their rights or remedies under the Credit Documents in any material respect, including, the issuance of any Securities in such Co-Borrower other than such Co-Borrower's issuance of additional common Securities to Holdings.

6.12.2 No Co-Borrower shall, without the prior written consent of Administrative Agent as directed in writing by the Required Lenders, such consent and direction not to be unreasonably withheld or delayed so long as no Event of Default has occurred and is continuing, seek to or petition to amend, modify, supplement or take any similar actions with respect to any Applicable Permit, except for such amendments, modifications, supplements or similar actions that (a) are required by Legal Requirements or (b) would not reasonably be expected to have a Material Adverse Effect.

6.12.3 No Co-Borrower shall, without the prior written consent of Administrative Agent as directed in writing by the Required Lenders, such consent and direction not to be unreasonably withheld or delayed so long as no Event of Default has occurred and is continuing, amend, supplement, waive or otherwise modify any First Lien Credit Document or any Permitted First Lien Refinancing Credit Document if the effect of such amendment, supplement, waiver or other modification is or would be inconsistent with the Intercreditor Agreement.

6.13 NAME AND LOCATION; FISCAL YEAR. No Co-Borrower shall change its name, its jurisdiction of organization, the location of its principal place of business, its organization identification number or its fiscal year without providing 30 days prior written notice to Administrative Agent and Collateral Agent.

6.14 ASSIGNMENT. No Co-Borrower shall assign its rights hereunder or under any Major Project Document to any Person, except (a) in the case of this Agreement only, as permitted

by Section 11.18 and (b) in the case of any Major Project Document, with the prior written consent of the Required Lenders.

6.15 ACCOUNTS. No Co-Borrower shall maintain or use any deposit or securities accounts other than the Accounts and the Local Checking Accounts without the prior written consent of Administrative Agent (as reasonably directed in writing by the Required Lenders).

6.16 HAZARDOUS SUBSTANCES. No Co-Borrower shall release into the environment any Hazardous Substances (a) in violation of any Environmental Laws or Permit required under any Environmental Law or (b) in a quantity, type or location that would reasonably be expected to lead to liability of any Co-Borrower pursuant to Environmental Laws or Permits except for, with respect to (a) and (b), any Release that would not reasonably be expected to materially impair the value of the Project, the Easements and the Collateral, taken as a whole, and would not otherwise reasonably be expected to have a Material Adverse Effect.

6.17 ADDITIONAL PROJECT DOCUMENTS. Other than (x) Permitted Commodity Hedge Agreements, (y) any joint operating agreement or joint development agreement entered into in connection with any Gas Property owned or acquired by GasCo in respect of which the Co-Borrowers have delivered to the Administrative Agent at least 10 Banking Days prior to execution and delivery thereof (or, if such joint operating agreement or joint development agreement is in substantially the same form as the Joint Development Agreement or Joint Operating Agreement, as applicable, in effect as of the Closing Date, within 10 Banking Days following the execution and delivery thereof), a true and correct copy of such agreement, together with a certificate of a Responsible Officer of GasCo certifying that the execution, delivery and performance of such agreement and the transactions contemplated thereby (1) are in the best interests of the Project, (2) are not materially adverse to the interests of the Secured Parties to the extent such agreement relates to a Gas Property owned on the Closing Date (or a Gas Property received as consideration in connection with a transfer or other disposition of a Gas Property owned on the Closing Date) and (3) would not reasonably be expected to have a Material Adverse Effect, and (z) those agreements described on Exhibit G-8 or as otherwise expressly provided in the Credit Documents, (a) without the prior written consent of Administrative Agent as directed in writing by the Required Lenders, which consent and direction shall not be unreasonably withheld or delayed, no Co-Borrower shall enter into, become a party to, or become liable under any Additional Project Document, or permit any counterparty to any existing Project Document to enter into on behalf of such Co-Borrower any agreement, other than any Additional Project Document, which, directly or indirectly through the reimbursement of costs, (i) provides for the payment by such Co-Borrower of, or the provision to such Co-Borrower of such goods and services with a value of, $5,750,000 or less per annum, (ii) provides for payment of Emergency Operating Costs, (iii) is a Replacement Project Document, and (b) without the prior written consent of the Required Lenders, no Co-Borrower shall enter into any Major Project Document. Notwithstanding anything to the contrary herein, nothing in this Section 6.17 shall limit any Co-Borrower’s ability to enter into any agreement which is expressly permitted or is entered into to document or give effect to any transaction expressly permitted or required under any provision of the Credit Documents.

6.18 ASSIGNMENT BY THIRD PARTIES. Without prior written consent of the Required Lenders or unless provided in a Consent, no Co-Borrower shall consent to the assignment of any obligations under any Major Project Document by any counterparty thereto other than to a Replacement Obligor.

6.19 ACQUISITION OF REAL PROPERTY. No Co-Borrower shall acquire or lease any material real property or other material interest in real property (excluding the acquisition of Gas Properties that do not include producing wells or other surface or subsurface facilities or improvements on the portion of such Gas Properties being acquired or leased, the acquisition of any easements or licenses and the acquisition (but not the exercise) of any options to acquire any such interests in real property) other than the Site, the Easements and other interests in real property acquired on or prior to the Closing Date, unless such Co-Borrower shall have delivered to Administrative Agent a "Phase I" environmental site assessment with respect to such real property and, if a "Phase II" environmental site assessment is warranted (as reasonably determined by the relevant consultant, who shall be reasonably satisfactory to the Administrative Agent), a "Phase II" environmental site assessment with respect to such property, in each case, along with a corresponding reliance letter from the consultant issuing such site assessment(s), confirming either that (a) no Hazardous Substances were found in, on or under such real property of a nature or concentrations that would reasonably be expected to impose on any Co-Borrower an environmental liability that would be expected to have a Material Adverse Effect or (b) the conditions and risks associated with such Hazardous Substances were otherwise reasonably being addressed.

6.20 ERISA MATTERS. No Co-Borrower shall have any employees nor shall it maintain, sponsor or contribute to any Plan or Multiemployer Plan.

6.21 USE OF SITE AND EASEMENTS. No Co-Borrower shall use the Site or the Easements for any purpose other than for the construction, operation and maintenance of the Project as contemplated by the Operative Documents or to provide access rights to neighboring landowners, easement holders and tenants, in each case to the extent that such access rights constitute Permitted Liens.

6.22 TAX ELECTION; TAX SHARING AGREEMENTS. No Co-Borrower shall make an election to be classified for U.S. federal or applicable state, local or foreign income or franchise tax purposes as an association taxable as a corporation. No Co-Borrower shall enter into any tax sharing agreements with any other entity other than an agreement (i) the parties to which include no Person other than Holdings or the Co-Borrowers or (ii) with one or more non-Affiliate third parties made in the ordinary course of business, the primary subject of which is not tax.

6.23 HEDGING AGREEMENTS. No Co-Borrower shall enter into any Hedging Agreements except any Permitted Commodity Hedge Agreement.

6.24 LEASE TRANSACTIONS. No Co-Borrower shall enter into any transaction after the date hereof for the lease of any assets, whether operating leases, Capital Leases or otherwise, other than any one or more of the following: (a) any lease constituting Permitted Debt, (b) leases of automobiles, office equipment or other real or personal property pursuant to which the annual lease payments by such Co-Borrower do not exceed $5,750,000 in the aggregate in any fiscal year,

(c) any transactions contemplated in the then applicable Annual Operating Budget, (d) any lease described on Exhibit G-8, (e) any lease consented to by Administrative Agent (such consent not to be unreasonably withheld or delayed) and (f) leases of Gas Properties made pursuant to the terms of the Joint Development Agreement.

6.25 CAPITAL EXPENDITURES. Prior to Term Conversion, no Co-Borrower shall make any Capital Expenditures other than in accordance with the Construction Budget, as then in effect. After Term Conversion, no Co-Borrower shall make any Capital Expenditures other than Permitted Capital Expenditures, Capital Expenditures consistent with the Annual Operating Budget and Emergency Operating Costs to the extent such costs are Capital Expenditures. Notwithstanding the foregoing, each Co-Borrower may make Capital Expenditures to the extent such Capital Expenditures are funded from (a) additional equity contributions made to such Co-Borrower by an owner of Holdings or (b) amounts in the Distribution Suspense Account subject to satisfaction of the Restricted Payment Conditions.

6.26 CONSTRUCTION BUDGET CONTINGENCY; CHANGE ORDERS; INITIAL BORROWING.

6.26.1 *Changes to Construction Budget*. No Co-Borrower shall amend or modify the Construction Budget without the prior written consent of Administrative Agent at the written direction of the Required Lenders acting in consultation with the Independent Engineer, such consent and direction not to be unreasonably withheld or delayed; provided that any Co-Borrower may, without the prior written consent of Administrative Agent (as directed in writing by the Required Lenders), such consent and direction not to be unreasonably withheld or delayed, (a) amend, revise or modify the Construction Budget to reallocate the “contingency” line item specified in the Construction Budget to any other budget categories (other than any line items pertaining to a transaction with an Affiliate) up to $5,000,000 in the aggregate and thereafter in respect of individual items not exceeding $2,000,000 until the aggregate amount of such reallocations is $10,000,000 and thereafter in respect of individual items not exceeding $100,000, (b) reallocate any savings in any line item specified in the Construction Budget in respect of which the work has been completed to any other line item in the Construction Budget (other than any line items pertaining to a transaction with an Affiliate), and (c) amend, revise or modify the Construction Budget so long as such amendment, revision or modification is required in connection with (i) any actions in respect of any Project Document permitted pursuant to Section 6.12 without the consent of Administrative Agent or (ii) any Additional Project Document permitted to be entered into pursuant to Section 6.17 without the consent of Administrative Agent. Co-Borrowers shall promptly deliver to Administrative Agent a copy of any revisions to the Construction Budget effected without the consent of Administrative Agent pursuant to this Section 6.26.1.

6.26.2 *Change Orders*. No Co-Borrower shall accept, approve or otherwise enter into any change order (or similar amendment) under any Construction and Equipment Contract without the prior written consent of Administrative Agent as

directed in writing by the Required Lenders acting in consultation with the Independent Engineer, such consent and direction not to be unreasonably withheld or delayed so long as no Event of Default has occurred and is continuing, provided that, subject to Section 6.12.1, no such consent shall be required if (x) such change order (or similar amendment) is contemplated in the Construction Budget or is funded solely pursuant to the contingency line item in the Construction Budget to the extent permitted under Section 6.26.1 above without the consent of Administrative Agent, (y) such change order (or similar amendment) is immaterial, is of a technical nature and is without monetary impact or the monetary impact is less than $2,500,000 or (z) such change order (or similar amendment) will not result in any extension of the Completion Date, change to any warranty, performance guarantee or minimum performance levels and guarantees in any Construction and Equipment Contract, change to the procedures for or results of any Performance Tests, amendment of the definition of "Substantial Completion", "Final Completion" or "Event of Default" or the conditions, events or circumstances that give rise to an event of default under any Major Project Document or change to the performance-based liquidated damages payable to such Co-Borrower under the Construction and Equipment Contracts or change the Guaranteed Substantial Completion Date (as defined therein).

6.27 RECEIVABLES. No Co-Borrower shall extend the maturity of, or agree to any renewal of, any Receivable in excess of $2,300,000 individually or $5,750,000 outstanding at any time, or fail to enforce its rights under any Receivable in excess of $2,300,000 individually or $5,750,000 outstanding at any time without the prior written consent of the Administrative Agent.

6.28 ANTI-TERRORISM; AML LAWS; ANTI-CORRUPTION; SANCTIONS. Each Borrower Party shall:

(a) not lend, contribute or otherwise make available the Loans, directly or indirectly, to any Person that (i) is, or is an Affiliate of a Person that is a Sanctioned Person or Sanctioned Country, or is described by or designated in any Anti-Terrorism Order, (ii) is, or is an Affiliate of a Person that is, in violation of the Sanctions, AML Laws, Anti-Corruption Laws or Anti-Terrorism Laws; or (iii) has, or is an Affiliate of a Person that has, been convicted of money laundering (under any AML Laws, including 18 U.S.C. Sections 1956 or 1957), which conviction has not been overturned, in each case of clauses (i), (ii) and (iii), to the extent that such contribution or provision or making available of Loans would be prohibited by the Sanctions, AML Laws, Anti-Corruption Laws or Anti-Terrorism Laws or would otherwise cause any Person participating in the transactions contemplated by this Agreement as a lender, participant, arranger, issuing bank, borrower, obligor or agent to be in breach of the Sanctions, AML Laws, Anti-Corruption Laws or Anti-Terrorism Laws;

(b) not fund all or part of any repayment under the Loans out of proceeds derived from transactions which at the time of effecting the applicable transaction would be prohibited by the Sanctions, AML Laws, Anti-Corruption Laws or Anti-Terrorism Laws or would otherwise cause any Person participating in the transactions contemplated by this Agreement as a lender, borrower

or agent to be in breach of the Sanctions, AML Laws, Anti-Corruption Laws or Anti-Terrorism Laws;

(c) not request any Borrowing, and such Co-Borrower shall not use, and shall procure that its directors, officers and employees shall not use, directly or indirectly, the proceeds of any Borrowing (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws or AML Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or involving any goods originating in or with a Sanctioned Person or Sanctioned Country, in each case if such action would be a violation of applicable law, or (iii) in any manner that would result in the violation of any Sanctions by any Person participating in the transactions contemplated by this Agreement as a lender, borrower or agent; and

(d) ensure that appropriate controls and safeguards are in place designed to prevent any proceeds of the Loans from being used contrary to clauses (a) through (c) above.

6.29 PRODUCTION PROJECT. GasCo shall not permit the annual rig limit set forth in Section 5.1(k)(ii) of the Joint Development Agreement and Section 1 of Master JOA Supplemental Agreement applicable to the Joint Operating Agreement to be exceeded.

6.30 FINANCIAL COVENANT. Commencing with the first full fiscal quarter ending following the Term Conversion Date, permit the Debt Service Coverage Ratio to be less than 1.05:1.00 as of the last day of any fiscal quarter (the "Financial Covenant"). For purposes of determining compliance with the Financial Covenant, any common equity contribution (other than Drawstop Equity Contributions (as defined in the First Lien Credit Agreement)) made to the Co-Borrowers after the end of a fiscal quarter and on or prior to the day that is 10 Banking Days after the day on which financial statements are required to be delivered for such fiscal quarter will, at the request of the Co-Borrowers, be included in the calculation of Operating Cash Available for Debt Service solely for the purposes of determining compliance with such Financial Covenant at the end of such fiscal quarter and applicable subsequent periods (any such equity contribution so included in the calculation of Operating Cash Available for Debt Service, a "Specified Equity Contribution"); provided, that (a) in each four consecutive fiscal quarter period, there shall be at least two fiscal quarters in which no Specified Equity Contribution is made, (b) during the term of the Term Facility, no more than five Specified Equity Contributions shall be made, (c) the amount of any Specified Equity Contribution shall be no greater than the amount required to cause the Co-Borrowers to be in compliance with the Financial Covenant, (d) all Specified Equity Contributions shall be disregarded for purposes of determining any baskets with respect to the covenants contained in the Credit Documents and (e) there shall be no pro forma reduction in Debt with the proceeds of any Specified Equity Contribution for determining compliance with the Financial Covenant; provided, that to the extent such net cash proceeds are actually applied to prepay Debt, such reduction may be credited in any subsequent fiscal quarter.

6.31 PASSIVE HOLDING COMPANY STATUS OF HOLDINGS. Holdings shall not engage in any operating or business activities other than the following: (a) its direct ownership of Capital Stock of the Co-Borrowers, (b) equity issuances, transfers, retirements, exchanges, splits

into series and repurchases of the Capital Stock of Holdings (and, for the avoidance of doubt, not of the Co-Borrowers) not prohibited hereunder, (c) the maintenance of its legal existence (including the ability to incur fees, costs and expenses relating to such maintenance), (d) the entering into, and the performance of its obligations under, the Credit Documents and the First Lien Credit Documents to which it is a party, (e) payment of dividends, and making contributions to the capital of the Co-Borrowers, (f) participating in tax, accounting and other administrative matters as a member of the consolidated group of Holdings and its Subsidiaries or the making and filing of any reports required by Governmental Authority, (g) providing customary indemnification to its officers, managers and directors, and (y) any other activities reasonably incidental to the foregoing and customary for passive holding companies.

6.32 [RESERVED].

ARTICLE 7
EVENTS OF DEFAULT; REMEDIES

7.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall constitute an event of default (each, an "Event of Default") hereunder:

7.1.1 *Failure to Make Payments*. A Co-Borrower shall fail to pay, in accordance with the terms of this Agreement (i) any principal on any Loan on the date that such sum is due, (ii) any interest on any Loan or any Construction Loan Commitment Fee within three Banking Days after the date such sum is due, (iii) any scheduled fee, cost, charge or sum due hereunder or under any other Credit Documents within five Banking Days of the date that such sum is due, or (iv) any other fee, cost, charge or other sum due under this Agreement or the other Credit Documents within three Banking Days after Administrative Agent has provided written notice to Co-Borrowers that such sum is due.

7.1.2 *Bankruptcy; Insolvency*. A Borrower Party shall become subject to a Bankruptcy Event.

7.1.3 *Cross Defaults*. Holdings or a Co-Borrower shall default for a period beyond any applicable grace period (a) in the payment of any principal, interest or other amount due under any agreement involving Debt for Borrowed Money (other than Debt under the Credit Documents) and the outstanding amount or amounts payable under any such agreement equals or exceeds $5,750,000 in the aggregate; provided, further, that with respect to any of the defaults described in clause (a) above in respect of Debt outstanding under the First Lien Credit Agreement, such default shall only constitute an Event of Default under this Agreement if Debt under the First Lien Credit Agreement has been accelerated in accordance with its terms, (b) in the performance of any obligation due under any agreement involving such Debt if pursuant to such default, the holder of the obligation concerned has accelerated the maturity of any such Debt evidenced thereby which equals or exceeds $5,750,000 in the aggregate or (c) on and after Term Conversion, any "event of default" or "termination event" shall occur under any Permitted Commodity Hedge Agreement or any other Hedging Agreement or any

other failure to make any payment or to perform of any obligation due under any Permitted Commodity Hedge Agreement or any other Hedging Agreement if the effect thereof is to cause amounts not otherwise payable by such Co-Borrower in the ordinary course thereunder, to become due and payable and (i) in the case of any Hedging Agreement other than a Permitted Commodity Hedge Agreement, such amounts exceed $5,750,000, (ii) if such Co-Borrower's obligations under such Permitted Commodity Hedge Agreement are not secured by a letter of credit, such amounts exceed $5,750,000 or (iii) if such Co-Borrower's obligations under such Permitted Commodity Hedge Agreement are secured by any letter of credit, the Outstanding Amount (as defined in the Intercreditor Agreement) with respect to such Permitted Commodity Hedge Agreement that becomes due and payable exceeds the Available Amount (as defined in the First Lien Credit Agreement) of such letter of credit provided to the Permitted Commodity Hedge Counterparty under such Permitted Commodity Hedge Agreement.

7.1.4 *Judgments*. (a) A final judgment or judgments shall be entered against any Borrower Party in the amount of $5,750,000 (excluding any amounts covered by insurance or subject to indemnification by a third party) or more in the aggregate (other than, in each case, (a) a judgment which is discharged within 60 days after its entry, or (b) a judgment, the execution of which is effectively stayed within 60 days after its entry, or (c) a judgment is satisfied within 60 days after its entry).

(b) Any non-monetary judgment or order (including any directive, instruction, incident of non-compliance or other order issued by any Governmental Authority) shall be rendered against any Borrower Party that would reasonably be expected to have a Material Adverse Effect, and there shall be any period of 60 consecutive days during which a stay of enforcement of such judgment or, order, by reason of a pending appeal or otherwise, shall not be in effect.

7.1.5 *ERISA*. One or more ERISA Events shall have occurred that, when taken together with all other ERISA Events that have occurred, has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

7.1.6 *Breach of Terms of Agreement.*

(a) Defaults Without Cure Periods. Any Borrower Party shall fail to perform or observe any of the covenants set forth in Sections 5.1 (*Use of Proceeds, Project Revenues and Other Proceeds*), 5.3 (*Warranty of Title*), 5.4.3 (*Notices*), 5.9(a) (*Existence, Conduct of Business, Properties, Etc.*), 5.15 (*Maintenance of Insurance*), 5.19 (*Special Purpose Entity*), *5.20 (The Patriot Act)*, 5.22 (*Maintenance of Accounts*) or Article 6 (*Negative Covenants*).

(b) Other Defaults. Any Borrower Party shall fail to perform or observe any of its covenants set forth hereunder or any other Credit Document not otherwise specifically provided for in Section 7.1.6(a) or elsewhere in this Article 7, and such failure shall continue unremedied for a period of 30 days after any Borrower Party has Knowledge thereof or receives written notice thereof from Administrative Agent; provided that, if (i) such failure cannot be cured within such 30 day period, (ii) such failure is susceptible of cure within 90 days, (iii) such Borrower Party is

proceeding with diligence and in good faith to cure such failure, (iv) the existence of such failure has not had and would not, after considering the nature of the cure, be reasonably expected to have a Material Adverse Effect, and (v) Administrative Agent shall have received a certificate signed by a Responsible Officer of such Borrower Party to the effect of clauses (i), (ii), (iii) and (iv) above and stating what action such Borrower Party is taking to cure such failure, then such 30 day cure period shall be extended to such date, not to exceed a total of 90 days as shall be necessary for such Borrower Party diligently to cure such failure.

7.1.7 *Loss of Collateral*. Any substantial portion of the Collateral is damaged, seized or appropriated without applicable insurance proceeds (subject to the underlying deductible), indemnity payments received from a third party or without fair value being paid therefor, in each case so as to allow replacement of such Collateral and/or prepayment of Loans and to allow each Borrower Party to continue satisfying its obligations hereunder and under the other Operative Documents to which it is a party, after giving effect to any applicable insurance coverage or other proceeds received or reasonably expected to be received for such event.

7.1.8 *Regulatory Status.*

(a) PowerCo shall have tendered notice to FERC that it has ceased to be an Exempt Wholesale Generator or FERC shall have issued an order determining that PowerCo no longer meets the criteria of an Exempt Wholesale Generator or takes other action revoking such Exempt Wholesale Generator status.

(b) FERC shall have issued an order determining that PowerCo does not have MBR Authority or otherwise revoking or suspending such MBR Authority, or shall have issued an order subjecting such sales to any materially adverse individual rate cap (whether based on cost or otherwise) or any other materially adverse individual market power mitigation measure, as the term “mitigation” is used under 18 C.F.R. § 35.38.

(c) Any Co-Borrower shall lose its exemption from regulation as an “electric utility company,” “public-utility company” or “holding company” under PUHCA or become subject to and not exempt from, whether or not a specific exemption has been granted, financial, organizational or rate regulation as a public utility under Chapter 4905 of the Ohio Revised Code and any regulations promulgated thereunder.

(d) Commencing with the first year that any Co-Borrower is eligible to participate in the PJM Base Residual Auction, any Co-Borrower shall fail to clear the full amount of its Unforced Capacity in the PJM capacity market as a Capacity Performance Resource or similar capacity product or otherwise fail to meet the requirements of a Capacity Performance Resource or similar capacity product and, in each case, such failure would reasonably be expected to have a Material Adverse Effect.

7.1.9 *Abandonment*. (i) Any Co-Borrower shall announce that it is abandoning the Generating Project or the Production Project, or (ii) the construction or operation of the Generating Project or the Production Project shall be abandoned for a

period of more than 30 consecutive days for any reason; provided that, none of (A) scheduled maintenance of the Generating Project or the Production Project, (B) repairs to the Generating Project or the Production Project, whether or not scheduled or (C) a force majeure event, forced outage or scheduled outage of the Generating Project or the Production Project shall constitute abandonment, so long as Co-Borrowers are diligently attempting to end any such outage or resolve such event.

7.1.10 *Security; Guaranties*. (i) Any of the Collateral Documents, shall, except as the direct result of the acts of Collateral Agent and other than with respect to an immaterial portion of the Collateral, fail to provide to Collateral Agent, for the benefit of the Secured Parties, the Liens, security interest having the priority required by this Agreement or the relevant Collateral Documents, rights, titles, interest, remedies permitted by law, powers or privileges intended to be created thereby or, except in accordance with its terms, cease to be in full force and effect or be declared null and void, or the validity thereof having the priority required by this Agreement or the relevant Collateral Documents or the applicability thereof to the Loans, the Notes (if any) or any other obligations purported to be secured or guaranteed thereby or any part thereof shall be disaffirmed by or on behalf of a Co-Borrower or, in respect of the Guaranty and Security Agreement, Holdings (other than following the satisfaction in full of the Obligations or any other termination of a Collateral Document in accordance with the terms hereof and thereof); or (ii) any Guaranty for any reason, other than the Discharge of Second Lien Secured Obligations, shall cease to be in full force and effect (other than in accordance with its express terms) or shall be declared to be null and void or any Guarantor shall repudiate its obligations thereunder, or any Guarantor or Affiliate thereof shall contest the validity or enforceability of any Guaranty.

7.1.11 *Change of Control*. A Change of Control shall have occurred.

7.1.12 *Unenforceability or Invalidity of Credit Documents*. At any time after the execution and delivery thereof, any material provision of any Credit Document (including, without limitation, the subordination provisions in the Subordination Agreement) shall cease to be in full force and effect (other than by reason of Discharge of Second Lien Secured Obligations or any other termination of a Credit Document expressly permitted in accordance with the terms hereof or thereof) or any Credit Document shall be declared null and void by a Governmental Authority of competent jurisdiction or its validity or enforceability shall be contested or the obligations thereunder repudiated by any Borrower Party or Affiliate thereof (or, in the case of the Subordination Agreement or any Consent, by the subordinated creditor or third party that is a party thereto).

7.1.13 *Misstatements; Omissions*. Any representation or warranty made or deemed made by any Borrower Party in any Credit Document to which such Person is a party or in any separate statement, certificate or document delivered to Administrative Agent, Depositary Agent, Collateral Agent, or any Lender hereunder or under any other Credit Document to which such Person is a party, shall be untrue in any

material respect as of the time made or deemed made; provided that, in respect of misrepresentations which are capable of being remedied and are made or deemed made after the Closing Date, and the untruth of which would not reasonably be expected to have a Material Adverse Effect, any such misrepresentation shall not be deemed to be an Event of Default if such misrepresentation is corrected within 30 days of any Borrower Party acquiring Knowledge thereof (or such longer period as is reasonably required, in the discretion of the Administrative Agent).

7.1.14 *Project Document Defaults.*

(a) Co-Borrower Breach. A Co-Borrower shall be in breach in any material respect of, or in default in any material respect under, a Major Project Document and such breach or default shall continue unremedied for the period of time (without giving effect to any extension given to Collateral Agent under any applicable Consent with respect thereto) under such Major Project Document which such Co-Borrower has available to it in which to remedy such breach or default; provided that, if (1) such breach or default cannot be cured within the period of time provided in the applicable Major Project Document, (2) such breach or default is susceptible of cure within 30 days after such breach or default, (3) such Co-Borrower is proceeding with diligence and in good faith to cure such breach or default, (4) the existence of such breach or default has not had and would not, after considering the nature of the cure, be reasonably expected to give rise to a Material Adverse Effect, and (5) Administrative Agent shall have received a certificate of a Responsible Officer of such Co-Borrower to the effect of clauses (1), (2), (3) and (4) above and stating what action such Co-Borrower is taking to cure such breach or default, then such 30 day cure period (or such lesser period of time, as the case may be) shall be extended to such date, not to exceed a total of 90 days, as shall be necessary for such Co-Borrower diligently to cure such breach or default.

(b) Third Party Breach. Any Person other than a Co-Borrower shall be in breach of, or in default under, a Major Project Document and such breach or default would reasonably be expected to have a Material Adverse Effect; provided that no Event of Default shall occur as a result of any such breach or default if (i) (A) such breach or default is cured within 90 days from the time the applicable Co-Borrower obtains Knowledge of such breach or default or (B) the applicable Co-Borrower obtains a Replacement Obligor for the affected party within such 90 day period or (ii) in the case of breach or default involving a Bankruptcy Event of such Person other than a Co-Borrower, the applicable Person is substantially performing its remaining obligations with respect to the Major Project Documents to which it is a party, if any, and has not rejected the Major Project Documents to which it is a party.

(c) Third Party Consents. (i) Any Major Project Participant other than a Co-Borrower shall disaffirm or repudiate in writing its material obligations under any Consent and such disaffirmation or repudiation is not rescinded and revoked in writing by such Major Project Participant within 90 days thereof, (ii) any representation or warranty made by any Major Project Participant other than a Co-Borrower in a Consent shall be untrue in any material respect as of the time made and such untrue representation or warranty would reasonably be expected to result in a Material Adverse Effect, or (iii) a Major Project Participant other than a Co-Borrower shall breach any material covenant of a Consent and such breach would reasonably be expected to have a Material

Adverse Effect; provided, that in the case of each of clauses (i), (ii) and (iii) above, that no Event of Default shall occur as a result thereof if such event is cured within 90 days from the time the applicable Co-Borrower obtains Knowledge of such events (it being understood that the Co-Borrowers shall be considered to have cured any such event if the relevant Major Project Participant is replaced by a Replacement Obligor that does not so trigger this Section 7.1.14(c) and without material liability to any Co-Borrower arising out of such replacement).

(d) Termination. (x) Any Major Project Document shall terminate or shall be declared null and void (except upon fulfillment of such party's obligations thereunder or the scheduled expiration of the term of such Major Project Document) or (y) any provision of any Major Project Document shall for any reason cease to be valid and binding on any party thereto (other than any Co-Borrower), other than any such failure to be valid and binding which would not reasonably be expected to have a Material Adverse Effect and except, in the case of the foregoing clause (x) or (y), to the extent that (1) such provision is restored or replaced by a replacement provision in form and substance reasonably acceptable to Administrative Agent within, or (2) the applicable Co-Borrower enters into a Replacement Project Document within, in each case of clauses (1) and (2), (I) with respect to any Closing Date Permitted Commodity Hedge Agreement, any Interconnection Agreement or the EPC Contract, a 30 day period thereafter or (II) with respect to any other Major Project Document, a 90 day period thereafter.

7.1.15 *Loss of or Failure to Obtain Necessary Project Permits.*

(a) A Co-Borrower shall fail to obtain, maintain or renew any Permit on or after the date that such Permit becomes, or at such other time as such Permit is, an Applicable Permit and such failure would reasonably be expected to have a Material Adverse Effect; provided that no Event of Default shall occur for a period of up to 60 days following any such failure so long as (x) such Co-Borrower or another Person for or on behalf of such Co-Borrower is diligently seeking to remedy such failure (or cause such failure to be remedied), (y) such Co-Borrower continues to construct or operate the Project, or the Project is otherwise constructed or operated, as contemplated by the Credit Documents and the Major Project Documents and (z) at all times during such 60 day period there has not occurred, nor after consideration of the nature of such Co-Borrower's or such other Person's efforts to remedy such failure (or cause such failure to be remedied), would there reasonably be expected to occur, a Material Adverse Effect.

(b) Any Applicable Permit necessary for the construction and operation of the Project and for each Co-Borrower's performance of its obligations under the Major Project Documents shall be materially modified, revoked, canceled or not renewed by the issuing agency or other Governmental Authority having jurisdiction (or otherwise ceases to be in full force and effect) other than any such modification of, revocation of, cancellation of, failure to renew, or failure to maintain in full force and effect such Applicable Permit that would not reasonably be expected to have a Material Adverse Effect.

7.1.16 *Term Conversion*. Term Conversion shall not have occurred by the Date Certain (as such date may be extended pursuant to the definition thereof).

7.2 REMEDIES. Upon the occurrence and during the continuation of an Event of Default, any Agent or Lender may, at the direction of the Required Lenders, without further notice

of default, presentment or demand for payment, protest or notice of non-payment or dishonor, or other notices or demands of any kind, all such notices and demands (other than notices expressly required by the Credit Documents) being waived, exercise any or all of the following rights and remedies, in any combination or order that the Required Lenders may elect, in addition to such other rights or remedies as the Secured Parties may have hereunder, under the Collateral Documents or at law or in equity:

7.2.1 *No Further Loans*. Cancel all Commitments, refuse, and Administrative Agent and the Lenders shall not be obligated, to continue any Loans or make any additional Loans and no Agent shall be required to make any payments, or permit the making of payments, from any Account or any Loan proceeds or other funds held by such Agent under the Credit Documents or on behalf of Co-Borrowers; provided that in the case of an Event of Default occurring under Section 7.1.2 with respect to any Co-Borrower, all such Commitments shall be cancelled and terminated without further act of any Agent or any other Secured Party.

7.2.2 *Cure by Agents*. Without any obligation to do so, make disbursements or Loans to or on behalf of Co-Borrowers or disburse amounts from any Account to cure (a) any Event of Default or Inchoate Default hereunder, and (b) any default and render any performance under any Project Document as the Required Lenders in their sole discretion may consider necessary or appropriate, whether to preserve and protect the Collateral or the Secured Parties' interests therein or for any other reason. All sums so expended, together with interest on such total amount at the Default Rate (but in no event shall the rate exceed the maximum lawful rate), shall be repaid by Co-Borrowers to Administrative Agent or Collateral Agent, as the case may be, on demand and shall be secured by the Credit Documents, notwithstanding that such expenditures may, together with amounts advanced under this Agreement, exceed the aggregate amount of the Total Term Loan Commitment.

7.2.3 *Acceleration*. Declare and make all or a portion of the sums of accrued and outstanding principal and accrued but unpaid interest remaining under this Agreement, together with all accrued and unpaid fees, costs (including the Call Premium) and charges due hereunder or under any other Credit Document, immediately due and payable and require Co-Borrowers immediately, without presentment, demand, protest or other notice of any kind, all of which each Co-Borrower hereby expressly waives, to pay Administrative Agent or the Secured Parties an amount in immediately available funds equal to the aggregate amount of any outstanding Obligations of Co-Borrowers; provided that, if an Event of Default occurs under Section 7.1.2 with respect to any Co-Borrower, all such amounts shall become immediately due and payable without further act of Administrative Agent, Collateral Agent, or the other Secured Parties. Upon any principal amount in respect of any Loan becoming due and payable under this Section 7.2.3, whether automatically or by declaration, the Call Premium determined in respect of such principal amount shall all be immediately due and payable in connection therewith, in each and every case without presentment, demand, protest or further notice, all of which are hereby waived by the Co-Borrowers.

7.2.4 *Cash Collateral; Letters of Credit*. Apply or execute upon any amounts on deposit in any Account, or any proceeds or any other moneys of any Co-Borrower on deposit with Administrative Agent, Collateral Agent, Depositary Agent or any other Secured Party in the manner provided in the UCC and other relevant statutes and decisions and interpretations thereunder with respect to cash collateral. Without limiting the foregoing, each of Administrative Agent, Collateral Agent and Depositary Agent shall have all rights and powers with respect to the Loan proceeds, the Accounts and the contents of the Accounts as it has with respect to any other Collateral and may apply, or cause the application of, such amounts to the payment of interest, principal, fees, costs, charges or other amounts due or payable to Administrative Agent, Collateral Agent, Depositary Agent or the Secured Parties with respect to the Loans in accordance with the Intercreditor Agreement. No Co-Borrower shall have any rights or powers with respect to such amounts.

In addition to the foregoing, but subject to the Intercreditor Agreement, Collateral Agent and the other Secured Parties shall, at the direction of the Required Lenders, at any time while an Event of Default has occurred and is continuing be entitled to exercise all remedies under the UCC and any Governmental Rule.

7.3 APPLICATION OF PROCEEDS. All proceeds received by the Collateral Agent shall be applied, and proceeds received by any Secured Party under this Agreement or any Collateral Document shall be turned over to the Collateral Agent to be applied, in full or in part by the Collateral Agent as and when provided in Section 3.4 of the Intercreditor Agreement.

ARTICLE 8
[RESERVED]

ARTICLE 9
ADMINISTRATIVE AGENT; SUBSTITUTION

9.1 APPOINTMENT, POWERS AND IMMUNITIES.

9.1.1 In order to expedite the transactions contemplated by this Agreement, each Lender and each other Secured Party hereby appoints and authorizes (a) AMP Capital Investors Limited, to act as the Arranger and (b) Cortland Capital Market Services LLC to act as Administrative Agent. None of the Administrative Agent, the Arranger or any of their respective Related Parties shall have any duties or responsibilities except those expressly set forth in this Agreement or in any other Credit Document, or be a trustee or a fiduciary for any Secured Party, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into the Credit Documents or otherwise exist against Administrative Agent (other than those implied as a matter of applicable law that are not capable of being waived). It is understood and agreed that the use of any of the terms “agent,” “arranger” or “bookrunner” herein or in any other Credit Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or

express) obligations arising under agency doctrine of any applicable Legal Requirements. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties. Notwithstanding anything to the contrary contained herein, none of the Administrative Agent, the Arranger or any of their respective Related Parties shall be liable as such for any action taken or omitted by any of them except for its or their own gross negligence or willful misconduct as determined in a final non-appealable decision by a court of competent jurisdiction, or required to take any action which is contrary to this Agreement or any other Credit Documents or any Legal Requirement or that exposes any of the Administrative Agent, the Arranger or any of their respective Related Parties (as the case may be) to any liability. None of the Arranger, the Administrative Agent, the Lenders nor any of their respective Related Parties shall be required to ascertain or to make any inquiry concerning the performance or observance by any Borrower Party of any of the terms, conditions, covenants or agreements contained in any Credit Document, or be responsible for (i) any recitals, statements, representations or warranties made by any other Person contained in this Agreement or the other Credit Documents or the contents of any document delivered in connection herewith or therewith, the other Credit Documents or in any certificate or other document referred to or provided for in, or received by the Arranger, the Administrative Agent, or any other Secured Party under this Agreement or any other Credit Document or (ii) any failure by any Borrower Party or its Affiliates to perform their respective obligations hereunder or thereunder. The Administrative Agent and the Arranger may execute any and all duties hereunder by or through any agents or employees or any sub-agent appointed by it, and none of the Administrative Agent or Arranger shall be responsible for the negligence or misconduct of any such agents or attorneys-in-fact selected by it with reasonable care.

9.1.2 Without limiting the generality of the foregoing, (a) Administrative Agent may treat the payee of any Note as the holder thereof until Administrative Agent receives written notice of the assignment or transfer thereof signed by such payee and in form satisfactory to Administrative Agent, (b) Administrative Agent may consult with legal counsel (including, without limitation, counsel to the Co-Borrowers), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts, (c) none of the Administrative Agent or Arranger makes any warranty or representation to any other Secured Party for any statements, warranties or representations made in or in connection with any Operative Document, (d) none of the Administrative Agent or Arranger shall have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of any Operative Document on the part of any party thereto, the existence of any Default or Event of Default, to inspect the Collateral or other property (including the books and records) of any Borrower Party or any other Person or to ascertain or determine whether a Material Adverse Effect exists or is continuing (provided that the Administrative Agent shall be required to provide notice (or copies, as applicable) to the Lenders of any payments, notices and other matters as provided in this Agreement (including, without limitation, pursuant to Section 9.4) and the other

Credit Documents), (e) none of the Administrative Agent or the Arranger shall be responsible to any other Secured Party for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of any Operative Document or any other instrument or document furnished pursuant thereto and (f) the Administrative Agent shall not be deemed to have made any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or any certificate prepared by any Borrower Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Secured Parties for any failure to monitor or maintain any portion of the Collateral. Except as otherwise provided under this Agreement and the other Credit Documents, the Administrative Agent shall take, or omit, such action with respect to the Credit Documents as shall be directed by the Required Lenders or, if expressly so provided, all Lenders. The Administrative Agent shall not be under any duty to take any discretionary action permitted to be taken by it pursuant to the provisions of this Agreement or the other Credit Documents unless it shall be instructed in writing to do so by the Required Lenders. The other Secured Parties further acknowledge and agree that so long as the Administrative Agent shall make any determination to be made by it hereunder or under any other Credit Document in good faith, the Administrative Agent shall have no liability in respect of such determination to any Secured Party. The Administrative Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees, and may consult with the applicable Independent Consultants in the exercise of such powers, rights and remedies and the performance of such duties.

9.1.3 Arranger shall not have any right, power, obligation, liability, responsibility or duty under this Agreement, other than those applicable to all Secured Parties and those set forth in Section 11.14 and this Article 9. The Arranger shall only have those rights, powers, obligations, liabilities, responsibilities and duties set forth in Section 3.1, this Article 9 and Section 11.14. Without limiting the foregoing, Arranger shall not have or be deemed to have a fiduciary relationship with any Secured Party. Each Secured Party hereby makes the same acknowledgments with respect to the Arranger as it makes with respect to the Administrative Agent in this Article 9. Notwithstanding the foregoing, the parties hereto acknowledge that the Arranger holds such title in name only, and that such title confer no additional rights or obligations relative to those conferred on any Secured Party hereunder.

9.1.4 Each Lender hereby authorizes Administrative Agent to be the agent for and representative of the Lenders with respect to each Guaranty, including, without limitation, enforcement thereof.

9.2 RELIANCE. Each of the Administrative Agent and the Arranger shall be entitled to rely upon, and shall not incur any liability for relying upon, any certificate, notice or other document (including any cable, telegram, electronic mail or telex) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by it.

Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person. Each of the Administrative Agent and the Arranger shall in all cases be fully protected in acting, or refraining from acting, in accordance with written instructions signed by the Required Lenders and, except as otherwise specifically provided herein, such instructions and any action or inaction pursuant thereto shall be binding on all the Secured Parties. As to any other matters not expressly provided for by this Agreement, the Administrative Agent shall not be required to take any action or exercise any discretion, but shall be required to act or to refrain from acting upon instructions of the Required Lenders or, where expressly provided, all Lenders (except that the Administrative Agent shall not be required to take any action which exposes the Administrative Agent to personal liability or which is contrary to this Agreement, any other Credit Document or any Legal Requirement). The Administrative Agent shall in all cases (including when any action by the Administrative Agent alone is authorized hereunder, if the Administrative Agent elects in its sole discretion to obtain instructions from the Required Lenders) be fully protected in acting, or in refraining from acting, hereunder or under any other Credit Document in accordance with the instructions of the Required Lenders (or, where so expressly stated, all Lenders), and such instructions of the Required Lenders (or all Lenders, where applicable) and any action taken or failure to act pursuant thereto shall be binding on all of the Secured Parties. The Administrative Agent shall not be liable for any action taken or refrained from being taken, by it with the consent or at the direction of the Required Lenders.

9.3 NON-RELIANCE. Each Lender represents that it has, independently and without reliance on the Arranger, the Agents, or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of the financial condition and affairs of each Co-Borrower and its own decision to enter into this Agreement and agrees that it will, independently and without reliance upon the Arranger, the Agents, or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own appraisals and decisions in taking or not taking action under this Agreement. Each of the Administrative Agent, the Arranger and any Lender shall not be required to keep informed as to the performance or observance by any Co-Borrower or its Affiliates under this Agreement or the other Credit Documents or any other document referred to or provided for herein or therein to make inquiry of, or to inspect the properties or books of any Co-Borrower or its Affiliates.

9.4 DEFAULTS; MATERIAL ADVERSE EFFECT. None of the Arranger or the Administrative Agent shall be deemed to have knowledge or notice of the occurrence of any Inchoate Default, Event of Default or Material Adverse Effect, unless such Person has received a written notice from a Lender, Secured Party or any Borrower Party, referring to this Agreement, describing such Inchoate Default, Event of Default or Material Adverse Effect and indicating that such notice is a notice of the occurrence of such default or Material Adverse Effect (as the case may be). If Administrative Agent receives such a notice of the occurrence of an Inchoate Default, Event of Default or Material Adverse Effect, Administrative Agent shall give written notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Inchoate Default, Event of Default or Material Adverse Effect as is provided in Article 3, Article 7 or the terms of the Credit Documents, or if not provided for in Article 3, Article 7 or such Credit Documents, as the Administrative Agent shall be reasonably 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 Inchoate Default, Event of Default or Material Adverse Effect as it shall deem advisable in the best interest of the Lenders.

9.5 INDEMNIFICATION. Without limiting the Obligations of any Co-Borrower hereunder, each Lender, severally and not jointly, agrees to indemnify each Agent and their respective officers, directors, shareholders, controlling Persons, employees, agents and servants, ratably in accordance with their Proportionate Shares for any and all liabilities, obligations, losses, damages, penalties, actions, final judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any Agent or such Person in any way relating to or arising out of this Agreement, the other Credit Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or the enforcement of any of the terms hereof or thereof or of any such other documents, or any action taken or omitted by it or any of them under this Agreement or any other Credit Document, to the extent the same shall not have been reimbursed by any Co-Borrower; provided that no Lender shall be liable to any Agent for any portion of such liabilities, obligations, losses, damages, penalties, actions, final judgments, suits, costs, expenses or disbursements found in a final non-appealable judgment by a court of competent jurisdiction to have resulted primarily from the gross negligence or willful misconduct of such Agent. The obligations of the Lenders under this Section 9.5 shall survive payment of all Obligations and the resignation or replacement of any Agent. Each Agent or any such Person shall be fully justified in refusing to take or to continue to take any action hereunder or under any other Credit Document unless it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Without limitation of the foregoing, each Lender agrees to reimburse each Agent or any such Person promptly upon demand for its Proportionate Share of any out-of-pocket expenses (including reasonable counsel fees and compensation of agents and employees paid for services rendered in connection with the Credit Documents) incurred by any Agent or any such Person in connection with the preparation, execution, administration or enforcement of, or legal advice in respect of rights or responsibilities under, the Operative Documents, to the extent that any Agent or any such Person is not reimbursed for such expenses by any Co-Borrower. This Section 9.5 shall not apply to taxes other than any taxes that represent losses or damages arising from any non-tax claim. Each of the Collateral Agent and the Depositary Agent shall be an express third party beneficiary of this Section 9.5.

9.6 SUCCESSOR AGENT. Subject to the appointment and acceptance of a successor Administrative Agent as provided below, the Administrative Agent may resign at any time by notifying the Lenders and Co-Borrowers. The Administrative Agent may be removed involuntarily only for a material breach of its respective duties and obligations hereunder and under the other Credit Documents or for gross negligence or willful misconduct in connection with the performance of its respective duties hereunder or under the other Credit Documents, in each case only upon the affirmative vote of the Required Lenders. Upon any such resignation or removal of Administrative Agent, the Required Lenders shall have the right, with, provided no Event of Default has occurred and is continuing, the consent of Co-Borrowers (such consent not to be unreasonably withheld or delayed) to appoint a successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the Required Lenders and shall have accepted such appointment, within

30 days after the retiring Administrative Agent's giving of notice of resignation or the Required Lenders' removal of the retiring Administrative Agent, the retiring Administrative Agent may, on behalf of the Secured Parties, with, provided no Event of Default has occurred, the consent of Co-Borrowers (such consent not to be unreasonably withheld or delayed), appoint a successor Administrative Agent hereunder, which shall be a Lender, if any Lender shall be willing to serve, and otherwise shall be a commercial bank with an office in the United States having a combined capital and surplus of at least $500,000,000 or an Affiliate of any such bank. Upon the acceptance of any appointment as Administrative Agent under the Operative Documents by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations as Administrative Agent hereunder and under the other Credit Documents. If no successor Administrative Agent has been appointed pursuant to the preceding sentences by the 30th day after the date such notice of resignation was given by the Administrative Agent, Administrative Agent's resignation shall nonetheless become effective in accordance with such notice and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and the other Credit Documents. After any retiring Administrative Agent's resignation or removal hereunder as Administrative Agent, the provisions of this Article 9, Section 11.4 and Section 11.14 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under the Operative Documents. Anything herein to the contrary notwithstanding, if at any time the Required Lenders determine that the Person serving as Administrative Agent is a Defaulting Lender, the Required Lenders may by notice to Co-Borrowers and such Person remove such Person as Administrative Agent and appoint a replacement Administrative Agent hereunder. Such removal will, to the fullest extent permitted by applicable law, be effective on the earlier of (i) the date a replacement Administrative Agent is appointed and (ii) the date which is five Banking Days after the giving of such notice by the Required Lenders (regardless of whether a replacement Administrative Agent has been appointed).

9.7 AUTHORIZATION. Each of the Lenders and each assignee of any such Lender hereby irrevocably authorizes each of the Administrative Agent and the Arranger to take such actions on behalf of such Lender or assignee and to exercise such powers as are specifically delegated to such Person in such capacity by the terms and provisions hereof and of the other Credit Documents, together with such actions and powers as are reasonably incidental thereto, and each Lender and each assignee of any such Lender hereby agrees to be bound by any such actions. Without limiting the generality of the foregoing, Administrative Agent is hereby expressly authorized by the Lenders, without hereby limiting any implied authority, (a) to receive on behalf of the Lenders all payments of principal of and interest on the Loans and promptly to distribute to each Lender its proper share of each payment so received; and (b) to distribute to each Lender copies of all notices, financial statements and other materials delivered by any Co-Borrower pursuant to this Agreement as received by Administrative Agent. The Administrative Agent is further authorized by the other Secured Parties to release Liens on property that any Co-Borrower is permitted to sell or transfer pursuant to the terms of this Agreement or the other Credit Documents and to enter into agreements supplemental hereto for the purpose of curing any formal defect, inconsistency, omission or ambiguity in this Agreement or any Credit Document to which it is a party. Without limiting the generality of the foregoing, Administrative Agent is hereby expressly authorized by the Lenders in

case of the pendency of any proceeding under any Bankruptcy Law or any other judicial proceeding relative to any Borrower Party, and the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Co-Borrowers) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise (A) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under this Agreement) allowed in such judicial proceeding and (B) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same, and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under this Agreement.

9.8 OTHER ROLES. With respect to its Commitment, the Loans made by it and any Note issued to it, the Arranger and the Administrative Agent in its individual capacity shall have the same rights and powers under the Operative Documents as any other Lender and may exercise the same as though it were not an Arranger or Administrative Agent. Each of the Arranger and the Administrative Agent and its respective Affiliates may accept deposits from, lend money to, act as trustee under indentures of, and generally engage in any kind of business with any Co-Borrower or any other Person, without any duty to account therefor to the other Secured Parties. Each of the Secured Parties hereby waives any claim against each of the Arranger and the Administrative Agent, the Borrower Parties and any of their respective Affiliates based upon any conflict of interest that the Arranger, the Administrative Agent or any of their respective Affiliates may have with regard to acting as an agent or arranger hereunder and acting in such other roles.

9.9 AMENDMENTS; WAIVERS.

9.9.1 *Unanimous Consent*. Subject to the provisions of this Section 9.9, unless otherwise specified in this Agreement or another Credit Document, the Required Lenders (or the Administrative Agent upon written direction or consent of the Required Lenders) and any Borrower Party party to the relevant Credit Document may enter into agreements, waivers or supplements (with a copy of such agreement, waiver or supplement provided to the Administrative Agent) hereto for the purpose of adding, modifying or waiving any provisions to the Credit Documents or changing in any manner the rights of the Secured Parties or any Borrower Party hereunder or thereunder or waiving any Inchoate Default or Event of Default; provided that no such agreement, waiver or supplement shall, without the consent of all of the Lenders:

(a) increase the amount of the Commitment of any Lender hereunder;

(b) amend any provision of this Section 9.9;

(c) release all or substantially all of the Collateral from the Lien of any of the Collateral Documents;

(d) cause any Obligations to cease to be secured on a *pari passu* basis with all other Obligations;

(e) extend the Date Certain or the Final Maturity Date or reduce the principal amount of any outstanding Loans or Notes or reduce the rate or change the time of payment of interest due on any Loan; provided that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" (but not to a rate less than zero) or to waive any obligation of Co-Borrowers to pay interest at the Default Rate;

(f) add, modify or waive any provisions to the Credit Documents so as to subordinate the Loans to any other Debt;

(g) except as expressly provided herein, amend the definition of "Required Target Debt Balance Payment" or "Target Debt Balance" or amend Section 3.2(b)(ix), (x) or (xi) of the Depositary Agreement; and

(h) permit any Co-Borrower to assign or otherwise transfer any of its rights or obligations under this Agreement.

9.9.2 *Affected Party*. Notwithstanding anything to the contrary herein, no agreement, waiver or supplement hereto shall add, modify or waive any provisions to the Credit Documents, or change in any manner the rights of the Lenders or any Borrower Party hereunder or thereunder, so as to:

(a) reduce the amount or extend the payment date for any interest amount or fees due hereunder without the prior written consent of each Lender adversely affected thereby;

(b) amend or modify any provision set forth in Sections 2.1.9(a)(ii)(B), 2.7.1 or 2.7.2 in a manner that would alter the *pro rata* sharing of payments with respect to the applicable Facility without the prior written consent of each Lender adversely affected thereby;

(c) [reserved];

(d) change the order of priority of payments set forth in Sections 3.2(b), 3.4(b), 3.4(c), 3.5(b), 3.5(c), 3.9(b) or 3.9(c) of the Depositary Agreement, without the prior written consent of each Lender adversely affected thereby;

(e) amend, modify or otherwise affect the rights or duties of the Administrative Agent or the Arranger without the prior written consent of the Administrative Agent or the Arranger, as applicable, acting as such at the effective date of such agreement;

(f) [reserved];

(g) amend the definition of "Lenders" or reduce the percentage specified in the definition "Required Lenders", "Required Class Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the prior written consent of each Lender adversely affected thereby;

(h) waive the obligations of the Co-Borrowers to pay any Call Premium due in respect of any prepayment hereunder without the consent of the each Lender to whom such Call Premium is payable; or

(i) amend or modify the definition of "Call Premium" or any of the provisions in this Agreement for when it is payable without the consent of each Lender.

Notwithstanding the foregoing, (x) no amendment, modification, waiver or consent shall, unless consented in writing by the Administrative Agent, affect the rights or duties of the Administrative Agent (but not in its capacity as a Lender) under this Agreement or any other Credit Document and (y) no amendment, modification, waiver or consent shall that would adversely affect the rights or obligations of Lenders disproportionately to that of any other Class, unless consented in writing by the Required Class Lenders of the adversely affected Class.

9.9.3 *Defaulting Lenders*. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender, (y) the maturity of any Defaulting Lender's Loans may not be extended and no principal or interest owed to any Defaulting Lender in respect of such Lender's Loans may be forgiven or reduced without the consent of such Lender and (z) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely to other affected Lenders shall require the consent of such Defaulting Lender.

9.9.4 *Minor Defects*. Notwithstanding the other provisions of this Section 9.9, the applicable Borrower Parties or the Administrative Agent may (but shall have no obligation to) amend or supplement the Credit Documents without the consent of any other Secured Party for the purpose of (a) curing any ambiguity, defect or inconsistency to correct any typographical errors or other similar mistakes that do not modify the rights and obligations of the parties hereto, (b) subject to Section 2.1 of the Intercreditor Agreement and the lien priority and subordination provisions therein, (i) making any change that would provide any additional rights or benefits to the Secured Parties or (ii) making, completing or confirming any grant of Collateral permitted or required by this Agreement or any of the Credit Documents or any release of any Collateral that is otherwise permitted under the terms of this Agreement and the Credit

Documents or any release of any Collateral that is otherwise permitted under the terms of this Agreement and the Credit Documents (or, if not addressed therein, not prohibited) and (c) making administrative or mechanical amendments to this Agreement or any of the Credit Documents to provide for the addition of obligations secured by the Collateral and the related secured parties and otherwise to effect the intent of Section 3.8 of the Intercreditor Agreement or the addition of any Borrower Party as permitted or required under the Credit Documents so long as such amendments do not modify the rights and obligations of the parties hereto (other than, for the avoidance of doubt, as may result from having additional secured obligations benefiting from the Collateral and additional secured parties voting as provided herein and having other rights of secured parties under this Agreement and under the Credit Documents).

9.10 WITHHOLDING TAX. To the extent required by applicable Legal Requirements, the Administrative Agent may withhold from any interest payment to any Lender an amount equivalent to the applicable withholding tax.

9.10.1 If the Internal Revenue Service or any other Governmental Authority asserts a claim that Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify Administrative Agent of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason) or Administrative Agent has paid over to the Internal Revenue Service or other Governmental Authority applicable withholding tax relating to a payment to a Lender but no deduction has been made from such payment, then such Lender shall indemnify Administrative Agent fully for all amounts paid, directly or indirectly, by Administrative Agent as tax or otherwise, including penalties and interest, together with all expenses incurred, including legal expenses, allocated staff costs, and any out of pocket expenses. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Credit Document against any amount due the Administrative Agent under this Section 9.10.1. The obligations of the Lenders under this Section 9.10.1 shall survive the payment of all Obligations and the resignation or replacement of Administrative Agent. No Co-Borrower shall be responsible for any amounts paid or required to be paid by a Lender under this Section 9.10.1 except as set forth in Section 2.6.4.

9.10.2 If any Lender sells, assigns, grants participation in, or otherwise transfers its rights under this Agreement, the purchaser, assignee, participant or transferee, as applicable, shall comply and be bound by the terms of Section 2.6.5 and this Section 9.10 as though it were such Lender.

9.11 GENERAL PROVISIONS AS TO PAYMENTS. Administrative Agent shall promptly distribute to each Lender (other than the Defaulting Lenders), subject to the terms of any

separate agreement between Administrative Agent and such Lender, its *pro rata* share of each payment of principal and interest payable to the Lenders on the Loans and of fees hereunder received by Administrative Agent for the account of the Lenders and of any other amounts owing under the Loans. The payments made for the account of each Lender shall be made, and distributed to it, for the account of (a) its domestic lending office in the case of payments of principal of, and interest on, its Loans and (b) its domestic lending office, or such other lending office as it may designate for the purpose from time to time, in the case of payments of fees and other amounts payable hereunder.

9.12 PARTICIPATION.

9.12.1 *Sales of Participation*. Any Lender may, at any time, without the consent of any Co-Borrower or Administrative Agent, sell participations to any Person (other than a natural Person or a holding company, investment vehicle or trust for or owned for the benefit of a natural Person, a Defaulting Lender, any Terminated Lender, any Sanctioned Person or any Co-Borrower or any of any Co-Borrower's Affiliates) (each, a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans owing to it); provided that (a) no such sale of a participation shall alter such Lender's or such Co-Borrower's obligations hereunder, (b) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (c) any Co-Borrower, Administrative Agent, and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement, and (d) any agreement or instrument (oral or written) pursuant to which any Lender may grant a participation in its rights with respect to its Commitment (or Loans made hereunder) shall provide that, with respect to such Commitment (or Loans made hereunder), subject to the following proviso, such Lender shall retain the sole right and responsibility to exercise the rights of such Lender, and enforce the obligations of the applicable Co-Borrower relating to such Commitment (or Loans made hereunder), including the right to approve any amendment, modification or waiver of any provision of this Agreement or any other Credit Document and the right to take action to have the Obligations hereunder (or any portion thereof) declared due and payable pursuant to Article 7; provided that (A) such agreement may provide that the Participant may have rights to approve or disapprove decreases in Commitments, interest rates or fees, lengthening of maturity of any Loans to the extent contemplated by Section 9.9.1(e) or release all or substantially all of the Collateral (other than (i) pursuant to Section 6.4, (ii) as contemplated by the definition of "Change of Control", (iii) in respect of any Loss Event or (iv) as otherwise expressly permitted hereby or under any other Operative Document) and (B) no other agreement (oral or written) with respect to such Participant may exist between such Lender and such Participant. Each Participant shall be entitled to the benefits of Sections 2.6.4 and 2.8.3 (subject to the requirements and limitations therein, including the requirements under Sections 2.6.4(f) and 2.6.5 (it being understood that the documentation required under such Sections shall be delivered to the participating Lender and not to Administrative Agent or Co-Borrowers)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to

Section 9.13; provided that such Participant (A) agrees to be subject to Section 2.10.2 as if it were an assignee under Section 9.13 and (B) shall not be entitled to receive any greater payment under Sections 2.6.4 or 2.8.3, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change of Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation shall 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 rights or obligations) held by it; provided that no Lender shall have any obligation to disclose all or any portion of such register (including the identity of any Participant or any information relating to a Participant's interest in any of its obligations under any Credit Document) to any Person except to the extent that such disclosure is necessary to establish that such obligation is in registered form under U.S. Treasury regulations Section 5f.103-1(c) and Proposed U.S. Treasury regulations Section 1.163-5(b) (or, in each case, any amended or successor version). The entries in such register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in such register as the owner of such Loan (or other right or obligation) hereunder as the owner thereof for all purposes of this Agreement notwithstanding any notice to the contrary. Any such register shall be available for inspection by the Administrative Agent at any reasonable time and from time to time upon reasonable prior notice. Notwithstanding anything to the contrary in this Section 9.12.1, (1) no Lender may sell any Participation in any portion of any Initial Term Loan or any Initial Term PIK Loan held by such Lender unless such Lender simultaneously sells (to the same Participant) equal percentage interests of both the Initial Term Loans and Initial Term PIK Loans held by such Lender and (2) no Lender may sell any Participation in any portion of any Additional Term Loan or any Additional Term PIK Loan held by such Lender unless such Lender simultaneously sells (to the same Participant) equal percentage interests of both the Additional Term Loans and Additional Term PIK Loans held by such Lender.

9.12.2 *Special Purpose Funding Vehicles*. Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle (a "SPC"), identified as such in writing from time to time by the Granting Lender to Administrative Agent and Co-Borrowers, the option to provide to Co-Borrowers all or any part of any Loan that such Granting Lender would otherwise be obligated to make to Co-Borrowers pursuant to this Agreement; provided that (a) nothing herein shall constitute a commitment by any SPC to make any Loan, (b) nothing herein shall alter the Commitments hereunder of any Granting Lender and (c) if a SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. The making of a Loan by a SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party

hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is 1 year and 1 day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other Person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any state thereof. In addition, notwithstanding anything to the contrary contained in this Section 9.12 (but subject to the second proviso in the first sentence of Section 9.13), any SPC may (i) with notice to, but without the prior written consent of, Co-Borrowers or Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender or to any financial institutions (consented to by Co-Borrowers and Administrative Agent) providing liquidity or credit support to or for the account of such SPC to support the funding or maintenance of Loans, and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPC. This Section 9.12.2 may not be amended without the written consent of all SPCs having outstanding Loans or Commitments hereunder.

9.12.3 Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank having jurisdiction over such Lender; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

9.13 TRANSFER OF COMMITMENT. Notwithstanding anything else herein to the contrary (but subject to Section 9.12.2), any Lender (so long as no Event of Default pursuant to Section 7.1.1 or Event of Default with respect to any Borrower Party pursuant to Section 7.1.2 has occurred and is continuing) upon receiving Co-Borrowers' prior written consent (such consent not to be unreasonably withheld or delayed), may from time to time, at its option, sell, assign, transfer, negotiate or otherwise dispose of a portion of one or more of its Commitments (including, for purposes of this Section 9.13, Loans made hereunder) (including the Lender's interest in this Agreement and the other Credit Documents) pursuant to an Assignment and Assumption to any Eligible Assignee; provided that Co-Borrowers shall be deemed to have consented to any such assignment unless they shall object thereto by written notice to Administrative Agent within 10 Banking Days after receiving notice thereof; provided, further, that no Lender (including any assignee of any Lender) may assign any portion of its Commitment (including Loans) (a) in an amount less than $5,000,000 or, if less, the remaining amount of such Lender's Commitment, (unless to another Lender), or (b) in an amount which leaves the assigning Lender with a Commitment (including Loans) of less than $5,000,000 (in each case based on the original principal amount of the Commitment assigned) after giving effect to such assignment and all previous assignments (except that a Lender may be left with no Commitment or Loans if it assigns its entire Commitment); provided, that no Person may transfer any portion of any Initial Term Loan or any Initial Term PIK Loan held by such Person unless such Person simultaneously transfers (to the same transferee) equal percentage interests of both the Initial Term Loans and Initial Term PIK Loans held by such Person;

provided that no Person may transfer any portion of any Additional Term Loan or any Additional Term PIK Loan held by such Person unless such Person simultaneously transfers (to the same assignee) equal percentage interests of both the Additional Term Loans and Additional Term PIK Loans held by such Person; provided, further, that any Lender may assign all or any portion of its Commitments (including Loans) to an Affiliate of such Lender or to any other Lender without the consent of any Person. An assignee shall not be entitled to receive any greater payment under Section 2.6.4 or 2.8 than the applicable Lender would have been entitled to receive with respect to the interest assigned to such assignee unless Co-Borrowers shall have consented to such assignment. An assignee shall not be entitled to the benefits of Section 2.6.4 to the extent such assignee fails to comply with Sections 2.6.4(f) and 2.6.5. In the event of any such assignment, (i) the assigning Lender's Proportionate Share shall be reduced and its obligations hereunder released by the amount of the Proportionate Share assigned to the new Lender, (ii) the parties to such assignment shall execute and deliver an appropriate agreement evidencing such sale, assignment, transfer or other disposition, in form and substance reasonably satisfactory to Administrative Agent and Co-Borrowers, (iii) the parties to the sale, assignment, transfer or other disposition, excluding any Co-Borrower, shall collectively pay to Administrative Agent an administrative fee of $3,500; provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment, (iv) at the assigning Lender's option, Co-Borrowers shall execute and deliver to such new Notes in the forms attached hereto as Exhibit B-1 or B-2, as applicable, as requested, in a principal amount equal to such assignee new Lender's Commitment, but only if it shall also be executing and exchanging with the assigning Lender a replacement note for any Note(s) in an amount equal to the Commitment retained by the assigning Lender, if any; provided that Co-Borrowers shall have received for cancellation the existing Note(s) held by such assigning Lender, (v) Administrative Agent shall have received from the new Lender all documentation and other information required by bank regulatory authorities and reasonably requested by it under applicable "know your customer" laws, AML Laws, Sanctions and Anti-Terrorism Laws, including the Act, to include a copy of such new Lender's duly executed IRS Form W-9 or such other applicable IRS Form, and (vi) Administrative Agent shall amend Exhibit H to reflect the Proportionate Shares of the Lenders following such assignment. Thereafter, such new Lender shall be deemed to be a Lender and shall have all of the rights and duties of a Lender (except as otherwise provided in this Article 9), in accordance with its Proportionate Share, under each of the Credit Documents. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in Section 2.1.10.

9.14 LAWS. Notwithstanding the foregoing provisions of this Article 9, no sale, assignment, transfer, negotiation or other disposition of the interests of any Lender hereunder or under the other Credit Documents shall be allowed if it would require registration under the federal Securities Act of 1933, as then amended, any other federal securities laws or regulations or the securities laws or regulations of any applicable jurisdiction. Each Co-Borrower shall, from time to time at the reasonable request and expense of Administrative Agent, execute and deliver to Administrative Agent, or to such party or parties as Administrative Agent may designate, any and all further instruments as may in the opinion of Administrative Agent be reasonably necessary or advisable to give full force and effect to such sale, assignment, transfer, negotiation or disposition which would not require any such registration.

9.15 ASSIGNABILITY AS COLLATERAL. Notwithstanding any other provision contained in this Agreement or any other Credit Document to the contrary, any Lender may assign all or any portion of the Loans or Notes held by it to the Federal Reserve Bank and the U.S. Treasury as collateral security pursuant to Regulation A of the Federal Reserve Board and any operating Circular issued by such Federal Reserve Bank or to any central bank as collateral security in accordance with applicable law; provided that any payment in respect of such assigned Loans or Notes made by any Co-Borrower to or for the account of the assigning or pledging Lender in accordance with the terms of this Agreement shall satisfy such Co-Borrower's obligations hereunder in respect of such assigned Loans or Notes to the extent of such payment; provided, further, that no such assignment shall release the assigning Lender from its obligations hereunder and in no event shall the Federal Reserve Bank or any central bank be considered a "Lender" hereunder.

9.16 NOTICES TO LENDERS. Administrative Agent promptly shall deliver all material documents, instruments and notices that it receives hereunder and under the other Operative Documents to each Lender (other than any Defaulting Lender). Except as expressly provided in this Agreement or the other Credit Documents, no Co-Borrower shall be required to deliver any documents, instruments or notices directly to the Lenders.

ARTICLE 10
INDEPENDENT CONSULTANTS

10.1 REMOVAL AND FEES. Administrative Agent, in its reasonable discretion, may remove from time to time, any one or more of the Independent Consultants and Administrative Agent may appoint replacements, which, so long as no Event of Default shall have occurred and be continuing, shall be reasonably acceptable to Co-Borrowers. Notice of any replacement Independent Consultant shall be given by Administrative Agent to Co-Borrowers, the Lenders and to the Independent Consultant being replaced. All reasonable and documented fees and expenses of the Independent Consultants (whether the original ones or replacements) shall be paid by Co-Borrowers pursuant to agreements reasonably acceptable to Co-Borrowers; provided that no such acceptance shall be required at any time an Event of Default shall have occurred and be continuing.

10.2 CERTIFICATION OF DATES. Administrative Agent will request that the Independent Consultants act diligently in the issuance of all certificates required to be delivered by the Independent Consultants hereunder, if their issuance is appropriate. Co-Borrowers shall use commercially reasonable efforts to provide the Independent Consultants with reasonable notice of the expected occurrence of any dates or events requiring the issuance of such certificates.

ARTICLE 11
MISCELLANEOUS

11.1 ADDRESSES. Any communications between the parties hereto or notices provided herein to be given may be given to the following addresses:

If to Administrative Agent: Cortland Capital Market Services LLC, as Administrative Agent
225 W. Washington St., 9th Floor

Chicago, IL 60606
Attention: Legal Department and Ryan Morick
Phone: (312) 564-5100
Email: legal@cortlandglobal.com and ryan.morick@cortlandglobal.com

With a copy to:

Holland & Knight LLP
131 S. Dearborn St., 30th Floor
Chicago, Il 60603
Attention: Joshua Spencer
Email: Joshua.spencer@hklaw.com

If to Co-Borrowers:

c/o FIG LLC
1345 Avenue of the Americas, 45th Floor
New York, NY 10105
Attention: Joseph P. Adams, Jr., Chief Executive Officer
E-mail: jadams@fortress.com

With a copy to:

c/o FIG LLC
1345 Avenue of the Americas, 45th Floor
New York, NY 10105
Attention: Ken Nicholson, Managing Director
E-mail: knicholson@fortress.com

With a copy to:

Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, NY 10019
Attention: George E. Zobitz
E-mail: jzobitz@cravath.com

All such notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service (including Federal Express, UPS, ETA, Emery, DHL, AirBorne and other similar overnight delivery services), (c) if mailed by first class United States Mail, postage prepaid, registered or certified with return receipt requested, (d) if sent by direct electronic transmission with receipt confirmed by telephone, or (e) by Electronic Transmission (as defined below). Notice so given shall be effective upon receipt by the addressee, except that communication or notice so transmitted by direct written electronic means shall be deemed to have been validly

and effectively given on the day (if a Banking Day and, if not, on the next following Banking Day) on which it is transmitted if transmitted before 4:00 p.m., recipient's time, and if transmitted after that time, on the next following Banking Day; provided that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving of 30 days' notice to the other parties in the manner set forth above.

Any Borrower Party may deliver to Administrative Agent any borrowing certificate, collateral report or other material hereunder or under the other Credit Documents, by e-mail or other electronic transmission (an "Electronic Transmission"), subject to the following terms:

(1) Each Electronic Transmission must be sent by an authorized person of the applicable Borrower Party (or any other authorized representative), and must be addressed to the e-mail address specified above in this Section 11.1 or such other e-mail address, as designated by Administrative Agent, Collateral Agent or Depositary Agent (as the case may be) from time to time in accordance with this Section 11.1. Unless the applicable Agent otherwise prescribes, (i) notices and other communications sent to an email address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgement) and (ii) notices or communications posted to an internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its email address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, in the case of each of the foregoing clauses (i) and (ii), if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Banking Day for the recipient. If any Electronic Transmission is returned to the sender as undeliverable, the material included in such Electronic Transmission must be delivered to the intended recipient in another manner permitted by this Section 11.1.

(2) Each certificate, collateral report, notice or instruction to the Depositary Agent or Collateral Agent or other material contained in an Electronic Transmission must be in a "pdf" or other imaging format. Any signature on a certificate, collateral report or other material contained in an Electronic Transmission shall constitute a valid signature for purposes hereof. Each Agent may rely upon, and assume the authenticity of, any such signature, and any material containing such signature shall constitute an "authenticated" record for purposes of the UCC and shall satisfy the requirements of any applicable statute of frauds.

(3) Upon the request of any Agent, each Co-Borrower shall maintain the original versions of all certificates, collateral reports and other materials delivered to any Agent by means of an Electronic Transmission and shall use commercially reasonable efforts to furnish to such Agent such original versions within five Banking Days of such Agent's request for such original materials, signed and certified (to the extent required hereunder) by the officer submitting the Electronic Transmission.

11.2 RIGHT TO SET-OFF. Subject to the Intercreditor Agreement, if an Event of Default shall have occurred and be continuing, Collateral Agent, and only Collateral Agent, is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by Collateral Agent to or for the credit or the account of any Co-Borrower, against any and all obligations of any Co-Borrower, now or hereafter existing under this Agreement or any other Credit Document held by Collateral Agent, irrespective of whether or not Collateral Agent shall have made any demand under this Agreement or such other Credit Document and although the obligations may be unmatured. Subject to the Intercreditor Agreement, the rights of Collateral Agent under this Section are in addition to other rights and remedies (including other rights of set-off) that Collateral Agent may have.

11.3 DELAY AND WAIVER. No delay or omission to exercise any right, power or remedy accruing to the Secured Parties upon the occurrence of any Event of Default, Inchoate Default, Material Adverse Effect or any breach or default of any Co-Borrower or unsatisfied condition precedent under this Agreement or any other Credit Document shall impair any such right, power or remedy of the Secured Parties, nor shall it be construed to be a waiver of any such breach or default or unsatisfied condition precedent, or an acquiescence therein, or of or in any similar breach or default or unsatisfied condition precedent thereafter occurring, nor shall any waiver of any single Event of Default, Inchoate Default, Material Adverse Effect or other breach or default or unsatisfied condition precedent be deemed a waiver of any other Event of Default, Inchoate Default, Material Adverse Effect or other breach or default or unsatisfied condition precedent theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of Administrative Agent or the Secured Parties of any Event of Default, Inchoate Default, Material Adverse Effect or other breach or default or unsatisfied condition precedent under this Agreement or any other Credit Document, or any waiver on the part of Administrative Agent or the Secured Parties of any provision or condition of this Agreement or any other Credit Document, must be in writing and shall be effective only to the extent in such writing specifically set forth. All remedies, either under this Agreement or any other Credit Document or by law or otherwise afforded to the Agents and the other Secured Parties, shall be cumulative and not alternative or exclusive of any other rights or remedies provided.

11.4 COSTS, EXPENSES AND ATTORNEYS' FEES. Co-Borrowers will pay (or reimburse) each of the Administrative Agent and the Arranger for all of their respective reasonable and documented fees and out-of-pocket costs and expenses (net of any costs and expenses paid prior to the Closing Date) in connection with the preparation, negotiation, closing, delivery, performance and administering of this Agreement, the other Credit Documents and the documents contemplated hereby and thereby, any participation or syndication of the Loans or this Agreement, and the consummation and administration of the transactions contemplated hereby and thereby and any amendments hereto or thereto, including the reasonable fees, expenses and disbursements of Holland & Knight LLP (counsel to Administrative Agent), Latham & Watkins LLP and Cahill Gordon & Reindel LLP and one local counsel in each relevant jurisdiction (and in the case of a conflict of interest, one additional counsel and one additional local (or specialist) counsel to each group of similarly situated affected persons) in connection with the negotiation, preparation, closing, delivery, performance and administering of this Agreement, the other Credit Documents and the

documents contemplated hereby and thereby and any amendments hereto or thereto. Co-Borrowers will pay or reimburse (a) Administrative Agent for all reasonable and documented out-of-pocket costs and expenses, including reasonable and documented attorneys' fees, expended or incurred by Administrative Agent for its reasonable and documented out-of-pocket expenses (including, without limitation, fees and disbursements of one general and one local legal counsel), and the Lenders for their reasonable and documented out-of-pocket expenses (including, without limitation, fees and disbursements of one general and one local legal counsel), in (i) the preservation and protections of the Administrative Agent's and Lenders' rights under this Agreement, (ii) the preparation of any amendments, waivers, or consent to this Agreement or the other Credit Documents, (iii) the protection, collection, lease, sale, taking possession of or liquidation of, any Collateral or other security in connection with this Agreement or any other Credit Document, (iv) any attempt to enforce any Lien or security interest in any Collateral or other security in connection with this Agreement or any other Credit Document, (v) any Environmental Claim or any liability under any Environmental Law, and (vi) enforcing this Agreement or the other Credit Documents in connection with an Event of Default or Inchoate Default, in actions for declaratory relief in any way related to this Agreement or in collecting any sum which becomes due on the Notes or under the Credit Documents or otherwise enforcing or exercising their rights and remedies hereunder and (b) the Administrative Agent for its reasonable out-of-pocket expenses, including reasonable attorney fees and reasonable expert, consultant and advisor fees and expenses, and the Lenders for their reasonable out-of-pocket expenses, including reasonable attorney fees and reasonable expert, consultant and advisor fees and expenses, in the case of a restructuring of the Loans or otherwise relating to the occurrence of any Inchoate Default or Event of Default. Co-Borrowers shall not be responsible for any counsel fees of the Arranger, the Administrative Agent or the Lenders other than as set forth in this Section 11.4 or in Section 11.14 or as otherwise set forth in a separate agreement (including any other Credit Documents).

11.5 ENTIRE AGREEMENT. This Agreement and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. Except as otherwise expressly provided, in the event of any conflict between the terms, conditions and provisions of this Agreement and any such agreement, document or instrument, the terms, conditions and provisions of this Agreement shall prevail. There are no promises, undertakings, representations or warranties by the Arranger, any Agent or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Credit Documents.

11.6 GOVERNING LAW. THIS AGREEMENT AND ANY OTHER CREDIT DOCUMENT (UNLESS OTHERWISE EXPRESSLY PROVIDED FOR THEREIN), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

11.7 SEVERABILITY. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties hereto shall endeavor in good-faith negotiations to replace any invalid, illegal or

unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

11.8 HEADINGS. Article, Section and Paragraph headings have been inserted in this Agreement as a matter of convenience for reference only and it is agreed that such headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

11.9 ACCOUNTING TERMS. All accounting terms not specifically defined herein shall be construed in accordance with GAAP and practices consistent with those applied in the preparation of the financial statements submitted by each Co-Borrower to Administrative Agent, and all financial data submitted pursuant to this Agreement shall be prepared in accordance with such principles and practices.

11.10 ADDITIONAL FINANCING. The parties hereto acknowledge that as of the date hereof the Lenders have made no agreement or commitment to provide any financing to any Co-Borrower except as set forth herein or in the First Lien Credit Documents.

11.11 NO PARTNERSHIP, ETC. The Lenders, on the one hand, and Co-Borrowers, on the other hand, intend that the relationship between them shall be solely that of creditor and debtor. Nothing contained in this Agreement, the Notes or in any of the other Credit Documents shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership by or among the Lenders, on the one hand, and Co-Borrowers or any other Person, on the other hand. None of the Arranger, Administrative Agent, Collateral Agent or the Lenders shall be in any way responsible or liable for the debts, losses, obligations or duties of any Co-Borrower or any other Person with respect to the Project or otherwise. Except as otherwise expressly set forth herein, all obligations to pay real property or other taxes, assessments, insurance premiums, and all other fees and charges arising from the ownership, operation or occupancy of the Project (if any) and to perform all obligations and other agreements and contracts relating to the Project shall be the sole responsibility of Co-Borrowers.

11.12 DEPOSITARY AGREEMENT. Each Lender hereby acknowledges that it has received and reviewed a copy of the Depositary Agreement and agrees to be bound by the terms thereof. Without limiting the generality of the foregoing, each Lender (and each Person that becomes a Lender hereunder pursuant to Section 9.13) and each other Secured Party hereby (a) authorizes and directs each Agent to execute the Depositary Agreement and the other Credit Documents to which it is a party on behalf of such Lender or Secured Party and agrees that the Agents may take such actions on behalf of such Lender or Secured Party as are contemplated by the terms of the Depositary Agreement, and (b) acknowledges that Depositary Agent is acting as Depositary Agent for all of the Secured Parties and not solely the Lenders.

11.13 LIMITATION ON LIABILITY. No claim shall be made by any Borrower Party against the Arranger, Administrative Agent, Collateral Agent, the Lenders or any of their respective Affiliates, directors, employees, attorneys or agents for any loss of profits, business or anticipated savings, special or punitive damages or any indirect or consequential loss whatsoever in respect of any breach or wrongful conduct (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions

contemplated by this Agreement or the other Operative Documents or any act or omission or event occurring in connection therewith, and each Borrower Party hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor, in each case, except to the extent such claim is based on gross negligence or willful misconduct of such Person. No claim shall be made by the Arranger, Administrative Agent, Collateral Agent, any Lender, or any Secured Party against any Borrower Party or any of their respective Affiliates, directors, employees, attorneys or agents for any loss of profits, business or anticipated savings, special or punitive damages or any indirect or consequential loss whatsoever in respect of any breach or wrongful conduct (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or the other Operative Documents or any act or omission or event occurring in connection therewith, and each Secured Party hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor, in each case, except to the extent such claim is based on gross negligence or willful misconduct of such Person; provided that nothing in this Section 11.13 shall limit the Co-Borrowers' indemnity or reimbursement obligations to the extent that such indirect, special, incidental, punitive or consequential damages or losses are included in any third party claim in connection with which the relevant Indemnitee is entitled to indemnification under Section 11.14.

11.14 INDEMNITY. Each Co-Borrower agrees to indemnify Arranger, Administrative Agent, the Lenders and each of their respective partners, directors, trustees, officers, administrators, managers, employees, affiliates, investment advisors and agents (each such Person being called an "Indemnitee") against, and to hold each Indemnitee harmless from, for and against any and all losses, claims, damages, liabilities and related expenses, including reasonable and documented counsel and consultant fees, charges and disbursements, incurred by or asserted against any Indemnitee (collectively, "Subject Claims") arising out of, in any way connected with, or as a result of (i) the execution or delivery of this Agreement or any other Credit Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto or the enforcement or administration of this Agreement or any other Credit Documents and thereto of their respective rights and obligations hereunder or thereunder or the consummation of the other transactions contemplated hereby or any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Agreement, the other Credit Documents and any such other documents, (ii) the use of the proceeds of the Loans, (iii) any Environmental Claim, any Release of Hazardous Substances or any violation of Environmental Law, in each case relating to any Co-Borrower or the Collateral, (iv) the use, financing, development, construction, operation and maintenance of the Project or (v) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto (other than claims solely as between the Lenders and/or the Arranger); provided that such indemnity shall not, as to any Indemnitee, be available to the extent that the applicable Subject Claim results from the gross negligence or willful misconduct of such Indemnitee, as determined by the final judgment of a court of competent jurisdiction. Except with respect to such gross negligence or willful misconduct (as determined by the final judgment of a court of competent jurisdiction), each Co-Borrower and its successors and assigns hereby waive, release and agree not to make any claim or bring any cost recovery action against, any Indemnitee under CERCLA or any state equivalent, or any similar law

now existing or hereafter enacted. The provisions of this Section shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the repayment of any of the Obligations, the invalidity or unenforceability of any term or provision of this Agreement or any other Credit Document, or any investigation made by or on behalf of any Lender. All amounts due under this Section shall be payable within 30 days at the written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested. This Section 11.14 shall not apply to taxes other than any taxes that represent losses, claims, damages, etc. arising from any non-tax claim. The Co-Borrowers shall not be liable for any settlement if such settlement was effected without the Co-Borrowers' consent (which consent shall not be unreasonably withheld, conditioned or delayed), but if settled with the Co-Borrowers' written consent, the indemnification obligations of the Co-Borrowers under this Section 11.14 shall apply in respect thereof. Each Indemnitee (other than the Administrative Agent and the Collateral Agent) agrees to provide Co-Borrowers with written notice of a proposed compromise or settlement of any Subject Claim specifying in detail the nature and amount of such proposed settlement or compromise. Such Indemnitee (other than the Administrative Agent and the Collateral Agent) shall consult with Co-Borrowers before compromising or settling such Subject Claim for at least 30 days after Co-Borrowers receive such notice of intended compromise or settlement and shall take into consideration any views or issues communicated by Co-Borrowers in connection with such compromise or settlement. Such Indemnitee (other than the Administrative Agent and the Collateral Agent) shall act in good faith and reasonably, taking into account the interests of the Borrower Parties, in agreeing to any compromise or settlement.

11.15 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 11.15 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.

EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT OR ACTION OF ANY PARTY HERETO.

11.16 CONSENT TO JURISDICTION. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING HERETO MAY 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 EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS;

(b) WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY OF THE AFORESAID ACTIONS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT BROUGHT IN THE COURTS REFERRED TO ABOVE AND HEREBY FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM;

(c) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 11.1;

(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 THE ADMINISTRATIVE AGENT, COLLATERAL AGENT AND SECURED PARTIES RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY BORROWER PARTY IN THE COURTS OF ANY OTHER JURISDICTION.

11.17 CERTAIN ERISA MATTERS.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and the Arranger and their respective Affiliates, and not, for the avoidance

of doubt, to or for the benefit of the Co-Borrowers or any other Borrower Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) of one or more Benefit Plans in connection with the Loans, Letters of Credit or Commitments,

(ii) the prohibited transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable so as to exempt from the prohibitions of ERISA Section 406 and Code Section 4975 such Lender's entrance into, participation in, administration of and performance of the Loans, Letters of Credit, Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, Letters of Credit, Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, Letters of Credit, Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Co-Borrowers or any other Borrower Party, that none of the Administrative Agent, the Arranger or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender involved in the Loans, Letters of Credit, Commitments and this Agreement (including in connection with the reservation

or exercise of any rights by the Administrative Agent under this Agreement, any Credit Document or any documents related to hereto or thereto).

11.18 SUCCESSORS AND ASSIGNS. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. No Co-Borrower may assign or otherwise transfer any of its rights or obligations under this Agreement except with the prior written consent of each Lender, and the Lenders may not assign or otherwise transfer any of their rights under this Agreement except as provided in Article 9.

11.19 COUNTERPARTS. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in one or more duplicate counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Delivery of an executed counterpart to this Agreement by electric transmission in "pdf" or other imaging format shall be as effective as delivery of a manually signed original.

11.20 USURY. Nothing contained in this Agreement or the Notes shall be deemed to require the payment of interest or other charges by any Co-Borrower or any other Person in excess of the amount which the holders of the Notes may lawfully charge under applicable usury laws. In the event that the Lenders shall collect moneys which are deemed to constitute interest which would increase the effective interest rate to a rate in excess of that permitted to be charged by applicable Legal Requirements, all such sums deemed to constitute interest in excess of the legal rate shall, upon such determination, at the option of the Lenders, be returned to Co-Borrower or credited against the principal balance then outstanding.

11.21 SURVIVAL. All representations, warranties, covenants and agreements made herein, in any other Credit Document and in the certificates or other instruments delivered in connection with or pursuant to this Agreement and the other Credit Documents shall be considered to have been relied upon by the parties hereto and shall survive the execution and delivery of this Agreement, the other Credit Documents and the making of the Loans. Notwithstanding anything in this Agreement or implied by law to the contrary, the agreements of Co-Borrowers set forth in Sections 2.6.4, 2.8.3, 2.8.4, 11.4, 11.14, 11.23 and the agreements of the Lenders and Administrative Agent set forth in Sections 9.1, 9.5, 9.8, 9.10 and 11.23 shall survive the payment and performance of the Loans and the other Obligations and the reimbursement of any amounts drawn hereunder, and the termination of this Agreement.

11.22 PATRIOT ACT NOTICE. Each Lender, Collateral Agent (for itself and not on behalf of any other Person, including any Lender) and Administrative Agent (for itself and not on behalf of any other Person, including any Lender) hereby notifies each Borrower Party that, pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies each Borrower Party which information includes the name, address, the tax identification number and other identifying information that will allow such Lender, Collateral Agent or Administrative Agent, as applicable, to identify such Borrower Party in accordance with the Act. The Borrower Parties shall, promptly following a request by any Lender, the Administrative Agent, the Collateral

Agent or the Depositary Agent, provide all documentation and other information that such Lender, the Administrative Agent, the Collateral Agent and the Depositary Agent, as applicable, requests in order to comply with its ongoing obligations under applicable "know your customer", AML Laws, Anti-Corruption Laws, Anti-Terrorism Laws and any rules or regulations thereunder, including the Act.

11.23 TREATMENT OF CERTAIN INFORMATION; CONFIDENTIALITY. Each Lender, the Arranger and the Administrative Agent agrees (on behalf of itself and each of its Affiliates, directors, officers, employees and representatives) to keep confidential any nonpublic information supplied to it by any Borrower Party; provided that nothing herein shall limit the disclosure of any such information: (a) to the extent such information is required to be disclosed by any Governmental Rule or judicial or administrative process, or to any Governmental Authority in connection with a tax audit or dispute or otherwise, (b) to counsel and/or advisors and auditors, affiliates, directors, officers, members, employees, agents, credit risk protection providers and third party service providers to any Lender or any Agent, in each case on a confidential basis it being understood and agreed that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential and the disclosing party shall cause such Persons to comply with the obligations of this Section 11.23, (c) to the extent such information is required to be disclosed to any banking, securities exchange or other regulatory or supervisory authorities (including any self-regulatory authority, such as the National Association of Insurance Commissioners or any other 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), auditors or accountants having proper jurisdiction and authority to require such disclosure, (d) to any Agent or any other Lender, (e) to any entity in connection with a securitization or proposed securitization of, among other things, all or a part of any amounts payable to or for the benefit of any Lender or its Affiliates under the Credit Documents so long as such entity agrees to keep such information confidential in a manner consistent with this Section 11.23, it being understood and agreed that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential and the disclosing party shall cause such Persons to comply with the obligations of this Section 11.23, (f) to the extent such information is required to be disclosed in connection with the exercise of any remedies hereunder or under any of the other Credit Documents, including without limitation upon the occurrence of any Event of Default and any enforcement or collection proceedings resulting therefrom or in connection with the negotiation of any restructuring or "work-out", whether or not consummated, of the obligations of Co-Borrowers under this Agreement or any other Operative Document or any suit, action or proceeding relating to this Agreement or any other Credit Document or the enforcement of rights hereunder or thereunder, (g) to any actual or prospective successor Agent so long as such entity agrees to keep such information confidential in a manner consistent with this Section 11.23, or (h) subject to an agreement containing provisions substantially the same (or at least as restrictive) as those of this Section 11.23, to any Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or Participant in, any of its rights or obligations under this Agreement or any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to any Co-Borrower or its obligations (including any credit insurance provider relating to any Co-Borrower and its obligations), in each case, to the extent not included in the previous

clauses (a) - (g) of this proviso, it being understood and agreed that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential and the disclosing party shall cause such Persons to comply with the obligations of this Section 11.23; provided that, in the event a Lender receives a summons or subpoena to disclose confidential information to any party, such Lender shall, if legally permitted, endeavor to notify the Co-Borrowers thereof as soon as possible after receipt of such request, summons or subpoena and to afford the Borrower Parties an opportunity to seek protective orders, or such other confidential treatment of such disclosed information, as the Borrower Parties may deem reasonable. In addition, Administrative Agent and the Lenders may disclose (i) the existence of this Agreement, (ii) statistical data about this Agreement without reference to specific terms and conditions of this Agreement, and (iii) the identity of the Lenders (but not the identity of the Borrower Parties) to market data collectors, the CUSIP Service Bureau and similar service providers to the lending industry, Administrative Agent and the Lenders. Notwithstanding the foregoing provisions of this Section 11.23, the foregoing obligation of confidentiality shall not apply to any such information becomes part of the public domain independently of any act of any Lender or Agent not permitted hereunder (through publication or otherwise). Notwithstanding anything to the contrary set forth herein or in any other agreement to which the parties hereto are parties or by which they are bound, any obligations of confidentiality contained herein and therein, as they relate to the transactions contemplated by this Agreement (the "Loan Transactions"), shall not apply to the U.S. federal tax structure or U.S. federal tax treatment of the Loan Transactions, and each party hereto (and any employee, representative, or agent of any party hereto) may disclose to any and all Persons, without limitation of any kind, the U.S. federal tax structure and U.S. federal tax treatment of the Loan Transactions. The preceding sentence is intended to cause the Loan Transactions not to be treated as having been offered under conditions of confidentiality for purposes of Section 1.6011-4(b)(3) (or any successor provision) of the Treasury regulations promulgated under Section 6011 of the Code and shall be construed in a manner consistent with such purpose.

11.24 COMMUNICATIONS.

11.24.1 *Delivery.*

(a) Each Co-Borrower hereby agrees that it will use all reasonable efforts to provide to Administrative Agent all information, documents and other materials that it is obligated to furnish to Administrative Agent pursuant to this Agreement and any other Credit Document, including all notices, requests, financial statements, financial and other reports, certificates and other information materials (collectively, the "Communications"), by transmitting the Communications by Electronic Transmission or in an electronic/soft medium in a format reasonably acceptable to Administrative Agent at the e-mail address referenced in Section 11.1 or such other e-mail address designated by Administrative Agent from time to time. Nothing in this Section shall prejudice the right of the Arranger, any Credit Party or any Co-Borrower to give any notice or other communication pursuant to this Agreement or any other Credit Document in any other manner specified in this Agreement or any other Credit Document.

(b) Administrative Agent agrees that receipt of the Communications by Administrative Agent at the e-mail address referenced in Section 11.1 or such other e-mail address

designated by Administrative Agent from time to time shall constitute effective delivery of the Communications to Administrative Agent for purposes of the Credit Documents. Each Lender agrees that notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform (as defined below) shall constitute effective delivery of the Communications to such Lender for purposes of the Credit Documents; provided that such Lender may access such Platform without any undertaking or condition other than those set forth in this Agreement. Each Lender agrees (A) to notify Administrative Agent in writing (including by electronic communication) from time to time of such Lender's email address to which the foregoing notice may be sent by Electronic Transmission and (B) that the foregoing notice may be sent to such email address.

11.24.2 *Posting*. Each Co-Borrower further agrees that 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").

11.24.3 *The Platform is provided "as is" and "as available"*. The Agent Parties (as defined below) do not warrant the accuracy or completeness of the Communications or the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall any Agent or Arranger or any of their respective Affiliates or any of their respective officers, directors, employees, sub-agents, advisors or representatives (collectively, "Agent Parties") have any liability to any Co-Borrower, any Lender or any other Person or entity for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of such Co-Borrower's or such Person's transmission of Communications through the internet, except to the extent the liability of any Agent Party is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted primarily from such Agent Party's bad faith, gross negligence or willful misconduct.

11.25 INTERCREDITOR AGREEMENT. Each Lender hereby acknowledges and agrees on behalf of itself that the Lien priorities and other matters related to the Credit Documents and the Collateral are subject to and governed by the Intercreditor Agreement. 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. Each Lender, by delivering its signature page hereto, funding its Loans and/or executing an Assignment and Assumption, as applicable, shall be deemed to have (a) acknowledged receipt of, consented to and approved of the Intercreditor Agreement, (b) authorized the appointment of Collateral Agent upon the terms and conditions set forth therein and (c) authorized Administrative Agent and Collateral Agent to perform their respective obligations thereunder and under the other Collateral Documents. The Lenders party hereto hereby authorize Collateral Agent to, in accordance with the express provisions of the

Intercreditor Agreement and the other Collateral Documents, enter into amendments to such documents (in form and substance reasonably satisfactory to Administrative Agent (as directed by the Required Lenders)).

11.26 USE OF WORK PRODUCTS AGREEMENT. Each Lender hereby authorizes and directs the Administrative Agent to execute and deliver each use of work product agreement set forth in Section 3.1.10 and the reliance letter set forth in Section 3.1.10(ii), and acknowledges and agrees on behalf of itself that each such Lender shall be bound by the terms and conditions of such agreement.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto, by their officers duly authorized, intending to be legally bound, have caused this Agreement to be duly executed and delivered as of the day and year first above written.

OHIO RIVER PP HOLDCO, as Holdings

By: /s/ Demetrios Tserpelis
Name: Demetrios Tserpelis
Title: Chief Financial Officer, Treasurer and Secretary

LONG RIDGE ENERGY GENERATION LLC, as PowerCo

By: /s/ Demetrios Tserpelis
Name: Demetrios Tserpelis
Title: Chief Financial Officer, Treasurer and Secretary

OHIO GASCO LLC, as GasCo

By: /s/ Demetrios Tserpelis
Name: Demetrios Tserpelis
Title: Chief Financial Officer, Treasurer and Secretary

CORTLAND CAPITAL MARKET SERVICES LLC, as Administrative Agent

By: /s/ Matthew Trybula
Name: Matthew Trybula
Title: Associate Counsel

AMP CAPITAL INVESTORS (IDF IV USD NO. 1) S.A.r.l., as Lender

By: /s/ Virginia Strelen
Name: Virginia Strelen
Title: Manager

By: /s/ Nicolai Nielson
Name: Nicolai Nielson
Title: Manager

EXHIBIT A
to Credit Agreement

DEFINITIONS

"Acceptable Accountant" means each of (i) BDO USA, LLP, (ii) Deloitte LLP, (iii) PwC, LLP, (iv) Ernst & Young LLP, (v) KPMG LLP and (vi) any other nationally recognized independent certified accountant approved by the Administrative Agent (such approval not be unreasonably withheld).

"Acceptable Credit Provider" has the meaning given in the Depositary Agreement.

"Accounts" means, collectively, the Depositary Accounts and each cash collateral account referred to in the Credit Documents, including any sub-accounts within such accounts.

"Act" has the meaning given in Section 3.1.25 of the Credit Agreement.

"Additional Cash Rate" has the meaning given in Section 2.1.1(c) of the Credit Agreement.

"Additional Construction Loan" has the meaning given in Section 2.1.1(b).

"Additional Project Documents" means any material contracts or agreements related to the construction, development, maintenance, repair, operation or use of the Project (but excluding any Credit Document and any First Lien Credit Document and Permitted First Lien Refinancing Credit Document) entered into by any Co-Borrower and any other Person, or assigned to any Co-Borrower, subsequent to the Closing Date.

"Additional Term Loan" has the meaning given in Section 2.1.2(c)(ii) of the Credit Agreement.

"Additional Term PIK Loan" has the meaning given in Section 2.1.2(c)(ii) of the Credit Agreement.

"Additional Term PIK Rate" has the meaning given in Section 2.1.2(c)(iii) of the Credit Agreement.

"Administrative Agent" has the meaning given in the preamble hereto.

"Administrative Agent's Account" means the account from time to time designated in writing by the Administrative Agent as the account to which payments hereunder are to be directed.

"Affiliate" means as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or

indirectly, of the power (i) to vote 50% or more of the Securities having ordinary voting power for the election of directors of such Person or (ii) to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise. For the purposes of this Agreement, Fortress and its Affiliates and any publicly traded entity managed by Fortress or any of its Affiliates, shall be deemed to be "Affiliates" of each Co-Borrower, Holdings and Parent.

"Agency Fee Letters" means (i) that certain fee letter dated as of even date hereof by and among Co-Borrowers and Cortland Capital Market Services LLC, as Administrative Agent, as may be amended, restated or modified in accordance therewith; (ii) that certain fee letter dated as of even date hereof by and among Co-Borrowers and Cortland Capital Market Services LLC, as first lien administrative agent, as may be amended, restated, or modified in accordance therewith; and (iii) that certain fee schedule dated as of even date hereof by and among Co-Borrower and The Bank of New York Mellon, as Depositary Agent and Collateral Agent.

"Agent" means Depositary Agent, Collateral Agent or Administrative Agent.

"Agent Parties" has the meaning given in Section 11.24.3 of the Credit Agreement.

"Agreement" has the meaning given in the preamble hereto.

"Allocable Amount" has the meaning given in Section 2.11.3 of the Credit Agreement.

"AML Laws" means all laws, rules, and regulations of any jurisdiction applicable to any Lender, any Co-Borrower, any Subsidiary of any Co-Borrower or any guarantor or any other party providing credit support in respect of any Person's obligations under the Credit Documents from time to time concerning or relating to anti-money laundering.

"AMP Capital" has the meaning set forth in the preamble hereto.

"Annual Operating Budget" has the meaning given in Section 5.12.2 of the Credit Agreement.

"Annual Period" has the meaning given in Section 5.8.10 of the Credit Agreement.

"Anti-Corruption Laws" means all laws, rules, and regulations of any jurisdiction applicable to any Co-Borrower, any Subsidiary of any Co-Borrower or any guarantor or any other party providing credit support in respect of any Person's obligations under the Operative Documents from time to time concerning or relating to bribery or corruption.

"Anti-Terrorism Laws" means any of the following: (a) the Anti-Terrorism Order; (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 Act; (f) any regulations promulgated pursuant to the laws, orders and regulations listed in the foregoing clauses (a)–(f) of this definition; or (g)

comparable laws, rules and directives administered or enforced by the United Nations Security Council, the United Kingdom, the European Union, or a member state of the European Union.

"Anti-Terrorism Order" means Section 1 of Executive Order 13224 of September 24, 2001, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (Title 12, Part 595 of the U.S. Code of Federal Regulations).

"Applicable Permit" means, at any time, any Permit, including any zoning, land use (including public lands), environmental or species protection, pollution (including air, water or noise), sanitation, import, export, safety, siting or building Permit issued by any Governmental Authority, including by not limited to FERC, Public Utilities Commission of Ohio, Ohio Department of Health, Ohio Environmental Protection Agency, Ohio Department of Natural Resources, Ohio State Emergency Response Commission, Ohio Power Siting Board, U.S. Environmental Protection Agency, Bureau of Land Management, US Army Corps of Engineers, Federal Aviation Administration, Department of Energy, and Ohio State Fire Marshall (a) that is necessary under applicable Legal Requirements to be obtained by or on behalf of any Co-Borrower at such time in light of the stage of development, construction or operation of the Project to construct, test, operate, maintain, repair, lease, own or use the Project as contemplated by the Operative Documents, to sell electricity from the Project or deliver fuel to the Project, or for any Co-Borrower to enter into any Operative Document or to consummate any transaction contemplated thereby, in each case in accordance with all applicable Legal Requirements, or (b) that is necessary so that none of Co-Borrowers, Administrative Agent, Collateral Agent, the Arranger or the Secured Parties nor any Affiliate of any of them may be deemed by any Governmental Authority to be subject to and not exempt from, whether or not a specific exemption has been granted (and any such specific exemption shall not be deemed an Applicable Permit), regulation under the FPA or PUHCA or treated as a public utility under Chapter 4905 of the Ohio Revised Code and any regulations promulgated thereunder, with respect to the regulation of the rates of, or the financial or organizational regulation of, electric utilities solely as a result of the development and construction or operation of the Project or the sale of electricity therefrom, except that each Co-Borrower is subject to (i) regulation as a public utility under the FPA and the requirements under FERC regulations implementing PUHCA for obtaining and maintaining Exempt Wholesale Generator status, and (ii) compliance with various operation and maintenance standards and record keeping and reporting obligations required, if required under the Ohio Revised Code.

"Arranger" has the meaning set forth in the preamble hereto.

"As-Built Survey" means a survey prepared by a licensed Ohio surveyor based on information received from Co-Borrowers, project contractors, and public agencies, but need not be based upon a field verification or investigation of the improvements or grades, unless the surveyor is engaged to provide such field verification services.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.13), and accepted by the Administrative Agent, in the form of Exhibit P or any other form approved by the Administrative Agent.

"Available Construction Funds" means, at any time and without duplication, the sum of (a) amounts in the Construction Account, (b) the amount of the undisbursed proceeds, if any, of the then-available Construction Loan Commitments and First Lien Loan Commitments, (c) undisbursed Loss Proceeds which are available for payment of Project Costs, (d) amounts in the Second Lien Loan Proceeds Account and (e) any additional capital contribution of a cash amount made to any Co-Borrower from time to time or commitments to provide such funding pursuant to documentation from Persons meeting (or whose obligations in such commitments are supported by a letter of credit in form and substance reasonably satisfactory to the Administrative Agent issued by an issuer meeting) the creditworthiness requirements set forth in the definition of "Acceptable Credit Provider", and otherwise reasonably acceptable to Administrative Agent.

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

"Bail-In Legislation" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"Bank Fee Letters" means each of the certain letter agreements regarding fees, dated as of the Closing Date, between the Co-Borrowers, on the one hand, and each applicable Lender, on the other.

"Banking 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 the laws of the State of Ohio or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close.

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

"Bankruptcy Event" shall be deemed to occur, with respect to any Person, if that Person shall institute a voluntary case seeking liquidation or reorganization under the Bankruptcy Law, or shall consent to the institution of an involuntary case thereunder against it; or such Person shall file a petition or consent or shall otherwise institute any similar proceeding under any other applicable federal or state law, or shall consent thereto; or such Person shall apply for, or consent or acquiesce to, the appointment of, a receiver, administrator, administrative receiver, liquidator, sequestrator, trustee or other officer with similar powers for itself or any substantial part of its assets; or such Person shall make a general assignment for the benefit of its creditors; or such Person shall admit in writing its inability to pay its debts generally as they become due; or if an involuntary case shall be commenced seeking liquidation or reorganization of such Person under the Bankruptcy Law or any similar proceedings shall be commenced against such Person under any other applicable federal or state law and (a) the petition commencing the involuntary case is not timely controverted, (b) the petition commencing the involuntary case is not dismissed within 60 days of its filing, (c) an interim trustee is appointed to take possession of all or a portion of the property, and/or to operate all or any part of the business of such Person and such appointment is not vacated within 60 days,

or (d) an order for relief shall have been issued or entered therein; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, administrator, administrative receiver, liquidator, sequestrator, trustee or other officer having similar powers, over such Person or all or a part of its property shall have been entered; or any other similar relief shall be granted against such Person under any applicable Bankruptcy Law.

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

"Base Case Projections" means the base case projections of Co-Borrowers' operating results for the Project (over a period ending no sooner than December 31, 2038) delivered to the Lenders on the Closing Date pursuant to Section 3.1.14 of the Credit Agreement.

"Beneficial Ownership Certification" has the meaning set forth in Section 3.1.25.

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

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

"Borrower Parties" means each Co-Borrower and Holdings.

"Borrowing" means a borrowing by Co-Borrowers of any Loan.

"Calculation Period" means, as to a particular date, a rolling period of 12 full calendar months immediately preceding the immediately preceding Quarterly Payment Date.

"Call Premium" means, with respect to any prepayment of any Construction Loan or Term Loan (or any replacement of a Lender pursuant to Section 2.10.2), an amount equal to the excess, if any, of the Discounted Value of the Remaining Specified Payments with respect to the Called Principal of such Construction Loan or Term Loan over the amount of such Called Principal, provided that the Call Premium may in no event be less than zero. For the purposes of determining the Call Premium, the following terms have the following meanings:

"Call Premium Outside Date" means the fifth anniversary of the Closing Date.

"Called Principal" means, with respect to any Construction Loan or Term Loan, the principal of such Construction Loan or Term Loan that is to be prepaid pursuant to Section 2.1.9 or has become or is declared to be immediately due and payable pursuant to Section 7.2.3, as the context requires; provided that in no event shall Construction PIK Principal (whether as a portion of outstanding Construction Loans or Term Loans) or Term PIK Loans constitute Called Principal for purposes of calculating the Call Premium.

"Discounted Value" means, with respect to the Called Principal of any Construction Loan or Term Loan, the amount obtained by discounting all Remaining Specified Payments with respect to such Called Principal from their respective scheduled due dates to the Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (applied on the same periodic basis as that on which interest on the Construction Loans or Term Loans is payable) equal to the Reinvestment Yield with respect to such Called Principal.

"Reinvestment Yield" means, with respect to the Called Principal of any Construction Loan or Term Loan, 0.50% greater than the yield to maturity implied by the yield(s) reported as of 10:00 a.m. on the second Banking Day preceding the Settlement Date with respect to such Called Principal, on the display designated as "Page PX1" (or such other display as may replace Page PX1) on Bloomberg Financial Markets for the most recently issued actively traded on-the-run U.S. Treasury securities ("Reported") having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date. If there are no such U.S. Treasury securities Reported having a maturity equal to such Remaining Average Life, then such implied yield to maturity will be determined by (a) converting U.S. Treasury bill quotations to bond equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between the yields Reported for the applicable most recently issued actively traded on-the-run U.S. Treasury securities with the maturities (1) closest to and greater than such Remaining Average Life and (2) closest to and less than such Remaining Average Life. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable Construction Loan or Term Loan.

If such yields are not Reported or the yields Reported as of such time are not ascertainable (including by way of interpolation), then "Reinvestment Yield" means, with respect to the Called Principal of any Construction Loan or Term Loan, the yield to maturity implied by the U.S. Treasury constant maturity yields reported, for the latest day for which such yields have been so reported as of the second Banking Day preceding the Settlement Date with respect to such Called Principal, in Federal Reserve Statistical Release H.15 (or any comparable successor publication) for the U.S. Treasury constant maturity having a term equal to the Remaining Average Life of such Called Principal as of such Settlement Date. If there is no such U.S. Treasury constant maturity having a term equal to such Remaining Average Life, such implied yield to maturity will be determined by interpolating linearly between (1) the U.S. Treasury constant maturity so reported with the term closest to and greater than such Remaining Average Life and (2) the U.S. Treasury constant maturity so reported with the term closest to and less than such Remaining Average Life. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable Construction Loan or Term Loan.

"Remaining Average Life" means, with respect to any Called Principal, the number of years obtained by dividing (i) such Called Principal into (ii) the sum of the products obtained by multiplying (a) the principal component of each Remaining Specified Payment with respect to such Called Principal by (b) the number of years, computed on the

basis of a 360-day year composed of twelve 30-day months, that will elapse between the Settlement Date with respect to such Called Principal and the scheduled due date of such Remaining Specified Payment.

"Remaining Specified Payments" means, with respect to the Called Principal of any Construction Loan or Term Loan, all payments of such Called Principal and interest thereon that would be due after the Settlement Date with respect to such Called Principal through and including the Call Premium Outside Date if no payment of such Called Principal were made prior to the Call Premium Outside Date, provided that, if such Settlement Date is not a date on which interest payments are due to be made under the terms of the Construction Loans or Term Loans, then the amount of the next succeeding scheduled interest payment will be reduced by the amount of interest accrued to such Settlement Date and required to be paid on such Settlement Date.

"Settlement Date" means, with respect to the Called Principal of any Construction Loan or Term Loan, the date on which such Called Principal is to be prepaid pursuant to Section 2.1.9 or has become or is declared to be immediately due and payable pursuant to Section 7.2.3, as the context requires.

"Capacity Performance Resource" has the meaning contained in the PJM Open Access Transmission Tariff.

"Capital Expenditures" means expenditures made by any Co-Borrower (or, in the case of GasCo, advanced pursuant to the Joint Development Agreement) to acquire or construct fixed assets, plant and equipment (including renewals, improvements and replacements, but excluding expenditures related to Major Maintenance), which, in accordance with GAAP, are or should be included in "purchase of property and equipment" or similar items reflected in the statement of cash flows of such Co-Borrower (excluding any such expenditures that are paid out of the proceeds of Loss Proceeds or Asset Sale Proceeds (as defined in the Depositary Agreement)).

"Capital Leases" means any and all lease obligations of a Person as lessee under leases that have been or should be, in accordance with GAAP as in effect on the date hereof, recorded as capital leases, without regard to any classification or reclassification as financing or operating leases upon the adoption of leasing standard FASB ASC 842.

"Capital Stock" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation) and any and all warrants, rights or options to purchase any of the foregoing, but excluding debt convertible or exchangeable into such capital stock or equivalent ownership interests.

"Cash Election" has the meaning given in section 2.1.1(c).

"Cash Rate" has the meaning given in Section 2.1.1(c) of the Credit Agreement.

"Casualty Event" has the meaning given in the Depositary Agreement.

"Change of Control" means any of the following:

1. Parent and/or any of its respective Affiliates shall, in the aggregate, cease to beneficially own and control, directly or indirectly, more than 50% of the Capital Stock of Holdings (determined on a fully diluted basis).

2. Holdings shall cease to beneficially own and control, directly, 100% of the Capital Stock of each Co-Borrower (determined on a fully diluted basis).

"Change of Law" means the occurrence after the Closing Date of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law, but if not having the force of law, being of a type with which a Lender customarily complies) by any Governmental Authority; 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 or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case, to the extent having the force of law or, if not having the force of law, if they are of a type with which a Lender customarily complies, be deemed to be a "Change of Law", regardless of the date enacted, adopted or issued.

"Class" (a) when used with respect to any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular Class of Loans or Commitments, (b) when used with respect to Commitments, refers to whether such Commitments are Construction Loan Commitments or Term Loan Commitments, and (c) when used with respect to Loans, refers to whether such Loans are Initial Construction Loans, Additional Construction Loans, Construction Loans, Initial Term Loans, Additional Term Loans, Term Loans, Initial Term PIK Loans, Additional Term PIK Loans or Term PIK Loans.

"Closing Date" means the date on which the conditions set forth in Section 3.1 of the Credit Agreement were satisfied or waived, which date occurred on February 15, 2019.

"Closing Date Permitted Commodity Hedge Agreements" means agreements, effective as of the Closing Date, hedging at least 457 megawatts of the Generating Project's output, entered with Permitted Commodity Hedge Counterparties identified on Exhibit L, for each such Permitted Commodity Hedge Agreement of no shorter duration, and containing such other terms, in each case with respect to the applicable Permitted Commodity Hedge Counterparty, as set forth on Exhibit L.

"Co-Borrower Payment" has the meaning given in Section 2.11.3(b) of the Credit Agreement.

"Co-Borrowers" has the meaning given in the preamble hereto.

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

"Collateral" means all property which is subject or is intended to become subject to the security interests or liens granted by any of the Collateral Documents.

"Collateral Agent" means The Bank of New York Mellon, acting in its capacity as collateral agent for the Secured Parties under the Collateral Documents.

"Collateral Documents" means the Intercreditor Agreement, the Consents, the Guaranty and Security Agreement, the Depositary Agreement, the Control Agreements, the Subordination Agreement, the Mortgages and each of the security agreements and any fixture filings, financing statements, or other similar documents filed, recorded or delivered in connection with the foregoing.

"Commitments" means, (i) with respect to each Lender, such Lender's Construction Loan Commitment or Term Loan Commitment, as applicable and (ii) with respect to all Lenders, the Total Construction Loan Commitments or the Total Term Loan Commitments.

"Communications" has the meaning given in Section 11.24.1(a) of the Credit Agreement.

"Completion" means the satisfaction of each of the following conditions:

(a) Substantial Completion shall have been achieved;

(b) all material work under each of the Interconnection Agreements shall have completed in all material respects in accordance with the terms thereof;

(c) all interconnection facilities necessary for (i) the delivery of natural gas to the Generating Project, and (ii) the transmission of electrical energy produced by the Generating Project shall, in each case, have been completed and shall be operational;

(d) all necessary and material facilities needed for the operation of the Project in accordance with the Base Case Projections, as applicable, shall have been completed and shall be operational; and

(e) Co-Borrowers shall have delivered to the Administrative Agent a certificate signed by a Responsible Officer of each Co-Borrower certifying that (i) the Project is capable of, and authorized to commence, injecting energy into the electric grids operated by PJM, (ii) PowerCo is eligible to receive capacity payments in the PJM Base Residual Auction next commencing and (iii) the Project is able to satisfy all obligations arising under each Permitted Commodity Hedge Agreement in accordance with the terms thereof.

"Completion Date" means the date that Completion is achieved, as certified by a Responsible Officer of each Co-Borrower and confirmed by the Independent Engineer pursuant to Section 3.3.2 of the Credit Agreement.

"Consents" means each consent and agreement specified in Exhibit E-2 to the Credit Agreement, and, with respect to any Additional Project Document, to the extent required pursuant to Section 5.14 of the Credit Agreement, a consent and agreement of each party to such Additional Project Document (other than any Co-Borrower) substantially in the form of Exhibit E-1, with such modifications as may be reasonably acceptable to Administrative Agent.

"Construction Account" has the meaning given in the Depositary Agreement.

"Construction and Equipment Contracts" means the EPC Contract and the PIE Contract.

"Construction Availability Period" means the period from the Closing Date to but excluding the earlier of (a) the Construction Maturity Date and (b) the date of termination of the Construction Loan Commitments pursuant to the provisions of the Credit Agreement.

"Construction Budget" means a budget setting forth all expected Project Costs through Final Completion delivered to the Lenders on the Closing Date pursuant to Section 3.1.23 of the Credit Agreement, and confirmed by the Independent Engineer, as the same may be amended, revised or modified from time to time in accordance with Section 6.26.1.

"Construction Credit Event" has the meaning given in Section 3.2 of the Credit Agreement.

"Construction Facility" means the Construction Loan Commitments and the Construction Loans made thereunder.

"Construction Lender" means a Lender with a Construction Loan Commitment or with outstanding Construction Loans.

"Construction Loan Commitment" means, at any time with respect to such Lender, such Lender's Proportionate Share of the Total Construction Loan Commitment.

"Construction Loan Commitment Fee" has the meaning given in Section 2.3.2(a) of the Credit Agreement.

"Construction Loan Commitment Outside Date" has the meaning given in Section 2.1.1(b).

"Construction Loans" has the meaning given in Section 2.1.1(a) of the Credit Agreement.

"Construction Maturity Date" means the earliest to occur of (a) the date upon which the Loans, together with all unpaid interest, fees, charges and costs (including the Call Premium), are accelerated in accordance with the Credit Agreement, (b) the Term Conversion Date, and (c) the Date Certain.

"Construction Note" has the meaning given in Section 2.1.6 of the Credit Agreement.

"Construction PIK Principal" has the meaning given in section 2.1.1(c).

"Construction Requisition" has the meaning given in the Depositary Agreement.

"Contingent Equity Account" has the meaning given in the Depositary Agreement.

"Control Agreements" has the meaning given in the Depositary Agreement.

"Credit Agreement" means this Second Lien Credit Agreement, dated as of the Closing Date, among Holdings, Co-Borrowers, Administrative Agent, and the Lenders from time to time party hereto.

"Credit Documents" means this Agreement, the Notes, the Collateral Documents and the Fee Letters; provided that for purposes of Sections 9.9.1, 9.13 and 9.14 only, Credit Documents shall not include the Agency Fee Letters (which may only be amended, assigned or transferred, as applicable, in accordance with their respective terms).

"Credit Event" has the meaning given in Section 3.4 of the Credit Agreement.

"Credit Party" means each Agent and Lender.

"Date Certain" means June 1, 2022.

"Debt" means of any Person, at any date of determination, (a) all Debt for Borrowed Money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments (other than, for the avoidance of doubt, surety, performance and similar bonds), (c) all obligations of such Person to pay the deferred purchase price of property or services, and other accrued expenses arising in the ordinary course of business which in accordance with GAAP would be shown on the liability side of the balance sheet of such Person, but excluding trade accounts payable and other accrued expenses arising in the ordinary course of business, (d) all obligations of such Person under leases which are or should be, in accordance with GAAP, recorded as Capital Leases in respect of which such Person is liable, (e) all obligations of such Person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property), (f) all deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other instrument, (g) all Debt for Borrowed Money of others secured by a Lien on any asset of such Person, whether or not such Debt is assumed by such Person, (h) all guarantees by such Person of any of the foregoing and (i) obligations in respect of Hedging Agreements.

"Debt for Borrowed Money" means of any Person, at any date of determination, the sum, without duplication, of (a) all items that, in accordance with GAAP, would be classified as indebtedness on a consolidated balance sheet of such Person at such date, and (b) all obligations of such Person under acceptance, letter of credit or similar facilities at such date.

"Debt Resizing Projections" has the meaning given in Section 3.1.14.

"Debt Service" means, for any period, the sum of all interest, fees (including agency fees) and scheduled principal payable during such period in respect of the Loans, Commitments, First Lien Loans, Permitted First Lien Refinancing Debt and First Lien Loan Commitments. For the avoidance of doubt, Debt Service shall not include (i) Construction PIK Principal or Term PIK Principal, as applicable, and (ii) mandatory prepayments pursuant to the Credit Documents (including any Required Target Debt Balance Payments) or the First Lien Credit Documents or the Permitted First Lien Refinancing Credit Documents, as applicable.

"Debt Service Coverage Ratio" means, for any Calculation Period, the ratio of (a) Operating Cash Available for Debt Service for such period to (b) Debt Service for such period; provided that if less than 12 full calendar months have elapsed since the Term Conversion Date, the Calculation Period for the calculation of such ratio shall be the actual period of up to 12 full calendar months that have occurred after the Term Conversion Date.

"Debt Sizing Criteria" means that the Base Case Projections shall demonstrate a projected minimum and average quarterly Second Lien Debt Service Coverage Ratio, calculated taking into account any Required Target Debt Balance Payment, of at least 1.10:1:00, from Term Conversion through March 31, 2038, in each case, based solely upon (a) projected cash flow from the Permitted Commodity Hedge Agreements as in effect on the Closing Date, (b) PJM Base Residual Auction capacity payments as forecasted in the "Overbuild Scenario" as set in the Market Consultant's Report and (c) (i) prior to June 30, 2022, 75% of forecasted merchant energy revenues and (ii) on and following June 30, 2022, 50% of forecasted merchant energy revenues, in each case net of fixed costs, in each case as projected in the Base Case Projections and determined in a manner consistent in all respects with the Independent Engineer's Report and the Market Consultant's Report.

"Debt to Capitalization Ratio" means, as of any date of determination, the ratio of (a) the aggregate principal amount of Loans outstanding on such date plus the aggregate principal amount of loans outstanding under the First Lien Credit Agreement and any Permitted First Lien Refinancing Credit Agreement on such date to (b) (i) the aggregate principal amount of Loans outstanding on such date plus the aggregate principal amount of loans outstanding under the First Lien Credit Agreement and any Permitted First Lien Refinancing Credit Agreement on such date plus (ii) the aggregate amount of cash equity contributions (other than Drawstop Equity Contributions (as defined in the First Lien Credit Agreement) and Specified Equity Contributions) that has been irrevocably contributed to the Co-Borrowers by Fortress as of such date less any Restricted Payments by Holdings on or prior to such date of determination.

"Declined Proceeds" has the meaning given in Section 2.1.9(c)(ii) of the Credit Agreement.

"Default Rate" has the meaning given in Section 2.6.3 of the Credit Agreement.

"Defaulting Lender" means, subject to Section 2.6.7(g), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Banking Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Co-Borrowers in writing that such failure is the result of such Lender's determination that one or

more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two Banking Days of the date when due, (b) has notified the Co-Borrowers or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Banking Days after written request by the Administrative Agent or the Co-Borrowers, to confirm in writing to the Administrative Agent and the Co-Borrowers that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Co-Borrowers) or (d) has, or has a direct or indirect parent company that has, become the subject of a Bankruptcy Event other than by way of an Undisclosed Administration; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States of America or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.6.7(g)) upon delivery of written notice of such determination to the each Co-Borrower and each Lender. For purposes of this definition, "Undisclosed Administration" means in relation to a Lender or its direct or indirect parent company the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official by a supervisory authority or regulator under or based on the law in the country where such Lender or its direct or indirect parent company is subject to home jurisdiction supervision if applicable law requires that such appointment is not to be publicly disclosed.

"Delivery Year" has the meaning contained in the PJM Open Access Transmission Tariff.

"Depositary Accounts" has the meaning given in the Depositary Agreement.

"Depositary Agent" means The Bank of New York Mellon, not in its individual capacity but solely as depositary agent, bank and securities intermediary under the Depositary Agreement.

"Depositary Agreement" means the Depositary Agreement, dated as of the date hereof, among Co-Borrowers, Administrative Agent, as second lien administrative agent, Cortland Capital Market Services LLC, as first lien administrative agent, Collateral Agent, as second lien

collateral agent and The Bank of New York Mellon, as first lien collateral agent and Depositary Agent.

"Discharge of Second Lien Secured Obligations" has the meaning assigned to such term in the Intercreditor Agreement.

"Disposition" has the meaning given in Section 2.1.9(c)(i)(C) of the Credit Agreement.

"Distribution Suspense Account" has the meaning given in the Depositary Agreement.

"Division Transaction" means (a) the division of a limited liability company into two or more limited liability companies pursuant to a "plan of division" or similar method or (b) the creation, or reorganization into, or allocation of its assets to, one or more series, in each case within the meaning of the Delaware Limited Liability Company Act or similar statute in Delaware or any other state.

"Dollars" and "$" means United States dollars or such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts in the United States of America.

"Easement Agreements" has the meaning given in the applicable Mortgage.

"Easements" has the meaning given in the applicable Mortgage.

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

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

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

"Electronic Transmission" has the meaning given in Section 11.1.

"Eligible Assignee" means (a) any Lender, (b) an Affiliate of any Lender and (c) any other Person (other than a natural person) that meets the requirements to be an assignee under Section 9.13 (subject to such consents, if any, as may be required under such Section); provided, that, notwithstanding the foregoing, Eligible Assignee shall not include (w) any Defaulting Lender,

(x) any Terminated Lender, (y) any Sanctioned Person or (z) any Borrower Party or any Affiliate or Subsidiary thereof.

"Eligible Facility" means an "eligible facility" within the meaning of PUHCA §15 U.S.C. 792-5(a)(2).

"Emergency Operating Costs" means those amounts required to be expended for the purchase of goods and services in order to prevent or mitigate an unforeseeable event or circumstances that, in the good faith judgment of Co-Borrowers (or Operator as operator of the Project) as the case may be, necessitates the taking of immediate measures to prevent or mitigate injury to Persons or injury to or loss of property or environmental contamination.

"Eminent Domain Proceeds" has the meaning given in the Depositary Agreement.

"Environment" means ambient and indoor air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata or sediment, and natural resources such as wildlife, flora and fauna or as otherwise defined in any Environmental Law.

"Environmental Claim" means any and all administrative, regulatory or judicial actions, suits, demands, decrees, claims, liens, judgments, warning notices, notices of noncompliance or violation, proceedings, removal or remedial orders, relating in any way to (a) a violation or alleged violation of Environmental Law or Permit issued (or left unissued due to the negligence of any Co-Borrower) under any Environmental Law, (b) a Release or threatened Release of Hazardous Substances, or (c) any legal or administrative proceedings relating to any of the above.

"Environmental Consultant" means Ramboll US Corporation or such other independent environmental consultant of recognized national standing as may be selected by Co-Borrowers with the prior written consent of the Administrative Agent as directed in writing by the Required Lenders (such consent not to be unreasonably withheld, conditioned or delayed).

"Environmental Law" means any and all foreign or domestic, federal or state (or any subdivision of either of them), statutes, laws (including common law), ordinances, orders, decrees, rules, regulations, judgments, Governmental Authorizations, or any other requirements of Governmental Authorities relating to (i) the protection of the Environment; (ii) the generation, use, storage, transportation, treatment, processing, removal, remediation or disposal of hazardous or toxic substances; or (iii) occupational safety and health, industrial hygiene or the protection of human, plant or animal health or welfare (as each relates to exposure to hazardous or toxic substances), in each of clauses (i) to (iii) in any manner applicable to any Co-Borrower, the Project or any Real Property, including the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.* ("CERCLA"), the Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.*, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.* ("RCRA"), the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.* ("CWA"), the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.* ("TSCA"), the Emergency Planning and Community Right to Know Act, 42 U.S.C. §§ 11001 *et seq.*, the Safe Drinking Water Act, 40 U.S.C. §§ 300f *et seq.* ("SDWA"), the National

Environmental Policy Act, 42 U.S.C. §§ 4321 each as amended, and their foreign, state or local counterparts or equivalents.

"EPC Contract" means the Engineering, Procurement and Construction Agreement, dated as of February 15, 2019, by and between PowerCo and EPC Contractor.

"EPC Contractor" means Kiewit Power Constructors Co., a Delaware corporation.

"EPC Guarantor" means Kiewit Energy Group Inc., a Delaware corporation.

"EPC Parent Guaranty" means the Parent Guaranty, dated as of February 15, 2019, by the EPC Guarantor in favor of PowerCo.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, the rules and regulations promulgated thereunder and any successor thereto.

"ERISA Affiliate" means any corporation, trade or business (whether or not incorporated) that, together with any Borrower Party, is treated as a single employer under Section 414(b) or (c) of the Code, or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414(b), (c), (m) or (o) of the Code.

"ERISA Event" means (a) any Reportable Event; (b) any failure by any Plan to satisfy the applicable minimum funding standards under Section 412 or 430 of the Code or Section 302 or 303 of ERISA, whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan, the failure to make by its due date a required installment under Section 430(j) of the Code with respect to any Plan or the failure to make any required contribution to a Multiemployer Plan; (d) the determination that any Plan is, or is expected to be, in "at–risk" status (as defined in Section 430 of the Code or Section 303 of ERISA); (e) the determination that any Multiemployer Plan is, or is expected to be, in "critical" or "endangered" status (as defined in Section 432 of the Code or Section 305 of ERISA) under circumstances in which any Borrower Party or ERISA Affiliate would reasonably be expected to incur any Withdrawal Liability; (f) the incurrence by any Borrower Party or any ERISA Affiliate of any liability under Title IV of ERISA; (g) the receipt by any Borrower Party or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or to appoint a trustee to administer any Plan, or the occurrence of any event or condition which would reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Plan; (h) the incurrence by any Borrower Party or any ERISA Affiliate of any Withdrawal Liability; (i) the receipt by any Borrower Party or any ERISA Affiliate of any notice or a determination that a Multiemployer Plan is being terminated by the PBGC; or (j) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which would reasonably be expected to result in liability to any Borrower Party.

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

"Event of Default" has the meaning given in Article 7 of the Credit Agreement.

"Event of Eminent Domain" has the meaning assigned to such term in the Depositary Agreement.

"Excess Cash Flow" means, for any Quarterly Payment Date, the amount remaining on deposit at level tenth of Section 3.2(b) of the Depositary Agreement on such Quarterly Payment Date, after making the payments and transfers described in levels first through ninth of such Section 3.2(b) on such date.

"Exempt Wholesale Generator" means an "exempt wholesale generator" within the meaning of PUHCA and FERC's implementing regulations pertaining thereto.

"Facility" means the Construction Facility or the Term Facility, as applicable.

"FATCA" means Sections 1471 through 1474 of the Code, effective as of the Closing Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), and current or future regulations promulgated thereunder, official interpretations thereof or published administrative guidance implementing such provisions, any agreement entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

"Federal Funds Rate" means, for any day, the weighted average of the per annum rates on overnight federal funds transactions with member banks of the Federal Reserve System as published by the Federal Reserve Bank of New York for such day (or, if such rate is not so published for any day, the average of the quotations for the day of such transactions received by Administrative Agent from three federal funds brokers of recognized standing selected by it).

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System (or any successor).

"Fee Letters" means each of (i) the Agency Fee Letters and (ii) the Bank Fee Letters.

"FERC" means the Federal Energy Regulatory Commission and its successors.

"Final Completion" means the achievement of "Final Completion" (as defined in the EPC Contract).

"Final Maturity Date" means the earlier of (a) the Scheduled Final Maturity Date and (b) the date on which the entire outstanding principal amount of the Loans, together with all unpaid interest, fees, charges and costs (including the Call Premium), shall be accelerated in accordance with the Credit Agreement.

"First Lien Collateral Documents" has the meaning given to the term "Collateral Documents" in the First Lien Credit Agreement.

"First Lien Credit Agreement" means that certain First Lien Credit Agreement, dated as of the Closing Date, among Holdings, Co-Borrowers, Cortland Capital Market Services LLC, as first lien administrative agent, the lenders and the other parties listed on the signature pages thereto.

"First Lien Credit Documents" has the meaning given to the term "Credit Documents" in the First Lien Credit Agreement.

"First Lien Debt Sizing Criteria" has the meaning given to the term "Debt Sizing Criteria" in the First Lien Credit Agreement.

"First Lien Facilities" has the meaning given in the recitals hereto.

"First Lien LC Commitment" has the meaning given to the term "LC Commitment" in the First Lien Credit Agreement.

"First Lien Loan Commitments" has the meaning given to the term "Commitments" in the First Lien Credit Agreement.

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

"Fortress" means Fortress Investment Group LLC, a Delaware limited liability company.

"FPA" means the Federal Power Act, as amended.

"Funds Flow Memorandum" means the memorandum delivered by Co-Borrowers to Administrative Agent and Depositary Agent with respect to the disbursement of funds on the Closing Date.

"GAAP" means generally accepted accounting principles in effect from time to time in the United States and applied on a consistent basis.

"Gas Availability Certificate" has the meaning given in Section 5.8.10 of the Credit Agreement.

"Gas Gathering Contract" means the Gas Gathering Contract, effective as of the Effective Date (as defined therein) by and between Eureka Midstream, LLC and GasCo.

"Gas Properties" means (a) Hydrocarbon Interests; (b) the properties now or hereafter pooled or unitized with Hydrocarbon Interests; all presently existing or future unitization, pooling agreements and declarations of pooled units and the units created thereby (including all units created under orders, regulations and rules of any Governmental Authority having jurisdiction) which may affect all or any portion of the Hydrocarbon Interests; (c) all operating agreements, contracts and other agreements which relate to any of the Hydrocarbon Interests or the production, sale, purchase, exchange or processing of Hydrocarbons from or attributable to such Hydrocarbon Interests; (d)

all Hydrocarbons in and under and which may be produced and saved or attributable to the Hydrocarbon Interests, the lands covered thereby and all oil in tanks and all rents, issues, profits, proceeds, products, revenues and other incomes from or attributable to the Hydrocarbon Interests; and (e) all tenements, hereditaments, appurtenances and properties in anywise appertaining, belonging, affixed or incidental to the Hydrocarbon Interests, properties, rights, titles, interests and estates described or referred to above, including any and all property, real or personal, now owned or hereafter acquired and situated upon, used, held for use or useful in connection with the operating, working or development of any of such Hydrocarbon Interests or property (excluding drilling rigs, automotive equipment or other personal property which may be on such premises for the purpose of drilling a well or for other similar temporary uses) and including any and all oil wells, gas wells, injection wells or other wells, buildings, structures, fuel separators, liquid extraction plants, plant compressors, pumps, pumping units, field gathering systems, tanks and tank batteries, fixtures, valves, fittings, machinery and parts, engines, boilers, meters, apparatus, equipment, appliances, tools, implements, cables, wires, towers, casing, tubing and rods, surface leases, rights-of-way, easements and servitudes together with all additions, substitutions, replacements, accessions and attachments to any and all of the foregoing. Unless otherwise qualified, all references to a Gas Property or to Gas Properties in this Agreement shall refer solely to a Gas Property or Gas Properties of Co-Borrowers, and solely to the extent of Co-Borrower's ownership of such Gas Property or Gas Properties.

"GasCo" has the meaning given in the preamble hereto.

"Generating Project" means the approximately 485 megawatt natural gas fired, combined cycle power plant to be constructed in Hannibal, Ohio, and all associated real and personal property.

"Generating Project Site" means the 25.443 acre land owned by PowerCo, in and being a part of Sections 14 and 15, Range 3, Town 2, Ohio Township, Monroe County, Ohio.

"Governing Documents" means, with respect to any Person, the certificate or articles of incorporation, bylaws, operating agreement or other organizational or governing documents of such Person.

"Governmental Authority" means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality, political subdivision or any entity or officer thereof exercising executive, legislative, judicial, taxing, 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 a foreign entity or government and shall also include any supra-national body exercising such powers or functions, such as the European Union or the European Central Bank.

"Governmental Authorization" means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

"Governmental Rule" means, with respect to any Person, any law, rule, regulation, ordinance, order, code, treaty, judgment, decree, directive, guideline, policy or similar form of decision of any Governmental Authority binding on such Person.

"Granting Lender" has the meaning given in Section 9.12.2 of the Credit Agreement.

"Guaranty" has the meaning given in the Guaranty and Security Agreement.

"Guaranty and Security Agreement" means that certain Second Lien Guaranty and Security Agreement, dated as of the date hereof, among Holdings, Co-Borrowers and Collateral Agent.

"Hazardous Substances" means substances defined as "hazardous substances," "pollutants" or "contaminants" in Section 101 of the CERCLA; those substances defined as "hazardous waste," "hazardous materials" or "regulated substances" by the RCRA; those substances designated as a "hazardous substance", "toxic pollutant" or oil pursuant to Sections 311 or 321 of the CWA; those substances defined as "hazardous materials" in Section 103 of the Hazardous Materials Transportation Act; those substances regulated as a hazardous chemical substance or mixture or as an imminently hazardous chemical substance or mixture pursuant to Section 6 or 7 of the TSCA; those substances defined as "contaminants" by Section 1401 of the SDWA, if present in excess of permissible levels; those substances regulated by the Oil Pollution Act; those substances defined as a pesticide pursuant to Section 2(u) of the Federal Insecticide, Fungicide and Rodenticide Act; those substances defined as a source, special nuclear or by-product material by Section 11 of the Atomic Energy Act; those substances defined as "residual radioactive material" by Section 101 of the Uranium Mill Tailings Radiation Control Act; those substances defined as "toxic materials" or "harmful physical agents" pursuant to Section 6 of the Occupational Safety and Health Act; those substances defined as hazardous wastes in 40 C.F.R. Part 261.3; those substances defined as hazardous waste constituents in 40 C.F.R. Part 260.10, specifically including Appendix VII and VIII of Subpart D of 40 C.F.R. Part 261; those substances designated as hazardous substances in 40 C.F.R. Parts 116.4 and 302.4; those substances defined as hazardous substances or hazardous materials in 49 C.F.R. Part 171.8; those substances regulated as hazardous materials, hazardous substances, or toxic substances in 40 C.F.R. Part 1910; those substances regulated as hazardous materials, hazardous substances, or toxic substances under any other Environmental Laws; and those substances regulated as hazardous materials, hazardous substances, or toxic substances in the regulations adopted and publications promulgated pursuant to said laws, whether or not such regulations or publications are specifically referenced herein.

"Hedging Agreement" means any agreement (other than this Agreement) in respect of any interest rate swap, forward rate transaction, forward commodity transaction, commodity swap, commodity option, interest rate option interest or commodity cap, interest or commodity collar transaction, currency swap agreement, currency future or option contract or other similar agreements.

"Holdings" has the meaning set forth in the preamble hereto.

"Holdings Project Account" means the account of Holdings with the account number 446026620730, which shall be used only for the purposes of receiving equity contributions from the owners of, and Affiliates of, Holdings, and the receipt of (and disbursement of) restricted payments from the Co-Borrowers, in each case in accordance with the terms of the Credit Documents.

"Hydrocarbon Interests" means all presently existing or after-acquired rights, titles and interests in and to gas leases, gas and mineral leases, other Hydrocarbon leases, mineral interests, mineral servitudes, overriding royalty interests, royalty interests, net profits interests, production payment interests and other similar interests. Unless otherwise qualified, all references to a Hydrocarbon Interest or Hydrocarbon Interests in this Agreement shall refer to a Hydrocarbon Interest or Hydrocarbon Interests of GasCo or the other Borrower Parties.

"Hydrocarbons" means collectively, gas, casinghead gas, drip gasoline, natural gasoline and all other liquid or gaseous hydrocarbons and related minerals and all products therefrom, in each case whether in a natural or a processed state.

"IE Requisition Certificate" has the meaning given in the Depositary Agreement.

"Impacted Loans" has the meaning given in Section 2.8.1 of the Credit Agreement.

"Improvements" has the meaning given in the applicable Mortgage.

"Inchoate Default" or "Default" means any occurrence, circumstance or event, or any combination thereof, which, with the lapse of time or the giving of notice or both, would constitute an Event of Default.

"Indemnitees" has the meaning given in Section 11.14 of the Credit Agreement.

"Independent Consultants" means, collectively, the Insurance Consultant, the Independent Engineer, the Market Consultant, the Petroleum Engineer, the Transmission Consultant, the PCB Consultant and the Environmental Consultant.

"Independent Engineer" means Black & Veatch Management Consulting, LLC or another independent engineer selected in accordance with Section 10.1 of the Credit Agreement.

"Independent Engineer Report" means the report entitled "Long Ridge Power Plant Independent Engineer's Report", dated February 7, 2019, delivered by the Independent Engineer, including all exhibits, appendices and any other attachments.

"Independent Market Monitor" means the independent market monitor for the PJM market.

"Initial Cash Rate" has the meaning given in Section 2.1.1(c) of the Credit Agreement.

"Initial Construction Loan" has the meaning given in Section 2.1.1(b) of the Credit Agreement.

"Initial Term Loan" has the meaning given in Section 2.1.2(c)(ii) of the Credit Agreement.

"Initial Term PIK Loan" has the meaning given in Section 2.1.2(c)(ii) of the Credit Agreement.

"Initial Term PIK Rate" has the meaning given in Section 2.1.2(c)(iii) of the Credit Agreement.

"Insurance Consultant" means Aon Risk Services Northeast, Inc. or another insurance consultant selected in accordance with Section 10.1 of the Credit Agreement.

"Insurance Consultant Report" means the report entitled "Lender's Insurance Report – Ohio PowerCo LLC", dated October 29, 2018, delivered by the Insurance Consultant, including all exhibits, appendices and any other attachments thereto.

"Insurance Proceeds" has the meaning given in the Depositary Agreement.

"Interconnection Agreements" means, collectively, the Interconnection Service Agreement, the Interconnection Construction Service Agreement, the Switching Station Agreement and the Interconnection Construction Agreement.

"Interconnection Construction Agreement" means the Interconnect Agreement, dated as of February 15, 2019, by and between PowerCo and Eureka Midstream, LLC.

"Interconnection Construction Service Agreement" means the Interconnection Construction Service Agreement to be entered into by and among PowerCo, PJM and AEP Ohio Transmission Company, Inc. and in form and substance reasonably satisfactory to the Administrative Agent.

"Interconnection Service Agreement" means the Interconnection Services Agreement, dated as of February 12, 2019, by and among PowerCo, PJM, and AEP Ohio Transmission Company, Inc.

"Intercreditor Agreement" means that certain Collateral Agency and Intercreditor Agreement, dated as of the Closing Date, by and among Holdings, Co-Borrowers, Administrative Agent, Cortland Capital Market Services LLC, as first lien administrative agent, Collateral Agent, The Bank of New York Mellon, as first lien collateral agent and the other parties from time to time party thereto.

"Interest Expense" means for any period, all interest and commitment fees in respect of any outstanding Obligations accrued, capitalized or payable during such period (whether or not actually paid during such period).

"Interest Rate Hedge" means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement.

"Joint Development Agreement" means the Joint Development Agreement, dated as of April 11, 2018, by and between Triad Hunter, LLC and GasCo.

"Joint Operating Agreements" means individually or collectively, as the context may require, (a) the Operating Agreement, dated as of April 11, 2018, by and between Triad Hunter, LLC and GasCo, (b) the Master JOA Supplemental Agreement, dated as of April 11, 2018, by and between Triad Hunter, LLC and GasCo, and (c) each joint operating agreement in the form of a "100% JOA" (as defined in the Joint Development Agreement) or a "Third Party JOA" (as defined in the Joint Development Agreement) entered into in connection therewith.

"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.

"Knowledge" means, with respect to the Borrower Parties, the actual knowledge of the Responsible Officer of the applicable Borrower Party upon reasonable investigation and inquiry.

"Legal Requirements" means, as to any Person, any requirement under any Permit or under any Governmental Rule, in each case applicable to or binding upon such Person or any of its properties or to which such Person or any of its property is subject.

"Lender" or "Lenders" means (i) on the Closing Date, AMP Capital Investors (IDF IV USD No.1) S.A r.l., a Luxembourg *société à responsabilité limitée* and an affiliate of AMP Capital, and (ii) any Person that becomes a "Lender" hereunder pursuant to Section 9.13 of the Credit Agreement. Any Affiliate of any Borrower Party will be deemed not to be a Lender for purposes of Section 9.9 of the Credit Agreement or any other provision of the Credit Agreement requiring the vote of the Lenders.

"Lending Office" means, with respect to any Lender, the office designated in writing as such to Administrative Agent and Co-Borrowers from time to time.

"Lien" means, with respect to any property or asset, any mortgage, deed of trust, lien, pledge, charge, security interest, covenant, condition or restriction, or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected or effective under applicable law, as well as the interest of a vendor or lessor under any conditional sale agreement, Capital Lease or other title retention agreement relating to such asset.

"Loan" means a Construction Loan or a Term Loan, as the context may require.

"Loan Transactions" has the meaning given in Section 11.23 of the Credit Agreement.

"Loans" means, collectively, the Construction Loans and the Term Loans.

"Local Checking Accounts" means the Construction Checking Account and the O&M Checking Account (each as defined in the Depositary Agreement).

"Long Term Service Agreement" means the Contractual Service Agreement, dated as of February 15, 2019, by and between PowerCo and General Electric International, Inc.

"Loss Event" has the meaning assigned to such term in the Depositary Agreement.

"Loss Proceeds" has the meaning given in the Depositary Agreement.

"Loss Proceeds Account" has the meaning given in the Depositary Agreement.

"Major Maintenance" means labor, materials and other direct expenses (including any such labor, materials and other direct expenses under or pursuant to the Long Term Service Agreement) for any overhaul of, or major maintenance procedure for, the Project which require significant disassembly or shutdown of the Project, (a) in accordance with Prudent Industry Practices, (b) pursuant to manufacturers' requirements to avoid voiding any such manufacturer's warranty or (c) pursuant to any applicable Legal Requirement.

"Major Maintenance Expenses" has the meaning given in the Depositary Agreement.

"Major Maintenance Reserve Account" has the meaning given in the Depositary Agreement.

"Major Project Documents" means the following:

(a) the Joint Operating Agreements;

(b) the Joint Development Agreement;

(a) each Interconnection Agreement;

(b) the Gas Gathering Contract;

(c) the PIE Contract;

(d) the EPC Contract;

(e) the EPC Parent Guaranty;

(f) the Permitted Commodity Hedge Agreements;

(g) the O&M Agreement;

(h) the Long Term Service Agreement;

(i) the Water Line Easement and Operating Agreement;

(j) each Additional Project Document which provides for the payment by any Co-Borrower of, or the provision to any Co-Borrower of, goods or services with a value in excess of $5,000,000 in any calendar year or $10,000,000 for the full term of such Additional Project Document; and

(k) each Replacement Project Document for any Major Project Document.

"Major Project Participants" means each counterparty to a Major Project Document.

"Mandatory Prepayment" has the meaning given in Section 2.1.9(c) of the Credit Agreement.

"Market Consultant" means ICF Resources, LLC or another electric market consultant selected in accordance with Section 10.1 of the Credit Agreement.

"Market Consultant's Report" means the report entitled "ICF PJM Forecast – Hannibal Combined Cycle Facility", dated November 15, 2018, delivered by the Market Consultant, including all exhibits, appendices and any other attachments.

"Material Adverse Effect" means (a) a material adverse change in the current business, property, results of operation or financial condition of the Co-Borrowers and Holdings (taken as a whole), (b) any event or occurrence of whatever nature which would reasonably be expected to materially and adversely affect the Co-Borrowers' and Holdings' ability (taken as a whole) to perform its payment or other material obligations under the Credit Documents, and (c) any event or occurrence of whatever nature which would reasonably be expected to materially and adversely affect the rights and remedies of the Lenders and the Agents under the Credit Documents.

"MBR Authority" has the meaning given in Section 4.16.3 of the Credit Agreement.

"Minimum Notice Period" means not later than 12:00 noon, New York City time (a) at least five Banking Days before the date of any funding of any Borrowing (other than the Additional Construction Loan), and (b) at least twenty (20) Banking Days before the date of the funding of the Additional Construction Loan or, in each case, such shorter period as may be agreed by the Required Lenders.

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

"Mortgage" means each of (a) the Open-End Mortgage, Assignment of Rents and Leases, Fixture Filing, Financing Statement and Security Agreement, dated as of the Closing Date, by and from PowerCo, to the Collateral Agent, and (b) the Open-End Leasehold Mortgage, Assignment of Rents and Leases, Fixture Filing, Financing Statement and Security Agreement, dated as of the Closing Date, by and from GasCo, to the Collateral Agent.

"Mortgaged Property" shall have the meaning given such term in the applicable Mortgage.

"Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA subject to the provisions of Title IV of ERISA and in respect of which any Borrower Party or any ERISA Affiliate is an "employer" as defined in Section 3(5) of ERISA.

"Net Cash Proceeds" means:

(a) in the case of any Project Document Claim, the aggregate gross cash proceeds received by any Co-Borrower or any of its Affiliates in respect of such Project Document Claim net of reasonable and customary costs and expenses actually incurred by such Co-Borrower in connection with the enforcement, negotiation, consummation, settlement, proceedings, administration or other activity related to the receipt or collection of such amount (including reasonable legal and accounting fees and expenses paid or payable as a result thereof), and net of any taxes paid (or reasonably estimated to be payable) in connection with such Project Document Claim, calculated assuming a rate of tax equal to the highest rate applicable to corporations in the State of Ohio (taking into account related deductions, losses and loss carryovers, in each case, subject to any limitations on the use thereof and attributable to the activities and operations of the Co-Borrowers) but without duplication with any applicable Permitted Tax Distributions withdrawn pursuant to the Depositary Agreement for the relevant taxable period;

(b) in the case of any Termination Payment, the aggregate gross cash proceeds received by any Co-Borrower or any of its Affiliates in respect of such Termination Payment, net of reasonable and customary costs and expenses actually incurred by such Co-Borrower in connection with the enforcement, negotiation, consummation, settlement, proceedings, administration or other activity related to the receipt or collection of such amount, and net of any taxes paid (or reasonably estimated to be payable) in connection with such Termination Payment, calculated assuming a rate of tax equal to the highest rate applicable to corporations in the State of Ohio (taking into account related deductions, losses and loss carryovers, in each case, subject to any limitations on the use thereof and attributable to the activities and operations of the Co-Borrowers) but without duplication with any applicable Permitted Tax Distributions withdrawn pursuant to the Depositary Agreement for the relevant taxable period; and

(c) in the case of any Disposition, the aggregate gross cash proceeds received by any Co-Borrower or any of its Affiliates in respect of such Disposition (including any cash payments when received in respect of promissory notes or other non-cash consideration delivered to such Co-Borrower or such Affiliate in respect thereof), net of reasonable and customary costs and expenses actually incurred by such Co-Borrower in connection with the enforcement, negotiation, consummation, settlement, proceedings, administration or other activity related to such Disposition, and net of any taxes paid (or reasonably estimated to be payable) in connection with

such Disposition, calculated assuming a rate of tax equal to the highest rate applicable to corporations in the State of Ohio (taking into account related deductions, losses and loss carryovers, in each case, subject to any limitations on the use thereof and attributable to the activities and operations of the Co-Borrowers) but without duplication with any applicable Permitted Tax Distributions withdrawn pursuant to the Depositary Agreement for the relevant taxable period.

"NGA" shall mean the Natural Gas Act, 15 U.S.C. §§ 717, et seq., and FERC's implementing regulations thereunder.

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

"Non-Performance Charge" has the meaning contained in the PJM Open Access Transmission Tariff.

"Notes" means, collectively, any Construction Notes and Term Notes.

"Notice of Borrowing" means a request by Co-Borrowers in accordance with Section 2.1.1(b) of the Credit Agreement and substantially in the form of Exhibit C-1 thereto.

"Notice of Term Conversion" means a request by Co-Borrowers in accordance with Section 2.1.2(b) of the Credit Agreement and substantially in the form of Exhibit C-2 thereto.

"O&M Agreement" has the meaning given in Section 5.27 of the Credit Agreement.

"O&M Costs" has the meaning given in the Depositary Agreement.

"Obligations" means and includes, all loans, advances, debts, liabilities, and obligations, howsoever arising, owed by Co-Borrowers to the Arranger, Administrative Agent, Depositary Agent, Collateral Agent or the Lenders of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, pursuant to the terms of the Credit Agreement or any of the other Credit Documents, including all interest, Call Premium, fees, charges, expenses, attorneys' fees and accountants fees chargeable to any Co-Borrower and payable by such Co-Borrower hereunder or thereunder.

"OFAC List" means (a) any blocked persons list, designated nationals list, denied persons list, entity list, debarred party list, unverified list, sanctions list, or other list of Persons with whom United States Persons may not conduct business, including any list published and maintained by the Office of Foreign Assets Control of the United States Department of the Treasury, the United States Department of Commerce, or the United States Department of State and (b) any list of Persons subject to general trade, economic or financial restrictions, sanctions or embargoes imposed, administered or enforced from time to time by the United Nations Security Council, the European Union, or Her Majesty's Treasury of the United Kingdom.

"Operating Cash Available for Debt Service" means, for any period, (a) Project Revenues during such period *minus* (b) the sum of (i) O&M Costs paid plus (ii) all ordinary course

settlement payments payable by any Co-Borrower in respect of Permitted Commodity Hedge Agreements plus (iii) any required deposits into the Major Maintenance Reserve Account, in each case during such period.

"Operative Documents" means, collectively, the Credit Documents, the First Lien Credit Documents and the Project Documents.

"Operator" means EthosEnergy or General Electric International Inc. or a Subsidiary thereof or such other Person with significant experience operating combined-cycle natural gas-fired generating facilities similar to the Project reasonably acceptable to the Required Lenders.

"Optional Prepayment" has the meaning given in Section 2.1.9(b) of the Credit Agreement.

"Other Taxes" means all present or future stamp, recording or documentary taxes and any other excise or property taxes, charges or similar levies (and interest, fines, penalties and additions related thereto) (but excluding, for the avoidance of doubt, any income, branch profits or franchise taxes, or taxes imposed in lieu of such taxes) that arise from any payment made hereunder or under any other Credit Document or from the execution or delivery or otherwise with respect to this Agreement or any other Credit Document, except any such taxes that are imposed with respect to an assignment (other than an assignment made pursuant to Section 2.10) as a result of a present or former connection between the Credit Party and the jurisdiction imposing such taxes.

"Parent" means Fortress Transportation and Infrastructure Investors LLC.

"Parent Company" means, with respect to a Lender, the bank holding company (as defined in Federal Reserve Board Regulation Y), if any, of such Lender, and/or any Person owning, beneficially or of record, directly or indirectly, a majority of the shares of such Lender.

"Participant" has the meaning given in Section 9.12.1 of the Credit Agreement.

"Payment Period" means the period commencing on a Quarterly Payment Date and ending on the day prior to the next Quarterly Payment Date or, in the case of the first Quarterly Payment Date, the period commencing on the Closing Date and ending on the day prior to the first Quarterly Payment Date following the Closing Date.

"PBGC" means the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA or any successor thereto.

"PCB Consultant" means Tetra Tech, Inc. or another PCB consultant selected in accordance with Section 10.1 of the Credit Agreement.

"PCB Report" means (a) the report entitled "PCB Investigation Summary Report", dated October 5, 2018, delivered by Tetra Tech, including all exhibits, appendices and any other attachments and (b) the report entitled "PCB Sampling Summary Report", dated August 28, 2018, delivered by Tetra Tech, including all exhibits, appendices and any other attachments.

"Performance Tests" means (a) the "Performance Test" as defined in the EPC Contract and the "Performance Test(s)" as defined in the PIE Contract or (b) performance tests that are substantially equivalent to the "Performance Test" as defined in the EPC Contract and the "Performance Test(s)" as defined in the PIE Contract.

"Permit" means any and all franchises, licenses, leases, permits, approvals, consents, notifications, certifications, registrations, authorizations, exemptions, variances, qualifications, easements, rights of way, Liens and other rights, privileges and approvals required under any Governmental Rule, including any Governmental Authorizations.

"Permitted Affiliate Transactions" means (a) the Operative Documents in effect on the Closing Date entered into by any Co-Borrower with any or more of its Affiliates, and the transactions expressly contemplated thereby and Replacement Project Documents in respect thereof and the transactions expressly contemplated thereby (provided that such Replacement Project Documents are on substantially similar terms and conditions as the Project Documents they replace or are otherwise approved by the Administrative Agent), (b) transactions on terms no less favorable in the aggregate to any Co-Borrower than would be included in an arm's-length transaction entered into by a prudent Person with a non-Affiliated third party, (c) any employment, noncompetition or confidentiality agreement entered into by any Co-Borrower with any of its employees, officers or directors in the ordinary course of business, (d) the payments expressly permitted by Section 6.6.2 (other than Section 6.6.2(b)), (e) any transaction otherwise expressly permitted or contemplated by Section 6.4(g), (f) arrangement by any Affiliate of any credit support required to be provided under any Permitted Commodity Hedge Agreement so long as claims of such Affiliate arising out of such credit support are treated as equity contributions to any Co-Borrower, (g) transactions for the sale and purchase of natural gas and related services solely among the Co-Borrowers, (h) any payment to Parent or any of its Subsidiaries, at cost, for any and all services provided in connection with the Project by directors, officers, employees and consultants of Parent or any of its Subsidiaries, including the reimbursement of (i) such Person's compensation and benefits (not to exceed the pro rata share for such Person's time spent providing services in connection with the Project), (ii) reasonable out of pocket-costs and (iii) related overhead costs, in each case in the ordinary course of business, in each case such amounts do not exceed for any annual period the amount set forth in the Base Case Projections for such expenses during such period and (i) any other transaction or arrangement otherwise expressly permitted by this Agreement or another Credit Document.

"Permitted Capital Expenditures" means Capital Expenditures incurred by any Co-Borrower in accordance with Prudent Industry Practices that are (a) necessary to operate the Project in compliance with applicable Legal Requirements or (b) incurred in the ordinary course of the operation and maintenance of the Project excluding, for the avoidance of doubt, Major Maintenance.

"Permitted Commodity Hedge Agreement" means any power hedge (financial or physical), power purchase agreement, tolling agreement, capacity purchase agreement, fuel supply agreement, fuel transportation agreement, energy management agreement or other Hedging Agreement with a Permitted Commodity Hedge Counterparty on a non-speculative basis (a) to sell, purchase or hedge against fluctuations in the price of energy, natural gas, ancillary services, capacity or other commodity to which the Co-Borrowers have exposure, (b) with respect to physical sales

of energy or capacity, commit the Co-Borrowers to no more than the anticipated uncommitted available output of the Project, and (c) that are consistent with the Co-Borrowers' then-effective risk management policy; provided that the Co-Borrowers may designate any similar agreement or arrangement that does not satisfy the above criteria as a "Permitted Commodity Hedge Agreement" with the consent of the Required Lenders; provided, further, that, notwithstanding anything to the contrary herein, the Closing Date Permitted Commodity Hedge Agreements entered into in accordance with the terms of this Agreement shall be considered Permitted Commodity Hedge Agreements.

"Permitted Commodity Hedge Counterparty" means:

(a) with respect to each Closing Date Permitted Commodity Hedge Agreement, the counterparty thereto (other than the Borrower Parties) as set forth on Exhibit L as of the Closing Date;

(b) with respect to any other Permitted Commodity Hedge Agreement, any entity that: is (i) a public utility or is in the business of selling, marketing, purchasing or distributing electric energy or transporting, selling or marketing fuel, (ii) a commercial bank, investment bank, insurance company or other similar financial institution or affiliate thereof or (iii) an exchange or a regional system operator; and

(c) any entity that, solely in the case of an entity of the type described in clause (b)(i) or (ii) above that is granted a lien on the Collateral to secure the obligations of the Co-Borrowers under the relevant Permitted Commodity Hedge Agreement, either (i) has, as of the date such Permitted Commodity Hedge Agreement is entered into, a rating of at least (x) in the case of an entity of the type described in clause (b)(i) above, at least BBB- by S&P and at least Baa3 by Moody's (with a stable or positive outlook if such rating is BBB- by S&P or Baa3 by Moody's, as applicable) (or another rating acceptable to the Required Lenders) or (y) in the case of an entity of the type described in clause (b)(ii) above, at least BBB+ by S&P and at least Baa1 by Moody's (with a stable or positive outlook if such rating is BBB+ by S&P or Baa1 by Moody's, as applicable) (or another rating acceptable to the Required Lenders), in either case, for its unsecured long-term senior debt obligations (or whose obligations under such commodity agreement are guaranteed by an entity with such ratings) or (ii) has, as of the date such Permitted Commodity Hedge Agreement is entered into, posted a letter of credit, issued by an entity of the type described in clause (b)(ii) above that has a rating of at least A- by S&P and at least A3 by Moody's (or another rating acceptable to the Required Lenders), collateralizing the net mark-to-market value of all transactions under such Permitted Commodity Hedge Agreement.

"Permitted Debt" means (a) Debt or other obligations incurred under the Credit Documents, (b) to the extent otherwise constituting Debt, obligations incurred pursuant to the terms of a Project Document (but not for Debt for Borrowed Money), either not more than 90 days past due or being contested in good faith, (c) trade or other similar Debt incurred in the ordinary course of business (but not for borrowed money), either not more than 90 days past due or being contested in good faith, (d) contingent liabilities of any Co-Borrower incurred in the ordinary course of business, to the extent otherwise constituting Debt, including those relating to (i) the acquisition of goods, supplies or merchandise in the normal course of business or normal trade credit, (ii) the

endorsement of negotiable instruments received in the normal course of its business, and (iii) contingent liabilities incurred with respect to any Applicable Permit, Credit Document or Project Document, (e) Capital Lease obligations and any other Debt of any Co-Borrower (including purchase money obligations incurred by any Co-Borrower to finance the purchase price of discrete items of equipment not comprising an integral part of the Project that extend only to the equipment being financed) in an aggregate amount of secured principal not exceeding $2,875,000 at any one time outstanding, (f) obligations of any Co-Borrower in respect of surety bonds or similar instruments in an aggregate amount not exceeding $2,875,000 at any one time outstanding, (g) to the extent constituting Debt, Debt 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; provided that the Debt described in this clause (g) is extinguished within 15 Banking Days of its incurrence, (h) ordinary course indemnities under agreements that are not Operative Documents or in connection with the issuance of the Title Policy or endorsements or supplements thereto, (i) to the extent constituting Debt, obligations of any Co-Borrower under Permitted Commodity Hedge Agreements (but not, for the avoidance of doubt, Interest Rate Hedges), provided that any such obligations that are secured by any Collateral shall at all times be subject to the Intercreditor Agreement and the Liens securing such obligations shall be limited to those permitted to be incurred pursuant to clause (r) of the definition of "Permitted Liens", (j) obligations incurred under the First Lien Credit Documents, any Permitted First Lien Refinancing Credit Documents and any Permitted Replacement LC Facility, in each case, subject to the Intercreditor Agreement and in an amount not to exceed the First Lien Debt Cap (as defined in the Intercreditor Agreement), plus the amounts permitted pursuant to clause (d) of the First Lien Cap (as defined in the Intercreditor Agreement), (k) [reserved] and (l) other unsecured Debt, not comprising Debt for borrowed money, in an amount not to exceed $2,875,000.

"Permitted First Lien Refinancing Collateral Documents" means all security documents under (and as defined in) the Permitted First Lien Refinancing Credit Agreement and all other security agreements, pledge agreements, collateral assignments, mortgages (including, without limitation, amended and restated mortgages), depositary agreements, collateral agency agreements, control agreements, deeds of trust or other grants or transfers for security executed and delivered by any obligor creating or perfecting (or purporting to create or perfect) a first lien upon Collateral for the benefit of the First Lien Secured Parties (as defined in the Intercreditor Agreement), in each case, as amended, amended and restated, supplemented, renewed, extended, replaced, refinanced or otherwise modified, in whole or in part, from time to time, in accordance with its terms, the terms of the Credit Documents and the Intercreditor Agreement.

"Permitted First Lien Refinancing Credit Agreement" means any credit agreement, loan agreement, indenture or similar instrument evidencing any of the Permitted First Lien Refinancing Debt.

"Permitted First Lien Refinancing Credit Documents" means collectively, any agreement, certificate, document or instrument governing, securing or evidencing any of the Permitted First Lien Refinancing Debt and/or constituting a "Credit Document" under (and as defined in) the Permitted First Lien Refinancing Credit Agreement, including, without limitation, the Permitted First Lien Refinancing Collateral Documents.

"Permitted First Lien Refinancing Debt" means Debt issued, incurred or otherwise obtained (including by means of the extension or renewal of Debt) in exchange for, or to extend, modify, renew, replace, defease, refund or refinance, in whole or part, existing Debt under the First Lien Facilities (including any successive Permitted First Lien Refinancing Debt) ("First Lien Refinanced Debt"); provided that:

(a) the principal amount (or accreted value, if applicable) of such Permitted First Lien Refinancing Debt does not exceed the principal amount (or accreted value, if applicable) of the First Lien Refinanced Debt, plus accrued and unpaid interest thereon, and reasonable and customary fees, costs and expenses, commissions or underwriting discounts and premiums incurred in connection therewith;

(b) such Permitted First Lien Refinancing Debt (i) does not have a maturity date or require commitment reductions prior to the maturity date of the First Lien Refinanced Debt and (ii) does not have any mandatory prepayment features (other than customary asset sale events, insurance and condemnation proceeds events, change of control offers or events of default and excess cash flow and indebtedness sweeps substantially the same (and in any event no less favorable to the Borrower Parties) as the Debt being replaced), in each case described in this subclause (ii), prior to the date on which any mandatory prepayment would be due under the First Lien Refinanced Debt;

(c) the average life to maturity of such Permitted First Lien Refinancing Debt is greater than or equal to that of the First Lien Refinanced Debt;

(d) such Permitted First Lien Refinancing Debt does not have any obligors that are not (or would not have been) obligated with respect to the First Lien Refinanced Debt, or greater guarantees or security, than the First Lien Refinanced Debt;

(e) such Permitted First Lien Refinancing Debt does not have terms and conditions that are, taken as a whole, materially more restrictive to the Borrower Parties, or materially more favorable to holders of such Permitted First Lien Refinancing Debt, than those of the relevant First Lien Refinanced Debt;

(f) the holders of the Permitted First Lien Refinancing Debt (or an agent on their behalf) shall have duly executed and delivered to the Administrative Agent and the Collateral Agent a joinder to the Intercreditor Agreement substantially in the form attached thereto, pursuant to which, among other things, such Person(s) shall have agreed to be bound by the Intercreditor Agreement; and

(g) the relevant First Lien Refinanced Debt shall have been repaid, satisfied and discharged in full on the date such Permitted First Lien Refinancing Debt is issued, incurred or obtained, all commitments thereunder shall have been terminated and all guarantees, liens and security interests in connection with such First Lien Refinanced Debt shall have been released, satisfied and discharged in full.

"Permitted First Lien Refinancing Facility" means the credit facility, notes or other instrument under which Permitted First Lien Refinancing Debt is issued, incurred or otherwise obtained.

"Permitted Investments" has the meaning given in the Depositary Agreement.

"Permitted Liens" means:

(a) the Lien of Collateral Agent for the benefit of the Secured Parties in the Collateral as provided in the Collateral Documents, subject to the terms of the Intercreditor Agreement; and provided that the obligations secured by second priority Liens in favor of the Secured Parties shall not exceed, with respect to any class of Secured Parties, the applicable Second Lien Cap (as defined in the Intercreditor Agreement) for such class of Secured Parties;

(b) Liens of any Co-Borrower for any tax, assessment or other governmental charge, either not yet due or the validity or amount thereof is being contested in good faith and by appropriate proceedings and adequately reserved against on such Co-Borrower's books in accordance with GAAP;

(c) Liens for materialmen's, mechanics', workers', repairmen's, employees' or other like Liens, arising in the ordinary course of any Co-Borrower's business or in connection with the construction, operation and maintenance of the Project, which (i) do not in the aggregate materially detract from the value of the property or assets to which they are attached or materially impair the construction or use thereof, and (ii) are either for amounts not yet due or for amounts being contested in good faith by appropriate proceedings; provided that (A) a bond or other security reasonably acceptable to Administrative Agent has been posted or provided in such manner and amount as to assure Administrative Agent that any amounts determined to be due will be promptly paid in full when such contest is determined or (B) adequate cash reserves are established in accordance with GAAP;

(d) Liens of any Co-Borrower arising out of judgments or awards so long as an appeal or proceeding for review is being prosecuted in good faith and for the payment of which adequate cash reserves are established or bonds or other security reasonably acceptable to Administrative Agent have been provided or are fully covered by insurance (other than any customary deductible);

(e) Liens, deposits or pledges of any Co-Borrower to secure statutory obligations or performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, or for purposes of like general nature in the ordinary course of its business, with any such Lien to be released as promptly as practicable;

(f) involuntary Liens as contemplated by the Credit Documents, the First Lien Credit Documents, the Permitted First Lien Refinancing Credit Documents and the Major Project Documents securing a charge or obligation on any Co-Borrower's property, either real or personal, whether now or hereafter owned in the aggregate sum of less than $1,150,000 at any one time outstanding;

(g) Liens in connection with or evidenced by Permitted Debt described in clause (e) in the definition thereof;

(h) all exceptions disclosed in Schedule B of the Title Policy on the Closing Date;

(i) Easements, rights-of-way, restrictions (including zoning restrictions), trackage rights, defects or irregularities in title, restrictions on use of real property and other similar non-monetary encumbrances or liens, in each case that, in the aggregate, do not detract in any material respect from the value or use of the property encumbered thereby in connection with the Project;

(j) any interest or title of a lessor under any lease of real estate permitted hereunder and covering only the assets leased;

(k) any zoning, building and land use or similar Legal Requirement arising in the ordinary course of business;

(l) Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

(m) Liens not otherwise permitted hereunder so long as the aggregate outstanding principal amount of the obligations secured thereby does not exceed $2,300,000 at any one time; provided that the Liens incurred pursued to this clause (m) shall rank junior in priority to the Liens securing the Obligations hereunder;

(n) Liens of any Co-Borrower arising by virtue of any statutory or common law provision relating to bankers' liens, rights of set-off or similar rights arising in the ordinary course of business;

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

(p) Liens, pledges or deposits under worker's compensation, unemployment insurance or other social security legislation (other than ERISA);

(q) extensions, renewals and replacements of any of the foregoing or following Liens to the extent and for so long as the Debt or other obligations secured thereby remain outstanding; provided that the Liens incurred pursued to this clause (q) shall rank no more senior in priority than the Liens which they are extending, renewing or replacing;

(r) Liens on the Collateral pursuant to the terms of the First Lien Collateral Documents and the Permitted First Lien Refinancing Collateral Documents securing any Co-Borrower's First Lien Secured Obligations (as defined in the Intercreditor Agreement) permitted to be incurred pursuant to clause (i) of the definition of "Permitted Debt," which Liens shall in each case be subject to the terms of the Intercreditor Agreement; provided that the aggregate amount of obligations incurred pursuant to clause (i) of the definition of "Permitted Debt" and secured by a first priority Lien shall not exceed the Hedging Cap (as defined in the Intercreditor Agreement);

(s) Liens or pledges of deposits of cash securing deductibles, self-insurance, co-payment, co-insurance, retentions or similar obligations to providers of property, casualty or liability insurance in the ordinary course of business;

(t) solely with respect to the Hydrocarbon Interests, all lessors' royalties (and Liens to secure the payment thereof), overriding royalties, net profits interests, carried interests, production payments, reversionary interests and other burdens on or deductions from the proceeds of production with respect to the Production Project Site (in each case) that do not operate to materially reduce the net revenue interest for the Hydrocarbon Interests (if any) in the aggregate, as reflected in any Mortgage or the most recently delivered Reserve Report or materially increase the working interest for such Hydrocarbon Interest (if any) in the aggregate, as reflected in any Mortgage or the most recently delivered Reserve Report without a corresponding increase in the corresponding net revenue interest;

(u) solely with respect to the Hydrocarbon Interests, Liens under the Joint Development Agreement and the Joint Operating Agreement (but not arising out of any default or breach by GasCo thereunder), under any gas leases, farm-out agreements, production sales contracts, division orders, contracts for sale, operating agreements, area of mutual interest agreements, production handling agreements, joint venture agreements, gas partnership agreements, unitization and pooling declarations and agreements, transportation agreements, marketing agreements, processing agreements, development agreements, gas balancing or deferred production agreements, injection, repressuring and recycling agreements, salt water or other disposal agreements, seismic or other geophysical permits or agreements in each case to the extent the same (i) are ordinary and customary to the oil, gas and other mineral exploration, development, processing or extraction business, (ii) do not otherwise cause any other express representation or warranty of any Borrower Party in any of the Credit Documents to be untrue, (iii) do not operate to materially reduce the net revenue interest for such Hydrocarbon Interests (if any) in the aggregate, as reflected in any Mortgage or the most recently delivered Reserve Report, or materially increase the working interest for such Hydrocarbon Interests (if any) in the aggregate, as reflected in any Mortgage or the most recently delivered Reserve Report without a corresponding increase in the corresponding net revenue interest, and (iv) secure obligations that are not delinquent and do not in any case materially detract from the value of the Hydrocarbon Interests subject thereto; provided that any Liens created by the Joint Development Agreement and the Joint Operating Agreement as in effect on the Closing Date (or in agreed form shared with the Lenders) (but not arising out of any default or breach by GasCo thereunder) shall be considered "Permitted Liens" irrespective of compliance with clauses (i) through (iv) hereof;

(v) Liens for property Taxes on property that either Co-Borrowers or any of the Subsidiaries has determined to abandon (so long as such abandonment is not prohibited by this Agreement or any of the other Credit Documents), if the sole recourse for such Tax is to such property; and

(w) first priority Liens on the Collateral pursuant to the terms of the First Lien Collateral Documents and the Permitted First Lien Refinancing Collateral Documents securing any Co-Borrower's First Lien Secured Obligations (as defined in the Intercreditor Agreement) (including

Debt incurred under any Permitted Replacement LC Facility subject to the secured parties thereof entering into the Intercreditor Agreement) permitted to be incurred pursuant to clause (j) of the definition of "Permitted Debt," which first priority Liens shall in each case be subject to the terms of the Intercreditor Agreement.

"Permitted Replacement LC Facility" has the meaning assigned to such term in the First Lien Credit Agreement on the date hereof.

"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, including any series of any limited liability company and Governmental Authorities.

"Petroleum Engineer" means Wright & Company, Inc. or such other independent petroleum engineers of recognized national standing as may be selected by Co-Borrowers with the prior written consent of the Administrative Agent as directed in writing by the Required Lenders (such consent not to be unreasonably withheld, conditioned or delayed).

"PIE Contract" means the Agreement for the Purchase and Sale of Power Generation Equipment and Related Services, dated as of February 15, 2019, by and between PowerCo and General Electric Company.

"PIE Contractor" means General Electric Company, a New York corporation.

"PIK Election" has the meaning given in section 2.1.1(c).

"PJM" means PJM Interconnection, L.L.C., a Delaware limited liability company, and any successor thereto.

"PJM Base Residual Auction" has the meaning contained in the PJM Open Access Transmission Tariff.

"PJM Open Access Transmission Tariff" means the open access transmission tariff of PJM, as accepted for filing by FERC under Section 205 of the FPA, in effect during the term of the Agreement.

"Plan" means any employee pension benefit plan other than a Multiemployer Plan subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA and in respect of which any Borrower Party or any ERISA Affiliate is (or if such plan were terminated any Borrower Party would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Platform" has the meaning given in Section 11.24.2 of the Credit Agreement.

"Pledged Equity" has the meaning given in the Guaranty and Security Agreement.

"PowerCo" has the meaning given in the preamble hereto.

"PowerCo's FERC Electric Tariff" means the electric tariff filed with FERC by PowerCo setting forth the rights and obligations of PowerCo with respect to its authority to make FERC-jurisdictional wholesale sales of electric energy, capacity or ancillary services at market-based rates.

"Production Project" means all rights, title and interest to the undivided 40% interest in the approximately 20,000 acres of Hydrocarbon Interests in and around Hannibal, Ohio and associated development, production and drilling rights.

"Production Project Site" has the meaning given to the term "Site" in the Mortgage executed and delivered by GasCo.

"Production Shortfall" has the meaning given in Section 5.25.2 of the Credit Agreement.

"Project" means, collectively the Generating Project and the Production Project.

"Project Costs" means the following costs and expenses incurred or to be incurred on or prior to Final Completion in connection with the ownership, acquisition, development, design, engineering, procurement, construction, installation, equipping, assembly, inspection, testing, completion, start-up, operation and financing of the Project, in accordance with (and to the extent provided in) the Construction Budget (without duplication):

(a) all amounts payable under the EPC Contract, the PIE Contract, the Joint Development Agreement and the other Project Documents (including any reserves established for the payment of Remaining Costs pursuant to the Depositary Agreement), any contractor bonuses, site leasing and preparation costs, any interconnection and transmission upgrade costs payable by any Co-Borrower, costs related to acquisition, development and construction of facilities for the receipt of natural gas, water and other inputs to, and to transport or deliver electricity and other outputs from, the Project, and all other amounts payable under the Project Documents prior to Final Completion, including the contingency provided for in the Construction Budget and amounts payable in order to complete the Punch List;

(b) financing, advisory, legal, accounting and other fees;

(c) all other Project-related costs, including fuel-related costs and prepaid fuel costs, any development costs, management services fees and expenses and costs and expenses to complete the construction and financing of the Project;

(d) contingency funds, required reserves, start-up costs and initial working capital costs;

(e) property and sales taxes due in respect of the Project;

(f) O&M Costs incurred prior to the Term Conversion Date;

(g) payments and fees under the Permitted Commodity Hedge Agreements (other than Termination Payments under the Permitted Commodity Hedge Agreements);

(h) payments to PJM;

(i) costs and expenses incurred with the negotiation and preparation of the Operative Documents and the formation of any Co-Borrower; and

(j) interest (including interest during construction), fees and other amounts payable under the Credit Documents;

provided that Project Costs consisting of drilling Capital Expenditures in respect of the Production Project shall in no event exceed $125,000,000 (exclusive of any funds from the Contingent Equity Account used for such purposes) in the aggregate prior to the Term Conversion Date. For the avoidance of doubt, for purposes of determining the uses of Construction Loans only, Project Costs shall include (i) reimbursement by any Co-Borrower of any Drawstop Equity Contributions (as defined in the First Lien Credit Agreement) made pursuant to clause (b) of the definition thereof (and not previously reimbursed), and (ii) any uses of Construction Loans described in Section 3.3.12 in connection with Term Conversion.

"Project Document Claim" means any payment under any Project Document in respect of liquidated damages for performance or performance guarantees, but excluding all delay-related liquidated damages.

"Project Document Modification" has the meaning given in Section 6.12 of the Credit Agreement.

"Project Document Termination Payment" means any termination payment paid for the benefit of a Borrower Party under a Project Document other than a Permitted Commodity Hedge Agreement.

"Project Documents" means, without duplication, the Major Project Documents and each other agreement related to the development, construction, operation, maintenance, management, administration, ownership or use of the Project, the sale of power therefrom, the provision of gas, electricity and other services thereto and Real Property rights and interests relating to the Project, in each case, entered into by, or assigned to, any Co-Borrower.

"Project Revenues" has the meaning given in the Depositary Agreement.

"Project Schedule" means a schedule setting forth the expected schedule and milestones for construction of the Project through Final Completion delivered to the Lenders on the Closing Date pursuant to Section 3.1.23 of the Credit Agreement.

"Proportionate Share" means the percentage participation of a Lender at any time in the Total Construction Loan Commitment or the Total Term Loan Commitment, respectively, as

set forth on Exhibit H to the Credit Agreement (as such Exhibit may be amended pursuant to Article 9 of the Credit Agreement). Upon any transfer by a Lender of all or part of its Commitments, Administrative Agent shall revise Exhibit H to reflect the Lenders' applicable Proportionate Shares after giving effect to such transfer. For the avoidance of doubt, after all Commitments have been terminated and the Obligations paid in full, each Lender's Proportionate Share shall be determined as of the time immediately prior to such Commitments having been terminated or the date prior to the Obligations being paid in full.

"Proved Reserves" means those Gas Properties designated as proved (in accordance with the definitions for "Gas Reserves" approved by the Board of Directors of the Society of Petroleum Engineers, Inc. from time to time) in the Reserve Report most recently delivered to the Administrative Agent pursuant to this Agreement.

"Prudent Industry Practices" means those practices, methods, equipment, specifications and standards of safety and performance, as the same may change from time to time, as are commonly used by independent operators of natural gas-fired electric generation stations in Ohio of a type and size similar to the Project as good, safe and prudent engineering practices in connection with the operation, maintenance, repair and use of gas turbines, electrical generators and electrical and other equipment, facilities and improvements of such electrical station, with commensurate standards of safety, performance, dependability, efficiency and economy. "Prudent Industry Practices" does not necessarily mean one particular practice, method, equipment specification or standard in all cases, but is instead intended to encompass a broad range of acceptable practices, methods, equipment specifications and standards.

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

"PUHCA" means the Public Utility Holding Company Act of 2005.

"Punch List" has the meaning given in the EPC Contract.

"Quarterly Payment Date" means the last Banking Day of each March, June, September and December.

"Real Property" means other than Hydrocarbon Interests (which are expressly excluded from the scope of this definition) all right, title and interest of any Co-Borrower in and to any and all parcels of real property (including the Site) owned, leased or operated by such Co-Borrower together with all of such Co-Borrower's interests in all improvements and appurtenant fixtures, equipment, personal property, easements and other property and rights incidental to the ownership, lease or operation thereof.

"Receivables" has the meaning given in the Guaranty and Security Agreement.

"Register" has the meaning given in Section 2.1.10 of the Credit Agreement.

"Regulation D" means Regulation D of the Board of Governors of the Federal Reserve System (or any successor).

"Rejection Notice" has the meaning given in Section 2.1.9(c)(ii) of the Credit Agreement.

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

"Release" means any release, spill, emission, leaking, emptying, seeping, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Substance into the Environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Substance), including the movement of any Hazardous Substance through the air, soil, surface water or groundwater.

"Remaining Costs" has the meaning given in the Depositary Agreement.

"Replacement Obligor" means a Person reasonably acceptable to the Required Lenders; provided that in each case, on the date the applicable Replacement Project Document is entered into, such Person enters into either (i) a consent substantially in the form of the Consent relating to the Major Project Document being replaced or (ii) a Consent.

"Replacement Project Document" means any Project Document entered into by any Co-Borrower with a Replacement Obligor in replacement of a Major Project Document in form and substance reasonably satisfactory to the Required Lenders.

"Reportable Event" means any of the events set forth in Section 4043(b) or (c) of ERISA for which the 30-day notice period to the PBGC has not been waived.

"Required Class Lenders" means, at any time, (a) with respect to the Construction Facility, Construction Lenders holding more than 50% of the sum of (i) the aggregate principal amount of the Construction Loans outstanding and (ii) the aggregate amount of Unutilized Construction Loan Commitments and (b) with respect to the Term Facility, Term Lenders holding more than 50% of the aggregate principal amount of the Term Loans outstanding. The Loans and Unutilized Construction Loan Commitments of any Defaulting Lender or any Affiliate of any Borrower Party shall be disregarded in determining Required Class Lenders at any time.

"Required Lenders" means, at any time, Lenders holding more than 50% of the sum of (a) the aggregate principal amount of the Loans outstanding and (b) the aggregate amount of Unutilized Construction Loan Commitments. The Loans and Unutilized Construction Loan Commitments of any Defaulting Lender or any Affiliate of any Borrower Party shall be disregarded in determining Required Lenders at any time.

"Required Target Debt Balance Payment" has the meaning given to the term "Required Second Lien Target Debt Balance Payment" in the Depositary Agreement.

"Reserve Report" means (a) the "Review and analysis of Ohio GasCo acreage," dated October 3, 2018, prepared by LP Consulting, LLC and (b) the "Revised Summary Report: Evaluation of Reserves and Resource Potential From the Utica Shale to the Interests of Ohio River Partners Shareholder LLC in Certain Properties Located in Monroe and Washington Counties, Ohio Utilizing Specified Economics," effective October 1, 2018, prepared by the Petroleum Engineer, as updated by any update to the foregoing report prepared by the Petroleum Engineer, regarding the Proved Reserves attributable to the Gas Properties of Co-Borrowers, reasonably satisfactory to the Administrative Agent in both format and content.

"Responsible Officer" has the meaning given in the Depositary Agreement.

"Restricted Payment" has the meaning given in the Depositary Agreement.

"Restricted Payment Conditions" has the meaning given in Section 6.6.1 of the Credit Agreement.

"Revenue Account" has the meaning given in the Depositary Agreement.

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

"Sanctioned Country" means, at any time, a country or territory which is, or whose government is, the subject or target of any Sanctions broadly restricting or prohibiting dealings with such country, territory or government (currently, Cuba, Iran, North Korea, Syria, and the Crimea region of Ukraine).

"Sanctioned Person" means, at any time, any Person with whom dealings are restricted or prohibited under Sanctions, including (a) any Person listed in any Sanctions-related list of designated Persons maintained by the United States (including by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or the U.S. Department of Commerce), the United Nations Security Council, the European Union or any of its member states, Her Majesty's Treasury or Switzerland, (b) any Person located, organized or resident in, or any Governmental Authority or governmental instrumentality of, a Sanctioned Country or (c) any Person 50% or more directly or indirectly owned by, controlled by, or acting for the benefit or on behalf of, any Person described in clauses (a) or (b) hereof.

"Sanctions" means economic or financial sanctions or trade embargoes or restrictive measures enacted, imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or the U.S. Department of Commerce (b) the United Nations Security Council; (c) the European Union or any of its member states; (d) Her Majesty's Treasury; or (e) Switzerland;.

"Scheduled Final Maturity Date" means June 30, 2028.

"Second Lien Debt Service" means, for any period, the sum of all interest, fees (including agency fees) and scheduled principal payable during such period in respect of the Loans and the Commitments. For the avoidance of doubt, Second Lien Debt Service shall not include (i) Construction PIK Principal or Term PIK Principal, as applicable, and (ii) mandatory prepayments pursuant to the Credit Documents (including any Required Target Debt Balance Payments).

"Second Lien Debt Service Coverage Ratio" means, for any Calculation Period, the ratio of (a) Operating Cash Available for Debt Service for such period to (b) Second Lien Debt Service for such period; provided that if less than 12 full calendar months have elapsed since the Term Conversion Date, the Calculation Period for the calculation of such ratio shall be the actual period of up to 12 full calendar months that have occurred after the Term Conversion Date.

"Second Lien Loan Proceeds Account" has the meaning given in the Depositary Agreement.

"Secured Parties" has the meaning assigned to the term "Second Lien Secured Parties" in the Intercreditor Agreement.

"Securities" means any stock, shares, partnership interests, limited liability company interests, voting trust certificates, certificates of interest or participation in any profit sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

"Site" means the Generating Project Site.

"SPC" has the meaning given in Section 9.12.2 of the Credit Agreement.

"Subject Claims" has the meaning given in Section 11.14 of the Credit Agreement.

"Subordination Agreement" means the Subordination Agreement, dated as of the Closing Date, by and between Triad Hunter, LLC and GasCo, for the benefit of the Collateral Agent and The Bank of New York Mellon, as the first lien collateral agent.

"Subsidiary" means, as to any Person, a corporation, partnership, limited liability company or other entity of which such Person: (a) owns 50% or more of the shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers, or similar governing body, of such corporation, partnership, limited liability company or other entity and/or (b) controls the management, directly or indirectly through one or more intermediaries.

"Substantial Completion" means the achievement of "Substantial Completion" as defined in each of the EPC Contract and PIE Contract.

"Switching Station Agreement" means the Supplemental Agreement Relating to the Hannibal Switching Station and Switching Station Site, dated as of February 11, 2019, by and between PowerCo, Ohio River Partners Shareholder LLC and AEP Ohio Transmission Company, Inc.

"Target Debt Balance" means, with respect to (a) each Quarterly Payment Date occurring on and after the last day of the first full quarter after the Term Conversion Date, and (b) the Final Maturity Date, the amount set forth on Exhibit I with respect to such date, as such Exhibit I is updated from time to time in accordance with Section 2.1.9(a)(iii) of the Credit Agreement.

"Taxes" has the meaning given in Section 2.6.4(a) of the Credit Agreement.

"Term Cash Rate" has the meaning given in Section 2.1.2(c)(i) of the Credit Agreement.

"Term Conversion" means satisfaction or waiver in writing of the conditions set forth in Section 3.3 of the Credit Agreement causing the automatic conversion of the Construction Loans to Term Loans.

"Term Conversion Date" means the date on which Term Conversion occurs.

"Term Facility" means the Term Loan Commitments and the Term Loans made thereunder.

"Term Lender" means a Lender with a Term Loan Commitment or with outstanding Term Loans.

"Term Loan" has the meaning given in Section 2.1.2(a) of the Credit Agreement.

"Term Loan Commitment" means, at any time with respect to each Lender, such Lender's Proportionate Share of the Total Term Loan Commitment at such time.

"Term Note" has the meaning given in Section 2.1.6 of the Credit Agreement.

"Term PIK Election" has the meaning given in section 2.1.1(c).

"Term PIK Loan" has the meaning given in section 2.1.1(c).

"Term PIK Principal" has the meaning given in section 2.1.1(c).

"Term PIK Rate" has the meaning given in Section 2.1.2(c)(iii) of the Credit Agreement.

"Termination Payment" has the meaning given in the Intercreditor Agreement.

"Title Event" has the meaning assigned to such term in the Depositary Agreement.

"Title Insurer" means Chicago Title Insurance Company.

"Title Policy" has the meaning given in Section 3.1.16 of the Credit Agreement.

"Total Construction Loan Commitment" has the meaning given in Section 2.5.1(a) of the Credit Agreement.

"Total Term Loan Commitment" has the meaning given in Section 2.5.1(b) of the Credit Agreement.

"Transmission Consultant" means Leidos Engineering, LLC or another transmission consultant selected in accordance with Section 10.1 of the Credit Agreement.

"Transmission Consultant Report" means the report entitled "Independent Transmission Assessment – Long Ridge Energy Terminal PJM Interconnection", dated October 29, 2018, delivered by the Transmission Consultant, including all exhibits, appendices and any other attachments.

"Treasury" means the U.S. Department of the Treasury.

"Treasury Rate" means the yield to maturity implied by the yield(s) reported as of 10:00 a.m. on the date of determination, on the display designated as "Page PX1" (or such other display as may replace Page PX1) on Bloomberg Financial Markets for the most recently issued actively traded on-the-run U.S. Treasury securities ("Reported") having a maturity equal to the period from the date of the proposed Borrowing to the Scheduled Final Maturity Date. If there are no such U.S. Treasury securities Reported having a maturity equal to the period from such date of the proposed Borrowing to the Scheduled Final Maturity Date, then such implied yield to maturity will be determined by (a) converting U.S. Treasury bill quotations to bond equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between the yields Reported for the applicable most recently issued actively traded on-the-run U.S. Treasury securities with the maturities (1) closest to and greater than such period from such date of the proposed Borrowing to the Scheduled Final Maturity Date and (2) closest to and less than such period from such date of the proposed Borrowing to the Scheduled Final Maturity Date.

"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 mandatory 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 Collateral 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 applicable Credit Document and any filing statement relating to such perfection or effect of perfection or non-perfection.

"Unforced Capacity" has the meaning contained in the PJM Open Access Transmission Tariff.

"Unsatisfied Condition" means a condition in a Permit that has not been satisfied and that either (a) must be satisfied before such Permit can become effective, (b) must be satisfied as of the date on which a representation is made or a condition precedent must be satisfied under the Credit Agreement, or (c) must be satisfied as of a future date but with respect to which facts or circumstances exist which, to any Co-Borrower's Knowledge, would reasonably be expected to result in a failure to satisfy such Permit condition.

"Unutilized Construction Loan Commitment" means (a) the Total Construction Loan Commitment *minus* the aggregate principal amount of outstanding Construction Loans or (b) when used with respect to an individual Construction Lender, such Construction Lender's Construction Loan Commitment *minus* such Construction Lender's Proportionate Share of outstanding Construction Loans.

"Water Line Easement and Operating Agreement" means that certain Easement and Operating Agreement, dated as of February 12, 2019, between Ohio River Partners Shareholder LLC and PowerCo.

"Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part 1 of Subtitle E of Title IV of ERISA.

"Write-Down and Conversion Powers" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

RULES OF INTERPRETATION

1. The singular includes the plural and the plural includes the singular.

2. The word "or" is not exclusive.

3. A reference to a Governmental Rule (except as otherwise provided in this Agreement) includes any amendment or modification to such Governmental Rule, and all regulations, rulings and other Governmental Rules promulgated under such Governmental Rule.

4. A reference to a Person includes its permitted successors, permitted replacements and permitted assigns.

5. Accounting terms have the meanings assigned to them by GAAP, as applied by the accounting entity to which they refer.

6. The words "include", "includes" and "including" are not limiting.

7. A reference in a document to an Article, Section, Exhibit, Schedule, Annex or Appendix is to the Article, Section, Exhibit, Schedule, Annex or Appendix of such document unless otherwise indicated. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed incorporated by reference in such document. In the event of any conflict between the provisions of the Credit Agreement (exclusive of the Exhibits, Schedules, Annexes and Appendices thereto) and any Exhibit, Schedule, Annex or Appendix thereto, the provisions of the Credit Agreement shall control.

8. Unless otherwise expressly provided, references to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, amended and restated, modified and supplemented from time to time and in effect at any given time.

9. Unless otherwise specified, all references herein to times of day (including references to "close of business") shall be references to Eastern time (daylight or standard, as applicable).

10. The words "hereof", "herein" and "hereunder" and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.

11. References to "days" shall mean calendar days, unless the term "Banking Days" shall be used. References to a time of day shall mean such time in New York, New York, unless otherwise specified.

12. If, at any time after the Closing Date, Moody's or S&P shall change its respective system of classifications, then any Moody's or S&P "rating" referred to herein shall be considered to be at or above a specified level if it is at or above the new rating which most closely corresponds to the specified level under the old rating system.

13. The Credit Documents are the result of negotiations between, and have been reviewed by each Co-Borrower, each Borrower Party party to any such Credit Document, Administrative Agent, the Arranger, each Lender and their respective counsel. Accordingly, the Credit Documents shall be deemed to be the product of all parties thereto, and no ambiguity shall be construed in favor of or against any Co-Borrower, any Borrower Party party to any such Credit Document, Administrative Agent or any Lender solely as a result of any such party having drafted or proposed the ambiguous provision.

EXHIBIT 31.1

SECTION 302 CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, Joseph P. Adams. Jr., certify that:

1. I have reviewed this quarterly report on Form 10-Q of Fortress Transportation and Infrastructure Investors LLC (the “registrant”);

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant’s other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and

5. The registrant’s other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

May 3, 2019
(Date)

/s/ Joseph P. Adams, Jr.
Joseph P. Adams, Jr.
Chief Executive Officer

EXHIBIT 31.2

SECTION 302 CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, Scott Christopher, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Fortress Transportation and Infrastructure Investors LLC (the “registrant”);

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant’s other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and

5. The registrant’s other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

May 3, 2019
(Date)

/s/ Scott Christopher
Scott Christopher
Chief Financial Officer

EXHIBIT 32.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of Fortress Transportation and Infrastructure Investors LLC (the “Company”) for the quarterly period ended March 31, 2019 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), Joseph P. Adams, Jr., as Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Joseph P. Adams, Jr.

Joseph P. Adams, Jr.
Chief Executive Officer
May 3, 2019

This certification accompanies the Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

EXHIBIT 32.2

**CERTIFICATION OF CHIEF FINANCIAL OFFICER PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Fortress Transportation and Infrastructure Investors LLC (the “Company”) for the quarterly period ended March 31, 2019 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), Scott Christopher, as Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Scott Christopher

Scott Christopher
Chief Financial Officer
May 3, 2019

This certification accompanies the Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.