# Current Report of GenOn Holdings, Inc.

Delivered Pursuant to Section 6.01(a) of the Stockholders Agreement

Date of Report: December 14, 2018

**IMPORTANT EXPLANATORY NOTE**

On December 14, 2018, GenOn Holdings, Inc. (the "Company") entered into the Stockholders Agreement (the "Stockholders Agreement") with each of the stockholders party thereto from time to time (the "Stockholders"). Section 6.01(a) of the Stockholders Agreement requires the Company to furnish to the Stockholders certain of the current reports that would be required to be filed with the Securities and Exchange Commission (the "SEC") on Form 8-K if the Company was required to file such reports with the SEC to the extent such reports relate to the occurrence of any event which would require such report to be filed, subject to the exceptions described therein. This Current Report has been prepared pursuant to the requirements of Section 6.01(a) of the Stockholders Agreement. The Company does not file reports with the SEC and the preparation of this report and the posting of this information to the Company's website pursuant to the requirements of the Stockholders Agreement shall in no way be interpreted as an undertaking on the part of the Company to otherwise comply with all of the rules and regulations that are applicable to a company subject to the reporting requirements of the Securities Exchange Act of 1934, as amended.

**Item 1.01 Entry into a Material Definitive Agreement**

***Plan of Reorganization***

As previously disclosed, on June 14, 2017, GenOn Energy, Inc. ("GenOn") and certain of its directly and indirectly-owned subsidiaries (collectively, the "Debtors") filed voluntary petitions for reorganization under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court") and on December 12, 2017, the Bankruptcy Court entered an order (the "Confirmation Order") confirming the Debtors' Third Amended Joint Chapter 11 Plan of Reorganization (the "Plan").

On December 14, 2018 (the "Effective Date"), GenOn Holdings, Inc. (the "Company") satisfied the conditions to effectiveness set forth in the Confirmation Order and in the Plan, the Plan became effective in accordance with its terms and the Company emerged from the Chapter 11 cases.

***Revolving Credit Agreement***

On the Effective Date, GenOn Holdings, LLC (the "Partnership") entered into a revolving credit agreement (the "Revolving Credit Agreement) with the lenders from time to time party thereto and Barclays Bank PLC as lead arranger, lead bookrunner, administrative agent and issuing bank.

The Revolving Credit Agreement allows the Partnership, for the fees and expenses and at the interest rates specified therein, to borrow, on a revolving credit basis up to $125 million at any time outstanding (the "Revolving Facility"), all of which is available for the issuance of letters of credit. Initial availability is limited to $100 million and of that, $17.5 million is available for cash borrowings. The caps on initial availability are subject to removal upon the Partnership's provision of a mortgage on the Bowline power plant. Commitments under the Revolving Facility will be reduced upon the sale of certain assets. In particular, upon the sale of the Bowline power plant, all commitments will be terminated under the Revolving Facility and any outstanding letters of credit will need to be cash collateralized. The Revolving Credit Agreement permits increases of commitments of up to an additional $50 million. Cash borrowings under such increases of commitments are subject to a sublimit of $25 million.

The Revolving Facility will mature December 14, 2021. Borrowings under the the Revolving Facility are available at the Partnership's option at either (a) the sum of Alternate Base Rate (as defined in the Revolving Credit Agreement), plus 3.50% or (b) the sum of the Adjusted LIBOR (as defined in the Revolving Credit Agreement), plus 4.50%.

The Revolving Facility is secured by a first-priority lien on certain assets of the Partnership and certain of its subsidiaries (the "Collateral"). The Revolving Credit Agreement contains customary covenants and warranties, including specified restrictions on indebtedness, liens and the Partnership's consolidated first lien leverage ratio that requires the ratio of Total First Lien Debt to Consolidated Cash Flow (each as defined in the Revolving Credit Agreement) to not exceed 2.50 to 1.00 as of the last day of any fiscal quarter. It also contains customary Events of Default (as defined in the Revolving Credit Agreement). If an Event of Default occurs, then, to the extent permitted in the Revolving Credit Agreement, the Administrative Agent with respect to the Revolving Facility may terminate the commitments under the Revolving Facility, accelerate any outstanding obligations under the Revolving Facility and demand the deposit of cash collateral equal to the letter of credit exposure of each letter of credit issuer or lender, as applicable, under the Revolving Facility.

On the Effective Date, letters of credit with an aggregate face amount of $78 million were outstanding under the Revolving Facility.

The description of the Revolving Credit Agreement in this Current Report is qualified in its entirety by reference to the complete text of the Revolving Credit Agreement, a copy of which is furnished as Exhibit 4.1 hereto and is incorporated herein by reference.

***Indenture***

Additionally, on the Effective Date, GenOn Energy, Inc. and NRG Americas, Inc. entered into an indenture (the "Indenture"), by and among the guarantors party thereto, Wells Fargo Bank, National Association, as trustee, and U.S. Bank National Association, as collateral trustee, governing the Floating Rate Senior Secured Second Lien Notes due 2023 (the "Notes"). Following the issuance of the Notes and entry into the Indenture, the parties thereto

entered into a supplemental indenture (the "Supplemental Indenture") with the Partnership and a new co-issuer, formed for the sole purpose of acting as the co-issuer on the Notes (the "Co-Issuer") whereby the obligations under the Indenture and the Notes were assumed by the Partnership and the Co-Issuer.

*Interest and Maturity*

The Notes will mature on December 1, 2023. The Notes bear interest at a variable rate equal to the LIBOR as determined on the relevant interest determination date, plus 6.50%, payable semi-annually in arrears on June 1 and December 1 of each year.

*Optional Redemption*

The Notes may be redeemed at the redemption prices (expressed as percentages of the principal amount) set forth below, plus accrued and unpaid interest thereon, if any, to the applicable redemption date (subject to the right of holders of record on the relevant record date to receive interest due on an interest payment date) according to the following schedule:

| Date | Percentage |
|---|---|
| Issue Date to, but excluding, June 14, 2019 | 101.000% |
| From, and including, June 14, 2019 and thereafter | 100.000% |

*Change of Control*

If the Company experiences certain kinds of changes of control set forth in the Indenture, each holder of the Notes may require the Company to repurchase all or a portion of its Notes for cash at a price equal to 101% of the aggregate principal amount of such Notes, plus any accrued but unpaid interest to the date of repurchase.

*Certain Covenants*

The Indenture contains covenants that, among other things and subject to certain exceptions and qualifications, limit the Company and its restricted subsidiaries' ability to: (i) incur or guarantee additional indebtedness or issue certain types of preferred stock; (ii) pay dividends on capital stock or redeem, repurchase or retire capital stock or subordinated indebtedness; (iii) make investments; (iv) create certain liens; (v) enter into agreements that restrict dividends or other payments from their subsidiaries to them; (vi) transfer or sell assets and subsidiary stock; (vii) engage in transactions with affiliates; (viii) create unrestricted subsidiaries; and (ix) consolidate, merge or transfer all or substantially all of their assets.

*Events of Default*

Upon an Event of Default (as defined in the Indenture), the Trustee or the holders of at least 25% of the aggregate principal amount of then outstanding Notes may declare the Notes immediately due and payable, except that a default resulting from certain events of bankruptcy or insolvency with respect to the Company, any restricted subsidiary of the Company that is a significant subsidiary or any group of restricted subsidiaries that, taken together, would constitute a significant subsidiary, will automatically cause all outstanding Notes to become due and payable.

The description of the Indenture in this Current Report is qualified in its entirety by reference to the complete text of the Indenture, a copy of which is furnished as Exhibit 4.2 hereto and is incorporated herein by reference.

**Item 1.02 Termination of a Material Definitive Agreement**

In connection with the effectiveness of and pursuant to the terms of the Plan, on the Effective Date, the following obligations of GenOn and certain of its subsidiaries, as well as other obligations as detailed in the Plan, have been satisfied and discharged:

- intercompany revolver with NRG Energy, Inc.;

- indenture governing the GenOn 7.875% Senior Notes due 2017;
- indenture governing the GenOn 9.500% Notes due 2018;
- indenture governing the GenOn 9.875% Notes due 2020;
- indenture governing the GenOn Americas Generation 8.50% Senior Notes due 2021; and
- indenture governing the GenOn Americas Generation 9.125% Senior Notes due 2031.

**Item 2.03 Creation of a Direct Financial Obligation of a Registrant**

The information set forth under Item 1.01 is incorporated herein by reference.

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

At the Effective Date, the following individuals constituted the executive officers of the Company:

- David Freysinger, Chief Executive Officer
- Darren Olagues, Chief Financial Officer;
- Dan McDevitt, General Counsel;
- Eric Watts, Chief Commercial Officer;
- Mark Gouveia, Senior Vice President, Plant Operations; and
- Jon Sacks, Senior Vice President, Strategy.

At the Effective Date, the following individuals constituted the members of the board of directors of the Company:

- Mark A. McFarland, Chairman of the Board of Directors, Chief Executive Officer of GenOn during the Company's restructuring, Chairman of the Board of the Perot Museum of Nature and Science in Dallas and Independent Director of TerraForm Power;
- David Freysinger, Chief Executive Officer of the Company;
- Ari Barzideh, Director with SVP Global, a leading global investment firm;
- Philip Brown, Partner with P. Schoenfeld Asset Management, a leading global alternative asset management firm and a Director for Riviera Resources;
- David Geenberg, Co-Head of SVP Global's North American investment team and a Director for Chaparral Energy, Silverbow Resources and Penn Virginia, where he serves as Co-Chairman;
- Alex Mazier, Founder and Managing Partner of E&A Capital, a financial advisory firm, and a former Partner and Portfolio Manager at Sandell Asset management; and
- Stephen Schaefer, formerly a Partner with Riverstone Holdings and currently a Director for Element Markets and HB2 Energy and Chairman of the Board for Texgen Power.

**Item 8.01 Other Information.**

On the Effective Date, the Company, the Partnership and the Company's subsidiaries signatory thereto entered into the stockholders agreement (the "Stockholders Agreement") with each of the stockholders party thereto (the "Stockholders"), pursuant to which the parties have agreed, among other things, that: (i) the Company will provide certain financial information and other reports to the Stockholders; (ii) certain Stockholders will be entitled to appoint members of the Board of Directors of the Company and other "board observers" so long as such Stockholders maintain certain ownership thresholds of the Company's equity securities; (iii) the Stockholders will receive preemptive rights with respect to certain Company actions, as well as certain customary tag-along and drag-along rights; and (iv) the Stockholders will have certain redemption rights with respect to the Company's equity securities.

The description of the Stockholders Agreement in this Current Report is qualified in its entirety by reference to the complete text of the Stockholders Agreement, a copy of which is furnished as Exhibit 99.1 hereto and is incorporated herein by reference.

Also on the Effective Date, the Board of Directors of the Company adopted an amended and restated certificate of incorporation and amended and restated bylaws, both of which are furnished as Exhibits 99.2 and 99.3, respectively, hereto and are incorporated herein by reference.

Also on the Effective Date, the Partnership entered into an amended and restated limited liability company agreement, a copy of which is furnished as Exhibit 99.4 hereto and is incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits.**

Exhibits.

| Exhibit No. | Description |
|---|---|
| 4.1 | Revolving Credit Agreement, dated as of December 14, 2018, among GenOn Holdings LLC, the lenders from time to time party thereto and Barclays Bank PLC as lead arranger, lead bookrunner, administrative agent and issuing bank. |
| 4.2 | Indenture, dated as of December 14, 2018, among GenOn Energy, Inc. and NRG Americas, Inc., as co-issuers, the guarantors party thereto, Wells Fargo Bank, National Association, as trustee, and U.S. Bank National Association, as collateral trustee. |
| 99.1 | Stockholders Agreement, dated as of December 14, 2018, by and among GenOn Holdings, Inc., its subsidiaries signatory thereto and each of the stockholders party thereto. |
| 99.2 | Amended and Restated Certificate of Incorporation of GenOn Holdings, Inc. |
| 99.3 | Amended and Restated Bylaws of GenOn Holdings, Inc. |
| 99.4 | Amended and Restated Limited Liability Company Agreement of GenOn Holdings, LLC. |

**Exhibit 4.1**

*EXECUTION VERSION*

**December 14, 2018**

among

**GENON HOLDINGS, LLC**
(as Borrower)

**THE LENDERS PARTY HERETO**

and

**BARCLAYS BANK PLC**
(as Lead Arranger and Lead Bookrunner)

and

**BARCLAYS BANK PLC**
as Administrative Agent

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# REVOLVING CREDIT AGREEMENT

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Exhibits and Schedules

REVOLVING CREDIT AGREEMENT, dated as of December 14, 2018, among GENON HOLDINGS, LLC, a Delaware limited liability company (the "Borrower"), the LENDERS from time to time party hereto (the "Lenders"), BARCLAYS BANK PLC (together with its Affiliates, "Barclays"), as administrative agent (in such capacity and together with its successors, the "Administrative Agent"), and Issuing Bank.

In consideration of the mutual agreements contained herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto hereby agree as follows:

## ARTICLE I.

## Definitions

SECTION 1.01. Defined Terms. As used in this Agreement, the following terms shall have the meanings specified below:

"ABR", when used in reference to any Loan or Borrowing, shall refer to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

"Acceptable Financial Institution" shall mean a regulated commercial bank or similar financial institution; provided that either such entity or its Parent Company has a long-term unsecured senior debt rating from (i) Moody's at or above A3 and (ii) S&P at or above A-, in each case, with stable or positive outlook.

"Acceptable Hedging Financial Institution" shall mean a regulated commercial bank or similar financial institution; provided that either such entity or its Parent Company has a long-term unsecured senior debt rating from (i) Moody's at or above Baa3 and (ii) S&P at or above BBB-, in each case, with stable or positive outlook.

"Accepting Lenders" shall have the meaning assigned to such term in Section 9.19.

"Account" shall have the meaning assigned to such term in the UCC.

"Acquired Debt" shall mean, with respect to any specified Person, (a) Indebtedness of any other Person or asset existing at the time such other Person or asset is merged with or into, is acquired by, or became a Subsidiary of such specified Person, as the case may be, whether or not such Indebtedness is incurred in connection with, or in contemplation of, such other Person merging with or into, or becoming a Restricted Subsidiary of, such specified Person and (b) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

"Additional Facility" shall mean any Facility that is both not a coal-fired Facility older than twenty (20) years old and is in compliant with MATS at the time of such acquisition, in each case except as consented to by Required Lenders (such consent not to be unreasonably, withheld, conditioned or delayed); provided that, upon the addition of an Additional Facility that is a coal-fired Facility, the Borrower's and its Restricted Subsidiaries' total expected power generation in a

given year from all coal-fired plants shall not be greater than 50% of the total generated electric energy on a mega-watt-hour basis.

"Additional L/C Amount" shall mean $25,000,000.

"Adjusted LIBO Rate" shall mean, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to (a) the LIBO Rate in effect for such Interest Period divided by (b) one minus the Statutory Reserves; provided that at no time shall the Adjusted LIBO Rate be less than zero for purposes of this Agreement.

"Administrative Agent" shall have the meaning assigned to such term in the preamble.

"Administrative Agent's Office" shall mean the Administrative Agent's address and, as appropriate, account as set forth on Schedule 9.01, or such other address or account as the Administrative Agent may from time to time notify to the Borrower.

"Administrative Questionnaire" shall mean an Administrative Questionnaire substantially in the form of Exhibit A, or such other similar form as may be supplied from time to time by the Administrative Agent.

"Affiliate" of any specified Person shall mean any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control," as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise; provided that beneficial ownership of 10% or more of the Voting Stock of a Person will be deemed to be control. For purposes of this definition, the terms "controlling," "controlled by" and "under common control with" have correlative meanings.

"Affiliate Transaction" shall have the meaning assigned to such term in Section 6.07.

"Agents" shall have the meaning assigned to such term in Article VIII.

"Aggregate Revolving Exposure" shall mean the aggregate amount of the Lenders' Revolving Exposures.

"Agreement" shall mean this Revolving Credit Agreement, as amended, restated, amended and restated, supplemented or otherwise modified and in effect from time to time.

"AHYDO Catch-Up Payment" shall mean any payment with respect to any obligations of the Borrower or any Restricted Subsidiary, including subordinated debt obligations, in each case to the extent such payment is necessary to avoid the application of Section 163(e)(5) of the Tax Code.

"Alternate Base Rate" shall mean, for any day, a rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1.00% and (c) the

Adjusted LIBO Rate for an interest period of one month beginning on such day (determined as if the relevant ABR Borrowing were a Eurodollar Borrowing) plus 1.00%. Any change in the Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or such Adjusted Eurodollar Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or such Adjusted Eurodollar Rate, respectively.

"Annualized G&A Expenses" (a) the four fiscal quarter period ending December 31, 2018, the G&A Expenses for the fiscal quarter ended December 31, 2018, multiplied by 4, (b) for the four fiscal quarter period ending March 31, 2019, the G&A Expenses for the fiscal quarter ended March 31, 2019, multiplied by 4, (c) for the four fiscal quarter period ending June 30, 2019, the G&A Expenses for the two consecutive fiscal quarters ended June 30, 2019, multiplied by 2 and (d) for the four fiscal quarter period ending September 30, 2019, the G&A Expenses for the three consecutive fiscal quarters ended September 30, 2019, multiplied by 4/3; provided, however, for purposes of this definition, G&A Expenses shall be calculated excluding charges and expenses incurred by the Borrower and its Restricted Subsidiaries in connection with their Chapter 11 proceedings, parent separation transactions and other one-time expenses, costs and charges related to restructuring charges including non-recurring expenses, costs or charges for severance and bonus including, without limitation, transaction, incentive, completion, milestone or retention bonuses.

"Anti-Corruption Laws" shall mean the United States Foreign Corrupt Practices Act of 1977, as amended, the UK Bribery Act 2010 and, to the extent applicable, other similar legislation in any other jurisdictions.

"Anti-Terrorism Laws" shall mean (i) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto and (ii) the PATRIOT Act.

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

"Applicable L/C Participation Fee Rate" shall mean, for any day, with respect to all undrawn amounts of all outstanding Letters of Credit at such time, the rate per annum equal to 5.50%.

"Applicable Margin" shall mean, for any day, with respect to Revolving Loans, the rate per annum applicable to the relevant Type of Loans set forth below under the caption "ABR Spread" or "Eurodollar Rate Spread", as the case may be:

| ABR Spread | Eurodollar Rate Spread |
|---|---|
| 3.50% | 4.50% |

"Approved Electronic Communications" shall mean each Communication that any Loan Party is obligated to, or otherwise chooses to, provide to the Administrative Agent pursuant to any Loan Document or the transactions contemplated therein, including any financial statement, financial and other report, notice, request, certificate and other information material; provided, however, that, solely with respect to delivery of any such Communication by any Loan Party to the Administrative Agent and without limiting or otherwise affecting either the Administrative Agent's right to effect delivery of such Communication by posting such Communication to the Approved Electronic Platform or the protections afforded hereby to the Administrative Agent in connection with any such posting, "Approved Electronic Communication" shall exclude (i) any Borrowing Request, Letter of Credit notice (other than as expressly set forth in Section 2.23(b)), notice of conversion or continuation, and any other notice, demand, communication, information, document and other material relating to a request for a new, or a conversion of an existing, Borrowing, (ii) any notice pursuant to Sections 2.12 and 2.13 and any other notice relating to the payment of any principal or other amount due under any Loan Document prior to the scheduled date therefor, (iii) all notices of any Default or Event of Default and (iv) any notice, demand, communication, information, document and other material required to be delivered to satisfy any of the conditions set forth in Article IV or any other condition to any Borrowing or other extension of credit hereunder or any condition precedent to the effectiveness of this Agreement.

"Approved Electronic Platform" shall have the meaning assigned to such term in Section 9.01(d).

"Arranger" shall mean Barclays Bank PLC.

"Asset Sale" shall mean (a) the sale, lease (other than an operating lease), conveyance or other disposition of any assets or rights (including by merger or consolidation); provided that the sale, conveyance or other disposition of all or substantially all of the assets of the Borrower and its Restricted Subsidiaries shall be governed by the provisions of this Agreement described under Section 6.08 and not by the provisions of Section 6.04 and (b) the issuance of Equity Interests in any of the Borrower's Restricted Subsidiaries or the sale of Equity Interests in any of its Subsidiaries.

Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale: (i) other than in respect of any Asset Sale Prepayment Event, any single transaction or series of related transactions for which the Borrower or its Restricted Subsidiaries receive aggregate consideration of less than $5,000,000; (ii) a transfer of assets or Equity Interests between or among the Borrower and the Subsidiary Guarantors and/or between Subsidiary Guarantors; (iii) an issuance of Equity Interests by a Restricted Subsidiary to the Borrower or to a Subsidiary Guarantor; (iv) the sale or lease of products or services (including power, capacity, energy, ancillary services, and other products or services, or the sale of any other inventory or contracts related to any of the foregoing (in each case, whether in physical, financial or any other form), or fuel or emission credits) and any sale or other disposition of damaged, worn-out or obsolete assets; (v) the sale or discount, in each case without recourse, of accounts receivable, but only in connection with the compromise or collection thereof; (vi) the licensing of intellectual property; (vii) the sale, lease, conveyance or other disposition for value of energy, fuel or emission credits or contracts for any of the foregoing; (viii) the sale or other disposition of cash or Cash Equivalents; (ix) a Restricted Payment that does not violate Section 6.06 or a Permitted Investment (in each

case other than consisting of Core Collateral); (x) to the extent allowable under Section 1031 of the Tax Code, any exchange of like property (other than Core Collateral, and excluding any "boot" thereon) for use in a Permitted Business; (xi) a disposition of assets in connection with a foreclosure, transfer or deed in lieu of foreclosure or other exercise of remedial action; (xii) any Specified Asset Sale for Fair Market Value, so long as no Default or Event of Default is continuing or would result therefrom provided that such limitation shall not apply so long as no Default or Event of Default shall have occurred and be continuing at the time of entering into a binding commitment to make such Specified Asset Sale for Fair Market Value; (xiii) any transfer of the Assigned Pipeline Interests pursuant to the Shawville Pipeline Agreement; and (xiv) any transfer of interest in NRG ECA Pipeline, LLC.

"Asset Sale Prepayment" shall have the meaning assigned to such term in Section 2.13(b).

"Asset Sale Prepayment Event" shall have the meaning assigned to such term in Section 6.04(e).

"Asset Sale Prepayment Properties" shall mean the Bowline Power Plant and the Commitment Reduction Facilities.

"Assignment and Assumption" shall mean an assignment and assumption entered into by a Lender and an assignee (with the consent of any Person whose consent is required by Section 9.04), substantially in the form of Exhibit B or such other similar form as shall be approved by the Administrative Agent.

"Assigned Pipeline Interests" shall have the meaning ascribed to such term in the Shawville Pipeline Agreement as of the date hereof.

"Attributable Debt" in respect of a sale and leaseback transaction shall mean, at the time of determination, the present value of the obligation of the lessee for net rental payments during the remaining term of the lease included in such sale and leaseback transaction, including any period for which such lease has been extended or may, at the option of the lessor, be extended. Such present value shall be calculated using a discount rate equal to the rate of interest implicit in such transaction, determined in accordance with GAAP; provided, however, that if such sale and leaseback transaction results in a Capital Lease Obligation, the amount of Indebtedness represented thereby will be determined in accordance with the definition of "Capital Lease Obligation."

"Audited Financial Statements" shall have the meaning assigned to such term in Section 3.05.

"Available Amount" means, at any date, an amount, determined on a cumulative basis equal to, without duplication: (a)(i) the Designated Cash Amount, plus (ii) the aggregate proceeds of the sale (other than to a Subsidiary) of Equity Interests of the Borrower (other than Disqualified Stock) or from the contribution of equity capital (unless such contribution would constitute Disqualified Stock) to the Borrower, minus an amount equal to the sum of (b)(i) Investments pursuant to clause (t) of the definition of "Permitted Investments", plus (ii) Restricted Payments made pursuant to Section 6.06(b)(vii), in each case, made after the Closing Date and prior to such time, or contemporaneously therewith.

"Available Revolving Commitment" shall mean, at any time, an amount equal to (a) the Total Revolving Commitment in effect at such time, minus (b) the aggregate undrawn amount of all outstanding Letters of Credit at such time, minus (c) the aggregate amount of all L/C Disbursements that have not yet been reimbursed or converted into Revolving Loans at such time, minus (d) the aggregate principal amount of any Loans outstanding at such time.

"Barclays" shall have the meaning assigned to such term in the preamble.

"Bail-In Action" shall mean 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" shall mean, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"Bankruptcy Code" shall mean Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, as amended from time to time.

"Bankruptcy Court" shall mean the United States Bankruptcy Court for the Southern District of Texas, Houston Division.

"Bankruptcy Law" shall mean the Bankruptcy Code or any similar federal or state or other law for the relief of debtors.

"Beneficial Owner" shall have the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act. The terms "Beneficially Owns" and "Beneficially Owned" have a corresponding meaning.

"Beneficial Ownership Certification" shall have the meaning specified in Section 4.02(o).

"Beneficial Ownership Regulation" shall mean 31. C.F.R. § 1010.230.

"Benefit Plan" shall mean any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Tax Code or Section 302 of ERISA, and which is maintained, sponsored or contributed to by the Borrower or any ERISA Affiliate or with respect to which the Borrower otherwise has any liability.

"Board" shall mean the Board of Governors of the Federal Reserve System of the United States of America.

"Board of Directors" shall mean (a) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board; (b) with respect to a partnership, the board of directors of the general partner of the partnership; (c) with respect to a limited liability company, the managing member or members or any controlling committee of managing members thereof; and (d) with respect to any other Person, the board or committee of such Person serving a similar function.

"Borrower" shall have the meaning assigned to such term in the preamble.

"Borrowing" shall mean Loans of the same Class and Type made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

"Borrowing Request" shall mean a request by the Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit C.

"Bowline Power Plant" shall mean that certain 1,136 MW dual-fuel capable facility located in West Haverstraw, New York that is comprised of two Steam Turbines.

"Breakage Event" shall have the meaning assigned to such term in Section 2.16.

"Business Day" shall mean any day other than a Saturday, Sunday or day on which commercial banks in New York City are authorized or required by law to close; provided, however, that, when used in connection with a Eurodollar Loan (including with respect to all notices and determinations in connection therewith and any payments of principal, interest or other amounts thereon), the term "Business Day" shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

"CAISO Settlement" shall mean the amount arising from that confidential settlement communication letter dated August 6, 2018 from the California Independent System Operator Corporation and acknowledged by NRG California South, LP (as in effect on the Closing Date without giving effect to amendments that are materially adverse to the Administrative Agent or the Lenders).

"Canal Escrow" shall mean the amount due to NRG Canal LLC and/or its affiliates pursuant to that certain Purchase and Sale Agreement, dated as of March 22, 2018, by and among Stonepeak Kestrel Holdings LLC, NRG Canal LLC, and GenOn Holdco 10, LLC, on account of the Escrow Amount (as such term is used in such Purchase and Sale Agreement) subject to the provisions therein (as in effect on the Closing Date without giving effect to amendments that are materially adverse to the Administrative Agent or the Lenders).

"Canal Excess Fuel Payments" shall mean the payments due to NRG Canal LLC and/or its affiliates pursuant to that certain Purchase and Sale Agreement, dated as of March 22, 2018, by and among Stonepeak Kestrel Holdings LLC, NRG Canal LLC, and GenOn Holdco 10, LLC, on account of Excess Fuel Inventory (as such term is used in such Purchase and Sale Agreement).

"Capital Lease" shall mean, when used with respect to any Person, any lease in respect of which the obligations of such Person constitute Capital Lease Obligations and the amount thereof shall be the amount of the liability that would be required to be capitalized on a balance sheet in accordance with GAAP as in effect on the Closing Date (without giving effect to any changes in GAAP to go into effect after the Closing Date).

"Capital Lease Obligation" shall mean, when used with respect to any Person, without duplication, all obligations of such Person to pay rent or other amounts under any Capital Lease, which obligations shall have been or should be, in accordance with GAAP as in effect on the

Closing Date (without giving effect to any changes in GAAP to go into effect after the Closing Date), capitalized on the books of such Person.

"Capital Stock" shall mean (a) in the case of a corporation, corporate stock; (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock; (c) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests; and (d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

"Cash Equivalents" shall mean:

(a) United States dollars, Euros, any other currency of countries members of the Organization for Economic Co-operation and Development or, in the case of any Foreign Subsidiary, any local currencies held by it from time to time;

(b) (i) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government (provided that the full faith and credit of the United States is pledged in support of those securities) and (ii) debt obligations issued by the Government National Mortgage Association, Farm Credit System, Federal Home Loan Banks, Federal Home Loan Mortgage Corporation, Financing Corporation and Resolution Funding Corporation, in each case, having maturities of not more than twelve (12) months from the date of acquisition;

(c) certificates of deposit and eurodollar time deposits with maturities of twelve (12) months or less from the date of acquisition, bankers' acceptances with maturities not exceeding twelve (12) months and overnight bank deposits, in each case, with any commercial bank having capital and surplus in excess of $500,000,000;

(d) repurchase obligations with a term of not more than seven (7) days for underlying securities of the types described in clauses (b) and (c) above entered into with any financial institution meeting the qualifications specified in clause (c) above;

(e) commercial paper and auction rate securities having one of the two (2) highest ratings obtainable from Moody's or S&P and in each case maturing within twelve (12) months after the date of acquisition;

(f) readily marketable direct obligations issued by any state of the United States or any political subdivision thereof, in either case having one of the two (2) highest rating categories obtainable from either Moody's or S&P; and

(g) money market funds that invest primarily in securities described in clauses (a) through (f) of this definition.

"Casualty Event" means any event that gives rise to the receipt by the Borrower or any Restricted Subsidiary of any insurance proceeds awards in respect of any equipment, fixed assets

or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

"Change in Law" shall mean (a) the adoption of any law, rule or regulation after the Closing Date, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Closing Date or (c) compliance by any Lender or any Issuing Bank (or, for purposes of Section 2.14, by any lending office of such Lender or by such Lender's or Issuing Bank's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the Closing Date; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law," regardless of the date adopted, issued, promulgated, implemented or enacted.

"Change of Control" shall mean the occurrence of, after the Exit Transactions, (a) any Person other than the Permitted Holders, in the aggregate, beneficially owning, directly or indirectly, more than 50% of the Voting Stock of the Borrower, measured by voting power rather than number of shares; provided, however, that a transaction in which a direct or indirect parent entity of the Borrower is formed and no Person (other than the Permitted Holders) beneficially owns, directly or indirectly, more than 50% of the Voting Stock of the Borrower, measured by voting power rather than number of shares, shall not be deemed to be a Change of Control or (b) SVP and its Affiliates, in the aggregate, cease to own, directly or indirectly, at least 35% of the Voting Stock of the Borrower, measured by voting power rather than number of shares.

"Choctaw Assets" shall mean the approximately 800 MW, 3 x 1 combined-cycle natural gas-fueled electrical generation plant located on the approximately 200-acre parcel of land located near French Camp, Choctaw County, Mississippi commonly known as the "Choctaw Generation Facility", and all related assets and properties, real, personal and mixed, and interests therein.

"Choctaw APA" shall mean that certain Asset Purchase Agreement dated as of August 21, 2018, by and between NRG Wholesale Generation LP, as Seller, GenOn Energy, Inc. and Entergy Mississippi, Inc., as Purchaser (as in effect on the Closing Date without giving effect to amendments that are materially adverse to the Administrative Agent or the Lenders).

"Citi Letter of Credit Facility" means that certain Letter of Credit Agreement, dated as of July 14, 2017 by and among GenOn Energy, Inc., a Delaware corporation, and CitiBank, N.A. (as in effect on the Closing Date without giving effect to amendments that are materially adverse to the Administrative Agent or the Lenders).

"Charges" shall have the meaning assigned to such term in Section 9.09.

"Class", when used in reference to any Loan or Borrowing, shall refer to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans, New Revolving Loans or Refinancing Revolving Loans, and, when used in reference to any Commitment, shall refer to

whether such Commitment is a Revolving Commitment, New Revolving Commitment or Refinancing Revolving Commitment. For the avoidance of doubt, any Loans or Commitments created pursuant to an Extension Amendment shall constitute a separate Class.

"Closing Date" shall mean December 14, 2018.

"Collateral" shall mean all property and assets of the Loan Parties, now owned or hereafter acquired, other than the Excluded Assets. "Collateral" shall include all Core Collateral.

"Collateral Trust Agreement" shall mean the Collateral Trust Agreement, dated as of the Closing Date, among the Borrower, each Subsidiary Guarantor, the Collateral Trustee and the other parties thereto, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"Collateral Trustee" shall mean U.S. Bank National Association, acting as collateral trustee under the Collateral Trust Agreement, or its successors appointed in accordance with the terms thereof.

"Commitment" shall mean, with respect to any Lender and as of any date of determination, such Lender's Revolving Commitment, New Revolving Commitment or Refinancing Revolving Commitment, as of such date.

"Commitment Fee" shall have the meaning assigned to such term in Section 2.05(a).

"Commitment Reduction Facilities" shall mean the Facilities listed on Schedule 1.01(h).

"Commodity Hedging Agreements" shall mean any agreement (including each confirmation entered into pursuant to any master agreement) providing for swaps, caps, collars, puts, calls, floors, futures, options, spots, forwards, power purchase or sale agreements, fuel purchase or sale agreements, emissions credit purchase or sales agreements, power transmission agreements, fuel transportation agreements, fuel storage agreements, netting agreements, commercial or trading agreements, weather derivatives agreements, each with respect to, or involving the purchase, transmission, distribution, sale, lease or hedge of, any energy, generation capacity or fuel, or any other energy or weather related commodity, service or risk, price or price indices for any such commodities, services or risks or any other similar derivative agreements, any renewable energy credits, carbon emission credits and any other "cap and trade" related credits, assets or attributes with an economic value and any other similar agreements, entered into by the Borrower or any Restricted Subsidiary, in each case under this definition, in the ordinary course of business, or otherwise consistent with Prudent Industry Practice in order to manage fluctuations in the price or availability to the Borrower or any Restricted Subsidiary of any commodity and/or manage the risk of adverse or unexpected weather conditions.

"Commodity Hedging Obligations" shall mean, with respect to any specified Person, the obligations of such Person under a Commodity Hedging Agreement.

"Communications" shall mean each notice, demand, communication, information, document and other material provided for hereunder or under any other Loan Document or otherwise transmitted between the parties hereto relating this Agreement, the other Loan

Documents, any Loan Party or its Affiliates, or the transactions contemplated by this Agreement or the other Loan Documents including all Approved Electronic Communications.

"Confirmation Orders" shall mean, collectively, the GenOn Confirmation Order and the REMA Confirmation Order.

"Consolidated Cash Flow" shall mean, with respect to any specified Person for any period, the Consolidated Net Income of such Person for such period plus, without duplication:

(a) an amount equal to any extraordinary loss (including any loss on the extinguishment or conversion of Indebtedness), to the extent such losses were deducted in computing such Consolidated Net Income; plus

(b) any net loss realized by such Person or any of its Restricted Subsidiaries in connection with an Asset Sale (without giving effect of the threshold provided in the definition thereof), to the extent such losses were deducted in computing such Consolidated Net Income; plus

(c) provision for taxes based on income or profits of such Person and its Restricted Subsidiaries for such period, to the extent that such provision for taxes was deducted in computing such Consolidated Net Income; plus

(d) the Fixed Charges of such Person and its Restricted Subsidiaries for such period, to the extent that such Fixed Charges were deducted in computing such Consolidated Net Income; plus

(e) any expenses or charges related to any equity offering, Permitted Investment, acquisition, disposition, recapitalization or Indebtedness permitted to be incurred under this Agreement including a refinancing thereof (in each case, whether or not successful), including such fees, expenses or charges related to the Exit Transactions and this Agreement, to the extent such fees, expenses or charges were deducted in computing such Consolidated Net Income; plus

(f) any professional and underwriting fees related to any equity offering, Permitted Investment, acquisition, recapitalization or Indebtedness permitted to be incurred under this Agreement and, in each case, deducted in such period in computing Consolidated Net Income; plus

(g) the amount of any minority interest expense deducted in calculating Consolidated Net Income (less the amount of any cash dividends paid to the holders of such minority interests); plus

(h) any non cash gain or loss attributable to Mark-to-Market Adjustments in connection with Hedging Obligations; plus

(i) without duplication, any writeoffs, writedowns or other non-cash charges reducing Consolidated Net Income for such period, excluding any such charge that represents an accrual or reserve for a cash expenditure for a future period, plus

(j) all items classified as nonrecurring non-cash losses or charges (including non-cash severance, relocation and other restructuring costs), and related tax effects according to GAAP to the extent such non-cash charges or losses were deducted in computing such Consolidated Net Income; plus

(k) the non-cash lease expense for the Shawville Facility incurred by the Borrower or any Restricted Subsidiary during such period according to GAAP to the extent such lease expense was in excess of cash lease expense for the Shawville Facility during such period and was deducted in computing such Consolidated Net Income; plus

(l) any and all fees, expenses and related transaction costs incurred by the Loan Parties and any Restricted Subsidiaries in connection with the Plans of Reorganization, their Chapter 11 proceedings and the Exit Transactions to the extent incurred no later than 60 days after the Closing Date and, with respect to such expenses incurred after the Closing Date, to the extent reasonably identified to the Administrative Agent; plus

(m) one-time or non-recurring restructuring charges, fees or expenses (including, without limitation, professional fees, severance costs, retention bonuses and management and operational transition fees and expenses) to the extent deducted in computing such Consolidated Net Income; provided that the aggregate amount of the items added pursuant to this clause (m) shall not exceed 10% of Consolidated Cash Flow (calculated before giving effect to the items added pursuant to this clause (m)); plus

(n) solely for each of the first five fiscal quarters ended after the Closing Date, non-recurring selling, general and administrative expenses in an amount (other than in respect of the fiscal quarter ending December 31, 2018 with respect to such amounts (i) incurred prior to the Closing Date, (ii) paid in cash prior to or on the Closing Date and (iii) scheduled in form and detail reasonably acceptable to the Administrative Agent in the audited financial statements for the fiscal year ending on December 31, 2018 and delivered pursuant to Section 5.04(a)) not to exceed $15,000,000 in the aggregate and solely to the extent such non-recurring expenses were deducted in computing such Consolidated Net Income; plus

(o) any fees and expenses related to fresh start accounting pursuant to FASB 852; plus

(p) [reserved];

(q) depreciation, depletion, amortization (including amortization of intangibles but excluding amortization of prepaid cash expenses that were paid in a prior period) and other non-cash charges and expenses (excluding any such non-cash expense to the extent that it represents an accrual of or reserve for cash expenses in any future period or amortization of a prepaid cash expense that was paid in a prior period) of such Person and its Restricted Subsidiaries for such period to the extent that such depreciation, depletion, amortization and other non-cash expenses were deducted in computing such Consolidated Net Income; minus

(r) non-cash items increasing such Consolidated Net Income for such period, other than the accrual of revenue in the ordinary course of business; in each case, on a consolidated basis and determined in accordance with GAAP; minus

(s) interest income for such period;

provided, however, that Consolidated Cash Flow of the Borrower will exclude the Consolidated Cash Flow attributable to (i) Excluded Subsidiaries and (ii) Unrestricted Subsidiaries, except to the extent of any dividends, distributions or other returns in respect of any Investments in any Excluded Subsidiary or Unrestricted Subsidiary, in each case, paid in cash to the Borrower or a Restricted Subsidiary that is not an Excluded Subsidiary.

"Consolidated First Lien Leverage Ratio" shall mean, on any date (for purposes of this definition, the "Calculation Date"), the ratio of (a) Total First Lien Debt on such date to (b) Consolidated Cash Flow of the Borrower for the period of four (4) consecutive fiscal quarters most recently ended on or prior to such date. For purposes of making the computation referred to above:

(i) Investments and acquisitions that have been made by the Borrower or any of its Restricted Subsidiaries, including through mergers or consolidations, or any Person or any of its Restricted Subsidiaries acquired by the Borrower or any of its Restricted Subsidiaries, and including any related financing transactions and including increases in ownership of Restricted Subsidiaries, during the four-quarter reference period or subsequent to such reference period and on or prior to the Calculation Date will be given pro forma effect (in accordance with Regulation S-X, but including all Pro Forma Cost Savings) as if they had occurred on the first day of the four-quarter reference period;

(ii) the Consolidated Cash Flow attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded;

(iii) any Person that is a Restricted Subsidiary on the Calculation Date will be deemed to have been a Restricted Subsidiary at all times during such four-quarter reference period; and

(iv) any Person that is not a Restricted Subsidiary on the Calculation Date will be deemed not to have been a Restricted Subsidiary at any time during such four-quarter reference period.

"Consolidated Total Secured Leverage Ratio" shall mean, on any date (for purposes of this definition, the "Calculation Date"), the ratio of (a) Total Debt that is secured by a Lien on the assets of the Borrower or its Restricted Subsidiaries on such date to (b) Consolidated Cash Flow of the Borrower for the period of four (4) consecutive fiscal quarters most recently ended on or prior to such date. For purposes of making the computation referred to above:

(i) Investments and acquisitions that have been made by the Borrower or any of its Restricted Subsidiaries, including through mergers or consolidations, or any Person or any of its Restricted Subsidiaries acquired by the Borrower or any of its Restricted Subsidiaries, and including any related financing transactions and including increases in ownership of Restricted Subsidiaries, during the four-quarter reference period or subsequent to such reference period and on or prior to the Calculation Date will be given pro forma effect (in accordance with Regulation S-

X, but including all Pro Forma Cost Savings) as if they had occurred on the first day of the four-quarter reference period;

(ii) the Consolidated Cash Flow attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded;

(iii) any Person that is a Restricted Subsidiary on the Calculation Date will be deemed to have been a Restricted Subsidiary at all times during such four-quarter reference period; and

(iv) any Person that is not a Restricted Subsidiary on the Calculation Date will be deemed not to have been a Restricted Subsidiary at any time during such four-quarter reference period.

"Consolidated Net Income" shall mean, with respect to any specified Person for any period, the aggregate of the Net Income of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, determined in accordance with GAAP; provided that:

(a) the Net Income of any Person that is not a Restricted Subsidiary or that is accounted for by the equity method of accounting will be included only to the extent of the amount of dividends or similar distributions (including pursuant to other intercompany payments) actually received by the specified Person or a Restricted Subsidiary of the specified Person (the "Designated Income"); provided that Designated Income shall be excluded from Consolidated Net Income to the extent it is designated as a "Designated Cash Amount";

(b) for purposes of Section 6.06 only, the Net Income of any Restricted Subsidiary will be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that Net Income is not at the date of determination permitted without any prior governmental approval (that has not been obtained) or, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders;

(c) the cumulative effect of a change in accounting principles will be excluded;

(d) any net after-tax non-recurring or unusual gains, losses (less all fees and expenses relating thereto) or other charges or revenue or expenses (including relating to severance, relocation and one-time compensation charges) shall be excluded;

(e) any non-cash compensation expense recorded from grants of stock appreciation or similar rights, stock options, restricted stock or other rights to officers, directors or employees shall be excluded, whether under Financial Accounting Standards Board Statement No. 123R, "Accounting for Stock-Based Compensation" or otherwise;

(f) any net after-tax income (loss) from disposed or discontinued operations and any net after-tax gains or losses on disposal of disposed or discontinued operations shall be excluded;

(g) any gains or losses (less all fees and expenses relating thereto) attributable to asset dispositions (other than asset dispositions in the ordinary course of business) shall be excluded;

(h) any impairment charge or asset write-off pursuant to Financial Accounting Statement No. 142 and No. 144 or any successor pronouncement shall be excluded;

(i) solely for each of the first four fiscal quarters ended after the Closing Date, the amount of recurring selling, general and administrative expenses reducing Consolidated Net Income shall be deemed to be the "Annualized G&A Expenses" regardless of the actual amount of such expense;

(j) payments to Independent Directors under Section 6.07(b)(xxi) shall reduce Consolidated Net Income to the extent such payments are not already reflected in such calculation; and

(k) customary salary, bonus, and other benefits payable to officers and employees of any direct or indirect parent company of the Borrower to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Borrower and the Restricted Subsidiaries shall reduce Consolidated Net Income to the extent such payments are not already reflected in such calculation and are made pursuant to Section 6.06.

"Control Agreement" shall mean each Control Agreement to be executed and delivered by each Loan Party and the other parties thereto, as required by the applicable Loan Documents as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof.

"Controlled Account" shall mean a Deposit Account with respect to which a Control Agreement in form and substance reasonably satisfactory to the Administrative Agent has been delivered pursuant to which the financial institution maintaining such Deposit Account has agreed to comply with entitlement orders and instructions issued or originated by the Collateral Trustee without further consent of any Loan Party.

"Core Collateral" shall mean all Equity Interests in, and property and assets of, any Core Collateral Subsidiary, in each case whether now owned or hereafter acquired but excluding, for the avoidance of doubt, any property or assets in respect of or subject to a Specified Asset Sale.

"Core Collateral Subsidiary" shall mean each of REMA, NRG Power Midwest LP, NRG Canal LLC, NRG Bowline LLC.

"Counterparty Account" shall mean any Deposit Account, Securities Account or Commodities Account (and all cash, Cash Equivalents and other securities or investments substantially comparable to Cash Equivalents therein) pledged to or deposited with the Borrower or any Restricted Subsidiary as cash collateral posted or deposited by a contract counterparty (including a counterparty in respect of Commodity Hedging Obligations) to or for the benefit of the Borrower or any Restricted Subsidiary, in each case, only for so long as such account (and amounts therein) represents a security interest (including as a result of an escrow arrangement) in favor (and not an ownership interest in the amounts therein) of the Borrower or the applicable Restricted Subsidiary.

"Credit Event" shall have the meaning assigned to such term in Section 4.01.

"Cure Amount" shall have the meaning assigned to such term in Section 7.02(a).

"Cure Right" shall have the meaning assigned to such term in Section 7.02(a).

"Cure Right Fiscal Quarter" shall have the meaning assigned to such term in Section 7.02(b).

"Debtors" shall mean all entities that are debtors and debtors-in-possession pursuant the chapter 11 cases before the Bankruptcy Court in the case styled *In re GenOn Energy, Inc*., Case No 17-33695 (DRJ) (S.D. Texas) pending immediately prior to the satisfaction of the conditions in Section 4.02.

"Default" shall mean any event or condition which upon notice, lapse of time (pursuant to Article VII) or both would constitute an Event of Default.

"Defaulting Lender" shall mean, at any time, subject to the penultimate paragraph of Section 2.26, any Lender that, at such time, has (a) failed to (i) pay any amount required to be paid by such Lender to any Issuing Bank under this Agreement (beyond any applicable cure period), (ii) fund any portion of its Loans (unless such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender's good faith determination that a condition precedent to funding (specifically identified and, if available to such Lender, supported by reasonable background information provided by such Lender) has not been satisfied), its participations in Letters of Credit or (iii) pay over to the Administrative Agent, the Issuing Bank or any other Lender any other amount required to be paid by it hereunder, (b) notified the Borrower, the Administrative Agent, the Issuing Bank or any other Lender, in writing, or has made a public statement, to the effect that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender's good faith determination that a condition precedent to funding (specifically identified and, if available to such Lender, supported by reasonable background information provided by such Lender) a Loan cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) failed, within three Business Days after request by the Administrative Agent or any Issuing Bank, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations to fund prospective Loans and participations in then outstanding Letters of Credit, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt by the Administrative Agent or such Issuing Bank of such written certification, or (d) (i) taken any action or become the subject of a Lender Insolvency Event with respect to such Lender or its Parent Company or (ii) has, or has a Parent Company that has, become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender pursuant to this clause (d) solely by virtue of the ownership or acquisition of any Equity Interest in such Lender or its Parent Company by a Governmental Authority or agency thereof; provided, further, that none of the reallocation of funding obligations provided for in Section 2.26 as a result of a Lender's being a Defaulting Lender, the performance by the other Lenders of such reallocated funding obligations or the cash collateralization of a Defaulting Lender's Revolving L/C Exposure provided for in Section 2.26 will by itself cause the relevant Defaulting Lender to cease to be a Defaulting Lender. A determination, if any, by the

Administrative Agent (it being understood and agreed that (A) the Administrative Agent may, but shall be under no obligation to, make any such determination and (B) a determination by the Administrative Agent shall not be required for a Lender to become a Defaulting Lender if the requirements of this definition are otherwise satisfied) that a Lender is a Defaulting Lender under any of clauses (a) through and including (d) above will be conclusive and binding absent manifest error, and, if any such determination is made, such Lender shall be deemed to be a Defaulting Lender (subject to the penultimate paragraph of Section 2.26) upon notification of such determination by the Administrative Agent to the Borrower, the Issuing Bank and the Lenders.

"Deposit Account" shall have the meaning assigned to such term in the UCC.

"Designated Cash Amount" shall mean Designated Income that has not been included in the calculation of Consolidated Net Income (or Consolidated Cash Flow) pursuant to clause (a) thereof *less* any tax distributions (not otherwise funded in cash separately by such Unrestricted Subsidiary) made by the Borrower or a Restricted Subsidiary to the extent attributable to any Unrestricted Subsidiaries for the relevant period (provided that Designed Cash Amount shall not be reduced to less than zero); provided that any such Designated Income is designated by the Borrower as "Designated Cash" in an officer's certificate delivered to the Administrative Agent within 10 Business Days of receipt thereof.

"Designated Income" shall have the meaning assigned to it in clause (a) of "Consolidated Net Income."

"Disqualified Lender" shall mean,

(a) Identified Competitors,

(b) those particular banks, financial institutions, other institutional lenders and other persons identified in writing by or on behalf of the Borrower to the Arranger on or prior to the Closing Date, and

(c) any affiliate of the entities described in the preceding clauses (a) and (b) (other than in the case of clause (a), any affiliates that are bona fide debt funds or investment vehicles that are engaged in making, purchasing, holding or otherwise investing in portfolios of commercial loans, bonds and similar extensions of credit in the ordinary course) that are either readily identifiable as such solely on the basis of their name or are identified as such in writing by or on behalf of the Borrower to the Arranger on or prior to the Closing Date, or after the Closing Date to the Administrative Agent from time to time;

*provided* that any Person that is a Lender and subsequently becomes a Disqualified Lender (but was not a Disqualified Lender at the time it became a Lender) shall be deemed to not be a Disqualified Lender hereunder with respect to any Loans or Commitments held by it immediately prior to becoming a Disqualified Lender; *provided* that such Lender shall not be permitted to purchase or participate in additional Loans or Commitments under this Agreement after becoming a Disqualified Lender. The list of Disqualified Lenders shall be made available to any Lender promptly upon request by such Lender to the Administrative Agent.

"Disqualified Stock" shall mean any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder of the Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the date that is 91 days after the Latest Maturity Date of all Classes of Loans or Commitments. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders of the Capital Stock have the right to require the Borrower to repurchase such Capital Stock upon the occurrence of a change of control or an asset sale will not constitute Disqualified Stock if the terms of such Capital Stock provide that the Borrower may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption complies with Section 6.06. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Agreement will be the maximum amount that the Borrower and its Restricted Subsidiaries may become obligated to pay upon the maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock, exclusive of accrued dividends.

"dollars" or "$" shall mean lawful money of the United States of America, except when expressly used in reference to the lawful money of another country.

"Domestic Subsidiary" shall mean any Restricted Subsidiary that was formed under the laws of the United States of America or any state of the United States of America or the District of Columbia or that guarantees or otherwise provides direct credit support for any Indebtedness of the Borrower.

"Easement" shall have the meaning assigned to such term in Section 3.07.

"EEA Financial Institution" shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" shall mean 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.

"EU Bail-In Legislation Schedule" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Engagement Letter" shall mean that certain engagement letter, dated as of December 14, 2018, between the Borrower and the Arrangers, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"Environmental CapEx Debt" shall mean Indebtedness of the Borrower or its Restricted Subsidiaries incurred for the purpose of financing Environmental Capital Expenditures.

"Environmental Capital Expenditures" shall mean capital expenditures deemed necessary by the Borrower or its Restricted Subsidiaries to comply with Environmental Laws.

"Environmental Laws" shall mean all former, current and future Federal, state, local and foreign laws (including common law), treaties, regulations, rules, ordinances and codes, and legally binding decrees, judgments, directives and orders (including consent orders), in each case, relating to protection of the environment, natural resources, occupational health and safety (to the extent relating to exposure to Hazardous Materials), climate change or the presence, Release of, or exposure to, Hazardous Materials or the generation, manufacture, processing, distribution, use, treatment, storage, disposal, transport, recycling or handling of, or the arrangement for such activities with respect to, Hazardous Materials.

"Environmental Liability" shall mean all liabilities, obligations, damages, losses, claims, actions, suits, judgments, orders, fines, penalties, fees, expenses and costs (including administrative oversight costs, natural resource damages and remediation costs), whether contingent or otherwise, arising out of or relating to (a) non-compliance with any Environmental Law, (b) the generation, manufacture, processing, distribution, recycling, use, handling, transportation, storage, treatment or disposal of, or the arrangement of such activities with respect to, any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials at or from any location or (e) any contract or agreement to the extent liability is assumed, imposed or covered by an indemnity with respect to any of the foregoing.

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

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

"ERISA Affiliate" shall mean any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Tax Code, or solely for purposes of Section 302 of ERISA and Section 412 of the Tax Code, is treated as a single employer under Section 414 of the Tax Code.

"ERISA Event" shall mean (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Benefit Plan (other than an event for which the 30-day notice period is waived); (b) any failure by any Benefit Plan to satisfy the minimum funding standards (as defined in Section 412 or 430 of the Tax Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(c) of the Tax Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Benefit Plan; (d) the incurrence by the Borrower or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Benefit Plan or the withdrawal or partial withdrawal of the Borrower or any ERISA Affiliate from any Benefit Plan

or Multiemployer Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to the intention to terminate any Benefit Plan or to appoint a trustee to administer any Benefit Plan; (f) the adoption of any amendment to a Benefit Plan that would require the provision of security pursuant to Section 401(a)(29) of the Tax Code; (g) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA; (h) a determination that any Benefit Plan is, or is expected to be, in "at-risk" status (within the meaning of Section 430 of the Tax Code or Section 303 of ERISA; or (i) a determination that any Multiemployer Plan is, or is expected to be, "insolvent" within the meaning of Section 432 of the Code or Section 305 of ERISA.

"Eurodollar", when used in reference to any Loan or Borrowing, shall refer to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

"Event of Default" shall have the meaning assigned to such term in Article VII.

"Excess Cash" shall have the meaning assigned to such term in Section 2.13.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Excluded Assets" shall mean:

(a) (i) any lease, license, contract, property right or agreement to which any Loan Party is a party or any of such Loan Party's rights or interests thereunder if and only for so long as the grant of a security interest therein under the Security Documents shall constitute or result in a breach, termination or default or invalidity under any such lease, license, contract, property right or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC of any relevant jurisdiction or any other applicable law or principles of equity); provided that such lease, license, contract, property right or agreement shall be an Excluded Asset only to the extent and for so long as the consequences specified above shall exist and shall cease to be an Excluded Asset and shall become subject to the security interest granted under the Security Documents, immediately and automatically, at such time as such consequences shall no longer exist and/or (ii) any property if and only for so long as the grant of a security interest therein under the Security Documents shall be prohibited or rendered ineffective under any Applicable Law adopted, issued, promulgated, implemented or enacted, in each case, after the Closing Date (other than to the extent any such Applicable Law would be rendered ineffective pursuant to Section 9-408 or 9-409 of the UCC of any relevant jurisdiction or any other applicable law or principles of equity); provided that such property shall be an Excluded Asset only to the extent and for so long as the prohibition specified above shall exist and shall cease to be an Excluded Asset and shall become subject to the security interest granted under the Security Documents, immediately and automatically, at such time as such prohibition shall no longer exist;

(b) any interests in real property owned or leased by any Loan Party only for so long as such interest represents an Excluded Perfection Asset;

(c) any voting Equity Interests in excess of 65% of the total outstanding voting Equity Interests in any Excluded Foreign Subsidiary;

(d) any Deposit Account, Securities Account or Commodities Account (and all cash, Cash Equivalents and other securities or investments substantially comparable to Cash Equivalents and Commodity Contracts (as defined in the UCC) held therein) if and only for so long as such Deposit Account, Securities Account or Commodities Account is subject to a Lien permitted under clauses (b) or (d) of the definition of "Permitted Liens" other than any such permitted Lien held by the Collateral Trustee pursuant to and in accordance with the Collateral Trust Agreement;

(e) [*reserved*];

(f) [*reserved*];

(g) [*reserved*];

(h) any Equity Interest of a Person or Project Interest held by any Loan Party if and for so long as the pledge thereof under the Security Documents shall constitute or result in a breach, termination or default under any joint venture, stockholder, membership, limited liability company, partnership, owners, participation, shared facility or other similar agreement between such Loan Party and one or more other holders of Equity Interests of such Person or Project Interest (other than any such other holder who is the Borrower or a Subsidiary thereof); provided that such Equity Interest shall be an Excluded Asset only to the extent and for so long as the consequences specified above shall exist and shall cease to be an Excluded Asset and shall become subject to the security interest granted under the Security Documents, immediately and automatically, at such time as such consequences shall no longer exist;

(i) any Counterparty Account, and any cash, Cash Equivalents and/or other securities or investments substantially comparable to Cash Equivalents, and other funds and investments held therein and the proceeds thereof, received from a contract counterparty (including a counterparty in respect of Commodity Hedging Obligations) (collectively, the "Counterparty Cash") but only to the extent that any agreements governing the underlying transactions with a contract counterparty (including a counterparty in respect of Commodity Hedging Obligations) pursuant to which any such Counterparty Cash was received provide that the pledging of, or other granting of any Lien in, the relevant Counterparty Cash as collateral for the Obligations of the Borrower or a Subsidiary Guarantor under the Loan Documents shall constitute or result in a breach, termination, default or invalidity under any such agreement, provided, however, that such Counterparty Cash shall be an Excluded Asset only to the extent and for so long as the consequences specified above shall exist, and shall cease to be an Excluded Asset and shall become subject to the security interest granted under the Security Documents, immediately and automatically, at such time as such consequences shall no longer exist; and provided, further, that any Lien the Borrower or any Subsidiary Guarantor may have in any such Counterparty Cash shall not be deemed to be an Excluded Asset under this clause (i) and such Lien shall follow and be treated as part of the underlying agreement (including any Commodity Hedging Obligations)

which agreement (including any Commodity Hedging Obligations) shall (to the extent applicable) be subject to the terms and conditions of clause (i) of this definition;

(j) the Assigned Pipeline Interests;

(k) Choctaw Assets; provided that if the requirements of Section 5.13 with respect to the Bowline Power Plant have not been satisfied and the Choctaw APA has been terminated, the Choctaw Assets shall cease to constitute Excluded Assets as long (and only for so long as) as the requirements of Section 5.13 with respect to the Bowline Power Plant have not been satisfied;

(l) if the requirements of Section 5.13 with respect to the Bowline Power Plant have been satisfied (and only once such requirements have been satisfied), the Canal Excess Fuel Payments;

(m) (i) Assets subject to a Specified Asset Sale and (ii) any other property and assets (other than any such properties or assets constituting Core Collateral) designated as Excluded Assets to the Administrative Agent in writing by the Borrower prior to the Closing Date (the property and assets described in this clause (ii), the "Scheduled Excluded Assets") which such Scheduled Excluded Assets shall not have, when taken together with all other property and assets that are designated as Scheduled Excluded Assets and as of the relevant time of determination by virtue of the operation of this clause (m)(ii), a Fair Market Value determined as of the date of such designation as an Excluded Asset exceeding $10,000,000 in the aggregate together with the Excluded Perfection Assets under clause (i) of the definition thereof at any time outstanding (this clause (ii), the "General Excluded Assets Basket") (and, to the extent that the Fair Market Value thereof shall exceed $10,000,000 in the aggregate together with the Excluded Perfection Assets under clause (i) of the definition thereof, such property or assets shall cease to be an Excluded Asset to the extent of such excess Fair Market Value and shall become subject to the security interest granted under the Security Documents, immediately and automatically, at such time as such amount is exceeded); for the avoidance of doubt, at any time the Borrower elects to have an Excluded Asset become part of the Collateral and cease to be an Excluded Asset, or at any time an Excluded Asset becomes an asset of an Unrestricted Subsidiary, or is sold or otherwise disposed of to a third party that is not a Subsidiary in accordance with the terms hereof, the Fair Market Value (as determined as of the date of such designation as an Excluded Asset) of any such asset shall not be taken into account for purposes of determining compliance with the General Excluded Assets Basket;

(n) any Intellectual Property (as defined in the Guarantee and Collateral Agreement) if and to the extent a grant of a security interest therein will result in the loss, abandonment or termination of any material right, title or interest in or to such Intellectual Property (including United States intent-to-use trademark or service mark applications); provided, however, that such Intellectual Property shall be an Excluded Asset only to the extent and for so long as the consequences specified above shall exist and shall cease to be an Excluded Asset and shall become subject to the security interest granted under the Security Documents, immediately and automatically, at such time as such consequences shall no longer exist;

(o) [*reserved*]; and

(p) unless otherwise elected by the Borrower in its discretion and designated by the Borrower to the Administrative Agent in writing, the Equity Interests owned by the Borrower or any of its Restricted Subsidiaries in and all properties and assets of each of the following Subsidiaries: NRG ECA Pipeline LLC.

"Excluded Foreign Subsidiary" shall mean, at any time, any Foreign Subsidiary that is a Restricted Subsidiary and that is (or is treated as) for United States federal income tax purposes either (a) a corporation or (b) a pass-through entity owned directly or indirectly by another Foreign Subsidiary that is (or is treated as) a corporation; provided that none of the Subsidiaries constituting or owning Core Collateral may at any time be an Excluded Foreign Subsidiary. The Excluded Foreign Subsidiaries on the Closing Date are set forth on Schedule 1.01(a).

"Excluded Perfection Assets" shall mean any property or assets that (i) do not have a Fair Market Value together with the Scheduled Excluded Assets included in the General Excluded Assets Basket at any time exceeding $10,000,000 in the aggregate in which a security interest cannot be perfected by the filing of a financing statement under the UCC of the relevant jurisdiction or, in the case of Equity Interests, either the filing of a financing statement under the UCC of the relevant jurisdiction or the possession of certificates representing such Equity Interests (provided, however, this clause (i) shall not apply to Deposit Accounts and Securities Accounts which are instead addressed in clause (iii) below), (ii) constitute leasehold interests of the Borrower or any of its Restricted Subsidiaries in real property (other than any real property constituting a Facility), (iii) (A) constitute any Deposit Account that is a "zero-balance" account (as long as (x) the balance in such "zero balance" account does not exceed at any time the $500,000 individually or $3,000,000 in the aggregate for a period of 24 consecutive hours or more (except during days that are not Business Days) and (y) all amounts in such "zero-balance" account shall either be swept on a daily basis (except on days that are not Business Days) into another Deposit Account that does not constitute an Excluded Perfection Asset or used for third party payments in the ordinary course of business), (B) constitute accounts used exclusively for payroll, employee benefits or tax as well as any other fiduciary or trust account or (C) otherwise constitute Deposit Accounts or Securities Accounts holding less than $500,000 individually or $3,000,000 in the aggregate (measured together with accounts described in clause (iii)(A) above), (iv) constitute motor vehicles and other assets subject to certificates of title to the extent a Lien thereupon cannot be perfected by the filing of a UCC financing statement, (v) constitute Intellectual Property over which a Lien is required to be perfected by actions in any jurisdiction other than the United States, (vi) rolling stock and (vii) any particular assets if the burden, cost or consequence of creating or perfecting such pledges or security interests in such assets is excessive in relation to the benefits to be obtained therefrom by the Lenders under the Loan Documents as mutually agreed by the Borrower and the Administrative Agent (it being understood that any fee interest in real property owned by the Loan Parties on the Closing Date and not scheduled on Schedule 1.01(c) or Schedule 1.01(e) is satisfies this clause (vii) as of the Closing Date). To the extent that the Fair Market Value of any such property or asset in clause (i) exceeds, together with the Scheduled Excluded Assets included in the General Excluded Assets Basket, $10,000,000 in the aggregate, such property or asset shall cease to be an Excluded Perfection Asset.

"Excluded Subsidiary" shall mean (a) an Excluded Foreign Subsidiary, (b) any other Subsidiary all of whose assets constitute Excluded Assets pursuant to the General Excluded Assets Basket (c) any captive insurance Subsidiary, (d) any not-for-profit Subsidiary, (e) any Immaterial

Subsidiary or (f) any special purpose vehicle; *provided* that, the Borrower may, at its option, designate any Excluded Subsidiary as a Subsidiary Guarantor upon such Excluded Subsidiary otherwise complying with the requirements under Section 5.09(c) as if it were a new Subsidiary and upon such compliance such Excluded Subsidiary shall cease to constitute an "Excluded Subsidiary."

"Excluded Taxes" shall mean, with respect to the Administrative Agent, any Lender, the Issuing Banks and any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) income, branch profits, or franchise taxes imposed on (or measured in whole or in part by) each such Person's net income, in each case, (i) imposed as a result of such recipient being organized under the laws of or having its principal office (or, in the case of any Lender, its applicable lending office) in the jurisdiction imposing such tax (or any political subdivision thereof), or (ii)as a result of a present or former connection between such recipient and the jurisdiction imposing such tax (or any political subdivision thereof), other than any such connection arising solely from such recipient having executed, delivered or performed its obligations or received a payment under, received or perfected a security interest under, engaged in any other transaction pursuant to, or enforced, this Agreement or any other Loan Document, or sold or assigned any interest in any Loan Document, (b) in the case of a Lender (other than an assignee pursuant to a request by the Borrower under Section 2.21(a)), any United Stated federal withholding tax that is imposed on amounts payable to such Lender at the time such Lender becomes a party to this Agreement (or designates a new lending office), except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrower with respect to such withholding tax pursuant to Section 2.20(a) (it being understood and agreed, for the avoidance of doubt, that any withholding tax imposed on a Lender as a result of a Change in Law occurring after the time such Lender became a party to this Agreement shall not be an Excluded Tax), (c) any withholding Taxes attributable to such Recipient's failure to comply with paragraphs (d) and (e) of Section 2.20 and (d) any United States federal withholding Taxes imposed under FATCA.

"Existing Indebtedness" shall mean Indebtedness of the Borrower and its Subsidiaries (other than the Indebtedness under the Second Lien Notes Documents) in existence on the Closing Date and set forth on Schedule 6.01, until such amounts are repaid.

"Exit Transactions" shall have the meaning assigned to such term in Section 4.02(e).

"Extension Amendments" shall mean one or more amendments providing for an extension of the final maturity date of any Loan and/or any Commitment of the Accepting Lenders (provided that such extensions may not result in having more than three different final maturity dates under this Agreement without the prior written consent of the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed)) and, in connection therewith and subject to the limitations set forth in Section 9.19, any change in the Applicable Margin and other pricing with respect to the applicable Loans and/or Commitments of the Accepting Lenders and the payment of any fees (including prepayment premiums or fees) to the Accepting Lenders (such changes and/or payments to be in the form of cash, equity interest or other property as agreed by the Borrower and the Accepting Lenders to the extent not prohibited by this Agreement).

"Facility" shall mean a power or energy related facility.

"Fair Market Value" shall mean the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party, determined in good faith by a Responsible Officer of the Borrower.

"FATCA" shall mean Sections 1471 through 1474 of the Tax Code, as of the Closing Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any Treasury Regulation promulgated thereunder, any published administrative guidance implementing such Sections or any agreement entered into pursuant to Section 1471(b)(1) of the Tax Code.

"Federal Funds Effective Rate" shall mean, for any day, the rate calculated by the Federal Reserve Bank of New York based on such day's federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; provided, that if the Federal Funds Effective Rate for any day is less than zero, the Federal Funds Effective Rate for such day will be deemed to be zero.

"Fee Letter" shall mean that certain fee letter, dated as of the Closing Date, between the Borrower and the Administrative Agent, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"Fees" shall mean the Commitment Fees, the Administrative Agent's Fees, the L/C Participation Fees, the Issuing Bank Fees and any fees payable pursuant to Section 2.05(b).

"FERC" shall mean the Federal Energy Regulatory Commission or its successor.

"Finance Parties" shall have the meaning assigned to such term in Section 4.02(e).

"Financial Officer" of any Person shall mean any of the chief executive officer, chief financial officer or treasurer (or if no individual shall have such designation, the Person charged by the Board of Directors of such Person (or a committee thereof) with such powers and duties as are customarily bestowed upon the individual with such designation) or the audit or finance committee of the Board of Directors of such Person.

"Fixed Charge Coverage Ratio" shall mean with respect to any specified Person for any period, the ratio of the Consolidated Cash Flow of such Person for such period to the Fixed Charges of such Person paid or payable in cash for such period. In the event that the specified Person or any of its Restricted Subsidiaries incurs, assumes, Guarantees, repays, repurchases, redeems, defeases or otherwise discharges any Indebtedness (other than ordinary working capital borrowings) or issues, repurchases or redeems preferred stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated and on or prior to the date on which the event for which the calculation of the Fixed Charge Coverage Ratio is made (for purposes of this definition, the "Calculation Date"), then the Fixed Charge Coverage Ratio will be calculated giving pro forma effect to such incurrence, assumption, Guarantee, repayment, repurchase, redemption, defeasance or other discharge of Indebtedness, or such issuance,

repurchase or redemption of preferred stock, and the use of the proceeds therefrom, as if the same had occurred at the beginning of the applicable four-quarter reference period.

In addition, for purposes of calculating the Fixed Charge Coverage Ratio:

(a) Investments and acquisitions that have been made by the specified Person or any of its Restricted Subsidiaries, including through mergers or consolidations, or any Person or any of its Restricted Subsidiaries acquired by the specified Person or any of its Restricted Subsidiaries, and including any related financing transactions and including increases in ownership of Restricted Subsidiaries, during the four-quarter reference period or subsequent to such reference period and on or prior to the Calculation Date will be given pro forma effect (in accordance with Regulation S-X, but including all Pro Forma Cost Savings) as if they had occurred on the first day of the four-quarter reference period and Consolidated Cash Flow for such reference period will be calculated on the same pro forma basis;

(b) the Consolidated Cash Flow attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded;

(c) the Fixed Charges attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded, but only to the extent that the obligations giving rise to such Fixed Charges will not be obligations of the specified Person or any of its Restricted Subsidiaries following the Calculation Date;

(d) any Person that is a Restricted Subsidiary on the Calculation Date will be deemed to have been a Restricted Subsidiary at all times during such four-quarter reference period;

(e) any Person that is not a Restricted Subsidiary on the Calculation Date will be deemed not to have been a Restricted Subsidiary at any time during such four-quarter reference period; and

(f) if any Indebtedness that is being incurred on the Calculation Date bears a floating rate of interest, the interest expense on such Indebtedness will be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligation applicable to such Indebtedness).

If since the beginning of such period any Person (that subsequently became a Restricted Subsidiary or was merged with or into the Borrower or any Restricted Subsidiary since the beginning of such period) shall have made any Investment, acquisition, disposition, merger, consolidation or disposed operation that would have required adjustment pursuant to this definition, then the Fixed Charge Coverage Ratio shall be calculated giving pro forma effect thereto (including any Pro Forma Cost Savings) for such period as if such Investment, acquisition or disposition, or classification of such operation as discontinued had occurred at the beginning of the applicable four-quarter reference period.

"Fixed Charges" shall mean, with respect to any specified Person for any period, the sum, without duplication, of (a) the consolidated interest expense of such Person and its Restricted

Subsidiaries (other than interest expense of any Excluded Subsidiary the Consolidated Cash Flow of which is excluded from the Consolidated Cash Flow of such Person pursuant to the definition of Consolidated Cash Flow hereof) for such period, whether paid or accrued, including amortization of debt issuance costs and original issue discount, non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments associated with Capital Lease Obligations, imputed interest with respect to Attributable Debt, and net of the effect of all payments made or received pursuant to Hedging Obligations in respect of interest rates, plus (b) the consolidated interest of such Person and its Restricted Subsidiaries that was capitalized during such period, plus (c) any interest accruing on Indebtedness of another Person that is Guaranteed by such Person or one of its Restricted Subsidiaries or secured by a Lien on assets of such Person or one of its Restricted Subsidiaries, whether or not such Guarantee or Lien is called upon, plus (d) the product of (i) all dividends, whether paid or accrued and whether or not in cash, on any series of preferred stock of such Person or any of its Restricted Subsidiaries, other than dividends on Equity Interests payable in Equity Interests of the Borrower (other than Disqualified Stock) or to the Borrower or a Restricted Subsidiary, times (ii) a fraction, the numerator of which is one and the denominator of which is one minus the then current combined federal, state and local statutory tax rate of such Person, expressed as a decimal, in each case, on a consolidated basis and in accordance with GAAP, minus (e) interest income for such period.

"Flood Laws" shall mean, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto and the Flood Insurance Reform Act of 2004 as how or hereafter in effect or any successor statute thereto and (v) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

"Foreign Lender" shall mean any Lender that is organized under the laws of a jurisdiction other than that in which the Borrower is incorporated or organized. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Foreign Subsidiary" shall mean any Restricted Subsidiary that is (a) not a Domestic Subsidiary or (b) a Foreign Subsidiary Holding Company.

"Foreign Subsidiary Holding Company" shall mean any Domestic Subsidiary that is a direct or indirect parent of one or more Foreign Subsidiaries and holds, directly or indirectly, no other assets other than Equity Interests (or Equity Interests and Indebtedness) of Foreign Subsidiaries and other *de minimis* assets related thereto.

"FPA" shall mean the Federal Power Act and the rules and regulations promulgated thereunder, as amended from time to time.

"FPA-Jurisdictional Subsidiary Guarantor" shall have the meaning assigned to such term in Section 3.23(b).

"FPA MBR Authorizations, Exemptions and Waivers" shall have the meaning assigned to such term in Section 3.23(b).

"G&A Expenses" shall mean non-recurring selling, general and administrative expenses in connection with management and operational transitions.

"GAAP" shall mean generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect from time to time; provided, however, that if any operating lease would be recharacterized as a capital lease due to changes in the accounting treatment of such operating lease under GAAP since the Closing Date, then solely with respect to the accounting treatment of any such leases, GAAP shall be interpreted as it was in effect on the Closing Date.

"General Excluded Assets Basket" shall have the meaning assigned to such term in the definition of Excluded Assets.

"GenMa" shall have the meaning assigned to such term in the definition of Permitted Investments.

"GenOn Confirmation Order" shall mean Order Confirming the Third Amended Joint Chapter 11 Plan of Reorganization of GenOn Energy, Inc. and Its Debtor Affiliates, dated December 12, 2017 [Docket No. 1250], as modified by: (i) the *Revised Order Pursuant to 11 U.S.C § 1127(b) Modifying the Third Amended Joint Plan of Reorganization of GenOn Energy, Inc. and Its Debtor Affiliates*, dated April 2, 2018 [Docket No. 1549]; (ii) the *Revised Order Pursuant to 11 U.S.C § 1127(b) Modifying the Third Amended Joint Plan of Reorganization of GenOn Energy, Inc. and Its Debtor Affiliates*, dated April 5, 2018 [Docket No. 1560]; (iii) the *Revised Order Pursuant to 11 U.S.C § 1127(b) Modifying the Third Amended Joint Plan of Reorganization of GenOn Energy, Inc. and Its Debtor Affiliates*, dated April 30, 2018 [Docket No. 1607]; (iv) the *Revised Order Pursuant to 11 U.S.C § 1127(b) Modifying the Third Amended Joint Plan of Reorganization of GenOn Energy, Inc. and Its Debtor Affiliates*, dated September 18, 2018 [Docket No. 1847]; and (v) the Revised Order (I) Modifying (A) the Third Amended Joint Plan of Reorganization of GenOn Energy, Inc. and Its Debtor Affiliates and (B) the Cash Incentive Plan, and (II) Granting Related Relief, dated November 1, 2018 [Docket No. 1953] (with respect to (i) through (v), the "Plan Amendment Orders").

"GenOn Plan of Reorganization" shall mean the Third Amended Joint Chapter 11 Plan of Reorganization of GenOn Energy, Inc. and Its Debtor Affiliates, dated December 10, 2017 [Docket No. 1213], as amended by the Plan Amendment Orders.

"GenOn Security Agreement" shall have the meaning assigned to such term in the definition of Tenaska Transaction Document.

"Governmental Authority" shall mean any nation or government, any state, province, territory or other political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive,

legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, or any governmental or non-governmental authority regulating the generation, sale and/or transmission of energy.

"Granting Lender" shall have the meaning assigned to such term in Section 9.04(j).

"Guarantee" shall mean a guarantee other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner, including by way of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Indebtedness (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take or pay or to maintain financial statement conditions or otherwise).

"Guarantee and Collateral Agreement" shall mean the Guarantee and Collateral Agreement, substantially in the form of Exhibit G, among the Borrower, each Subsidiary Guarantor, the Collateral Trustee and the other parties thereto, as may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"Guaranteed Obligations" shall mean the Credit Agreement Borrower Obligations and the Guarantor Obligations in respect thereof, in each case as such terms are defined in the Guarantee and Collateral Agreement.

"Hazardous Materials" shall mean (a) any petroleum products or byproducts, coal ash, coal combustion by-products or waste, boiler slag, scrubber residue, flue desulfurization material, radon gas, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, radioactive materials, radioactive waste or radioactive byproducts, chlorofluorocarbons and all other ozone-depleting substances and (b) any chemical, material, substance or waste that is prohibited, limited or regulated by or pursuant to any Environmental Law due to its hazardous or dangerous properties or characteristics.

"Hedging Obligations" shall mean, with respect to any specified Person, the obligations of such Person under (a) currency exchange, interest rate or commodity swap agreements, currency exchange, interest rate or commodity cap agreements and currency exchange, interest rate or commodity collar agreements and (b) (i) agreements or arrangements designed to protect such Person against fluctuations in currency exchange, interest rates, commodity prices or commodity transportation or transmission pricing or availability; (ii) any netting arrangements, power purchase and sale agreements, fuel purchase and sale agreements, swaps, options and other agreements, in each case, that fluctuate in value with fluctuations in energy, power or gas prices; and (iii) agreements or arrangements for commercial or trading activities with respect to the purchase, transmission, distribution, sale, lease or hedge of any energy related commodity or service.

"Identified Competitors" shall mean the competitors of the Borrower and its Subsidiaries identified in writing by or on behalf of the Borrower to the Arranger on or prior to the Closing Date and as updated from time to time in writing from the Borrower to the Administrative Agent.

"Immaterial Subsidiary" shall mean, at any time, any Restricted Subsidiary that is designated by the Borrower as an "Immaterial Subsidiary" if and for so long as such Restricted Subsidiary, together with all other Immaterial Subsidiaries, has (a) total assets at such time not exceeding 5.00% of the Borrower's consolidated assets as of the most recent fiscal quarter for which balance sheet information is available and (b) total revenues and operating income for the most recent twelve (12)-month period for which income statement information is available not exceeding 5.00% of the Borrower's consolidated revenues and operating income, respectively; provided that such Restricted Subsidiary shall be an Immaterial Subsidiary only to the extent that and for so long as all of the above requirements are satisfied.

"Increased Amount Date" shall have the meaning provided in Section 2.24(a).

"incur" shall have the meaning assigned to such term in Section 6.01.

"Indebtedness" shall mean, with respect to any specified Person, any indebtedness of such Person (excluding accrued expenses and trade payables except as provided in clause (e) below), whether or not contingent (a) in respect of borrowed money; (b) the undrawn amount of all outstanding letters of credit and bankers acceptances (including the Letters of Credit); (c) evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof); (d) in respect of banker's acceptances; (e) representing Capital Lease Obligations or Attributable Debt in respect of sale and leaseback transactions; (f) representing the balance deferred and unpaid of the purchase price of any property (including trade payables) or services due more than six (6) months after such property is acquired or such services are completed; or (g) representing the net amount owing under any Hedging Obligations, if and to the extent any of the preceding items (other than letters of credit, Attributable Debt and Hedging Obligations) would appear as a liability upon a balance sheet of the specified Person prepared in accordance with GAAP. In addition, the term "Indebtedness" includes all Indebtedness of others secured by a Lien on any asset of the specified Person (whether or not such Indebtedness is assumed by the specified Person) and, to the extent not otherwise included, the Guarantee by the specified Person of any Indebtedness of any other Person; provided that the amount of such Indebtedness shall be deemed not to exceed the lesser of the amount secured by such Lien and the value of the Person's property securing such Lien.

"Indebtedness Obligations" shall mean any principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.

"Indemnified Taxes" shall mean (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

"Indemnitee" shall have the meaning assigned to such term in Section 9.05(b).

"Independent Director" means (i) Mark A. McFarland, (ii) Alejandro Mazier, (iii) Stephen Schaefer and (iv) any member of the Board of Directors that is a natural person who, (A)is not, and during the continuation of his or her service as Independent Director is not: (i) an employee, director, stockholder, member, manager, partner or officer of the Borrower, a parent company of

the Borrower, the equity holders or shareholders of the Borrower or any of their respective Affiliates, (ii) a customer or supplier of the Borrower, a parent company of the Borrower, the equity holders or shareholders of the Borrower or any of their respective Affiliates, or (iii) any member of the immediate family of a person described in (i) or (ii), and (B) has (i) prior experience as an independent director (consistent with this definition) for a limited partnership, corporation or limited liability company whose charter documents required the unanimous consent of all independent directors thereof before such limited partnership, corporation or limited liability company could consent to the institution of bankruptcy or insolvency proceedings against it or could file a petition seeking relief under any applicable federal or state law relating to bankruptcy and (ii) at least three years of employment experience with one or more companies of a similar size that, in the ordinary course of their respective businesses, operate in the same or similar businesses as the Borrower.

"Independent Financial Advisor" shall mean an accounting, appraisal, investment banking firm or consultant to Persons engaged in a Permitted Business of nationally recognized standing that is, in the good faith judgment of the Borrower, qualified to perform the task for which it has been engaged.

"Information" shall have the meaning assigned to such term in Section 9.16.

"Intellectual Property Collateral" shall have the meaning assigned to such term in the Guarantee and Collateral Agreement.

"Intellectual Property Security Agreement" shall mean all Intellectual Property Security Agreements executed and delivered by the Loan Parties, each substantially in the applicable form required by the Guarantee and Collateral Agreement, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof.

"Interest Payment Date" shall mean (a) with respect to any ABR Loan, the last Business Day of each March, June, September and December (beginning with December 31, 2018) and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three (3) months' duration, each day that would have been an Interest Payment Date had successive Interest Periods of three (3) months' duration been applicable to such Borrowing.

"Interest Period" shall mean, with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one (1), two (2), three (3) or six (6) months thereafter (or twelve (12) months thereafter if, at the time of the relevant Borrowing, agreed to by all Lenders participating therein), as the Borrower may elect; provided, however, that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end

on the last Business Day of the last calendar month of such Interest Period. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

"Interest Rate/Currency Hedging Agreement" shall mean any agreement of the type described in clauses (a), (b) or (c) of the definition of "Interest Rate/Currency Hedging Obligations."

"Interest Rate/Currency Hedging Obligations" shall mean, with respect to any specified Person, the obligations of such Person under (a) interest rate swap agreements (whether from fixed to floating or from floating to fixed), interest rate cap agreements and interest rate collar agreements, (b) other agreements or arrangements designed to manage interest rates or interest rate risk and (c) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange rates, in each case under clauses (a), (b) and (c), entered into by such Person in the ordinary course of business and not for speculative purposes.

"Interpolated Screen Rate" shall mean, in relation to the Screen Rate, the rate which results from interpolating on a linear basis between: (a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan, each as of approximately 11:00 a.m. (London, England time) two (2) Business Days prior to the commencement of such Interest Period of that Loan.

"Investments" shall mean, with respect to any Person, all direct or indirect investments by such Person in other Persons (including Affiliates) in the forms of loans (including Guarantees or other obligations), advances or capital contributions (excluding commission, travel and similar advances to officers and employees), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP. If the Borrower or any Subsidiary sells or otherwise disposes of any Equity Interests of any direct or indirect Subsidiary such that, after giving effect to any such sale or disposition, such Person is no longer a Subsidiary, the Borrower will be deemed to have made an Investment on the date of any such sale or disposition equal to the Fair Market Value of the Borrower's Investments in such Subsidiary that were not sold or disposed of in an amount determined as provided in the final paragraph of Section 6.06(b). The acquisition by the Borrower or any Subsidiary of a Person that holds an Investment in a third Person will be deemed to be an Investment by the Borrower or such Subsidiary in such third Person in an amount equal to the Fair Market Value of the Investments held by the acquired Person in such third Person in an amount determined as provided in the final paragraph of Section 6.06(b). Except as otherwise provided in this Agreement, the amount of an Investment will be determined at the time the Investment is made and without giving effect to subsequent changes in value; provided that, to the extent, if any, that a Guarantee and/or credit support results in an Investment, the amount of such Investment will be (x) the fair market value thereof determined first as of the time such Investment is made and thereafter on an annual basis, (y) zero upon such Guarantee and/or credit support being released or terminated and (z) the fair

market value of such Guarantee and/or credit support determined as of the time of any modification thereof, if modified or amended.

"ISP98" shall have the meaning assigned to such term in Section 9.07.

"Issuing Bank" shall mean, as the context may require, each of (a) Barclays and/or any of its affiliates, each in its capacity as the issuer of Letters of Credit issued by it hereunder, and (b) any other Lender that may become an Issuing Bank pursuant to Section 2.23(i) or 2.23(k), with respect to Letters of Credit issued by such Lender. Unless otherwise specified, in respect of any Letters of Credit, "Issuing Bank" shall refer to the applicable Issuing Bank which has issued such Letter of Credit. Each Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Bank, in which case the term "Issuing Bank" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

"Issuing Bank Fees" shall have the meaning assigned to such term in Section 2.05(c).

"Joinder Agreement" shall mean an agreement substantially in the form of Exhibit D.

"L/C Commitment" shall mean the commitment of each Issuing Bank to issue Letters of Credit pursuant to Section 2.23.

"L/C Disbursement" shall mean a payment or disbursement made by the Issuing Bank pursuant to a Letter of Credit.

"L/C Fee Payment Date" shall have the meaning assigned to such term in Section 2.05(c).

"L/C Participation Fee" shall have the meaning assigned to such term in Section 2.05(c).

"Latest Maturity Date" shall mean, at any date of determination, the latest maturity date applicable to any Class of Loans or Commitments with respect to such Class of Loans or Commitments at such time, including, for the avoidance of doubt, the latest maturity date of any Refinancing Revolving Loan or Refinancing Revolving Commitment, in each case as extended from time to time in accordance with this Agreement.

"LCT Election" shall have the meaning assigned to such term in Section 1.05.

"Lender Insolvency Event" shall mean that (a) a Lender or its Parent Company is insolvent, or is generally unable to pay its debts as they become due, or admits in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of its creditors, or (b) such Lender or its Parent Company is the subject of a bankruptcy, insolvency, reorganization, liquidation or similar proceeding, or a receiver, trustee, conservator, intervenor or sequestrator or the like has been publicly appointed for such Lender or its Parent Company, or such Lender or its Parent Company has taken any action in furtherance of or indicating its consent to or acquiescence in any such proceeding or appointment.

"Lenders" shall have the meaning assigned to such term in the preamble; provided that such term shall also include (a) the Persons that become a party hereto pursuant to a Joinder Agreement and (b) any Person that has become a party hereto pursuant to an Assignment and

Assumption (other than in each case any such Person that has ceased to be a party hereto pursuant to an Assignment and Assumption). Unless the context otherwise requires, the term "Lenders" shall include the Issuing Banks.

"Letter of Credit" shall mean, at any time, any letter of credit issued pursuant to and in accordance with the terms and provisions of Section 2.23. For the avoidance of doubt, the undrawn amount of each Letter of Credit, at any time, shall include any increase that has been made to such Letter of Credit including any increase that is contemplated by the terms of such Letter of Credit.

"LIBO Rate" shall mean, with respect to any Eurodollar Borrowing for any Interest Period, (i) the rate per annum determined by the Administrative Agent to be the offered rate which appears on the page of the Reuters Screen which displays the London interbank offered rate administered by ICE Benchmark Administration Limited (such page currently being the LIBOR01 page) (the "Screen Rate") for deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period in Dollars, determined as of approximately 11:00 a.m. (London, England time), two (2) Business Days prior to the commencement of such Interest Period, or (ii) in the event the rate referenced in the preceding clause (i) does not appear on such page or service or if such page or service shall cease to be available, the rate determined by the Administrative Agent to be the offered rate on such other page or other service which displays the Screen Rate for deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period in Dollars, determined as of approximately 11:00 a.m. (London, England time) two Business Days prior to the commencement of such Interest Period; provided that if Screen Rates are quoted under either of the preceding clauses (i) or (ii), but there is no such quotation for the Interest Period elected, the Screen Rate shall be equal to the Interpolated Screen Rate; and provided, further, that if any such rate determined pursuant to the preceding clauses (i) or (ii) is less than zero, the Eurodollar Rate will be deemed to be zero.

"Lien" shall mean, with respect to any asset (a) any mortgage, deed of trust, deed to secure debt, lien (statutory or otherwise), pledge, hypothecation, encumbrance, restriction, collateral assignment, charge or security interest in, on or of such asset; (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset; and (c) in the case of Equity Interests or debt securities, any purchase option, call or similar right of a third party with respect to such Equity Interests or debt securities. For the avoidance of doubt, "Lien" shall not be deemed to include licenses of intellectual property.

"Limited Condition Transaction" shall mean, any permitted acquisition or Investment (and, to the extent required to consummate such acquisition or Investment, any Restricted Payment, Asset Sale, fundamental change or the designation as Restricted Subsidiary, Unrestricted Subsidiary or Excluded Subsidiary) by the Borrower or one or more of its Restricted Subsidiaries permitted pursuant to this Agreement whose consummation is not conditioned on the availability of, or on obtaining, third party financing.

"Liquidity" means at any date of determination, the sum of (a) the Unrestricted Cash Amount plus (b) the Available Revolving Commitment.

"Loan Documents" shall mean this Agreement, any promissory note delivered pursuant to Section 2.04(e), the Security Documents and each Joinder Agreement.

"Loan Parties" shall mean the Borrower and each Subsidiary Guarantor.

"Loans" shall mean the Revolving Loans, the New Revolving Loans and the Refinancing Revolving Loans.

"LTSA Obligations" shall mean obligations arising from that certain Long Term Service Agreement by and among NRG Wholesale Generation LP, (as successor-in-interest to Reliant Energy Choctaw, LLC) and General Electric International Inc., amended by that certain First Amendment to the Long Term Service Agreement dated as of June 1, 2004, that certain Second Amendment to the Long Term Service Agreement dated December 11, 2015, that Third Amendment to the Long Term Service Agreement dated December 21, 2016, and that certain Fourth Amendment to Long Term Service Agreement

"Management Incentive Plan" shall mean that Management Incentive Plan of GenOn Holdings, LLC which shall be entered into on or after the Closing Date, as modified from time to time.

"Margin Stock" shall have the meaning assigned to such term in Regulation U.

"Mark-to-Market Adjustments" shall mean (a) any non-cash loss attributable to the mark-to-market movement in the valuation of Hedging Obligations (to the extent the cash impact resulting from such loss has not been realized) or other derivative instruments pursuant to Financial Accounting Standards Board Statement No. 133, "Accounting for Derivative Instruments and Hedging Activities," or any similar successor provision; plus (b) any loss relating to amounts paid in cash prior to the stated settlement date of any Hedging Obligation that has been reflected in Consolidated Net Income in the current period; plus (c) any gain relating to Hedging Obligations associated with transactions recorded in the current period that has been reflected in Consolidated Net Income in prior periods and excluded from Consolidated Cash Flow pursuant to clauses (e) and (f) below; minus (d) any non-cash gain attributable to the mark-to-market movement in the valuation of Hedging Obligations (to the extent the cash impact resulting from such gain has not been realized) or other derivative instruments pursuant to Financial Accounting Standards Board Statement No. 133, "Accounting for Derivative Instruments and Hedging Activities," or any similar successor provision; minus (e) any gain relating to amounts received in cash prior to the stated settlement date of any Hedging Obligation that has been reflected in Consolidated Net Income in the current period; minus (f) any loss relating to Hedging Obligations associated with transactions recorded in the current period that has been reflected in Consolidated Net Income in prior periods and excluded from Consolidated Cash Flow pursuant to clauses (b) and (c) above.

"MATS" shall mean the National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units, effective April 16, 2012 (commonly referred to as the Mercury and Air Toxic Standards or MATS).

"Material Adverse Effect" shall mean a material adverse change in or material adverse effect on (i) the condition (financial or otherwise), results of operations, assets or liabilities of the Borrower and the Restricted Subsidiaries, taken as a whole, or (ii) the validity or enforceability of any Loan Document, which if such Loan Document is a Security Document, relates to Collateral having an aggregate Fair Market Value of $25,000,000 or more in the aggregate, or the material rights and remedies of the Arranger, the Administrative Agent, the Issuing Bank, the Collateral Trustee or the Secured Parties under the Loan Documents.

"Material Indebtedness" shall mean Indebtedness for money borrowed (other than the Loans and Letters of Credit) and Hedging Obligations of any one or more of the Borrower or any of the Subsidiaries in an aggregate principal amount or mark-to-market adjustment value exceeding $25,000,000.

"Material Regulatory Event" shall mean (i) the issuance of an injunction or administrative order to cease and desist from causing any violations, including without limitation, any future violations of regulations applicable to the Borrower or any of its Restricted Subsidiaries, (ii) suspension from association with any applicable regulatory body, grid operator or regime, (iii) the finding by a court or regulator with respect to the making of a false statement or omission, (iv) any event that would cause Section 3.23 to be untrue or inaccurate in any material way, (v) any event the effect of which is to violate Section 5.11 or (vi) the issuance of a criminal indictment with respect to a felony of any officer or director of the Borrower having responsibility for the performance by the Borrower of its obligations under the Loan Documents or its operations under any applicable regulatory body or regime, in each case listed in clause (i)-(iv) above, to the extent such event could reasonably be expected to result in a Material Adverse Effect on the Borrower's ability to perform its obligations under the Loan Documents or results in the loss or threat of loss of any permit or approval needed to maintain its operations in substantially the same form as on the Closing Date.

"Maximum Incremental Amount" shall have the meaning assigned to such term in Section 2.24(a).

"Maximum Rate" shall have the meaning assigned to such term in Section 9.09.

"Minimum L/C Exposure" shall mean, at any time, 50% of the Total Revolving Commitments.

"Minority Investment" shall mean any Person (other than a Subsidiary) in which the Borrower or any Restricted Subsidiary owns Capital Stock.

"MIRE Event" means if there are any Mortgaged Properties at such time, any increase, extension or renewal of any of the Commitments or Loans (including any incremental credit facilities hereunder, but excluding (i) any continuation or conversion of borrowings, (ii) the making of any Loan or New Revolving Loan or (iii) the issuance, renewal or extension of Letters of Credit).

"Moody's" shall mean Moody's Investors Service, Inc. or any successor entity.

"Mortgaged Properties" shall mean on the Closing Date, each parcel of real property and the improvements located thereon and appurtenants thereto owned or leased by a Loan Party and specified on Schedule 1.01(c), and shall include each other parcel of real property and improvements located thereon with respect to which a Mortgage is granted pursuant to Section 5.09 or 5.10; provided, however, that any Mortgaged Property that becomes an Excluded Asset, or the rights in which are held by any Person that ceases to be a Subsidiary Guarantor pursuant to Section 6.10 hereof or as otherwise provided in the Loan Documents, shall cease to be a Mortgaged Property for all purposes under the Loan Documents and the Collateral Trustee shall take such actions as are reasonably requested by any Loan Party at such Loan Party's expense to terminate the Liens and security interests created by the Loan Documents in such Mortgaged Property.

"Mortgages" shall mean the mortgages, deeds of trust, leasehold mortgages, assignments of leases and rents, modifications, amendments and restatements of the foregoing and other security documents granting a Lien on any Mortgaged Property to secure the Guaranteed Obligations, each in a form reasonably acceptable to the Administrative Agent with such changes as are reasonably satisfactory to the Borrower (which shall be evidenced by the signature thereof by the applicable Loan Party), and the Collateral Trustee, in each case, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"Multiemployer Plan" shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"Necessary CapEx Debt" shall mean Indebtedness of the Borrower or its Restricted Subsidiaries incurred for the purpose of financing Necessary Capital Expenditures.

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

"Net Income" shall mean, with respect to any specified Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends or accretion, excluding, however, (a) any gain or loss, together with any related provision for taxes on such gain or loss, realized in connection with (i) any Asset Sale (without giving effect to the threshold provided for in the definition thereof) or (ii) the disposition of any securities by such Person or any of its Restricted Subsidiaries or the extinguishment of any Indebtedness of such Person or any of its Restricted Subsidiaries; and (b) any infrequent, unusual or non-recurring gain or loss, together with any related provision for taxes on such infrequent, unusual or non-recurring gain or loss.

"Net Proceeds" shall mean the aggregate cash proceeds received by the Borrower or any of its Restricted Subsidiaries in respect of any Asset Sale, Specified Asset Sale (including any cash received upon the sale or other disposition of any non-cash consideration received in any Asset Sale or Specified Asset Sale) or Casualty Event, net of any asset retirement obligations or other similar liabilities with respect to such Asset Sale or Specified Asset Sale retained by the Borrower

or any of its Restricted Subsidiaries, and any direct costs relating to such Asset Sale, Specified Asset Sale, or Casualty Event, including legal, accounting and investment banking fees, and sales commissions, and any relocation expenses incurred as a result of the Asset Sale, Specified Asset Sale or Casualty Event, taxes paid or payable as a result of the Asset Sale, Specified Asset Sale or Casualty Event, and, in the case of any Casualty Event, net of any actual and reasonable costs incurred by the Borrower or such Restricted Subsidiary in connection with the adjustment or settlement of any claims of the Borrower or such Subsidiary in respect thereof, and in the case of the Choctaw Assets, net of any seller holdbacks, in each case, after taking into as applicable, account any available tax deductions and any tax sharing arrangements, and amounts required to be applied to the repayment of Indebtedness (other than Indebtedness hereunder or debt secured by a Lien that is subject to the Collateral Trust Agreement) secured by a Lien on the asset or assets that were the subject of such Asset Sale or Specified Asset Sale and any reserve for adjustment in respect of the sale price of such asset or assets established in accordance with GAAP.

"New Revolving Commitments" shall have the meaning assigned to such term in Section 2.24(a).

"New Revolving Lender" shall have the meaning assigned to such term in Section 2.24(b).

"New Revolving Loans" shall have the meaning assigned to such term in Section 2.24(b).

"Non-Consenting Lender" shall have the meaning assigned to such term in Section 9.08(c).

"Non-Recourse Debt" shall mean (a) Indebtedness (i) as to which neither the Borrower nor any of its Restricted Subsidiaries (x) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness) other than pursuant to any arrangement to provide or guarantee to provide goods and services on an arm's length basis or (y) is directly or indirectly liable as a guarantor or otherwise and (ii) no default with respect to which (including any rights that the holders of the Indebtedness may have to take enforcement action against an Unrestricted Subsidiary) would permit upon notice, lapse of time or both any holder of any other Indebtedness of the Borrower (other than the Second Lien Notes, any Permitted Refinancing Indebtedness in respect of the Second Lien Notes and this Agreement) or any of its Restricted Subsidiaries to declare a default on such other Indebtedness or cause the payment of such other Indebtedness to be accelerated or payable prior to its Stated Maturity and (b) to the extent constituting Indebtedness, any Investments in a Subsidiary and, for the avoidance of doubt, pledges by the Borrower or any Subsidiary of the Equity Interests of any Excluded Subsidiary that are directly owned by the Borrower or any Subsidiary in favor of the agent or lenders in respect of such Excluded Subsidiary's Non-Recourse Debt, to the extent otherwise not prohibited by this Agreement.

"NYPSC" shall have the meaning assigned to such term in Section 3.23(f).

"Obligations" shall have the meaning assigned to such term in the Collateral Trust Agreement.

"Officer" shall mean, with respect to any Person, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the

Treasurer, any Assistant Treasurer, the Controller, the Secretary, Assistant Secretary or any Vice-President of such Person.

"Officers' Certificate" shall mean a certificate signed on behalf of the Borrower by two (2) Officers of the Borrower, one of whom must be the principal executive officer, the principal financial officer, the treasurer or the principal accounting officer of the Borrower, which certificate shall include: (a) a statement that each of the Officers making such certificate has read the applicable covenant or condition, (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate are based, (c) a statement that, in the opinion of each such Officer, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not the applicable covenant or condition has been complied with and (d) a statement as to whether or not, in the opinion of each such Officer, the applicable condition or covenant has been complied with.

"Organizational Documents" shall mean, collectively, with respect to any Person, (a) in the case of any corporation, the certificate of incorporation or articles of incorporation and by-laws (or similar constitutive documents) of such Person, (b) in the case of any limited liability company, the certificate or articles of formation or organization and operating agreement or memorandum and articles of association (or similar constitutive documents) of such Person, (c) in the case of any limited partnership, the certificate of formation and limited partnership agreement (or similar constitutive documents) of such Person (and, where applicable, the equity holders or shareholders registry of such Person), (d) in the case of any general partnership, the partnership agreement (or similar constitutive document) of such Person, (e) in any other case, the functional equivalent of the foregoing, and (f) any shareholder, voting trust or similar agreement between or among any holders of Equity Interests of such Person.

"Other Taxes" shall mean any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies (including interest, fines, penalties and additions to tax) arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document.

"Owner Lessors" shall mean Conemaugh Lessor Genco LLC, Keystone Lessor Genco LLC and Shawville Lessor Genco LLC, and their respective successors and permitted assigns.

"Owner Participants" shall mean PSEGR Conemaugh Generation, LLC, PSEGR Keystone Generation, LLC, PSEGR Shawville Generation, LLC, and their respective successors and permitted assigns. "Owner Participant" includes any affiliated group of corporations (and any member thereof) of which the Owner Participant is or shall become a member, if consolidated, unitary or combined returns are or shall be filed for such affiliated group for U.S. federal, state, or local income tax purposes.

"Parent Company" shall mean, with respect to a Lender, the bank holding company (as defined in Regulation Y of the Board), 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.

"PATRIOT Act" shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (Title III of Pub. L. 107-56

(signed into law October 26, 2001)), as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

"PBGC" shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"Permitted Business" shall mean the business of acquiring, constructing, managing, developing, improving, maintaining, leasing, owning and operating Facilities, together with any related assets or facilities, as well as any other activities reasonably related to, ancillary to, or incidental to, any of the foregoing activities (including acquiring and holding reserves), including investing in Facilities.

"Permitted Cure Securities" means Equity Interests in the Borrower in the form of common equity or other equity (other than Disqualified Stock) in a form acceptable to the Administrative Agent issued in connection with an exercise of the Cure Right pursuant to Section 7.02.

"Permitted Debt" shall have the meaning assigned to such term in Section 6.01(b).

"Permitted Holders" shall mean collectively, (i) any of (a) MacKay Shields LLC, (b) P. Schoenfeld Asset Management LP, (c) PGIM, Inc., (d) Sound Point Capital Management LP, (e) Strategic Value Partners, LLC, (ii) the Affiliates of the Persons set forth in clause (i) of this definition, and (iii) any Person that is managed, advised or sub-advised by any of the Persons set forth in clauses (i) and (ii) of this definition.

"Permitted Investments" shall mean:

(a) any Investment in the Borrower or in a Restricted Subsidiary that is a Subsidiary Guarantor;

(b) any Investment in an Immaterial Subsidiary;

(c) [*reserved*];

(d) any issuance of letters of credit on the Closing Date to support the obligations of any of the Excluded Subsidiaries;

(e) any Investment in Cash Equivalents (and, in the case of Excluded Subsidiaries only, Cash Equivalents or other liquid investments permitted under any credit facility to which it is a party);

(f) any Investment by the Borrower or any Restricted Subsidiary in a Person, if as a result of such Investment:

(i) such Person becomes a Restricted Subsidiary and a Subsidiary Guarantor; or

(ii) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Borrower or a Restricted Subsidiary that is a Subsidiary Guarantor;

(g) any Investment made as a result of the receipt of non-cash consideration from an Asset Sale that was made pursuant to and in compliance with Section 6.04;

(h) Investments made as a result of the sale of Equity Interests of any Person that is a Subsidiary such that, after giving effect to any such sale, such Person is no longer a Subsidiary, if the sale of such Equity Interests constitutes an Asset Sale and the Net Proceeds received from such Asset Sale are applied as set forth under Section 6.04;

(i) Investments to the extent made in exchange for the issuance of Equity Interests (other than Disqualified Stock) of the Borrower;

(j) any Investments received in compromise or resolution of (i) obligations of trade creditors or customers of the Borrower or any of its Restricted Subsidiaries, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer; or (ii) litigation, arbitration or other disputes with Persons who are not Affiliates;

(k) Investments represented by Hedging Obligations;

(l) loans or advances to employees in an aggregate amount not to exceed at any one time outstanding $2,000,000;

(m) repayments or prepayments of the Loans;

(n) any Investment in securities of trade creditors, trade counter-parties or customers received in compromise of obligations of those Persons, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers;

(o) negotiable instruments held for deposit or collection;

(p) receivables owing to the Borrower or any Restricted Subsidiary and payable or dischargeable in accordance with customary trade terms; provided, however, that such trade terms may include such concessionary trade terms as the Borrower of any such Restricted Subsidiary deems reasonable under the circumstances;

(q) payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes;

(r) Investments resulting from the acquisition of a Person that at the time of such acquisition held instruments constituting Investments that were not acquired in contemplation of the acquisition of such Person;

(s) Investments (i) by the Borrower or its Restricted Subsidiaries in an amount not to exceed $5,000,000 in the aggregate (as calculated at the time such initial Investment is made) in (x) Restricted Subsidiaries that are not Subsidiaries Guarantors or (y) the form of contributions of cash to GenOn Mid-Atlantic, LLC and its direct and indirect subsidiaries (collectively, "GenMA") in an amount necessary for GenMA to satisfy Tax obligations asserted directly against GenMA by any state, local, or foreign Governmental Authority, (ii) by a Restricted Subsidiary that is not a Subsidiary Guarantor in another Restricted Subsidiary that is not a Subsidiary Guarantor and (iii) by a Restricted Subsidiary that is not a Guarantor in the Borrower or any of its Restricted Subsidiaries that are Subsidiary Guarantors; provided, that, any such Investment under this clause (iii) that is in the form of Indebtedness shall be subject to the Subordinated Intercompany Note;

(t) so long as no Default or Event of Default has occurred and is continuing or would be caused thereby, Investments made utilizing the Available Amount;

(u) Investments made pursuant to a commitment that, when entered into, would have complied with the provisions of this Agreement;

(v) Investments in any Excluded Subsidiary made by another Excluded Subsidiary;

(w) other Investments made since the Closing Date in any Person other than an Unrestricted Subsidiary having an aggregate Fair Market Value (measured on the date each such Investment was made and without giving effect to subsequent changes in value), that are at the time outstanding not to exceed $25,000,000; provided, however, that if any Investment pursuant to this clause (w) is made in any Person that is not a Restricted Subsidiary and a Subsidiary Guarantor on the date of the making of the Investment and such Person becomes a Restricted Subsidiary and a Subsidiary Guarantor after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (a) above, and shall cease to have been made pursuant to this clause (w);

(x) Investments existing on or prior to the Closing Date; and

(y) any Investment made pursuant to Section 6.04(d).

"Permitted Liens" shall mean:

(a) Liens held by the Collateral Trustee on assets of the Borrower or any Subsidiary Guarantor in accordance with the Collateral Trust Agreement securing (x) Indebtedness, Letters of Credit and other Guaranteed Obligations hereunder and under the other Loan Documents (including Indebtedness, Letters of Credit and other Guaranteed Obligations arising from New Revolving Commitments pursuant to and in accordance with Section 2.24), (y) Indebtedness of the Borrower and the Subsidiary Guarantors and under the Second Lien Notes or other secured Indebtedness permitted by Section 6.01(a) or Section 6.01(b)(xv) (on a junior basis to the Liens securing the Guaranteed Obligations) and (z) Hedging Obligations of the Loan Parties under Specified Hedging Agreements;

(b) Liens on cash and Cash Equivalents to secure Hedging Obligations (which Liens may but shall not be required to be, in each case, held by the Collateral Trustee pursuant to and in

accordance with the Collateral Trust Agreement) other than Hedging Obligations that are secured by Liens on all or any portion of the Collateral;

(c) Liens (i) in favor of the Borrower or any of the Subsidiary Guarantors or (ii) incurred by Excluded Foreign Subsidiaries in favor of any other Excluded Foreign Subsidiary;

(d) Liens on cash and Cash Equivalents to secure the performance of statutory obligations, surety or appeal bonds, performance bonds or other obligations of a like nature;

(e) Liens to secure obligations to vendors or suppliers covering the assets sold or supplied by such vendors or suppliers, including Liens to secure Indebtedness or other obligations (including Capital Lease Obligations) permitted by Section 6.01(b)(iv) covering only the assets acquired with or financed by such Indebtedness;

(f) (i) Liens existing on the Closing Date and set forth on Schedule 6.02(a) and (ii) Liens existing after the Closing Date consisting of cash collateral, letters of credit or other similar instruments required by Governmental Authorities, quasi-Governmental Authorities (including, without limitation, independent system operators and regional transmission organizations) or contract counterparties, incurred in the ordinary course of business, and set forth on Schedule 6.02(b) or otherwise identified to the Administrative Agent from time to time pursuant to Section 5.04(d); provided that the aggregate amount of obligations secured by such Liens in foregoing clauses (i) and (ii) shall not exceed $40,000,000 at any time outstanding;

(g) Liens for taxes, assessments or governmental charges or claims that are not yet delinquent or that are being contested in good faith by appropriate proceedings promptly instituted and diligently concluded; provided that any reserve or other appropriate provision as is required in conformity with GAAP has been made therefor;

(h) Liens imposed by law, such as carriers', warehousemen's, landlord's and mechanics' Liens;

(i) survey exceptions, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines, oil and gas and other mineral interests and leases and other similar purposes, or zoning or other restrictions as to the use of real property that were not incurred in connection with Indebtedness and that do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(j) Liens to secure any Permitted Refinancing Indebtedness permitted to be incurred under this Agreement; provided, however, that:

(i) the new Lien shall be limited to all or part of the same property and assets that secured or, under the written agreements pursuant to which the original Lien arose, could secure the original Lien (plus improvements and accessions to, such property or proceeds or distributions thereof);

(ii) the Indebtedness secured by the new Lien is not increased to any amount greater than the sum of (1) the outstanding principal amount or, if greater,

committed amount, of the Permitted Refinancing Indebtedness and (2) an amount necessary to pay any fees and expenses, including premiums, related to such refinancings, refunding, extension, renewal or replacement; and

(iii) if the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is subordinated in right of security to the Guaranteed Obligations, the Liens securing the Permitted Refinancing Indebtedness is subordinated in right of security to the Guaranteed Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded or on terms otherwise reasonably satisfactory to the Administrative Agent.

(k) Liens incurred or deposits made in connection with workers' compensation, unemployment insurance and other types of social security;

(l) Liens encumbering deposits made to secure obligations arising from statutory, regulatory, contractual or warranty requirements of the Borrower or any of its Restricted Subsidiaries, including rights of offset and set-off;

(m) leases or subleases granted to others that do not materially interfere with the business of the Borrower and its Restricted Subsidiaries, taken as a whole;

(n) statutory Liens arising under ERISA;

(o) Liens on property (including Capital Stock) existing at the time of acquisition of the property by the Borrower or any Subsidiary; provided that such Liens were in existence prior to, such acquisition, and not incurred in contemplation of, such acquisition;

(p) Liens arising from UCC financing statements filed on a precautionary basis in respect of operating leases intended by the parties to be true leases (other than any such leases entered into in violation of this Agreement);

(q) Liens on assets and Equity Interests of a Subsidiary that is an Excluded Subsidiary;

(r) Liens on the Receivables Collateral in favor of Tenaska granted under the Tenaska Transaction Documents; provided that such Lien is subject to the Tenaska Intercreditor Agreement;

(s) Liens to secure Indebtedness or other obligations incurred to finance Necessary Capital Expenditures that encumber only the assets purchased, installed or otherwise acquired with the proceeds of such Indebtedness;

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

(u) Liens on assets or securities deemed to arise in connection with the execution, delivery or performance of contracts to sell such assets or stock otherwise permitted under this Agreement;

(v) any Liens resulting from restrictions on any Equity Interest or undivided interests, as the case may be, of a Person providing for a breach, termination or default under any joint venture, stockholder, membership, limited liability company, partnership, owners', participation or other similar agreement between such Person and one or more other holders of Equity Interests or undivided interests of such Person, as the case may be, if a security interest or Lien is created on such Equity Interest or undivided interest, as the case may be, as a result thereof;

(w) Liens resulting from any customary provisions limiting the disposition or distribution of assets or property (including Equity Interests) or any related restrictions thereon in joint venture, partnership, membership, stockholder and limited liability company agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements, including owners', participation or similar agreements governing projects owned through an undivided interest; provided, however, that any such limitation is applicable only to the assets that are the subjects of such agreements;

(x) [reserved];

(y) Liens on cash deposits and other funds maintained with a depository institution, in each case arising in the ordinary course of business by virtue of any statutory or common law provision relating to banker's liens, including Section 4-210 of the UCC, and/or arising from customary contractual fee provisions, the reimbursement of funds advanced by a depositary or intermediary institution (and/or its Affiliates) on account of investments made or securities purchased, indemnity, returned check and other similar provisions;

(z) [reserved];

(aa) Liens incurred by the Borrower or any Subsidiary with respect to obligations not to exceed $25,000,000 at any one time outstanding; provided that if such Lien is on the Collateral and is securing Indebtedness for borrowed money, then such Lien shall be secured on a junior basis to the Guaranteed Obligations and shall be subject to the Collateral Trust Agreement or an intercreditor agreement that is reasonably acceptable to the Administrative Agent;

(bb) Liens on cash to secure letter of credit and related obligations under the Citi Letter of Credit Facility in an amount not to exceed 103% of the face amount of any such outstanding letters of credit issued pursuant to the Citi Letter of Credit Facility;

(cc) [reserved]; and

(dd) Liens on the Assigned Pipeline Interests in favor of PSEG granted under the Shawville Pipeline Agreement and Liens on cash and Cash Equivalents constituting Shawville Qualifying Credit Support; and

"Permitted Refinancing Indebtedness" shall mean any Indebtedness of the Borrower or any of its Restricted Subsidiaries issued in exchange for, or the net proceeds of which are used to refund, refinance, replace, defease or discharge, other Indebtedness of the Borrower or any of its Restricted Subsidiaries (other than intercompany Indebtedness and the Citi Letter of Credit Facility); provided that (a) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable)

of the Indebtedness extended, refinanced, renewed, replaced, defeased or refunded (plus all accrued interest on such Indebtedness and the amount of all expenses and premiums incurred in connection therewith); (b) such Permitted Refinancing Indebtedness has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded; (c)(i) if the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is subordinated in right of payment to the Guaranteed Obligations, such Permitted Refinancing Indebtedness is subordinated in right of payment to the Guaranteed Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded and (ii) if the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is subordinated in right of security to the Guaranteed Obligations, such Permitted Refinancing Indebtedness is subordinated in right of security to the Guaranteed Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded; (d) such Indebtedness is incurred either by the Borrower (and may be guaranteed by any Subsidiary Guarantor) or by the Restricted Subsidiary who is the obligor on the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded; and (e)(i) if the Stated Maturity of the Indebtedness being refinanced is earlier than the Latest Maturity Date of all Classes of Loans or Commitments, the Permitted Refinancing Indebtedness has a Stated Maturity no earlier than the Stated Maturity of the Indebtedness being refinanced or (ii) if the Stated Maturity of the Indebtedness being refinanced is later than the Latest Maturity Date of all Classes of Loans or Commitments, the Permitted Refinancing Indebtedness has a Stated Maturity at least 91 days later than the Latest Maturity Date of all Classes of Loans or Commitments.

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

"Plan Amendment Orders" shall have the meaning assigned to such term in the definition of GenOn Confirmation Order.

"Plan Documents" shall have the meaning assigned to such term in Section 4.02(e).

"Plans of Reorganization" shall mean collectively the GenOn Plan of Reorganization and the REMA Plan of Reorganization.

"Pledged Securities" shall have the meaning assigned to such term in the Guarantee and Collateral Agreement.

"Post-Closing Real Property Collateral" shall mean (i) fee owned or leasehold interests in real property that are owned by the Borrower or any Subsidiary Guarantor as of the Closing Date (other than Excluded Assets) and in respect of which a Mortgage and related requirements set forth in Section 4.02(n) have not been provided as of the Closing Date, and which real property is subject to the requirements of Section 5.13 and (ii) any fee owned or leasehold interests in real property (other than Excluded Assets) that are acquired by the Borrower or any Subsidiary Guarantor after the Closing Date and in respect of which a Mortgage and related requirements set forth in Section 5.09(b) have not been provided as of the applicable date of determination.

"Potrero Escrow" shall mean the amounts to be received by the Borrower or its Subsidiaries pursuant to that Escrow Holdback Agreement dated as of September 26, 2016 by and among NRG Potrero, LLC, California Barrel Company LLC and Fidelity National Title Company (as in effect on the Closing Date without giving effect to amendments that are materially adverse to the Administrative Agent or the Lenders).

"Prime Rate" shall mean the rate of interest last quoted by The Wall Street Journal as the "Prime Rate" in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent).

"Priority Lien Obligations" shall have the meaning assigned to such term in the Collateral Trust Agreement.

"Pro Forma Cost Savings" shall mean, without duplication, with respect to any period, reductions in costs and related adjustments that have been actually realized or are projected by the Borrower's Chief Financial Officer in good faith to result from reasonably identifiable and factually supportable actions or events, but only if such reductions in costs and related adjustments are so projected by the Borrower to be realized during the consecutive four-quarter period commencing after the transaction giving rise to such calculation.

"Pro Rata Percentage" of any Lender at any time shall mean the percentage of the Total Revolving Commitment represented by such Lender's Revolving Commitment. In the event the Revolving Commitments shall have expired or been terminated, the Pro Rata Percentages of any Lender shall be determined on the basis of the Revolving Commitments most recently in effect prior thereto.

"Project Interest" shall mean any undivided interest in a Facility.

"Prudent Industry Practice" shall mean those practices and methods as are commonly used or adopted by Persons in the Permitted Business in the United States in connection with the conduct of the business of such industry, in each case as such practices or methods may evolve from time to time, consistent in all material respects with all Applicable Laws.

"PSEG" shall mean, collectively, the PSEG Equity Investors, the Owner Lessors and the Owner Participants, or one or more of the PSEG Equity Investors, Owner Lessors and/or Owner Participants, as the context may require.

"PSEG Equity Investors" shall mean PSEG Resources L.L.C., PSEGR PJM, LLC, PSEGR Conemaugh, LLC, PSEGR Keystone, LLC, PSEGR Shawville, LLC, and their respective successors and permitted assigns.

"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" shall mean the Public Utility Holding Company Act of 2005 and the rules and regulations promulgated thereunder, effective February 8, 2006.

"Qualified Counterparty" shall mean, with respect to any Specified Hedging Agreement, (i) any Person that at the time it enters into a Specified Hedging Agreement is an Agent, the Administrative Agent, the Arranger, a Lender or an Affiliate of an Agent, the Administrative Agent, the Arranger or a Lender, (ii) any Person that is, as of the Closing Date, an Agent, the Administrative Agent, the Arranger, a Lender or an Affiliate of an Agent, the Administrative Agent, the Arranger or a Lender and a party to a Specified Hedging Agreement, in each case, in its capacity as a party to such Specified Hedging Agreement and (iii) an Acceptable Hedging Financial Institution in its capacity as a party to such Specified Hedging Agreement. For the avoidance of doubt, such Person shall continue to be a Qualified Counterparty with respect to the applicable Specified Hedging Agreement even if it ceases to be an Agent, the Administrative Agent, the Arranger, a Lender or an Affiliate of an Agent, the Administrative Agent, the Arranger, a Lender or a Lender after the date on which it entered into such Specified Hedging Agreement.

"Qualifying Equity Interests" shall mean Equity Interests of the Borrower other than Disqualified Stock.

"Rate" shall have the meaning set forth in the definition of Type.

"Receivables Collateral" shall mean the "Senior Collateral" as defined in the Tenaska Intercreditor Agreement.

"Refinancing Amount Date" shall have the meaning assigned to such term in Section 2.25(a).

"Refinancing Revolving Commitments" shall have the meaning assigned to such term in Section 2.25(a).

"Refinancing Revolving Lender" shall have the meaning assigned to such term in Section 2.25(e).

"Refinancing Revolving Loans" shall have the meaning assigned to such term in Section 2.25(e).

"Register" shall have the meaning assigned to such term in Section 9.04(e).

"Regulation S-X" shall mean Regulation S-X under the Securities Act as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulation T" shall mean Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulation U" shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulation X" shall mean Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Related Fund" shall mean, with respect to any Lender that is a fund that invests in bank loans, any other fund that invests in bank loans and is advised or managed by such Lender, an Affiliate of such Lender, the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"Related Parties" shall mean, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, trustees, employees, agents and advisors of such Person and such Person's Affiliates.

"Release" shall mean any release, spill, emission, leaking, pumping, injection, pouring, emptying, deposit, disposal, discharge, dispersal, dumping, escaping, leaching or migration into or through the environment or within or upon any building, or facility.

"REMA" shall mean NRG REMA LLC, a Delaware limited liability company.

"REMA Confirmation Order" shall mean Order Approving the Debtor's Disclosure Statement for and Confirming the Joint Prepackaged Chapter 11 Plan of Reorganization of NRG REMA LLC and Its Debtor Affiliates, dated November 1, 2018 [Docket No. 1955].

"REMA Plan of Reorganization" shall mean the Joint Prepackaged Chapter 11 Plan of Reorganization of NRG REMA LLC and Its Debtor Affiliates [Docket No. 1867].

"REMA Security Agreement" shall have the meaning assigned to such term in the definition of Tenaska Transaction Document.

"Reorganized Debtors" shall have the meaning ascribed in the GenOn Plan of Reorganization and REMA Plan of Reorganization.

"Required Lenders" shall mean, at any time, Lenders having Loans, Revolving L/C Exposure, unused Revolving Commitments, unused New Revolving Commitments (if any) and unused Refinancing Revolving Commitments (if any), representing greater than 50% of the sum of all Loans outstanding, Revolving L/C Exposure, unused Revolving Commitments, unused New Revolving Commitments (if any) and unused Refinancing Revolving Commitments (if any) at such time; provided that, after the Commitments are terminated "Required Lenders" shall mean, at any time, Lenders having Loans and Revolving L/C Exposure representing greater than 50% of the sum of all Loans outstanding and Revolving L/C Exposure at such time.

"Responsible Officer" of a Person shall mean the Chief Executive Officer, Chief Financial Officer, Treasurer, Executive Vice President, President, Secretary, Assistant Secretary, or General Counsel of such Person.

"Restricted Investment" shall mean an Investment other than a Permitted Investment.

"Restricted Payment" shall have the meaning assigned to such term in Section 6.06. For purposes of determining compliance with Section 6.06, no Hedging Obligation shall be deemed to be contractually subordinated to the Guaranteed Obligations.

"Restricted Payment Conditions" shall have the meaning assigned to such term in Section 6.06(v).

"Restricted Subsidiary" of a Person shall mean any subsidiary of the referent Person that is not an Unrestricted Subsidiary. Unless otherwise indicated, any reference to a "Restricted Subsidiary" shall be deemed to be a reference to a Restricted Subsidiary of the Borrower.

"Revolving Commitment" shall mean, with respect to each Lender, the commitment, if any, of such Lender to make Revolving Loans (and to acquire participations in Letters of Credit) hereunder as set forth on Schedule 1.01(d) or in the Assignment and Assumption or Joinder Agreement pursuant to which such Lender assumed its Revolving Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.09 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender in accordance with Section 9.04.

"Revolving Exposure" shall mean, with respect to any Lender at any time, the aggregate principal amount at such time of all outstanding Revolving Loans and Revolving L/C Exposure of such Lender.

"Revolving Facility Maturity Date" means December 14, 2021.

"Revolving L/C Exposure" shall mean, at any time, the sum of (a) the aggregate undrawn amount of all Letters of Credit at such time and (b) the aggregate amount of all L/C Disbursements that have not been reimbursed at such time. The Revolving L/C Exposure of any Lender at any time shall equal its Pro Rata Percentage of the aggregate Revolving L/C Exposure at such time.

"Revolving Loans" shall mean a Loan made by the Lenders to the Borrower pursuant to Section 2.01.

"Revolving Maturity Date" shall mean (a) with respect to any Revolving Commitments that become effective on the Closing Date and any Revolving Loans made thereunder, the Revolving Facility Maturity Date, (b) with respect to any New Revolving Commitments and New Revolving Loans, the maturity date thereof set forth in the applicable Joinder Agreement and (c) with respect to any Refinancing Revolving Commitments and Refinancing Revolving Loans, the maturity date thereof set forth in the applicable Joinder Agreement, in each case, as it may be extended pursuant to and in accordance with this Agreement.

"Revolving Note" shall mean a promissory note substantially in the form of Exhibit F.

"RTO Markets" shall mean the wholesale markets for electric energy, capacity and certain ancillary services administered by a Regional Transmission Organization, as that term is understood under 18 C.F.R. § 35.34, including the California Independent System Operator Corporation, ISO New England Inc., the New York Independent System Operator, Inc., and PJM Interconnection L.L.C.

"S&P" shall mean Standard & Poor's Ratings Group, Inc. or any successor entity.

"Sanctioned Country" shall mean, at any time, a country or territory that is subject to comprehensive Sanctions.

"Sanctioned Person" shall mean, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or by Her Majesty's Treasury of the United Kingdom, the United Nations Security Council, the European Union or any EU member state, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person.

"Sanctions" shall mean economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union or Her Majesty's Treasury of the United Kingdom.

"Scheduled Excluded Assets" shall have the meaning assigned to such term in clause (m)(ii) of the definition of "Excluded Assets".

"Scheduled G&A Expenses" shall mean the non-recurring G&A Expenses (i) incurred prior to the Closing Date, (ii) paid in cash prior to or on the Closing Date and (iii) scheduled in form and detail acceptable to the Administrative Agent in the audited financial statements for the fiscal year ending on December 31, 2018 and delivered pursuant to Section 5.04(a))

"Screen Rate" shall have the meaning assigned to it in the definition of "LIBO Rate".

"Second Lien Notes" shall mean the second lien notes co-issued by GenOn Energy, Inc. and NRG Americas, Inc., and assumed by the Borrower and GenOn Energy Enterprises, Inc., in connection with the Exit Transaction in an aggregate principal amount not to exceed $400,000,000 together with any paid in kind interest thereon from time to time.

"Second Lien Notes Documents" shall mean the indentures under which the Second Lien Notes are issued and all other instruments, agreements and other documents evidencing or governing the Second Lien Notes or providing for any Guarantee or other right in respect thereof, in each case as the same may be amended or supplemented from time to time in accordance with the terms hereof and thereof.

"Secured Parties" shall mean the Arranger, the Administrative Agent, the Lenders, the Issuing Banks and, with respect to any Specified Hedging Agreement, any Qualified Counterparty that has agreed to be bound by the provisions of Article VIII hereof and Section 8.4 of the Guarantee and Collateral Agreement as if it were a party hereto or thereto; provided that no Qualified Counterparty shall have any rights in connection with the management or release of any Collateral or the obligations of any Subsidiary Guarantor under the Guarantee and Collateral Agreement or the Collateral Trust Agreement except, in the case of Qualified Counterparties to Commodity Hedge Agreements to the extent set forth in the Collateral Trust Agreement.

"Securities Account" shall have the meaning assigned to such term in the UCC.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Security Documents" shall mean the Guarantee and Collateral Agreement, the Mortgages, the Control Agreements, the Intellectual Property Security Agreements, the Collateral Trust Agreement and each of the other security agreements, pledges, mortgages, assignments (collateral or otherwise), consents and other instruments and documents executed and delivered pursuant to any of the foregoing or pursuant to Section 5.09 or 5.10.

"Seward Inventory Payments" shall mean the payments due to NRG Wholesale Generation LP and/or its affiliates pursuant to (i) that certain Asset Purchase Agreement, dated as of November 24, 2015, among NRG Wholesale Generation LP, Seward Generation, LLC, and the other parties thereto (as in effect on the Closing Date without giving effect to amendments that are materially adverse to the Administrative Agent or the Lenders) and (ii) that certain Inventory Management and Purchase and Sale Agreement, dated as of February 2, 2016, among NRG Wholesale Generation LP, Seward Generation, LLC, and the other parties thereto (as in effect on the Closing Date without giving effect to amendments that are materially adverse to the Administrative Agent or the Lenders).

"Shawville Facility" shall mean collectively (i) that certain Facility Lease Agreement, dated as of August 24, 2000, by and between NRG REMA LLC, a Delaware limited liability company, as successor to Reliant Energy Mid-Atlantic Power Holdings, LLC, as Facility Lessee, and Shawville Lessor Genco LLC, a Delaware limited liability company, as Owner Lessor (as in effect on the Closing Date without giving effect to amendments that are materially adverse to the Administrative Agent or the Lenders) and (ii) that certain Participation Agreement, dated as of August 24, 2000, as amended by that certain First Amendment to Participation Agreement dated as of December 1, 2001, and as further amended by that certain Second Amendment to Participation Agreement dated as of June 18, 2003, by and between NRG REMA LLC, a Delaware limited liability company, as successor to Reliant Energy Mid-Atlantic Power Holdings, LLC, as Facility Lessee, POSER Shawville Generation, LLC, a Delaware limited liability company, as Owner Participant, Shawville Lessor Geno LLC, a Delaware limited liability company, as Owner Lessor, and Wilmington Trust Company, a Delaware banking corporation (as in effect on the Closing Date without giving effect to amendments that are materially adverse to the Administrative Agent or the Lenders).

"Shawville Pipeline Agreement" shall mean that certain Pipeline Assignment and Pledge and Security Agreement, dated on or about the date hereof (as it may be amended, amended and restated, supplemented or otherwise modified from time to time), by and between REMA and each of the other REMA Debtors, and PSEG (as in effect on the Closing Date without giving effect to amendments that are materially adverse to the Administrative Agent or the Lenders).

"Shawville Qualifying Credit Support" shall mean (a) cash and Cash Equivalents held in favor of Shawville Lessor Genco LLC securing REMA's obligation to pay scheduled rent under the Shawville Facility, (b) one or more irrevocable unconditional standby letters of credit issued in favor of Shawville Lessor Genco LLC securing REMA's obligation to pay scheduled rent pursuant to the terms of the Shawville Facility; and (c) one or more surety bonds issued in favor

of Shawville Lessor Genco LLC securing REMA's obligation to pay scheduled rent under the Shawville Facility.

"Significant Subsidiary" shall mean any Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X, as such Regulation is in effect on the Closing Date and shall in any event include the Core Collateral Subsidiaries.

"SPC" shall have the meaning assigned to such term in Section 9.04(j); provided that in no event shall a Disqualified Lender be an SPC.

"Specified Asset Sale" shall mean, (a) the disposition of properties and assets listed on Schedule 1.01(e) and the Choctaw Assets, (b) the receipt of payments or remittance of funds resulting from the Seward Inventory Payments, Potrero Escrow or CAISO Settlement and solely after the requirements of Section 5.13 with respect to the Bowline Power Plant have been satisfied, the Canal Escrow and Canal Excess Fuel Payments and (c) the disposition of any Capital Stock of any Unrestricted Subsidiary.

"Specified Hedging Agreement" shall mean any Interest Rate/Currency Hedging Agreement or Commodity Hedging Agreement entered into by the Borrower or any Subsidiary Guarantor and any Qualified Counterparty, in each case not for speculative purposes by the Borrower or such Subsidiary Guarantor; provided that, with respect to Commodity Hedging Obligations, the applicable Commodity Hedging Agreements are structured such that the net mark-to-market credit exposure of (a) the counterparties to such Commodity Hedging Agreements (taken as a whole) to (b) the Borrower or any of the Subsidiary Guarantors, is positively correlated with the price of the relevant commodity or positively correlated with changes in the relevant spark spread; provided further, that, notwithstanding the foregoing, the Borrower or any of its Restricted Subsidiaries may incur non speculative Hedging Obligations to hedge (i) the price of fuel, (ii) projected shortfalls in capacity and (iii) expected production through the purchase of put options and/or option spreads.

"Stated Maturity" shall mean, with respect to any installment of interest or principal on any series of Indebtedness, the date on which the payment of interest or principal was scheduled to be paid in the documentation governing such Indebtedness as of the Closing Date, and will not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

"Statutory Reserves" shall mean, for any day during any Interest Period, the reserve percentage in effect on such day, whether or not applicable to any Lender, under regulations issued from time to time by the Federal Reserve Board for determining the maximum reserve requirement (including any emergency, special, supplemental or other marginal reserve requirement) with respect to eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D). The Adjusted LIBO Rate for each outstanding Eurodollar Loan shall be adjusted automatically as of the effective date of any change in the Statutory Reserves.

"subsidiary" shall mean, with respect to any Person (herein referred to as the "parent"), any corporation, partnership, limited liability company, association or other entity of which securities or other ownership interests representing more than 50% of the equity or more than 50%

of the ordinary voting power or more than 50% of the general partnership interests are, at the time any determination is being made, owned, controlled or held by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

"Subsidiary" shall mean any subsidiary (direct or indirect) of the Borrower.

"Subsidiary Guarantor" shall mean on the Closing Date, each Restricted Subsidiary specified on Schedule 1.01(f) and, at any time thereafter, shall include (a) all Core Collateral Subsidiaries and (b) each other Restricted Subsidiary that is not an Excluded Subsidiary; provided that if at any time any Subsidiary Guarantor is designated as (i) an Unrestricted Subsidiary pursuant to and in accordance with Section 6.10, or (ii) an Excluded Subsidiary pursuant to the definition thereof, thereafter, such Person shall not be deemed a Subsidiary Guarantor.

"Subordinated Intercompany Note" shall mean the Subordinated Intercompany Note, substantially in the form of Exhibit K.

"SVP" shall mean, collectively, (i) Strategic Value Partners, LLC and its Affiliates and (ii) any Person that is managed or sub-advised by Strategic Value Partners, LLC or its Affiliates.

"Tax Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"Taxes" shall mean any and all present or future taxes, levies, imposts, duties, deductions, charges, liabilities or withholdings (including interest, fines, penalties or additions to tax) imposed by any Governmental Authority.

"Tenaska" shall mean Tenaska Power Services Co.

"Tenaska Energy Management Agreements" shall mean collectively (a) the Energy Management Agreement, dated as of May 23, 2018 by and between Tenaska and GenOn Energy Management, LLC and (b) the Energy Management Agreement, dated as of May 23, 2018 by and between Tenaska and NRG REMA LLC .

"Tenaska Intercreditor Agreement" shall mean the Shared Collateral Intercreditor Agreement, substantially in the form of Exhibit L, among Tenaska and the Collateral Trustee and acknowledged by the Borrower and the other grantors party thereto, as may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"Tenaska Secured Obligations" shall mean "Secured Obligations" as such term is defined in each of the GenOn Security Agreement and REMA Security Agreement, in each case, as in effect on the date hereof. For the avoidance of doubt, it is agreed and understood that the "Senior Obligations" are obligations that arise from Tenaska's provision of fuel procurement, energy management and related services to the Borrower and other Guarantors pursuant to the Tenaska Energy Management Agreements, Tenaska Transaction Documents and ancillary documentation and are not funded indebtedness obligations.

"Tenaska Transaction Documents" shall mean collectively (a) the Depositary Agreement, dated as of August 2, 2018, among GenOn Energy Management, LLC, Tenaska and the Bank of

New York Mellon, (b) the Depositary Agreement, dated as of May 23, 2018, among NRG REMA LLC, Tenaska and the Bank of New York Mellon, (c) the Security Agreement, dated as of May 23, 2018, by and among GenOn Energy Management, LLC, and Tenaska (the "GenOn Security Agreement"), and (d) the Security Agreement, dated as of May 23, 2018, by and among NRG REMA LLC and Tenaska (the "REMA Security Agreement").

"Total Assets" shall mean the total consolidated assets of the Borrower and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, as shown on the most recent balance sheet of the Borrower.

"Total Debt" shall mean, at any time, the (A) sum of (a) the aggregate amount of any Indebtedness of the type set forth in clauses (a), (b), (c), (d) and (e) (for the avoidance of doubt, in the case of Capital Lease Obligations, as determined in accordance with GAAP as in effect on the Closing Date (without giving effect to any changes in GAAP to go into effect after the Closing Date)) of the definition thereof of the Borrower and its Restricted Subsidiaries plus (b) the aggregate amount of all of the Borrower's outstanding Disqualified Stock and all preferred stock of the Borrower's Restricted Subsidiaries, with the amount of such Disqualified Stock and preferred stock equal to the greater of their respective voluntary or involuntary liquidation preferences and their Maximum Fixed Repurchase Prices, in each case, determined on a consolidated basis in accordance with GAAP; provided, however, that Total Debt will (i) exclude any Hedging Obligations and any obligations under the Tenaska Transaction Documents, the Shawville Facility and the Shawville Pipeline Agreement and (ii) include any undrawn letters of credit of the Borrower and its Restricted Subsidiaries *minus* (B) the Unrestricted Cash Amount. For purposes hereof, the "Maximum Fixed Repurchase Price" of any Disqualified Stock or preferred stock means the price at which such Disqualified Stock or preferred stock could be redeemed or repurchased by the issuer thereof in accordance with its terms at the option of the holder thereof, in each case, determined on any date on which Total Debt shall be required to be determined.

"Total First Lien Debt" shall mean, at any time, the aggregate amount of Indebtedness of the type set forth in clauses (a), (b), (c), (d) and (e) (for the avoidance of doubt, in the case of Capital Lease Obligations, as determined in accordance with GAAP as in effect on the Closing Date (without giving effect to any changes in GAAP to go into effect after the Closing Date)) of the definition thereof of the Borrower and the Restricted Subsidiaries outstanding at such time that is subject to a first priority Lien (subject to Permitted Liens) in the amount that would be reflected on a balance sheet prepared at such time on a consolidated basis in accordance with GAAP, net of the Unrestricted Cash Amount; provided, however, that notwithstanding the foregoing, that Total First Lien Debt will (i) exclude any Hedging Obligations and any obligations under the Tenaska Transaction Documents, the Shawville Facility and the Shawville Pipeline Agreement and (ii) include the undrawn amount of all outstanding Letters of Credit.

"Total Revolving Commitment" shall mean, at any time, the aggregate amount of the Revolving Commitments, as in effect at such time. The Total Revolving Commitment on the Closing Date is $125,000,000; *provided* that until Section 5.13 has been satisfied with respect to the Bowline Power Plant, (x) the principal outstanding amount of all Borrowings shall not exceed an aggregate amount of $17,500,000 and (y) the principal outstanding amounts of all Borrowings (subject to the cap in the forgoing clause (x)) and the face amount of all issued Letters of Credit

shall not exceed an aggregate amount of $100,000,000 such that the Total Revolving Commitments for purposes of determining the Minimum LC Exposure and the fees set forth in Section 2.05(a) shall be deemed to be $100,000,000 until Section 5.13 is satisfied with respect to the Bowline Power Plant.

"Transactions" shall mean, collectively, (a) the execution, delivery and performance by the Loan Parties of the Loan Documents to which they are a party, (b) the borrowings hereunder, the issuance of Letters of Credit and the use of proceeds of each of the foregoing, (c) the granting of Liens pursuant to the Security Documents, (d) any other transactions related to or entered into in connection with any of the foregoing (including the Exit Transactions) and (e) the payment of fees, costs and expenses incurred in connection with the foregoing.

"Type", when used in respect of any Loan or Borrowing, shall refer to the Rate by reference to which interest on such Loan or on the Loans comprising such Borrowing is determined. For purposes hereof, the term "Rate" shall include the Adjusted LIBO Rate and the Alternate Base Rate.

"UCC" shall mean the Uniform Commercial Code as in effect in the State of New York or any other applicable jurisdiction.

"Unaudited Financial Statements" shall have the meaning assigned to such term in Section 3.05.

"Uniform Customs" shall have the meaning assigned to such term in Section 9.07.

"United States Tax Compliance Certificate" means a certificate substantially in the form of Exhibits I-1, I-2, I-3 and I-4 hereto, as applicable.

"Unrestricted Cash Amount" means, as of any date of determination, the amount of (a) unrestricted cash and Cash Equivalents of the Borrower and its Restricted Subsidiaries, (b) Cash and Cash Equivalents of the Borrower and its Restricted Subsidiaries restricted in favor of the Secured Parties (as defined in the Guarantee and Collateral Agreement) and/or any Indebtedness permitted to be secured on a *pari passu* or junior lien basis to the Guaranteed Obligations, in each case, in which the Collateral Trustee has a perfected first priority security interest for the benefit of the Secured Parties (and excluding, for the avoidance of doubt, cash or Cash Equivalents restricted in favor of Tenaska or constituting Shawville Qualifying Credit Support).

"Unrestricted Subsidiary" shall mean (a) GenOn Mid-Atlantic, LLC and any of its Subsidiaries and (b) any Subsidiary (other than any Subsidiary that constitutes or owns Core Collateral) that is designated by the Borrower as an Unrestricted Subsidiary pursuant to a certificate executed by a Responsible Officer of the Borrower, but only to the extent that such Subsidiary (a) has no Indebtedness other than Non-Recourse Debt; (b) except as permitted by Section 6.07, is not party to any agreement, contract, arrangement or understanding with the Borrower or any Restricted Subsidiary unless the terms of any such agreement, contract, arrangement or understanding are no less favorable to the Borrower or such Restricted Subsidiary than those that might be obtained at the time from Persons who are not Affiliates of the Borrower; (c) is a Person with respect to which neither the Borrower nor any of its Restricted Subsidiaries

has any direct or indirect obligation (i) to subscribe for additional Equity Interests or (ii) to maintain or preserve such Person's financial condition or to cause such Person to achieve any specified levels of operating results except as otherwise permitted by this Agreement; and (d) has not guaranteed or otherwise directly or indirectly provided credit support for any Indebtedness of the Borrower or any of its Restricted Subsidiaries except as otherwise permitted by this Agreement. Any designation of a Subsidiary as an Unrestricted Subsidiary will be evidenced to the Administrative Agent by delivering to the Administrative Agent a certified copy of the certificate executed by a Responsible Officer of the Borrower giving effect to such designation and certifying that such designation complied with the conditions described under Section 6.10 and was permitted by Section 6.04. If, at any time, any Unrestricted Subsidiary fails to meet the requirements as an Unrestricted Subsidiary, it will thereafter cease to be an Unrestricted Subsidiary for purposes of this Agreement and (A) any Indebtedness and Liens of such Subsidiary will be deemed to be incurred by a Restricted Subsidiary as of such date and, if such Indebtedness and Liens are not permitted to be incurred as of such date under Section 6.01 and Section 6.02, the Borrower will be in default of such covenants and (B) any assets of such Subsidiary will be deemed to be held by a Restricted Subsidiary as of such date. The Borrower may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary; provided that such designation will be deemed to be an incurrence of Indebtedness and Liens by a Restricted Subsidiary of any outstanding Indebtedness of such Unrestricted Subsidiary and such designation will only be permitted if (1) such Indebtedness and Liens are permitted under Section 6.01 and Section 6.02, calculated on a pro forma basis as if such designation had occurred at the beginning of the four-quarter reference period and (2) no Default or Event of Default would be in existence following such designation. The Unrestricted Subsidiaries on the Closing Date are set forth on Schedule 1.01(g).

"U.S. Person" means any Person that is a "United States person" as defined in Section 7701(a)(30) of the Tax Code.

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

"Weighted Average Life to Maturity" shall mean, when applied to any Indebtedness at any date, the number of years obtained by dividing (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect of the Indebtedness, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness.

"Withdrawal Liability" shall mean 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 I 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.

SECTION 1.02. Terms Generally. The definitions in Section 1.01 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including", and words of similar import, shall not be limiting and shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". The words "asset" and "property" shall be construed as having the same meaning and effect and to refer to any and all rights and interests in tangible and intangible assets and properties of any kind whatsoever, whether real, personal or mixed, including cash, securities, Equity Interests, accounts and contract rights. The word "control", when used in connection with the Collateral Trustee's rights with respect to, or security interest in, any Collateral, shall have the meaning specified in the UCC with respect to that type of Collateral. The words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision of this Agreement unless the context shall otherwise require. All references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Except as otherwise expressly provided herein, (a) any definition of, or reference to, any Loan Document or any other agreement, instrument or document in this Agreement shall mean such Loan Document or other agreement, instrument or document as amended, restated, amended and restated, supplemented, replaced, refinanced or otherwise modified from time to time (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein) and (b) all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided, however, that if the Borrower notifies the Administrative Agent that the Borrower wishes to amend any covenant in Article VI or any related definition to eliminate the effect of any change in GAAP occurring after the Closing Date on the operation of such covenant (or if the Administrative Agent notifies the Borrower that the Required Lenders wish to amend Article VI or any related definition for such purpose), then the Borrower's compliance with such covenant shall be determined on the basis of GAAP in effect immediately before the relevant change in GAAP became effective, until either such notice is withdrawn or such covenant is amended in a manner satisfactory to the Borrower and the Required Lenders. Without limiting the foregoing, leases shall continue to be classified and accounted for on a basis consistent with GAAP as in effect on the Closing Date (without giving effect to any changes in GAAP prior to the Effective Date as long as the implications of such changes do not go into effect until after the Effective Date). Any reference herein to a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, assignment, sale or transfer, or similar term, as applicable to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, Restricted Subsidiary, Unrestricted Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

SECTION 1.03. Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (*e.g.*, a "Revolving Loan") or by Type (*e.g.*, a "Eurodollar Loan") or by Class and Type (*e.g.*, a "Eurodollar Revolving Loan"). Borrowings also may be classified and referred to by Class (*e.g.*, a "Revolving Borrowing") or by

Type (*e.g.*, a "Eurodollar Borrowing") or by Class and Type (*e.g.*, a "Eurodollar Revolving Borrowing").Exchange Rates. For purposes of determining compliance under Article VI with respect to any amount in a foreign currency, the U.S. dollar-equivalent amount thereof will be calculated based on the relevant currency exchange rate in effect at the time of such incurrence. The maximum amount of Indebtedness, Liens, Investments and other basket amounts that the Borrower and its Subsidiaries may incur under Article VI shall not be deemed to be exceeded, with respect to any outstanding Indebtedness, Liens, Investments and other basket amounts, solely as a result of fluctuations in the exchange rate of currencies, if as of the initial date of calculation the Borrower determined that each such maximum amount had not been exceeded. When calculating capacity for the incurrence of additional Indebtedness, Liens, Investments and other basket amounts by the Borrower and its Subsidiaries under Article VI the exchange rate of currencies shall be measured as of the date of calculation.

SECTION 1.05. Limited Condition Transactions. Notwithstanding anything to the contrary herein or in any other Loan Document, in connection with any action being taken solely in connection with a Limited Condition Transaction, for purposes of:

(a) determining compliance with any provision of this Agreement which requires the calculation of any financial ratio or test, including the Consolidated First Lien Leverage Ratio, Consolidated Total Secured Leverage Ratio, or the Fixed Charge Coverage Ratio, or requires the absence of any Default or Event of Default or the making of representations and warranties; or

(b) testing availability under baskets set forth in this Agreement (including baskets measured as a percentage of Total Assets or Consolidated Cash Flow);

in each case, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Transaction, an "LCT Election"), the date of determination of whether any such action is permitted hereunder shall be deemed to be the date the definitive agreements for such Limited Condition Transaction are entered into (the "LCT Test Date"), and if, after giving effect to the Limited Condition Transaction and the other transactions to be entered into in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof, the granting of any Liens and the making of any Restricted Payment) on a pro forma basis as if they had occurred at the beginning of the most recently completed period of four (4) consecutive fiscal quarters for which the financial statements and certificates required by Sections 5.04(a) or 5.04(b), as the case may be, have been or were required to have been delivered ending prior to the LCT Test Date, the Borrower would have been permitted to take such action on the relevant LCT Test Date in compliance with such ratio, test or basket, or any requirement relating to the absence of any Default or Event of Default and the making of representations and warranties, such ratio, test or basket or requirement shall be deemed to have been complied with; provided, that if the Borrower has made an LCT Election for any Limited Condition Transaction, then (x) in connection with any subsequent calculation of any financial ratio or basket availability with respect to any Restricted Payments on or following such date of the execution of the definitive agreement and prior to the earlier of the date on which such Limited Condition Transaction is consummated or the applicable definitive agreement is terminated or expires without consummation of such Limited Condition Transaction, any such financial ratio or basket shall be calculated (and tested) on a pro forma basis assuming that such Limited Condition Transaction had been consummated and also calculated (and tested) on a pro forma basis assuming that such Limited Condition

Transaction had not been consummated and (y) in connection with any other purposes (other than the testing of compliance with Section 6.09, but including pro forma compliance with such financial covenant), any such financial ratio or basket shall be calculated (and tested) on a pro forma basis assuming that such Limited Condition Transaction had been consummated. For the avoidance of doubt, if the Borrower has made an LCT Election and any of the ratios, tests or baskets for which compliance was determined or tested as of the LCT Test Date are exceeded as a result of fluctuations in any such ratio, test or basket, including due to fluctuations in Consolidated Cash Flow or Total Assets at or prior to the consummation of the relevant transaction or action, such baskets, tests or ratios will not be deemed to have been exceeded as a result of such fluctuations.

## ARTICLE II.

## The Credits

SECTION 2.01. Commitments. Subject to the terms and conditions hereof and relying upon the representations and warranties set forth herein each Lender agrees, severally and not jointly, to fund Revolving Loans in dollars to the Borrower, at any time and from time to time on or after the Closing Date and until the earlier of the applicable Revolving Maturity Date and the termination of the Revolving Commitment of such Lender in accordance with the terms hereof in an aggregate principal amount at any time outstanding that will not result in such Lender's Revolving Exposure exceeding such Lender's Revolving Commitment.

Within the limits set forth in this Section 2.01 and subject to the terms, conditions and limitations set forth herein, the Borrower may borrow, pay or prepay and reborrow Revolving Loans.

SECTION 2.02. Loans. (a) Each Loan shall be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Class; provided, however, that the failure of any Lender to make any Loan required to be made by it shall not in itself relieve any other Lender of its obligation to lend hereunder (it being understood, however, that no Lender shall be responsible for the failure of any other Lender to make any Loan required to be made by such other Lender). Except for Loans deemed made pursuant to Section 2.02(f), the Loans comprising any Borrowing shall be in an aggregate principal amount that is (i) an integral multiple of $1,000,000 and not less than $5,000,000 or (ii) equal to the remaining available balance of the applicable Commitments.

(a) Subject to Sections 2.08 and 2.15, each Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request pursuant to Section 2.03. Each Lender may at its option make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall (i) not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement, (ii) not result in increased costs for the Borrower pursuant to Sections 2.14, 2.15, 2.16 or 2.20 and (iii) take into account the obligations of each Lender to mitigate increased costs pursuant to Section 2.21 hereof. Borrowings of more than one Type may be outstanding at the same time; provided, however, that the Borrower shall not be entitled to request any Borrowing that, if made, would result in more than 16 Eurodollar Borrowings outstanding hereunder at any

time. For purposes of the foregoing, Borrowings having different Interest Periods, regardless of whether they commence on the same date, shall be considered separate Borrowings.

(b) Except with respect to Loans made pursuant to Section 2.02(f), each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds to such account in New York City as the Administrative Agent may designate not later than 11:00 a.m., New York City time, and the Administrative Agent shall promptly credit the amounts so received to an account designated by the Borrower in the applicable Borrowing Request or, if a Borrowing shall not occur on such date because any condition precedent herein specified shall not have been met, return the amounts so received to the respective Lenders.

(c) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's portion of such Borrowing, the Administrative Agent may assume that such Lender has made such portion available to the Administrative Agent on the date of such Borrowing in accordance with Section 2.02(c) and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, such Lender and the Borrower severally agree to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower to but excluding the date such amount is repaid to the Administrative Agent at (i) in the case of the Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing (in lieu of interest which would otherwise become due to such Lender pursuant to Section 2.06) or (ii) in the case of such Lender, a rate determined by the Administrative Agent to represent its cost of overnight or short-term funds (which determination shall be conclusive absent clearly demonstrable error). If such Lender shall repay to the Administrative Agent such corresponding amount, such amount shall constitute such Lender's Loan as part of such Borrowing for purposes of this Agreement.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request any Borrowing which is a Eurodollar Borrowing if the Interest Period requested with respect thereto would end after the latest Revolving Maturity Date associated with Commitments sufficient to support such Borrowing at such time.

(e) If such Issuing Bank shall not have received from the Borrower the payment required to be made by Section 2.23(e) with respect to a Letter of Credit issued by such Issuing Bank within the time specified in such Section, such Issuing Bank will promptly notify the Administrative Agent of the L/C Disbursement and the Administrative Agent will promptly notify each Lender of such L/C Disbursement and its Pro Rata Percentage thereof. Each Lender shall pay by wire transfer of immediately available funds to the Administrative Agent not later than 5:00 p.m., New York City time, on such date (or, if such Lender shall have received such notice later than 3:00 p.m., New York City time, on any day, not later than 10:00 a.m., New York City time, on the immediately following Business Day), an amount equal to such Lender's Pro Rata Percentage of such L/C Disbursement (it being understood that such amount shall be deemed to constitute an ABR Revolving Loan of such Lender and such payment shall be deemed to have reduced the Revolving L/C Exposure), and the Administrative Agent will promptly pay to the

applicable Issuing Bank amounts so received by it from the Lenders. The Administrative Agent will promptly pay to the applicable Issuing Bank any amounts received by it from the Borrower pursuant to Section 2.23(e) prior to the time that any Lender makes any payment pursuant to this Section 2.02(f); any such amounts received by the Administrative Agent thereafter will be promptly remitted by the Administrative Agent to the Lenders that shall have made such payments and to the applicable Issuing Bank, as their interests may appear. If any Lender shall not have made its Pro Rata Percentage of such L/C Disbursement available to the Administrative Agent as provided above, such Lender and the Borrower severally agree to pay interest on such amount, for each day from and including the date such amount is required to be paid in accordance with this Section 2.02(f) to but excluding the date such amount is paid, to the Administrative Agent for the account of the Issuing Bank at (i) in the case of the Borrower, a rate per annum equal to the interest rate applicable to Revolving Loans pursuant to Section 2.06(a) (in lieu of interest which would otherwise become due to such Lender pursuant to Section 2.06), and (ii) in the case of such Lender, for the first such day, the Federal Funds Effective Rate, and for each day thereafter, the Alternate Base Rate; and provided, further, that under no circumstances shall such Lender be entitled to seek indemnity from any Loan Party in respect of any interest so accrued or paid.

SECTION 2.03. Borrowing Procedure. In order to request a Borrowing (other than a deemed Borrowing pursuant to Section 2.02(f), as to which this Section 2.03 shall not apply), the Borrower shall notify the Administrative Agent by written notice to the Administrative Agent of a duly completed Borrowing Request (a) in the case of a Eurodollar Borrowing, not later than 12:00 (noon), New York City time, three (3) Business Days before a proposed Borrowing and (b) in the case of an ABR Borrowing, not later than 12:00 (noon), New York City time, on the Business Day of the proposed Borrowing. Each Borrowing Request shall be irrevocable, shall be signed by or on behalf of the Borrower and shall specify the following information: (i) whether such Borrowing is to be a Eurodollar Borrowing or an ABR Borrowing; (ii) the date of such Borrowing (which shall be a Business Day); (iii) the number and location of the account to which funds are to be disbursed; (iv) the amount of such Borrowing; and (v) if such Borrowing is to be a Eurodollar Borrowing, the initial Interest Period with respect thereto and the Class of Loans to which such initial Interest Period will apply; provided, however, that, notwithstanding any contrary specification in any Borrowing Request, each requested Borrowing shall comply with the requirements set forth in Section 2.02. If no election as to the Type of Borrowing is specified in any such notice, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period with respect to any Eurodollar Borrowing is specified in any such notice, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. The Administrative Agent shall promptly advise the applicable Lenders of any notice given in accordance with this Section 2.03 (and the contents thereof), and of each Lender's portion of the requested Borrowing.

SECTION 2.04. Repayment of Loans; Evidence of Debt. (a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Revolving Loan of such Lender made to the Borrower on the Revolving Maturity Date with respect to such Revolving Loan of such Lender.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender to the Borrower from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement, and shall provide

copies of such accounts to the Borrower upon its reasonable request (at the Borrower's sole cost and expense).

(c) The Administrative Agent shall maintain accounts in which it will record (i) the amount of each Loan made hereunder, the Class and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder from the Borrower or any Subsidiary Guarantor and each Lender's share thereof, and shall provide copies of such accounts to the Borrower upon its reasonable request (at the Borrower's sole cost and expense).

(d) The entries made in the accounts maintained pursuant to Sections 2.04(b) and 2.04(c) shall be conclusive evidence of the existence and amounts of the obligations therein recorded absent clearly demonstrable error; provided, however, that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(e) Any Lender may request that Loans made by it hereunder be evidenced by a promissory note. In such event, the Borrower shall execute and deliver to such Lender a promissory note payable to such Lender and its registered assigns in the form of Exhibit F or any other form reasonably acceptable to the Administrative Agent. Notwithstanding any other provision of this Agreement, in the event any Lender shall request and receive such a promissory note, the interests represented by such note shall at all times (including after any assignment of all or part of such interests pursuant to Section 9.04) be represented by one or more promissory notes payable to the payee named therein or its registered assigns.

SECTION 2.05. Fees. (a) The Borrower agrees to pay to each Lender, through the Administrative Agent, on the last Business Day of March, June, September and December in each year (beginning with December 31, 2018) and on each date on which any Revolving Commitment of such Lender shall expire or be terminated as provided herein, a commitment fee (a "Commitment Fee") equal to 2.00% per annum, on the average daily unused amount of the Revolving Commitments of such Lender (provided that if the L/C Participation Fee for the same period is based on the Minimum L/C Exposure, 50% of such Revolving Commitments shall be deemed used) during the preceding quarter (or shorter or longer period commencing with the Closing Date and ending with the Revolving Maturity Date with respect to the Commitments of such Lender or the date on which the Commitments of such Lender shall expire or be terminated); provided that for purposes of calculating the Commitment Fee, the amount of Revolving Commitments shall be subject to the proviso set forth in the second sentence of the definition of "Total Revolving Commitment." All Commitment Fees shall be computed on the basis of the actual number of days elapsed in a year of 360 days. The Commitment Fee due to each Lender shall commence to accrue on the Closing Date and shall cease to accrue on the date on which the Commitment of such Lender shall expire or be terminated as provided herein.

(b) Unless previously paid, the Borrower agrees to pay to the Administrative Agent, for its own account, the fees in the amounts and at the times from time to time agreed to in writing by the Borrower and the Administrative Agent, including pursuant to the Fee Letter.

(c) The Borrower agrees to pay (i) to each Lender, through the Administrative Agent, on the last Business Day of March, June, September and December of each year (beginning with December 31, 2018) and on the date on which the Revolving Commitment of such Lender shall be terminated as provided herein (each, an "L/C Fee Payment Date") a fee (an "L/C Participation Fee") calculated on such Lender's Pro Rata Percentage of the daily aggregate Revolving L/C Exposure or, if greater, the Minimum L/C Exposure (excluding the portion thereof attributable to unreimbursed L/C Disbursements which are earning interim interest pursuant to Section 2.23(h)) during the preceding quarter (or shorter or longer period commencing with the Closing Date and ending with the Revolving Maturity Date with respect to the Revolving Commitment of such Lender or the date on which all Letters of Credit have been canceled or have expired and the Revolving Commitments of all Lenders shall have been terminated) at a rate per annum equal to the Applicable L/C Participation Fee Rate and (ii) to the Issuing Bank with respect to each outstanding Letter of Credit issued at the request of the Borrower a fronting fee, which shall accrue at a rate of 0.125% on the outstanding amount of such Letter of Credit (provided that, in the event that all Letters of Credit are cash collateralized in accordance with Section 2.23(j) the fronting fee shall accrue at a rate of 0.25%), payable quarterly in arrears on each L/C Fee Payment Date after the issuance date of such Letter of Credit (or as otherwise separately agreed upon between the Borrower and the applicable Issuing Bank), as well as the Issuing Bank's customary documentary and processing charges with respect to the issuance, amendment, renewal, extension or increase (including any increase contemplated by the terms of any such Letter of Credit) of any Letter of Credit issued at the request of the Borrower or processing of drawings thereunder (the fees in this clause (ii), collectively, the "Issuing Bank Fees"). All L/C Participation Fees and Issuing Bank Fees shall be computed on the basis of the actual number of days elapsed in a year of 360 days.

(d) All Fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution, if and as appropriate, among the Lenders, except that the Issuing Bank Fees shall be paid directly to the Issuing Bank. Once paid, none of the Fees actually owed and due shall be refundable under any circumstances.

(e) Notwithstanding anything herein to the contrary, during such period as a Lender is a Defaulting Lender, such Defaulting Lender will not be entitled to any fees accruing during such period pursuant to Section 2.05(a) or 2.05(c)(i) (without prejudice to the rights of the non-Defaulting Lenders in respect of such fees), provided that (i) to the extent that all or a portion of such Defaulting Lender's Pro Rata Percentage of any Revolving L/C Exposure is reallocated to the non-Defaulting Lenders pursuant to Section 2.26, such fees that would have accrued for the benefit of such Defaulting Lender will instead accrue for the benefit of and be payable to such non-Defaulting Lenders, pro rata in accordance with their respective Revolving Commitments, and (ii) to the extent that all or any portion of such Defaulting Lender's Pro Rata Percentage of any Revolving L/C Exposure cannot be so reallocated, such fees will instead accrue for the benefit of and be payable to the Issuing Bank (and the *pro rata* payment provisions of Section 2.17 will automatically be deemed adjusted to reflect the provisions of this Section 2.05(e)).

SECTION 2.06. Interest on Loans. (a) Subject to the provisions of Section 2.07, the outstanding Loans comprising each ABR Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, as the case may be, when the Alternate Base Rate is determined by reference to the Prime Rate and over a year of 360 days at all other times) at a rate per annum equal to the Alternate Base Rate plus the Applicable Margin.

(b) Subject to the provisions of Section 2.07, the Loans comprising each Eurodollar Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days) at a rate per annum equal to the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin.

(c) Interest on each Loan shall be payable on the Interest Payment Dates applicable to such Loan except as otherwise provided in this Agreement. Subject to Section 2.08, the applicable Alternate Base Rate or Adjusted LIBO Rate for each Interest Period, as the case may be, shall be determined by the Administrative Agent, and such determination shall, absent clearly demonstrable error, be final and conclusive and binding on all parties hereto.

SECTION 2.07. Default Interest. If the Borrower shall default in the payment of the principal of or interest on any Loan or any other amount becoming due and payable hereunder or under any other Loan Document, by acceleration or otherwise, the Borrower shall on demand from time to time pay interest, to the extent permitted by law, on such defaulted amount to but excluding the date of actual payment (after as well as before judgment) (a) in the case of overdue principal, at the rate otherwise applicable to such Loan pursuant to Section 2.06 plus 2.00% per annum and (b) in all other cases, at a rate per annum (computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, as the case may be, when determined by reference to the Prime Rate and over a year of 360 days at all other times) equal to the rate that would be applicable to an ABR Loan plus 2.00%.

SECTION 2.08. Alternate Rate of Interest. (a) In the event, and on each occasion, that prior to the commencement of any Interest Period for a Eurodollar Borrowing (a) the Administrative Agent shall have determined that adequate and reasonable means do not exist for determining the Adjusted LIBO Rate for such Interest Period or (b) the Administrative Agent is advised by the Required Lenders reasonably and in good faith that the Adjusted LIBO Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing, for such Interest Period, then the Administrative Agent shall, as soon as practicable thereafter, give written notice of such determination to the Borrower and the Lenders. In the event of any such notice, until the Administrative Agent shall have advised the Borrower and the Lenders that the circumstances giving rise to such written notice no longer exist, (A) any request by the Borrower for a Eurodollar Borrowing pursuant to Section 2.03 or 2.10 shall be deemed to be a request for an ABR Borrowing and (B) any Interest Period election that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective.

(b) If at any time the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in clause (a) above have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in clause (a) above have not arisen but the supervisor for the administrator of the LIBO Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the LIBO Rate shall no longer be used for determining interest rates for loans, then the Administrative Agent and the Borrower shall endeavor to establish an alternate rate of interest to the LIBO Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of

interest and such other related changes to this Agreement as may be applicable; provided that, if such alternate rate of interest shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement. Notwithstanding anything to the contrary in Section 9.08, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five (5) Business Days of the date notice of such alternate rate of interest is provided to the Lenders, written notice from the Required Lenders stating that such Required Lenders object to such amendment.

SECTION 2.09. Termination and Reduction of Commitments. (a) Unless previously terminated in accordance with the terms hereof, the Revolving Commitments and the L/C Commitment shall automatically terminate on the Revolving Maturity Date with respect to such Revolving Commitments (provided that, notwithstanding anything else herein to the contrary, the Revolving Maturity Date applicable to the L/C Commitment shall be the date specified in clause (i) of the definition of "Revolving Maturity Date" unless, subject to Section 2.23(d)(ii), such date is extended with the prior written consent of the Issuing Banks). If any Letter of Credit remains outstanding on the Revolving Maturity Date with respect to the Revolving Commitments applicable to such Letter of Credit (and, at the time thereof, after giving effect to the repayment of the applicable Revolving Loans at such time, the Revolving Exposure of the applicable Lenders exceeds the available Revolving Commitments of such Lenders), the Borrower shall deposit with the Administrative Agent an amount in cash equal to 103% of the aggregate undrawn amount of such Letter of Credit to secure the full obligations with respect to any drawings that may occur thereunder, which amount shall be promptly returned to the Borrower upon each such Letter of Credit being terminated or cancelled.

(b) Upon at least three (3) Business Days' prior irrevocable written notice to the Administrative Agent, the Borrower may at any time in whole permanently terminate, or from time to time in part permanently reduce, in each case without premium or penalty, the Revolving Commitments; provided, however, that (i) each partial reduction of the Revolving Commitments shall be in an integral multiple of $1,000,000 and in a minimum amount of $5,000,000 and (ii) the Total Revolving Commitment shall not be reduced to an amount that is less than the Aggregate Revolving Exposure then in effect; provided, further, that a notice of termination may state that such termination is conditioned upon the effectiveness of other credit facilities or any other event, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified termination date) if such condition is not satisfied.

(c) Each reduction in the Revolving Commitments hereunder shall be made, at the Borrower's option, to either (i) on a *pro rata* basis all Classes of Revolving Commitments outstanding on such date or (ii) the Classes of Revolving Commitments outstanding on such date in the order of the maturity date thereof, in each case, ratably among the applicable Lenders in accordance with their Pro Rata Percentages. The Borrower shall pay to the Administrative Agent for the account of the applicable Lenders, on the date of each termination or reduction, the Commitment Fees on the amount of the Commitments so terminated or reduced accrued to but excluding the date of such termination or reduction.

(d) The Borrower may terminate the unused amount of the Commitment of a Defaulting Lender upon not less than ten (10) Business Days' prior notice to the Administrative Agent (which will promptly notify the Lenders thereof), and in such event the provisions of

Section 2.26(e) shall apply to all amounts thereafter paid by the Borrower for the account of such Defaulting Lender under this Agreement (whether on account of principal, interest, fees, indemnity or other amounts); provided that such termination will not be deemed to be a waiver or release of any claim the Borrower, the Administrative Agent, any Issuing Bank or any Lender may have against such Defaulting Lender.

SECTION 2.10. Conversion and Continuation of Borrowings. The Borrower shall have the right at any time upon prior irrevocable notice to the Administrative Agent (a) not later than 12:00 (noon), New York City time, one Business Day prior to conversion, to convert any Eurodollar Borrowing of the Borrower into an ABR Borrowing, (b) not later than 12:00 (noon), New York City time, three (3) Business Days prior to conversion or continuation, to convert any ABR Borrowing of the Borrower into a Eurodollar Borrowing or to continue any Eurodollar Borrowing of the Borrower as a Eurodollar Borrowing for an additional Interest Period and (c) not later than 12:00 (noon), New York City time, three (3) Business Days prior to conversion, to convert the Interest Period with respect to any Eurodollar Borrowing of the Borrower to another permissible Interest Period, subject in each case to the following:

(i) each conversion or continuation shall be made *pro rata* among the Lenders in accordance with the respective principal amounts of the Loans comprising the converted or continued Borrowing;

(ii) if less than all the outstanding principal amount of any Borrowing shall be converted or continued, then each resulting Borrowing shall satisfy the limitations specified in Sections 2.02(a) and 2.02(b) regarding the principal amount and maximum number of Borrowings of the relevant Type;

(iii) each conversion shall be effected by each Lender and the Administrative Agent by recording for the account of such Lender the new Loan of such Lender resulting from such conversion and reducing the Loan (or portion thereof) of such Lender being converted by an equivalent principal amount; accrued and unpaid interest on any Eurodollar Loan (or portion thereof) being converted shall be paid by the Borrower at the time of conversion;

(iv) if any Eurodollar Borrowing is converted at a time other than the end of the Interest Period applicable thereto, the Borrower shall pay, upon demand, any amounts due to the Lenders pursuant to Section 2.16;

(v) any portion of a Borrowing maturing or required to be repaid in less than one month may not be converted into or continued as a Eurodollar Borrowing;

(vi) any portion of a Eurodollar Borrowing that cannot be converted into or continued as a Eurodollar Borrowing by reason of the immediately preceding clause shall be automatically converted at the end of the Interest Period in effect for such Borrowing into an ABR Borrowing; and

(vii) after the occurrence and during the continuance of an Event of Default, no outstanding Loan may be converted into, or continued as, a Eurodollar Loan.

Each notice pursuant to this Section 2.10 shall be irrevocable and shall refer to this Agreement and specify (A) the identity and amount of the Borrowing that the Borrower requests be converted or continued, (B) whether such Borrowing is to be converted to or continued as a Eurodollar Borrowing or an ABR Borrowing, (C) if such notice requests a conversion, the date of such conversion (which shall be a Business Day) and (D) if such Borrowing is to be converted to or continued as a Eurodollar Borrowing, the Interest Period with respect thereto. If no Interest Period is specified in any such notice with respect to any conversion to or continuation as a Eurodollar Borrowing, the Borrower shall be deemed to have selected an Interest Period of one month's duration. The Administrative Agent shall advise the Lenders of any notice given pursuant to this Section 2.10 and of each Lender's portion of any converted or continued Borrowing. If the Borrower shall not have given notice in accordance with this Section 2.10 to continue any Borrowing into a subsequent Interest Period (and shall not otherwise have given notice in accordance with this Section 2.10 to convert such Borrowing), such Borrowing shall, at the end of the Interest Period applicable thereto (unless repaid pursuant to the terms hereof), automatically be converted or continued into an ABR Borrowing.

SECTION 2.11. [*Reserved*].

SECTION 2.12. Prepayment. (a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part upon at least three (3) Business Days' prior written notice in the case of Eurodollar Loans, or written notice at least one Business Day prior to the date of prepayment in the case of ABR Loans, to the Administrative Agent before 11:00 a.m., New York City time; provided, however, that each partial prepayment shall be in an amount that is an integral multiple of $1,000,000 and not less than $5,000,000.Each notice of prepayment shall be substantially in the form of Exhibit H, shall be irrevocable and shall commit the Borrower to prepay such Borrowing by the amount stated therein on the date stated therein; provided that a notice of prepayment may state that such prepayment is conditioned upon the effectiveness of other credit facilities or any other event, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified prepayment date) if such condition is not satisfied. All prepayments and failures to prepay under this Section 2.12 shall be subject to Section 2.16. All prepayments under this Section 2.12 shall be accompanied by accrued and unpaid interest on the principal amount to be prepaid to but excluding the date of payment.

SECTION 2.13. Mandatory Prepayments. (a) In the event of any termination in full of all the Revolving Commitments, the Borrower shall, on the date of such termination, repay or prepay all its outstanding Borrowings and replace all its outstanding Letters of Credit and/or deposit an amount equal to the Revolving L/C Exposure in cash in a cash collateral account established with a deposit bank reasonably acceptable to the Administrative Agent for the benefit of the Lenders and the Issuing Banks. Other than as provided in clause (b) below, if as a result of any partial reduction of the Revolving Commitments the Aggregate Revolving Exposure would exceed the Total Revolving Commitment after giving effect thereto, then the Borrower shall, on the date of such reduction, repay or prepay Borrowings and/or cash collateralize Letters of Credit in an amount sufficient to eliminate such excess.

(b) Upon any Asset Sale Prepayment Event with respect to the Bowline Power Plant, the Revolving Commitments hereunder shall be immediately reduced to zero and within five (5)

Business Days thereafter, unless otherwise agreed by the Required Lenders, (x) the Borrower shall repay or prepay outstanding Borrowings and cash collateralize all Letters of Credit in accordance with Section 2.23(j) and (y) concurrent therewith, this Agreement shall automatically terminate (except Section 2.05(c)(ii) and Section 2.23(j) and any provisions that by their express terms survive termination) and thereafter any fronting fees with respect to any outstanding Letter of Credit shall be paid to any Issuing Bank to the extent set forth in Section 2.05(c)(ii). Upon any Asset Sale Prepayment Event with respect to a Commitment Reduction Facility, the Revolving Commitments hereunder shall be reduced by an amount equal to 25% of the Net Proceeds received with respect to such Asset Sale and, if the Aggregate Revolving Exposure would exceed the Total Revolving Commitment after giving effect thereto, then the Borrower shall, within five (5) Business Days thereafter, repay or prepay outstanding Borrowings and cash collateralize Letters of Credit in an amount sufficient to eliminate such excess (such repayment, prepayment, reduction in Commitments and cash collateralization, an "Asset Sale Prepayment").

(c) Within five (5) Business Days following the receipt of any Net Proceeds of any Casualty Event, the Borrower shall repay or prepay outstanding Borrowings and cash collateralize Letters of Credit in an amount equal to such Net Proceeds; *provided* that so long as no Event of Default has occurred and is continuing, the Borrower may (i) in the case of any Casualty Event in respect of the Bowline Power Plant, reinvest up to $75,000,000 (or such greater amount as the Administrative Agent may so agree in its sole discretion) of such proceeds to the extent necessary to repair the property or assets that are the subject of the Casualty Event, (ii) in the case of any Casualty Event in respect of any Commitment Reduction Facility, reinvest up to $40,000,000 (or such greater amount as the Administrative Agent may so agree in its sole discretion) of such proceeds to the extent necessary to repair the property or assets that are the subject of the Casualty Event, (iii) in the case of any Casualty Event in respect of the any other Core Collateral (exclusive of the preceding clauses (i) and (ii)), reinvest up to $10,000,000 (or such greater amount as the Administrative Agent may so agree in its sole discretion) of such proceeds to the extent necessary to repair the property or assets that are the subject of the Casualty Event and (iv) in the case of any other Casualty Event, reinvest any portion of such proceeds in assets useful for its business (which shall include any Investment permitted, or not otherwise prohibited, by this Agreement), in each case, within 365 days of such receipt and such portion of such proceeds shall not constitute Net Proceeds except to the extent not, within 365 days of such receipt, so reinvested or contractually committed to be so reinvested (it being understood that if any portion of such proceeds are not so used within such 365-day period but within such 365-day period are contractually committed to be used, then upon the termination of such contract or if such Net Proceeds are not so used within 548 days of initial receipt, such remaining portion shall constitute Net Proceeds as of the date of such termination or expiry without giving effect to this proviso); it being further understood that such proceeds shall constitute Net Proceeds notwithstanding any investment notice if an Event of Default has occurred and is continuing at the time of a proposed reinvestment, unless such proposed reinvestment is made pursuant to a binding commitment entered into at a time when no such Event of Default was continuing.

(d) In the event that the Unrestricted Cash Amount exceeds $25,000,000 as of the last Business Day of any calendar week, the Borrower shall within two (2) Business Days, to the extent any such Excess Cash still exists, repay or prepay its outstanding Borrowings in an amount equal to the amount by which the Unrestricted Cash Amount exceeds $25,000,000 (the "Excess Cash").

Each prepayment and, if applicable, commitment reduction under this Section 2.13 shall be made on a *pro rata* basis among the Revolving Commitments based on the Pro Rata Percentages of each Lender.

SECTION 2.14. Reserve Requirements; Change in Circumstances. (a) Notwithstanding any other provision of this Agreement, if any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender, the Administrative Agent or the Issuing Bank,

(ii) subject any Lender, the Administrative Agent or any Issuing Bank to any Taxes (other than Indemnified Taxes or Excluded Taxes) on its loans, loan principal, letters of credit, commitments or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender, the Administrative Agent or any Issuing Bank or the London interbank market any other condition affecting this Agreement or Eurodollar Loans made by such Lender or any Letter of Credit (except, in each case, any such reserve requirement which is reflected in the Adjusted LIBO Rate),

and the result of any of the foregoing shall be to increase the cost to such Lender or such Issuing Bank of making or maintaining, continuing or converting to any Eurodollar Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to any Lender, the Administrative Agent or any Issuing Bank of issuing or maintaining any Letter of Credit or purchasing or maintaining a participation therein or to reduce the amount of any sum received or receivable by such Lender or such Issuing Bank hereunder (whether of principal, interest or otherwise) by an amount reasonably deemed by such Lender, the Administrative Agent or such Issuing Bank to be material, then the Borrower will pay to such Lender, the Administrative Agent or the Issuing Bank, as the case may be, promptly upon demand such additional amount or amounts as will compensate such Lender or the Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender, the Administrative Agent or any Issuing Bank shall have determined that any Change in Law regarding capital adequacy or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's, the Administrative Agent's or the Issuing Bank's capital or on the capital of such Lender's, the Administrative Agent's or the Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit purchased by, such Lender or the Letters of Credit issued by such Issuing Bank to a level below that which such Lender, the Administrative Agent or such Issuing Bank or such Lender's, the Administrative Agent's or such Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's, the Administrative Agent's or such Issuing Bank's policies and the policies of such Lender's, the Administrative Agent's or such Issuing Bank's holding company with respect to capital adequacy or liquidity) by an amount reasonably deemed by such Lender, the Administrative Agent or such Issuing Bank to be material, then from time to time the Borrower shall pay to such Lender, the Administrative Agent or the Issuing Bank, as the case may be, such additional amount

or amounts as will compensate such Lender, the Administrative Agent or such Issuing Bank or such Lender's, the Administrative Agent's or such Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender, the Administrative Agent or an Issuing Bank setting forth the amount or amounts reasonably determined by such Person to be necessary to compensate such Lender, the Administrative Agent or such Issuing Bank or its holding company, as applicable, as specified in paragraph (a) or (b) of this Section, the calculations and criteria applied to determine such amount or amounts, and other documentation or information reasonably supporting the conclusions in such certificate, shall be delivered to the Borrower and shall, absent clearly demonstrable error, be final and conclusive and binding. The Borrower shall pay such Lender, the Administrative Agent or the Issuing Bank, as the case may be, the amount or amounts shown as due on any such certificate delivered by it within ten (10) days after its receipt of the same.

(d) Failure or delay on the part of any Lender, the Administrative Agent or any Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's, the Administrative Agent's or the Issuing Bank's right to demand such compensation; provided that the Borrower shall not be under any obligation to compensate any Lender, the Administrative Agent or any Issuing Bank under paragraph (a) or (b) above for increased costs or reductions with respect to any period prior to the date that is 270 days prior to such request; provided, further, that the foregoing limitation shall not apply to any increased costs or reductions arising out of the retroactive application of any Change in Law within such 270-day period. The protection of this Section shall be available to each Lender, the Administrative Agent and each Issuing Bank regardless of any possible contention of the invalidity or inapplicability of the Change in Law that shall have occurred or been imposed.

SECTION 2.15. Change in Legality. (a) Notwithstanding any other provision of this Agreement, if any Change in Law shall make it unlawful for any Lender to make or maintain any Eurodollar Loan or to give effect to its obligations as contemplated hereby with respect to any Eurodollar Loan, then, by written notice to the Borrower (which notice shall include documentation or information in reasonable detail supporting the conclusions in such notice) and to the Administrative Agent:

(i) such Lender may declare that Eurodollar Loans will not thereafter (for the duration of such unlawfulness) be made by such Lender hereunder (or be continued for additional Interest Periods and ABR Loans will not thereafter (for such duration) be converted into Eurodollar Loans), whereupon any request for a Eurodollar Borrowing (or to convert an ABR Borrowing to a Eurodollar Borrowing or to continue a Eurodollar Borrowing for an additional Interest Period) shall, as to such Lender only, be deemed a request for an ABR Loan (or a request to continue an ABR Loan as such for an additional Interest Period or to convert a Eurodollar Loan into an ABR Loan, as the case may be), unless such declaration shall be subsequently withdrawn; and

(ii) such Lender may require that all outstanding Eurodollar Loans made by it be converted to ABR Loans, in which event all such Eurodollar Loans shall be automatically converted to ABR Loans as of the effective date of such notice as provided in paragraph (b) below.

In the event any Lender shall exercise its rights under clauses (i) or (ii) above, all payments and prepayments of principal that would otherwise have been applied to repay the Eurodollar Loans that would have been made by such Lender or the converted Eurodollar Loans of such Lender shall instead be applied to repay the ABR Loans made by such Lender in lieu of, or resulting from the conversion of, such Eurodollar Loans. Any such conversion of a Eurodollar Loan under (i) above shall be subject to Section 2.16.

(b) For purposes of this Section 2.15, a notice to the Borrower by any Lender shall be effective as to each Eurodollar Loan made by such Lender, if lawful, on the last day of the Interest Period then applicable to such Eurodollar Loan; in all other cases such notice shall be effective on the date of receipt by the Borrower.

SECTION 2.16. Indemnity. The Borrower shall indemnify each Lender against any loss or expense that such Lender may sustain or incur as a consequence of (a) any event, other than a default by such Lender in the performance of its obligations hereunder, which results in (i) such Lender receiving or being deemed to receive any amount on account of the principal of any Eurodollar Loan prior to the end of the Interest Period in effect therefor, (ii) the conversion of any Eurodollar Loan to an ABR Loan, or the conversion of the Interest Period with respect to any Eurodollar Loan, in each case other than on the last day of the Interest Period in effect therefor or (iii) any Eurodollar Loan to be made by such Lender (including any Eurodollar Loan to be made pursuant to a conversion or continuation under Section 2.10) not being made after notice of such Loan shall have been given by the Borrower hereunder (any of the events referred to in this clause (a) being called a "Breakage Event") or (b) any default in the making of any payment or prepayment required to be made hereunder. In the case of any Breakage Event, such loss shall include, in the case of a Lender, an amount equal to the excess, as reasonably determined by such Lender, of (i) its cost of obtaining funds for the Eurodollar Loan that is the subject of such Breakage Event for the period from the date of such Breakage Event to the last day of the Interest Period in effect (or that would have been in effect) for such Loan over (ii) the amount of interest likely to be realized by such Lender in redeploying the funds released or not utilized by reason of such Breakage Event for such period. A certificate of any Lender setting forth any amount or amounts which such Lender believes it is entitled to receive pursuant to this Section 2.16, including the calculations and criteria applied to determine such amount or amounts, and other documentation or information reasonably supporting the conclusions in such certificate, shall be delivered to the Borrower and shall, absent clearly demonstrable error, be final and conclusive and binding.

SECTION 2.17. Pro Rata Treatment. Except as required under Section 2.09(d), 2.13, 2.14, 2.15, 2.20, 2.21, 2.23(d)(ii), 2.24, 2.25, 9.04, or 9.19, each Borrowing, each payment or prepayment of principal of any Borrowing by the Borrower, each payment of reimbursement obligations, each payment of interest on the Loans, each payment of the Commitment Fees, each reduction of the Revolving Commitments and each conversion of any Borrowing to or continuation of any Borrowing as a Borrowing of any Type, in each case, by the Borrower, shall be allocated *pro rata* among the Lenders in accordance with their respective applicable Commitments (or, if such Commitments shall have expired or been terminated, in accordance with the respective principal amounts of their outstanding Loans). Each Lender agrees that in computing such Lender's portion of any Borrowing to be made hereunder, the Administrative Agent may, in its

discretion, round each Lender's percentage of such Borrowing to the next higher or lower whole dollar amount.

SECTION 2.18. Sharing of Setoffs. Each Lender agrees that if, other than as a result of any assignment of Loans pursuant to and in accordance with this Agreement, it shall, through the exercise of a right of banker's lien, setoff or counterclaim against the Borrower or any other Loan Party, or pursuant to a secured claim under Section 506 of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, as amended from time to time, or other security or interest arising from, or in lieu of, such secured claim, received by such Lender under any applicable bankruptcy, insolvency or other similar law or otherwise, or by any other means, obtain payment (voluntary or involuntary) in respect of any Loan or Loans or L/C Disbursement as a result of which the unpaid principal portion of its Loans and participations in L/C Disbursements shall be proportionately less than the unpaid principal portion of the Loans and participations in L/C Disbursements of any other Lender, it shall be deemed simultaneously to have purchased from such other Lender at face value, and shall promptly pay to such other Lender the purchase price for, a participation in the Loans and Revolving L/C Exposure of such other Lender, so that the aggregate unpaid principal amount of the Loans and Revolving L/C Exposure and participations in Loans and Revolving L/C Exposure held by each Lender shall be in the same proportion to the aggregate unpaid principal amount of all Loans and Revolving L/C Exposure then outstanding as the principal amount of its Loans and Revolving L/C Exposure prior to such exercise of banker's lien, setoff or counterclaim or other event was to the principal amount of all Loans and Revolving L/C Exposure outstanding prior to such exercise of banker's lien, setoff or counterclaim or other event; provided, however, that if any such purchase or purchases or adjustments shall be made pursuant to this Section 2.18 and the payment giving rise thereto shall thereafter be recovered, such purchase or purchases or adjustments shall be rescinded to the extent of such recovery and the purchase price or prices or adjustment restored without interest; provided, further, that in the event that any Defaulting Lender exercises any such right of setoff, (a) all amounts so set off will be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.26 and, pending such payment, will be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Banks and the Lenders and (b) the Defaulting Lender will provide promptly to the Administrative Agent a statement describing in reasonable detail the obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The Borrower expressly consents to the foregoing arrangements and agrees that any Lender holding a participation in a Loan or L/C Disbursement deemed to have been so purchased may exercise any and all rights of banker's lien, setoff or counterclaim with respect to any and all moneys owing by the Borrower to such Lender by reason thereof as fully as if such Lender had made a Loan directly to the Borrower in the amount of such participation.

SECTION 2.19. Payments. (a) The Borrower shall make each payment (including principal of or interest on any Borrowing or any L/C Disbursement or any Fees or other amounts) hereunder and under any other Loan Document not later than 12:00 (noon) (or such other time as otherwise required by Section 2.23(e)), New York City time, on the date when due in immediately available dollars, without setoff, defense or counterclaim. Each such payment (other than (i) Issuing Bank Fees, which shall be paid directly to the applicable Issuing Bank and (ii) payments pursuant to Sections 2.14, 2.16 or 2.20, which at the election of the Borrower may be made directly to the Lender claiming the benefit of any such Sections) shall be made to the Administrative Agent at the Administrative Agent's Office by wire transfer of immediately available funds (or as

otherwise agreed by the Borrower and the Administrative Agent). The Administrative Agent shall pay to each Lender any payment received on such Lender's behalf promptly after the Administrative Agent's receipt of such payment. All payments hereunder and under each other Loan Document shall be made in dollars.

(b) Except as otherwise expressly provided herein, whenever any payment (including principal of or interest on any Borrowing or any Fees or other amounts) hereunder or under any other Loan Document shall become due, or otherwise would occur, on a day that is not a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest or Fees, if applicable.

SECTION 2.20. Taxes. (a) Except as otherwise provided herein, any and all payments by or on account of any obligation of the Borrower or any other Loan Party hereunder or under any other Loan Document shall be made free and clear of and without deduction or withholding for any Indemnified Taxes or Other Taxes; provided that if the Borrower or any other Loan Party or the Administrative Agent shall be required to deduct or withhold any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable by the Borrower or such other Loan Party shall be increased as necessary so that after making all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section) the Administrative Agent, such Issuing Bank or such Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions and withholdings been made, (ii) the Borrower or such other Loan Party shall make (or cause to be made) such deductions and withholdings and (iii) the Borrower or such other Loan Party shall pay (or cause to be paid) the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law. In addition, the Borrower or any other Loan Party hereunder shall pay (or cause to be paid) any Other Taxes imposed other than by deduction or withholding to the relevant Governmental Authority in accordance with applicable law.

(b) The Borrower shall indemnify the Administrative Agent, each Issuing Bank and each Lender, within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent, such Issuing Bank or such Lender, as the case may be, or any of their respective Affiliates, on or with respect to any payment by or on account of any obligation of the Borrower or any Loan Party hereunder or under any other Loan Document (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Government Authority. A certificate as to the amount of such payment or liability shall be delivered to the Borrower by an Issuing Bank or a Lender, or by the Administrative Agent on its behalf or on behalf of an Issuing Bank or a Lender, promptly upon such party's determination of an indemnifiable event and such certificate shall be conclusive absent clearly demonstrable error. Payment under this Section 2.20(b) shall be made within 15 days from the date of delivery of such certificate.

(c) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower or any other Loan Party to a Governmental Authority, and in any event within 60 days of such payment being due, the Borrower shall deliver to the Administrative Agent, the relevant Lender or the relevant Issuing Bank, if applicable, the original or a certified copy of a

receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent, the relevant Lender or the relevant Issuing Bank, if applicable.

(d) Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the Borrower (with a copy to the Administrative Agent), at the reasonable written request of the Borrower, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate; provided that such Lender is legally entitled to complete, execute and deliver such documentation and in such Lender's judgment such completion, execution or delivery would not materially prejudice the legal position of such Lender.

In addition, each Foreign Lender shall (i) furnish to the Administrative Agent and the Borrower on or before it becomes a party to this Agreement, two (2) accurate and complete copies of executed (A) U.S. Internal Revenue Service Forms W-8BEN or W-8BEN-E, as applicable (or successor form), (B) to the extent the Foreign Lender is not the beneficial owner, U.S. Internal Revenue Service Forms W-8IMY, accompanied by U.S. Internal Revenue Service Form W-8ECI (or successor form), U.S. Internal Revenue Service Forms W-8BEN or W-BEN-E, as applicable (or successor form), a United States Tax Compliance Certificate, U.S. Internal Revenue Service Form W-9 (or successor form), and/or other certification documents from each beneficial owner, as applicable, or (C) U.S. Internal Revenue Service Form W-8ECI (or successor form), certifying, in each case, to such Foreign Lender's legal entitlement to an exemption or reduction from U.S. federal withholding tax with respect to all interest payments hereunder, and (ii) provide new (A) U.S. Internal Revenue Service Forms W-8BEN or W-8BEN-E, as applicable (or successor form), (B) to the extent the Foreign Lender is not the beneficial owner, U.S. Internal Revenue Service Forms W-8IMY, accompanied by U.S. Internal Revenue Service Form W-8ECI (or successor form), U.S. Internal Revenue Service Forms W-8BEN or W-BEN-E, as applicable (or successor form), a United States Tax Compliance Certificate, U.S. Internal Revenue Service Form W-9 (or successor form), and/or other certification documents from each beneficial owner, as applicable, or (C) U.S. Internal Revenue Service Form W-8ECI (or successor form), in each case, upon the expiration or obsolescence of any previously delivered form to reconfirm any complete exemption from, or any entitlement to a reduction in, U.S. federal withholding tax with respect to any interest payment hereunder; provided that any Foreign Lender that is relying on the so-called "portfolio interest exemption" shall also furnish a United States Tax Compliance Certificate to the effect that such Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Tax Code, a "10 percent shareholder" of Borrower within the meaning of Section 871(h)(3)(B) of the Tax Code, or a "controlled foreign corporation" related to Parent Borrower as described in Section 881(c)(3)(C) of the Tax Code, together with a Form W-8BEN (or W-8BEN-E or successor form). Notwithstanding any other provision of this Section 2.20(d), a Foreign Lender shall not be required to deliver any form pursuant to this Section 2.20(d) that such Foreign Lender is not legally able to deliver.

(e) Any Lender that is a U.S. Person, as defined in Section 7701(a)(30) of the Tax Code shall deliver to the Borrower (with a copy to the Administrative Agent) two (2) accurate and complete original signed copies of Internal Revenue Service Form W-9, or any successor form

that such person is entitled to provide at such time in order to comply with United States back-up withholding requirements.

(f) If a payment made to a Lender hereunder may be subject to U.S. federal withholding tax under FATCA, such Lender shall deliver to the Borrower and the Administrative Agent, at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent, such documentation prescribed by applicable law and such additional documentation reasonably requested by the Borrower or the Administrative Agent to comply with its withholding obligations, to determine that such Lender has complied with such Lender's obligations or to determine the amount to deduct and withhold from such payment. Solely for purposes of this paragraph (f), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(g) The Administrative Agent and any successor thereto shall deliver to the Borrower on or prior to the date on which it becomes the Administrative Agent under this Agreement (and from time to time thereafter upon request of the Borrower) (i) if the Administrative Agent (or such successor to the Agent) is a U.S. Person, two properly completed and duly signed copies of IRS Form W-9 certifying that it is exempt from U.S. federal backup withholding, or (ii) if the Administrative Agent (or such successor to the Administrative Agent) is not a U.S. Person, (A) two properly completed and duly signed copies of IRS Form W-8ECI (or successor form) with respect to any amounts payable under any Loan Document to the Administrative Agent for its own account, and (B) IRS Form W-8IMY (or successor form) with respect to any amounts payable under any Loan Document to the Administrative Agent for the account of others, certifying that it is a "U.S. branch" and that the payments it receives for the account of others are not effectively connected with the conduct of its trade or business within the United States and that it is using such form as evidence of its agreement with the Borrower to be treated as a U.S. Person and thus act as the withholding agent with respect to such payments (and the Borrower and the Administrative Agent agree to so treat the Administrative Agent as a U.S. Person with respect to such payments as contemplated by Treasury Regulation Section 1.1441-1(b)(2)(iv)(A)).

(h) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.20 (including by the payment of additional amounts pursuant to this Section 2.20), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any

indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) Without prejudice to the survival of any other agreement of the Borrower hereunder, the agreements and obligations of the Borrower contained in this Section 2.20 shall survive the payment in full of all amounts due hereunder.

SECTION 2.21. Assignment of Commitments Under Certain Circumstances; Duty to Mitigate. (a) In the event (i) any Lender or any Issuing Bank delivers a certificate requesting compensation pursuant to Section 2.14, (ii) any Lender or any Issuing Bank delivers a notice described in Section 2.15, (iii) the Borrower is required to pay any additional amount to any Lender or any Issuing Bank or any Governmental Authority on account of any Lender or any Issuing Bank pursuant to Section 2.20 or (iv) any Lender is a Defaulting Lender, the Borrower may, at its sole expense and effort (including with respect to the processing and recordation fee referred to in Section 9.04(b)), upon notice to such Lender or such Issuing Bank and the Administrative Agent, require such Lender or such Issuing Bank to transfer and assign, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all of its interests, rights and obligations under this Agreement to an assignee that shall assume such assigned obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (A) such assignment shall not conflict with any law, rule or regulation or order of any court or other Governmental Authority having jurisdiction, (B) the Borrower shall have received the prior written consent of the Administrative Agent and of the Issuing Banks, which consent shall not unreasonably be withheld or delayed, and (C) the Borrower or such assignee shall have paid to the affected Lender or Issuing Bank in immediately available funds an amount equal to the sum of the principal of and interest accrued to the date of such payment on the outstanding Loans or L/C Disbursements of such Lender or such Issuing Bank, respectively, plus all Fees and other amounts accrued for the account of such Lender or such Issuing Bank hereunder (including any amounts under Section 2.14 and Section 2.16); provided, further, that, if prior to any such transfer and assignment the circumstances or event that resulted in such Lender's or such Issuing Bank's claim for compensation under Section 2.14 or notice under Section 2.15 or the amounts paid pursuant to Section 2.20, as the case may be, cease to cause such Lender or such Issuing Bank to suffer increased costs or reductions in amounts received or receivable or reduction in return on capital, or cease to have the consequences specified in Section 2.15, or cease to result in amounts being payable under Section 2.20, as the case may be (including as a result of any action taken by such Lender or such Issuing Bank pursuant to paragraph (b) below), or if such Lender or such Issuing Bank shall waive its right to claim further compensation under Section 2.14 in respect of such circumstances or event or shall withdraw its notice under Section 2.15 or shall waive its right to further payments under Section 2.20 in respect of such circumstances or event, as the case may be, then such Lender or such Issuing Bank shall not thereafter be required to make any such transfer and assignment hereunder. Each of each Lender and each Issuing Bank agrees that, if the Borrower exercises its option under this Section 2.21(a), such Lender or such Issuing Bank, as applicable, shall, promptly after receipt of written notice of such election, execute and deliver all documentation necessary to effectuate such assignment in accordance with Section 9.04 (including an Assignment and Assumption duly executed by such Lender and such Issuing Bank with respect to such assignment). In the event that a Lender or an Issuing Bank, as applicable, does not comply with the requirements of the immediately preceding sentence within one Business Day after receipt of such notice, the Borrower shall be entitled (but not obligated), and such Lender

or such Issuing Bank, as applicable, authorizes, directs and grants an irrevocable power of attorney (which power is coupled with an interest) to the Borrower, to execute and deliver, on behalf of such Lender or such Issuing Bank, as applicable, as assignor, all documentation necessary to effectuate such assignment in accordance with Sections 2.21 and 9.04 (including an Assignment and Assumption) in the circumstances contemplated by this Section 2.21(a) and any documentation so executed and delivered by the Borrower shall be effective for all purposes of documenting an assignment pursuant to and in accordance with Section 9.04.

(b) If (i) any Lender or any Issuing Bank shall request compensation under Section 2.14, (ii) any Lender or any Issuing Bank delivers a notice described in Section 2.15 or (iii) the Borrower is required to pay any additional amount to any Lender or any Issuing Bank or any Governmental Authority on account of any Lender or any Issuing Bank, pursuant to Section 2.20, then such Lender or such Issuing Bank shall use reasonable efforts (which shall not require such Lender or such Issuing Bank to incur an unreimbursed loss or unreimbursed cost or expense or otherwise take any action inconsistent with its internal policies or legal or regulatory restrictions or suffer any disadvantage or burden reasonably deemed by it to be significant) (A) to file any certificate or document reasonably requested in writing by the Borrower or (B) to assign its rights and delegate and transfer its obligations hereunder to another of its offices, branches or affiliates, if such filing or assignment would reduce or eliminate its claims for compensation under Section 2.14 or enable it to withdraw its notice pursuant to Section 2.15 or would reduce or eliminate amounts payable pursuant to Section 2.20, as the case may be, in the future. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender or any Issuing Bank in connection with any such filing or assignment, delegation and transfer.

SECTION 2.22. [*Reserved*].

SECTION 2.23. Letters of Credit.

(a) General. Subject to the terms and conditions hereof, each Issuing Bank agrees to issue, upon the Borrower's request, a Letter of Credit denominated in dollars and in such form as may be reasonably approved from time to time by the Issuing Bank at any time and from time to time while the Revolving Commitments remain in effect for the Borrower's account or for the account of any of its Restricted Subsidiaries, provided that (A) the agreement of each Issuing Bank to issue Letters of Credit shall not extend beyond the date specified in clause (i) of the definition of "Revolving Maturity Date" without the prior written consent of such Issuing Bank, (B) if such Letter of Credit is being issued for the account of a Restricted Subsidiary, the Borrower and such Restricted Subsidiary, as the case may be, shall be co-applicants with respect to such Letter of Credit, (C) if such Letter of Credit is being issued for the account of a Restricted Subsidiary, the applicable Issuing Bank shall have received at least three (3) Business Days (or such shorter period of time acceptable to such Issuing Bank) prior to the proposed date of issuance of such Letter of Credit all documentation and other information reasonably requested by it with respect to such Restricted Subsidiary that is required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the PATRIOT Act and a Beneficial Ownership Certification if such Restricted Subsidiary qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, (D) no Issuing Bank will be required to provide documentary, trade or commercial letters of credit without its consent (in such Issuing Bank's sole discretion) and (E) the maximum amount of Letters of Credit at any time issued and

outstanding of any Issuing Bank shall not exceed the amount of the Total Revolving Commitments. This Section shall not be construed to impose an obligation upon any Issuing Bank to issue any Letter of Credit that is inconsistent with the terms and conditions of this Agreement.

Notwithstanding the foregoing, no Issuing Bank is under any obligation to issue any Letter of Credit if at the time of such issuance:

(i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms enjoin or restrain such Issuing Bank from issuing such Letter of Credit or any requirement of law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction or reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect with respect to such Issuing Bank on the Closing Date, or any unreimbursed loss, cost or expense which was not applicable or in effect with respect to such Issuing Bank as of the Closing Date and which such Issuing Bank reasonably and in good faith deems material to it;

(ii) the issuance of such Letter of Credit would violate one or more policies of such L/C Issuer applicable to letters of credit generally;

(iii) such Issuing Bank shall have received from the Borrower or the Administrative Agent prior to the issuance of such Letter of Credit notice that the issuance of such Letter of Credit is not permitted under this Agreement; or

(iii) any Lender is a Defaulting Lender, unless such Issuing Bank has entered into arrangements satisfactory to it and the Borrower to eliminate such Issuing Bank's risk with respect to the participation of such Defaulting Lender in Letters of Credit.

(b) Notice of Issuance, Amendment, Renewal, Increase, Extension; Certain Conditions. In order to request the issuance of a Letter of Credit or to amend, renew, increase (including any increase contemplated by the terms of any such Letter of Credit) or extend an existing Letter of Credit, the Borrower shall fax or send electronic communication (including through the Internet or other electronic platform) to the Issuing Bank and the Administrative Agent (no less than three (3) Business Days or, in the event of an increase (including any increase contemplated by the terms of any such Letter of Credit) no less than seven (7) Business Days (or, in either case, such shorter period of time acceptable to the Issuing Bank) in advance of the requested date of issuance, amendment, renewal, increase or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed, increased or extended, the date of issuance, amendment, renewal, increase or extension, the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) below), the amount of such Letter of Credit or such increase, the name and address of the beneficiary thereof and such other information as shall be reasonably necessary to prepare such Letter of Credit. If requested by the Issuing Bank, the Borrower shall also submit a letter of credit application on the Issuing Bank's standard form in connection with any request for a Letter of Credit. The Issuing Bank shall

promptly (i) notify the Administrative Agent in writing of the amount and expiry date of each Letter of Credit issued by it and (ii) provide a copy of such Letter of Credit (and any amendments, renewals, increases or extensions thereof) to the Administrative Agent. A Letter of Credit shall be issued, amended, renewed, increased or extended only if, and upon issuance, amendment, renewal, increase or extension of each such Letter of Credit the Borrower shall be deemed to represent and warrant that, after giving effect to such issuance, amendment, renewal, increase or extension, the Aggregate Revolving Exposure shall not exceed the Total Revolving Commitment and that the other conditions expressly set forth herein are satisfied in respect thereto.

(c) Expiration Date. Each Letter of Credit shall expire at the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit and (ii) the date that is five (5) Business Days prior to the latest applicable Revolving Maturity Date with respect to which the aggregate amount of Revolving Commitments maturing on or after such Revolving Maturity Date shall equal or exceed the Revolving L/C Exposure related to such Letter of Credit and all other Letters of Credit expiring on or after the date thereof, unless such Letter of Credit expires by its terms on an earlier date; provided, however, that a Letter of Credit may, upon the request of the Borrower, include a provision whereby such Letter of Credit shall be renewed automatically for additional consecutive periods of twelve (12) months or less (but not beyond the date that is five (5) Business Days prior to the applicable Revolving Maturity Date described above) unless the Issuing Bank notifies the beneficiary thereof at least 30 days (or within such longer period as specified in such Letter of Credit) prior to the then-applicable expiration date that such Letter of Credit will not be renewed.

(d) Participations.

(i) By the issuance of a Letter of Credit and without any further action on the part of the Issuing Bank or the Lenders, the Issuing Bank hereby grants to each Lender, and each such Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to such Lender's Pro Rata Percentage of the aggregate amount available to be drawn under such Letter of Credit, effective upon the issuance of such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, such Lender's Pro Rata Percentage of each L/C Disbursement made by the Issuing Bank and not reimbursed by the Borrower (or, if applicable, another party pursuant to its obligations under any other Loan Document) forthwith on the date due as provided in Section 2.02(f). Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this Section 2.23(d) in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or an Event of Default, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(ii) Notwithstanding anything to the contrary herein, each Lender's participation in any undrawn Letter of Credit that is outstanding on the Revolving Maturity Date with respect to the Revolving Commitments of such Lender shall terminate on such applicable Revolving Maturity Date.

(e) Reimbursement. If the Issuing Bank shall make any L/C Disbursement in respect of a Letter of Credit, the Borrower shall pay or cause to be paid to the Administrative Agent an amount equal to such L/C Disbursement not later than two (2) hours after the Borrower shall have received notice from the Issuing Bank that payment of such draft will be made, or, if the Borrower shall have received such notice later than 1:00 p.m., New York City time, on any Business Day, not later than 12:00 (noon), New York City time, on the immediately following Business Day.

(f) Obligations Absolute. The Borrower's obligations to reimburse L/C Disbursements as provided in Section 2.23(e) above shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement, under any and all circumstances whatsoever, and irrespective of:

(i) any lack of validity or enforceability of any Letter of Credit or any Loan Document, or any term or provision therein;

(ii) any amendment or waiver of, or any consent to departure from, all or any of the provisions of any Letter of Credit or any Loan Document;

(iii) the existence of any claim, setoff, defense or other right that the Borrower, any other party guaranteeing, or otherwise obligated with, the Borrower, any subsidiary or other Affiliate thereof or any other Person may at any time have against the beneficiary under any Letter of Credit, any Issuing Bank, the Administrative Agent or any Lender or any other Person, whether in connection with this Agreement, any other Loan Document or any other related or unrelated agreement or transaction;

(iv) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(v) payment by any Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit; and

(vi) any other act or omission to act or delay of any kind of any Issuing Bank, any Lender, the Administrative Agent or any other Person or any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of the Borrower's obligations hereunder.

Without limiting the generality of the foregoing, it is expressly understood and agreed that the absolute and unconditional obligation of the Borrower hereunder to reimburse L/C Disbursements will not be excused by the bad faith, gross negligence or willful misconduct of any Issuing Bank. However, the foregoing shall not be construed to excuse any Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by such Issuing Bank's bad faith, gross negligence or willful misconduct, as determined by a court of competent jurisdiction by final and nonappealable judgment, in determining whether drafts and other documents presented under a

Letter of Credit comply with the terms thereof; it is understood that each Issuing Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary and, in making any payment under any Letter of Credit (A) an Issuing Bank's exclusive reliance on the documents presented to it under such Letter of Credit as to any and all matters set forth therein, including reliance on the amount of any draft presented under such Letter of Credit, whether or not the amount due to the beneficiary thereunder equals the amount of such draft and whether or not any document presented pursuant to such Letter of Credit proves to be insufficient in any respect, if such document on its face appears to be in order, and whether or not any other statement or any other document presented pursuant to such Letter of Credit proves to be forged or invalid or any statement therein proves to be inaccurate or untrue in any respect whatsoever and (B) any noncompliance in any immaterial respect of the documents presented under such Letter of Credit with the terms thereof shall, in each case, be deemed not to constitute bad faith, willful misconduct or gross negligence of such Issuing Bank.

(g) Disbursement Procedures. The applicable Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit issued by it. The applicable Issuing Bank shall make an L/C Disbursement on the Business Day following receipt of a demand for payment under a Letter of Credit issued by it (provided that the applicable Issuing Bank shall use its best efforts to make such L/C Disbursement on the same day if such demand is received prior to 11:00 a.m., New York City time on a Business Day) and shall give written notice to the Administrative Agent and the Borrower of such demand for payment and whether such Issuing Bank has made or will make an L/C Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse such Issuing Bank and the applicable Lenders with respect to any such L/C Disbursement. The Administrative Agent shall promptly give each Lender notice thereof.

(h) Interim Interest. If an Issuing Bank shall make any L/C Disbursement in respect of a Letter of Credit, then, unless the Borrower shall reimburse such L/C Disbursement in full on such date, the unpaid amount thereof shall bear interest for the account of such Issuing Bank, for each day from and including the date of such L/C Disbursement to but excluding the earlier of the date of payment by the Borrower or the date on which interest shall commence to accrue thereon as provided in Section 2.02(f), at the rate per annum that would apply to such amount if such amount were an ABR Revolving Loan.

(i) Resignation or Removal of the Issuing Bank. Any Issuing Bank may resign at any time by giving 30 days' prior written notice to the Administrative Agent, the Lenders and the Borrower, and may be removed at any time by the Borrower by notice to such Issuing Bank, the Administrative Agent and the Lenders. Upon the acceptance of any appointment as an Issuing Bank hereunder by a Lender that shall agree to serve as successor Issuing Bank, such successor shall succeed to and become vested with all the interests, rights and obligations of the retiring Issuing Bank and the retiring Issuing Bank shall be discharged from its obligations to issue additional, extend, or increase the amount of Letters of Credit hereunder without affecting its rights and obligations with respect to Letters of Credit previously issued by it. At the time such removal or resignation shall become effective, the Borrower shall pay all accrued and unpaid fees pursuant to Section 2.05(c)(ii). The acceptance of any appointment as an Issuing Bank hereunder by a

successor Lender shall be evidenced by an agreement entered into by such successor, in a form reasonably satisfactory to the Borrower and the Administrative Agent, and, from and after the effective date of such agreement, (i) such successor Lender shall have all the rights and obligations of the previous Issuing Bank under this Agreement and the other Loan Documents and (ii) references herein and in the other Loan Documents to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the resignation or removal of an Issuing Bank hereunder, the retiring Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank set forth in this Agreement and the other Loan Documents with respect to Letters of Credit issued by it prior to such resignation or removal, but, after receipt by the Administrative Agent, the Lenders and the Borrower of notice of resignation from an Issuing Bank or after the receipt by an Issuing Bank, the Administrative Agent and the Lenders of notice of removal from the Borrower, as applicable, such Issuing Bank shall not be required to issue additional Letters of Credit or extend or increase the amount of Letters of Credit then outstanding.

(j) Cash Collateralization. If any Event of Default pursuant to clauses (b), (c), (g) or (h) of Article VII shall occur and be continuing, or the maturity of the Loans has been accelerated and/or the Commitments have been terminated or an Asset Sale Prepayment Event has occurred, the Borrower shall on such termination date (or, with respect to an Asset Sale Prepayment Event, on the date set forth in Section 2.13(b)) deposit in an account with a commercial bank reasonably acceptable to the Administrative Agent, for the ratable benefit of the Issuing Banks and the Lenders with Revolving L/C Exposure, an amount in cash equal to the Revolving L/C Exposure as of such date (or such lesser amount as required by Section 2.13(b)). Such deposit shall be held, upon the occurrence of any such Event of Default or such Asset Sale Prepayment Event, and, in the case of an Event of Default, for so long as such Event of Default is continuing, by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower with respect to Letters of Credit under this Agreement. The Administrative 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 in Cash Equivalents, which investments shall be made by the Administrative Agent in accordance with its internal policies applied to transactions of the size and nature provided for in the Loan Documents, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Upon the occurrence and during the continuance of an Event of Default pursuant to clauses (b), (c), (g) or (h) of Article VII, or acceleration of the maturity of the Loans, and/or termination of the Commitments, moneys in such account shall (i) automatically be applied by the Administrative Agent to reimburse each Issuing Bank for L/C Disbursements for which it has not been reimbursed, (ii) be held for the satisfaction of the reimbursement obligations of the Borrower for the Revolving L/C Exposure at such time and (iii) if the maturity of the Loans has been accelerated be applied to satisfy the Guaranteed Obligations hereunder. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence and during the continuance of an Event of Default pursuant to clauses (b), (c), (g) or (h) of Article VII, or acceleration of the maturity of the Loans and/or termination of the Commitments, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three (3) Business Days after all such Events of Default have been cured or waived.

(k) Additional Issuing Banks. The Borrower may, at any time and from time to time with the consent of the Administrative Agent (which consent shall not be unreasonably withheld)

and such Lender, designate one or more additional Lenders to act as an issuing bank under the terms of the Agreement. Any Lender designated as an issuing bank pursuant to this Section 2.23(k) shall be deemed to be an "Issuing Bank" (in addition to being a Lender) in respect of Letters of Credit issued or to be issued by such Lender, and, with respect to such Letters of Credit, such term shall thereafter apply to the other Issuing Bank and such Lender.

SECTION 2.24. Incremental Facilities. (a) The Borrower may, by written notice to the Administrative Agent, elect to request prior to the latest Revolving Maturity Date at such time, (I) up to three increases to the existing Revolving Commitments (any such increase together with any such increase made pursuant to clause (II) below, the "New Revolving Commitments"), in a principal amount (A) not less than $5,000,000 individually (or such lesser amount which shall be reasonably approved by the Administrative Agent or that shall constitute the remaining available amount of New Revolving Commitments permitted to be established pursuant to and in accordance with this Section 2.24(a) after giving effect to the aggregate amount of New Revolving Commitments established pursuant to this Section 2.24(a) after the Closing Date and prior to such date), and integral multiples of $5,000,000 in excess thereof, and (B) not to exceed, for all New Revolving Commitments established pursuant to this Section 2.24(a)(I), an aggregate amount (the "Maximum Incremental Amount") equal to $25,000,000; provided, that the Maximum Incremental Amount shall be reduced by the aggregate principal amount of any New Revolving Commitments established prior to such date and (II) to establish New Revolving Commitments following the Closing Date, in a principal amount (A) not less than $5,000,000 (or such lesser amount which shall be reasonably approved by the Administrative Agent), and integral multiples of $5,000,000 in excess thereof, and (B) not to exceed, for all new Revolving Commitments established pursuant to this Section 2.24(a)(II), an aggregate amount equal to the Additional L/C Amount. Each such notice shall specify the date (each, an "Increased Amount Date") on which the Borrower proposes that the New Revolving Commitments shall be effective, which shall be a date not less than ten (10) Business Days (or such shorter time as the Administrative Agent may agree in its sole discretion) after the date on which such notice is delivered to the Administrative Agent and the Lender thereof, which shall be an eligible assignee pursuant to and in accordance with Section 9.04(b), and subject to the prior written consent of the Administrative Agent and the Issuing Banks, in each case, to the extent required pursuant to Section 9.04(b) as if such New Revolving Lender were an assignee. Such New Revolving Commitments shall become effective as of such Increased Amount Date; provided that (1) no Event of Default shall exist on such Increased Amount Date immediately before or immediately after giving effect to such New Revolving Commitments, as applicable; (2) both before and after giving effect to the making of any New Revolving Loans, the condition set forth in Section 4.01(d) shall be satisfied; (3) the Borrower and its Subsidiaries shall be in pro forma compliance with the covenant set forth in Section 6.09 as of the last day of the most recently ended fiscal quarter for which financial statements are required to be delivered pursuant to Sections 5.04(a) and 5.04(b) immediately after giving effect to such New Commitments and any Investment to be consummated in connection therewith; (4) the New Revolving Commitments shall be effected pursuant to one or more Joinder Agreements executed by the Borrower, the Lenders providing such New Revolving Commitments and the Administrative Agent, and each of which shall be recorded in the Register; provided that if the New Revolving Commitments are not provided by existing Lenders, no more than two Acceptable Financial Institutions may provide the New Revolving Commitments; (5) the Borrower shall make any payments required pursuant to Section 2.16 in connection with the New Revolving Commitments, as applicable; (6) the Borrower shall deliver or cause to be delivered

any customary and appropriate legal opinions or other documents reasonably requested by the Administrative Agent in connection with any such transaction; (7) the requirements set forth in Section 9.17 shall have been satisfied; and (8) in the case of the Additional L/C Amount, such New Revolving Commitments shall be available only for the issuance of Letters of Credit which are fully cash collateralized.

(b) On any Increased Amount Date on which New Revolving Commitments are effected, subject to the satisfaction of the foregoing terms and conditions, (i) each of the Lenders with Revolving Commitments shall assign to each Lender with a New Revolving Commitment (each, a "New Revolving Lender") and each of the New Revolving Lenders shall purchase from each of the Lenders, at the principal amount thereof (together with accrued interest), such interests in the Revolving Loans outstanding on such Increased Amount Date as shall be necessary in order that, after giving effect to all such assignments and purchases, such Revolving Loans will be held by existing Lenders with Revolving Loans and New Revolving Lenders ratably in accordance with their Revolving Commitments after giving effect to the addition of such New Revolving Commitments to the Revolving Commitments, (ii) each New Revolving Commitment shall be deemed for all purposes a Revolving Commitment and each loan made thereunder (a "New Revolving Loan") shall be deemed, for all applicable purposes and as of the Increased Amount Date, a Revolving Loan and (iii) each New Revolving Lender shall become a Lender as of the Increased Amount Date with respect to its New Revolving Commitment and all matters relating thereto.

(c) The Administrative Agent shall notify the Lenders promptly upon receipt of the Borrower's notice of each Increased Amount Date and in respect thereof (i) the New Revolving Commitments and New Revolving Lenders, as applicable, and (ii) in the case of each notice to any Lender with Revolving Loans, the respective interests in such Lender's Revolving Loans subject to the assignments contemplated by Section 2.24(b).

(d) As of the Increased Amount Date, the terms and provisions of the New Revolving Loans and New Revolving Commitments shall be identical to the extent applicable to those of the Revolving Loans and the Revolving Commitments as in effect on the Increased Amount Date with respect to such New Revolving Loans and New Revolving Commitments.

(e) Each Joinder Agreement may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.24.

SECTION 2.25. Incremental Refinancing Facilities. (a) The Borrower may by written notice to the Administrative Agent elect to request the establishment of one or more new tranches of Revolving Commitments and/or New Revolving Commitments (the "Refinancing Revolving Commitments"), in an aggregate amount not less than $10,000,000 individually (or such lesser amount which shall be reasonably approved by the Administrative Agent), and integral multiples of $5,000,000 in excess thereof, the proceeds of which shall be used solely to permanently replace Revolving Commitments and/or New Revolving Commitments then existing. Each such notice shall specify the date (each, a "Refinancing Amount Date") on which the Borrower proposes that the Refinancing Revolving Commitments shall be effective, which shall

be a date not less than ten (10) Business Days after the date on which such notice is delivered to the Administrative Agent. Such Refinancing Revolving Commitments shall become effective as of such Refinancing Amount Date; provided that (A) no Event of Default shall exist on such Refinancing Amount Date immediately before or immediately after giving effect to such Refinancing Revolving Commitments, as applicable; (B) both before and after giving effect to the making of any Refinancing Revolving Loans, each of the conditions set forth in Section 4.01 shall be satisfied in respect of any such Refinancing Revolving Loans; (C) Borrower and its Subsidiaries shall be in pro forma compliance with the covenant set forth in Section 6.09 as of the last day of the most recently ended fiscal quarter for which financial statements are required to be delivered on pursuant to Sections 5.04(a) and 5.04(b) immediately after giving effect to such Refinancing Commitments; (D) the Refinancing Revolving Commitments shall be provided by one or more Lenders and/or any other Person that is an eligible assignee pursuant to and in accordance with Section 9.04(b), and subject to the prior written consent of the Administrative Agent and the Issuing Banks, in each case, to the extent required pursuant to Section 9.04(b); provided, that any Lender offered or approached to provide all or a portion of the Refinancing Revolving Commitments may elect or decline, in its sole discretion, to provide a Refinancing Revolving Commitment; (E) the Refinancing Revolving Commitments shall be effected pursuant to one or more Joinder Agreements executed by the Borrower, the Lenders and/or Persons that are eligible assignees pursuant to and in accordance with Section 9.04(b), in each case, providing such Refinancing Revolving Commitments and the Administrative Agent, and each of which shall be recorded in the Register; (F) the Borrower shall make any payments required pursuant to Section 2.16 (which payment may be financed with proceeds of the Refinancing Revolving Loans) and shall pay all fees and expenses due and payable to the Agents and the Lenders in connection with the Refinancing Revolving Commitments, as applicable; (G) the Borrower shall deliver or cause to be delivered any customary and appropriate legal opinions or other documents reasonably requested by the Administrative Agent in connection with any such transaction; and (H) the requirements set forth in Section 9.17 shall have been satisfied.

(b) [*Reserved*].

(c) [*Reserved*].

(d) To the extent applicable as of the Refinancing Amount Date, the terms and provisions of any Refinancing Revolving Loans and Refinancing Revolving Commitments shall be such that, except as otherwise set forth herein or in the Joinder Agreement, they shall be identical to the extent applicable as of the Refinancing Amount Date to those of the Revolving Loans and the Revolving Commitments being refinanced, in each case, as in effect on the Refinancing Amount Date with respect to such Refinancing Revolving Loans and Refinancing Revolving Commitments; provided, however, that (i) the applicable maturity date of such Refinancing Revolving Loans shall be no shorter than the final maturity of the Revolving Commitments being refinanced (it being understood and agreed that the agreement of an Issuing Bank to issue Letters of Credit shall not extend beyond the date specified in clause (i) of the definition of "Revolving Maturity Date" without the prior written consent of such Issuing Bank) and (ii) the rate of interest applicable to such Refinancing Revolving Loans shall be determined by the Borrower and the applicable new Lenders and shall be set forth in each applicable Joinder Agreement.

(e) On any Refinancing Amount Date on which any Refinancing Revolving Commitments are effective, subject to the satisfaction of the foregoing terms and conditions, (i) each Lender with a Refinancing Revolving Commitment (each, a "Refinancing Revolving Lender") shall commit to make Revolving Loans to the Borrower ("Refinancing Revolving Loans") in an amount equal to its Refinancing Revolving Commitment and (ii) each Refinancing Revolving Lender shall become a Lender hereunder with respect to the Refinancing Revolving Commitment.

(f) Each Joinder Agreement may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.25.

SECTION 2.26. Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes, and during the period it remains, a Defaulting Lender:

(a) if any Revolving L/C Exposure exists at the time such Lender becomes a Defaulting Lender then so long as such Revolving L/C Exposure exists, all or any part of the Revolving L/C Exposure of such Defaulting Lender shall automatically, for so long as such Revolving L/C Exposure is outstanding, be reallocated among the non-Defaulting Lenders in accordance with their respective Pro Rata Percentages but only to the extent the sum of all non-Defaulting Lenders' Revolving Exposures plus such Defaulting Lender's Revolving L/C Exposure does not exceed the total of all non-Defaulting Lenders' Revolving Commitments; provided that neither such reallocation nor any payment by a non-Defaulting Lender pursuant thereto will constitute a waiver or release of any claim the Borrower, the Administrative Agent, the Issuing Bank or any other Lender may have against such Defaulting Lender or cause such Defaulting Lender to no longer be a Defaulting Lender;

(b) if the reallocation described in clause (a) above cannot, or can only partially, be effected, the Borrower shall, within one Business Day following notice by the Administrative Agent, cash collateralize for the benefit of the Issuing Bank only the Borrower's obligations corresponding to such Defaulting Lender's Revolving L/C Exposure (after giving effect to any partial reallocation pursuant to clause (a) above) in accordance with the procedures set forth in Section 2.23(j) for so long as such Revolving L/C Exposure is outstanding;

(c) in furtherance of the foregoing, each Issuing Bank is hereby authorized by the Borrower (which authorization is irrevocable and coupled with an interest) to give, in its discretion, through the Administrative Agent, a Borrowing Request pursuant to Section 2.03 in such amounts and in such times as may be required to (i) reimburse an outstanding L/C Disbursement and/or (ii) cash collateralize the obligations of the Borrower in respect of outstanding Letters of Credit in an amount at least equal to the aggregate amount of the obligations (contingent or otherwise) of such Defaulting Lender in respect of such Letter of Credit; so long as such Lender is a Defaulting Lender or if any Issuing Bank has a good faith and reasonable belief that any Lender has defaulted in fulfilling its obligations generally under other agreements in which it commits to extend credit, then no Issuing Bank shall be required to issue, amend, renew, increase or extend any Letter of Credit, unless it is satisfied that the related exposure will be 100% covered by the Revolving

Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrower in accordance with clauses (a) and (b) above, and participating interests in any such newly issued or increased Letter of Credit shall be allocated among non-Defaulting Lenders in a manner consistent with clause (a) (and such Defaulting Lender shall not participate therein); and

(d) any amount paid by the Borrower or otherwise received by the Administrative Agent for the account of a Defaulting Lender under this Agreement (whether on account of principal, interest, fees, indemnity payments or other amounts) will not be paid or distributed to such Defaulting Lender, but will instead be retained by the Administrative Agent in a segregated account until (subject to the penultimate paragraph of this Section 2.26) the termination of the Commitments and payment in full of all obligations of the Borrower hereunder and will be applied by the Administrative Agent, to the fullest extent permitted by Applicable Law, to the making of payments from time to time in the following order of priority: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent under this Agreement; *second*, to the payment of any amounts owing by such Defaulting Lender to the Issuing Banks (*pro rata* as to the respective amounts owing to each of them) under this Agreement; *third*, to the payment of post-default interest and then current interest due and payable to the Lenders hereunder other than Defaulting Lenders, ratably among them in accordance with the amounts of such interest then due and payable to them; *fourth*, to the payment of fees then due and payable to the non-Defaulting Lenders hereunder, ratably among them in accordance with the amounts of such fees then due and payable to them; *fifth*, to pay principal and unreimbursed L/C Disbursements then due and payable to the non-Defaulting Lenders hereunder ratably in accordance with the amounts thereof then due and payable to them; *sixth*, to the ratable payment of other amounts then due and payable to the non-Defaulting Lenders; and, *seventh*, after the termination of the Commitments and payment in full of all obligations of the Borrower hereunder, to pay amounts owing under this Agreement to such Defaulting Lender or as a court of competent jurisdiction may otherwise direct.

In the event that the Administrative Agent, the Borrower and the Issuing Banks each agrees in writing that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the Administrative Agent shall 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 amounts then held in the segregated account referred to in Section 2.26(d)), such Lender will, to the extent applicable, purchase at par such portion of outstanding Loans of the other Lenders and/or make such other adjustments as the Administrative Agent may determine to be necessary to cause the Revolving Exposure, Revolving L/C Exposure of the Lenders to be held in accordance with their Pro Rata Percentage in accordance with their respective Commitments, whereupon such Lender will cease to be a Defaulting Lender and will be a non-Defaulting Lender (and such Revolving Exposure and Revolving L/C Exposure of each Lender will automatically be adjusted on a prospective basis to reflect the foregoing); provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while such Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to non-Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from such Lender having been a Defaulting Lender.

Subject to Section 9.24, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having

become a Defaulting Lender, including any claim of a non-Defaulting Lender as a result of such non-Defaulting Lender's increased exposure following such reallocation.

## ARTICLE III.

## Representations and Warranties

The Borrower represents and warrants to the Arranger, the Administrative Agent, each of the Issuing Banks and each of the Lenders that:

SECTION 3.01. Organization; Powers. The Borrower and each of the Restricted Subsidiaries (a) is duly organized or formed, validly existing and in good standing under the laws of the jurisdiction of its organization or formation, (b) has all requisite power and authority, and the legal right, to own and operate its property and assets, to lease the property it operates as lessee and to carry on its business as now conducted and, except to the extent the failure to do so could not reasonably be expected to result in a Material Adverse Effect, as proposed to be conducted, (c) is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except where the failure so to qualify, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect and (d) has the power and authority, and the legal right, to execute, deliver and perform its obligations under this Agreement, each of the other Loan Documents and each other agreement or instrument contemplated hereby or thereby to which it is or will be a party, including, in the case of the Borrower, to borrow hereunder, in the case of each Loan Party, to grant the Liens contemplated to be granted by it under the Security Documents and, in the case of each Subsidiary Guarantor, to Guarantee the Guaranteed Obligations hereunder as contemplated by the Guarantee and Collateral Agreement.

SECTION 3.02. Authorization; No Conflicts. The Transactions (a) have been duly authorized by all requisite corporate, partnership or limited liability company and, if required, stockholder, partner or member action and (b) will not (i) violate (A) any applicable provision of any material law, statute, rule or regulation, or of the certificate or articles of incorporation or other constitutive documents or by-laws of the Borrower or any Restricted Subsidiary, (B) any order of any Governmental Authority or arbitrator or (C) any provision of any indenture or any material agreement or other material instrument to which the Borrower or any Restricted Subsidiary is a party or by which any of them or any of their property is or may be bound, (ii) be in conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a default under, or give rise to any right to accelerate or to require the prepayment, repurchase or redemption of any obligation under any such indenture or material agreement or other material instrument or (iii) result in the creation or imposition of any Lien upon or with respect to any property or assets now owned or hereafter acquired by the Borrower or any other Loan Party (other than Liens created under the Security Documents).

SECTION 3.03. Enforceability. This Agreement has been duly executed and delivered by the Borrower and constitutes, and each other Loan Document when executed and delivered by each Loan Party party thereto will constitute, a legal, valid and binding obligation of such Loan Party enforceable against such Loan Party, in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other laws now or hereafter in effect relating to creditors' rights generally and (including with respect to

specific performance) subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law, and to the discretion of the court before which any proceeding therefor may be brought.

SECTION 3.04. Governmental Approvals. No action, consent or approval of, registration or filing with, notice to, or any other action by, any Governmental Authority is or will be required in connection with the Transactions, except for (a) the filing of UCC financing statements and filings with the United States Patent and Trademark Office and the United States Copyright Office, (b) recordation of the Mortgages, (c) such other actions specifically described in Section 3.19, (d) any immaterial actions, consents, approvals, registrations or filings or (e) such as have been made or obtained and are in full force and effect.

SECTION 3.05. Financial Statements. The Borrower has, on or prior to the Closing Date, furnished to the Arranger and the Lenders consolidated balance sheets and related statements of income, equity and cash flows of GenOn Energy, Inc. and its consolidated Subsidiaries (i) as of and for the fiscal year ended December 31, 2017 audited by and accompanied by the opinion of KPMG LLC, independent public accountants (the "Audited Financial Statements"), and (ii) as of and for the fiscal quarter ended September 30, 2018, certified by a Financial Officer of the Borrower and reviewed by KPMG LLC, independent public accountants, as provided in Statement on Auditing Standards No. 100 (the "Unaudited Financial Statements"). Such financial statements present fairly in all material respects the financial condition and results of operations of GenOn Energy, Inc. and its consolidated Subsidiaries, as applicable, as of such dates and for such periods, subject to normal year-end audit adjustments and the absence of footnotes in the case of the financial statements referred to in clause (ii) above. Such balance sheets and the notes thereto disclose all material liabilities, direct or contingent, of GenOn Energy, Inc. and its consolidated Subsidiaries, as applicable, as of the dates thereof. Such financial statements were prepared in accordance with GAAP applied on a consistent basis (except, with respect to such financial statements referred to in clause (ii) above, for normal year-end adjustments and the absence of footnotes).

SECTION 3.06. No Material Adverse Effect. Since the Closing Date, no event, change or condition has occurred that has had, or could reasonably be expected to have, a Material Adverse Effect.

SECTION 3.07. Title to Properties; Possession Under Leases. (a) The Borrower and the other Loan Parties have good and marketable title to, valid leasehold interests in, or a license or other right to use, all their respective material properties and material assets that are included in the Collateral (including all Mortgaged Property) and including valid rights, title and interests in or rights to control or occupy easements or rights of way used in connection with such properties and assets ("Easements"), free and clear of all Liens or other exceptions to title other than Permitted Liens and minor defects in title that, in the aggregate, are not substantial in amount and do not materially detract from the value of the property subject thereto or interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes.

(b) Except as set forth in Schedule 3.07 or where the failure to do so could not reasonably be expected to result in a Material Adverse Effect, (i) each of the Loan Parties has

complied with all material obligations under all material leases to which it is a party and all such material leases are in full force and effect and (ii) each of the Loan Parties enjoys peaceful and undisturbed possession under all such material leases.

(c) Except as set forth in Schedule 3.07, none of the Borrower or any of the other Loan Parties has received any notice of, nor has any knowledge of, any pending or contemplated condemnation proceeding affecting the Mortgaged Properties or any sale or disposition thereof in lieu of condemnation (i) as of the Closing Date or (ii) at any time thereafter, which in the case of clause (ii) has had, or could reasonably be expected to have, a Material Adverse Effect.

(d) Except as set forth on Schedule 3.07, as of the Closing Date none of the Borrower or any of the Restricted Subsidiaries is obligated under any right of first refusal, option or other contractual right to sell, assign or otherwise dispose of any Mortgaged Property or any interest therein.

SECTION 3.08. Subsidiaries. Schedule 3.08 sets forth as of the Closing Date a list of all Subsidiaries, including each Subsidiary's exact legal name (as reflected in such Subsidiary's certificate or articles of incorporation or other constitutive documents) and jurisdiction of incorporation or formation and the percentage ownership interest of the Borrower (direct or indirect) therein, and identifies each Subsidiary that is a Loan Party. As of the Closing Date, the shares of Capital Stock or other Equity Interests so indicated on Schedule 3.08 are owned by the Borrower, directly or indirectly, free and clear of all Liens (other than Liens created under the Security Documents and, in the case of Equity Interests (other than Pledged Securities), Permitted Liens, and in respect of Pledged Securities, the Permitted Liens set forth in clause (g) of the definition thereof) and all such shares of capital stock are fully paid, and to the extent issued by a corporation, non-assessable.

SECTION 3.09. Litigation; Compliance with Laws. (a) Except as set forth on Schedule 3.09, there are no actions, suits or proceedings at law or in equity or by or before any arbitrator or Governmental Authority now pending or, to the knowledge of the Borrower, threatened against the Borrower or any Restricted Subsidiary or any business, property or material rights of the Borrower or any Restricted Subsidiary (i) that, as of the Closing Date, involve any Loan Document or the Transactions or, at any time thereafter, involve any Loan Document or the Transactions and which could reasonably be expected to be material and adverse to the interests of the Borrower and its Restricted Subsidiaries, taken as a whole, or the Lenders, or (ii) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect but not including, in each case, any matters arising under or relating to Environmental Laws or Hazardous Materials, which are the subject of Section 3.17.

(b) Except as set forth on Schedule 3.09, none of the Borrower or any of the Restricted Subsidiaries or any of their respective material properties or assets is in violation of any law, rule or regulation (including any zoning, building, ordinance, code or approval or any building permits), or is in default with respect to any judgment, writ, injunction, decree or order of any Governmental Authority, where such violation or default, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect (but not including, in each case, any

Environmental Law which is the subject of Section 3.17 or any energy regulation matter which is the subject of Section 3.23).

(c) All material permits are in effect for each Mortgaged Property as currently constructed.

SECTION 3.10. Agreements. None of the Borrower or any of the Restricted Subsidiaries is in default under any provision of any indenture or other agreement or instrument evidencing Indebtedness, or any other material agreement or instrument to which it is a party or by which it or any of its properties or assets are or may be bound, where such default, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.11. Federal Reserve Regulations. (a) None of the Borrower or any of the Restricted Subsidiaries is engaged principally, or as one of its material activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

(b) No part of the proceeds of any Loan or any Letter of Credit will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for purchasing or carrying Margin Stock or for the purpose of purchasing, carrying or trading in any securities under such circumstances as to involve the Borrower in a violation of Regulation X or to involve any broker or dealer in a violation of Regulation T. No Indebtedness being reduced or retired out of the proceeds of any Loans or Letters of Credit was or will be incurred for the purpose of purchasing or carrying any Margin Stock. Following the application of the proceeds of the Loans and the Letters of Credit, Margin Stock will not constitute more than 25% of the value of the assets of the Borrower and the Restricted Subsidiaries. None of the transactions contemplated by this Agreement will violate or result in the violation of any of the provisions of the Regulations of the Board, including Regulation T, U or X. If requested by any Lender or the Administrative Agent, the Borrower will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form G-3 or FR Form U-1 referred to in Regulation U.

SECTION 3.12. Investment Company Act. None of the Borrower or any of the Restricted Subsidiaries is an "investment company" as defined in, and subject to registration under, the Investment Company Act of 1940, as amended from time to time.

SECTION 3.13. Use of Proceeds. The Borrower will use the proceeds of (a) the Revolving Loans and the New Revolving Loans for the Borrower's and/or its Subsidiaries' working capital requirements, the payment of fees and expenses in connection with this Agreement and the transactions related thereto and other general corporate purposes (including permitted acquisitions, funding Minority Investments and permitted joint ventures) and (b) the Refinancing Revolving Loans, initially, solely for the purposes set forth in Section 2.25(a) with respect thereto and, thereafter, for the Borrower's and/or its Subsidiaries' working capital requirements, the payment of fees and expenses in connection with this Agreement and the transactions related thereto and other general corporate purposes (including permitted acquisitions, funding Minority Investments and permitted joint ventures). The Borrower will request the issuance of Letters of Credit solely for the working capital requirements and general corporate purposes of the Borrower and its Restricted Subsidiaries.

SECTION 3.14. Tax Returns. The Borrower and each of the Restricted Subsidiaries has timely filed or timely caused to be filed all material Federal, state, local and non-U.S. tax returns or materials required to have been filed by it and all such tax returns are correct and complete in all material respects. The Borrower and each of the Restricted Subsidiaries has timely paid or caused to be timely paid all material Taxes due and payable by it and all assessments received by it, except Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such Restricted Subsidiary, as applicable, shall have set aside on its books adequate reserves in accordance with GAAP or except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect. The Borrower has made adequate provision in accordance with GAAP for all Taxes accrued and not yet due and payable. Except as permitted in clause (g) of the definition of "Permitted Liens," no Lien for Taxes has been filed (except for Taxes not yet delinquent that are being contested in good faith by appropriate proceedings), and to the knowledge of the Borrower and each of the Restricted Subsidiaries, based on the receipt of written notice, no claim is being asserted, with respect to any Tax. Neither the Borrower nor any of the Restricted Subsidiaries (a) intends to treat the Loans, the Transactions or any of the other transactions contemplated by the terms of any Loan Document as being a "reportable transaction" (within the meaning of Treasury Regulation Section 1.6011-4) or (b) is aware of any facts or events that would result in such treatment.

SECTION 3.15. No Material Misstatements. No written information, report, financial statement, exhibit or schedule furnished by or on behalf of the Borrower or any Restricted Subsidiary to the Arranger, the Administrative Agent, any Issuing Bank or any Lender for use in connection with the Transactions or the other transactions contemplated by the Loan Documents or in connection with the negotiation of any Loan Document or included therein or delivered pursuant thereto contained, contains or will, when furnished, contain any material misstatement of fact or omitted, omits or will, when furnished, omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were, are or will be made, not misleading; provided that to the extent any such written information, report, financial statement, exhibit or schedule is based upon or constitutes a forecast or projection (including pro forma financial statements) or is information of a general economic or industry nature, the Borrower represents only that it acted in good faith and upon assumptions believed to be reasonable at the time made and at the time such information, report, financial statement, exhibit or schedule is made available to the Arranger, the Administrative Agent, any Issuing Bank or any Lender, it being understood that projections are subject to significant uncertainties and contingencies, many of which are beyond the control of the Borrower and the Restricted Subsidiaries, and that no assurance can be given that such projections will be realized.

SECTION 3.16. Employee Benefit Plans. Except as could not reasonably be expected to result in a Material Adverse Effect, the Borrower and each ERISA Affiliate is in compliance with the applicable provisions of ERISA and, in respect of the Benefit Plans and Multiemployer Plans, the Tax Code and the regulations and published interpretations thereunder. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events, could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.17. Environmental Matters. (a) Except as set forth in Schedule 3.17 or except with respect to any matters that, individually or in the aggregate, could not reasonably be

expected to result in a Material Adverse Effect, none of the Borrower or any of the Restricted Subsidiaries:

(i) has failed to comply with any Environmental Law or to take all actions necessary to obtain, maintain, renew and comply with any permit, license, registration or other approval required under Environmental Law;

(ii) has become a party to any administrative or judicial proceeding, or possesses knowledge of any such proceeding that has been threatened, that could result in the termination, revocation or modification of any permit, license, registration or other approval required under Environmental Law;

(iii) possesses knowledge that the Borrower or any of the Restricted Subsidiaries has become subject to any Environmental Liability or that any Mortgaged Property (A) is subject to any Lien imposed pursuant to Environmental Law or (B) contains Hazardous Materials of a form or type or in a quantity or location that could reasonably be expected to result in any Environmental Liability;

(iv) has received written notice of any claim or threatened claim with respect to any Environmental Liability other than those which have been fully and finally resolved and for which no obligations remain outstanding; or

(v) possesses knowledge of any facts or circumstances that could reasonably be expected to result in any Environmental Liability or could reasonably be expected to materially interfere with or prevent continued material compliance with Environmental Laws in effect as of the Closing Date and the date of each Credit Event by the Borrower or the Restricted Subsidiaries.

(b) Since the Closing Date, there has been no change in the status of any matter addressed under Section 3.17(a) above that, individually or in the aggregate, has resulted in, or could reasonably be expected to result in, a Material Adverse Effect.

SECTION 3.18. Insurance. Schedule 3.18 sets forth a true, complete and correct description of all material insurance coverage maintained by or on behalf of the Borrower and the Restricted Subsidiaries as of the Closing Date. As of the Closing Date, such insurance is in full force and effect and all premiums that are due and owed have been duly paid. The Borrower and the Restricted Subsidiaries are insured by financially sound insurers (subject to the proviso in Section 5.02) and such insurance is in such amounts and covering such risks and liabilities (and with such deductibles, retentions and exclusions) as are maintained by companies of a similar size operating in the same or similar businesses.

SECTION 3.19. Security Documents. (a) The Guarantee and Collateral Agreement is effective to create in favor of the Collateral Trustee, for the ratable benefit of the Secured Parties, a legal, valid, binding and enforceable security interest in the Collateral described therein and proceeds thereof (other than money not constituting identifiable proceeds of any Collateral), subject to applicable insolvency, bankruptcy, reorganization, moratorium, fraudulent transfer and other laws now or hereafter in effect generally affecting rights of creditors and (including with respect to specific performance) principles of equity, whether considered in a proceeding in equity

or in law and to the discretion of the court before which any proceeding therefor may be brought, and (i) in the case of the Pledged Securities, upon the earlier of (A) when such Pledged Securities are delivered to the Collateral Trustee and (B) when financing statements in appropriate form are filed in the offices specified on Schedule 3.19(a), (ii) in the case of Deposit Accounts not constituting Excluded Perfection Assets or Counterparty Accounts, by the execution and delivery of control agreements providing for "control" as described in Section 9-104 of the UCC, (iii) in the case of Securities Accounts not constituting Excluded Perfection Assets or Counterparty Accounts, upon the earlier of (A) the filing of financing statements in the offices specified on Schedule 3.19(a) and (B) the execution and delivery of control agreements providing for "control" as described in Section 9-106 of the UCC and (iv) in the case of all other Collateral described therein (other than Excluded Perfection Assets, Intellectual Property Collateral, money not credited to a Deposit Account or letter of credit rights not constituting supporting obligations), when financing statements in appropriate form are filed in the offices specified on Schedule 3.19(a), the Lien created by the Guarantee and Collateral Agreement shall constitute a fully perfected Lien on, all right, title and interest of the Secured Parties in such Collateral and proceeds thereof, as security for the Guaranteed Obligations hereunder, in each case prior and superior to the rights of any other Person (except, in the case of all Collateral other than Pledged Securities in the possession of the Collateral Trustee, with respect to Permitted Liens, and in respect of Pledged Securities in the possession of the Collateral Trustee, the Permitted Liens set forth in clause (g) of the definition thereof and with respect to any other Priority Lien Obligations).

(b) Each Intellectual Property Security Agreement is effective to create in favor of the Collateral Trustee, for the ratable benefit of the Secured Parties, a legal, valid, binding and enforceable security interest in the Intellectual Property Collateral described therein and proceeds thereof (other than money not constituting identifiable proceeds of any Intellectual Property Collateral), subject to applicable insolvency, bankruptcy, reorganization, moratorium, fraudulent transfer and other laws now or hereafter in effect generally affecting rights of creditors and (including with respect to specific performance) principles of equity, whether considered in a proceeding in equity or in law and to the discretion of the court before which any proceeding therefor may be brought. When each Intellectual Property Security Agreement is filed in the United States Patent and Trademark Office and the United States Copyright Office, respectively, together with financing statements in appropriate form filed in the offices specified in Schedule 3.19(a), in each case within the time period prescribed by applicable law, such Intellectual Property Security Agreement shall constitute a fully perfected Lien on, and security interest in (if and to the extent perfection may be achieved by such filings), all right, title and interest of the grantors thereunder in the Intellectual Property Collateral, as security for the Guaranteed Obligations hereunder, in each case prior and superior in right to any other Person (except with respect to Permitted Liens) (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a Lien on registered trademarks, trademark applications, patents, patent applications, copyright registrations and copyright applications acquired by the grantors after the Closing Date).

(c) Each of the Mortgages, beginning at the time entered into, is effective to create in favor of the Collateral Trustee, for the ratable benefit of the Secured Parties, a legal, valid, binding, subsisting and enforceable Lien on, and security interest in all of the Loan Parties' right, title and interest in and to the Mortgaged Property described therein and proceeds thereof (other than money

not constituting identifiable proceeds of any Mortgaged Property), subject to applicable insolvency, bankruptcy, reorganization, moratorium, fraudulent transfer and other laws now or hereafter in effect generally affecting rights of creditors and (including with respect to specific performance) principles of equity, whether considered in a proceeding in equity or in law, and to the discretion of the court before which any proceeding therefor may be brought. When the Mortgages are filed in the offices specified on Schedule 3.19(c), each such Mortgage shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the grantors thereof in such Mortgaged Property and proceeds thereof, as security for the Guaranteed Obligations hereunder, in each case prior and superior in right to any other Person (except the Permitted Liens set forth in clauses (e), (f), (g), (h), (i), (j) (solely with respect to Permitted Refinancing Indebtedness refinancing Indebtedness secured by a Permitted Lien set forth in clause (e) or (o) of the definition thereof), (m) and (o) of the definition thereof and with respect to any other Priority Lien Obligations).

SECTION 3.20. Location of Real Property. Schedule 3.20 lists completely and correctly as of the Closing Date (a) all real property owned or leased by the Borrower and the other Loan Parties (except for (i) leasehold interests of the Borrower or any of its Restricted Subsidiaries in real property (other than any real property constituting a Facility), (ii) any real property or leasehold interest that is subject to a Specified Asset Sale, (iii) any real property or leasehold interest that is an ash disposal or ash handling site, except as indicated therein, and (iv) any maintenance facilities) and (b) all real property (except for (i) such interest therein that does not constitute Collateral, (ii) such interest therein that constitutes an Excluded Perfection Asset or (iii) where the Fair Market Value of such interest therein is less than $10,000,000 individually) to which the Borrower and the other Loan Parties have an interest via easement, license or permit and, in the case of each of clauses (a) and (b), the addresses thereof, indicating for each parcel whether it is owned or leased. As of the Closing Date, the Borrower and the other Loan Parties own in fee or have valid leasehold or easement interests in, as the case may be, all the real property set forth on Schedule 3.20.

SECTION 3.21. Labor Matters. As of the Closing Date, there are no strikes, lockouts or slowdowns against the Borrower or any Restricted Subsidiary pending or, to the knowledge of the Borrower, threatened. The hours worked by and payments made to employees of the Borrower and the Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, material local or material foreign law applicable to such matters in any material respect. All payments due from the Borrower or any Restricted Subsidiary, or for which any claim may be made against the Borrower or any Restricted Subsidiary, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of the Borrower or such Restricted Subsidiary, except as could not reasonably be expected to have a Material Adverse Effect. The consummation of the Transactions will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which the Borrower or any Restricted Subsidiary is bound.

SECTION 3.22. Intellectual Property. Except in each case as could not reasonably be expected to result in a Material Adverse Effect, (a) the Borrower and each of the Restricted Subsidiaries owns, or is licensed or otherwise has the right to use, all trademarks, tradenames, copyrights, patents and other intellectual property material to its business, and (b) the use thereof

by the Borrower and the Restricted Subsidiaries does not infringe upon the rights of any other Person.

SECTION 3.23. Energy Regulation. (a) Each of the Borrower and any Restricted Subsidiary Guarantor that is a holding company as such term is defined in PUHCA is exempt in accordance with 18 CFR § 366.3 from the federal accounting, record-retention and reporting requirements of PUHCA.

(b) The Borrower is not subject to regulation as a "public utility" as such term is defined in the FPA. Each Subsidiary Guarantor that is a "public utility" within the meaning of the FPA ("FPA-Jurisdictional Subsidiary Guarantors") has a validly-issued order from FERC, not subject to any pending challenge or investigation, except as could not reasonably be expected to result in a Material Adverse Effect and other than generic proceedings generally applicable in the industry: (x) authorizing it to engage in wholesale sales of electric energy, capacity and certain ancillary services and, to the extent permitted under its market-based rate tariff, other transactions at market-based rates and (y) granting such waivers and blanket authorizations as are customarily granted to entities with market-based rate authority, including blanket authorizations to issue securities and to assume liabilities pursuant to Section 204 of the FPA (together, "FPA MBR Authorizations, Exemptions and Waivers"). As of the Closing Date, except as could not reasonably be expected to result in a Material Adverse Effect and except as set forth on Schedule 3.23(b), FERC has not imposed any rate caps, mitigation measures, or other limitations on the FPA MBR Authorizations, Exemptions and Waivers of any FPA-Jurisdictional Subsidiary Guarantor or any of the FPA-Jurisdictional Subsidiary Guarantors' authority to engage in sales of electricity at market-based rates, other than (i) rate caps and mitigation measures generally applicable to wholesale suppliers participating in the applicable FERC-jurisdictional electric market (although, to the knowledge of the Borrower, there are no generally applicable challenges currently pending before FERC to the market-based rate authorization of wholesale suppliers in the electric markets in which the Subsidiary Guarantors described in the previous sentence make wholesale sales under their market-based rate tariffs). As of the Closing Date, except as could not reasonably be expected to result in a Material Adverse Effect, no applicable Governmental Authority has imposed any specific limitation on the ability of any FPA-Jurisdictional Subsidiary Guarantor to participate in any RTO Market (other than generic limitations generally applicable to similarly situated participants in such RTO Market).

(c) [Reserved].

(d) Except as could not reasonably be expected to result in a Material Adverse Effect and except as set forth on Schedule 3.23(d), there are no complaint proceedings pending with FERC or any other applicable Government Authority seeking abrogation or modification or refunds, or otherwise investigating the rates, terms or conditions, of a sale of electric energy, capacity or ancillary services by the Borrower or its Subsidiary Guarantors.

(e) Except as could not reasonably be expected to result in a Material Adverse Effect, each of the Borrower and each of the Subsidiary Guarantors, as applicable, has filed or caused to be filed with the applicable state or local utility commission or regulatory bodies, FERC or any other applicable Governmental Authority, all forms, applications, notices, statements, reports and documents (including all exhibits and amendments thereto) required to be filed by it under all

Applicable Laws, including PUHCA, the FPA, the rules for RTO Markets and state utility laws and the respective rules thereunder, all of which complied with the applicable requirements of the appropriate act and rules, regulations and orders thereunder in effect on the date each was filed.

(f) None of the Borrower or any of the Subsidiary Guarantors is subject to any material state laws or material regulations respecting rates or the financial or organizational regulation of utilities, other than (i) "lightened regulation" by the New York State Public Service Commission (the "NYPSC") of the type described in the NYPSC's order issued on September 23, 2004 in Case 04-E-0884, (ii) the assertion of jurisdiction by the State of California over maintenance and operating standards of all generating facilities pursuant to California Public Utilities Commission General Order 167 and (iii) with respect to Subsidiary Guarantors that are retail electric providers, regulations issued by the respective state legislatures and regulatory Commissions. Other than the approval of the NYPSC, which was granted by an order issued in Case 10-E-0405 (November 18, 2010), no approval is required to be obtained in connection with the Transactions by the Borrower or the Subsidiary Guarantors from the FERC or any other state or federal Governmental Authority with jurisdiction over the energy sales or financing arrangements of the Borrower and the Subsidiary Guarantors.

(g) As of the Closing Date, each Person identified as an "EWG" in Schedule 3.23(g) is an "exempt wholesale generator" within the meaning of PUHCA and the Energy Policy Act of 2005, as amended.

SECTION 3.24. Solvency. Immediately after the consummation of the Transactions on the Closing Date and immediately following the making of each Loan (or other extension of credit hereunder) and after giving effect to the application of the proceeds of each Loan (or other extension of credit hereunder), (a) the fair value of the assets of the Loan Parties, taken as a whole, at a fair valuation, taking into account the effect of any indemnities, contribution or subrogation rights, will exceed their debts and liabilities, subordinated, contingent or otherwise; (b) the present fair saleable value of the property of the Loan Parties, taken as a whole, taking into account the effect of any indemnities, contribution or subrogation rights, will be greater than the amount that will be required to pay the probable liability of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (c) the Loan Parties, taken as a whole, will be able to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (d) the Loan Parties, taken as a whole, will not have unreasonably small capital with which to conduct the business in which they are engaged as such business is now conducted and is proposed to be conducted following the Closing Date.

SECTION 3.25. Beneficial Ownership. As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

SECTION 3.26. Anti-Terrorism Laws. To the extent applicable, each Loan Party and its Subsidiaries are in compliance with Anti-Terrorism Laws in all material respects.

SECTION 3.27. Anti-Corruption Laws and Sanctions.

(a) The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower and its Subsidiaries and, to the knowledge of the Borrower, their respective directors, officers and employees with Anti-Corruption Laws and applicable Sanctions.

(b) The Borrower and its Subsidiaries and their respective officers, directors and employees, are not Sanctioned Persons.

(c) No part of the proceeds of the Loans or the Letters of Credit will be used, directly, or to the knowledge of the Borrower, indirectly (i) in violation of the Anti-Corruption Laws or (ii) in violation of Section 6.12.

## ARTICLE IV.

## Conditions of Lending

The obligations of the Lenders to make Loans and the obligations of the Issuing Banks to issue Letters of Credit hereunder are subject to the satisfaction (or waiver in accordance with Section 9.08) of the following conditions:

SECTION 4.01. All Credit Events. On the date of each Borrowing on or after the Closing Date, and on the date of each issuance, amendment, extension, increase (including any increase contemplated by the terms of any such Letter of Credit) or renewal of a Letter of Credit on or after the Closing Date (each such event being called a "Credit Event"):

(a) The Administrative Agent shall have received a notice of such Borrowing as required by Section 2.03 (or such notice shall have been deemed given in accordance with Section 2.03) or, in the case of the issuance, amendment, extension, increase or renewal of a Letter of Credit, the Issuing Bank and the Administrative Agent shall have received a notice requesting the issuance, amendment, extension, increase or renewal of such Letter of Credit as required by Section 2.23(b).

(b) The representations and warranties set forth in each Loan Document shall be true and correct in all material respects on and as of the date of such Credit Event with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects on and as of such earlier date; provided that, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality (or Material Adverse Effect) in the text thereof.

(c) At the time of and immediately after such Credit Event, no Default or Event of Default shall have occurred and be continuing.

(d) After giving effect to such Credit Event, the Aggregate Revolving Exposure shall not exceed the Total Revolving Commitment.

Each Credit Event shall be deemed to constitute a representation and warranty by the Borrower on the date of such Credit Event as to the matters specified in Sections 4.01(b), 4.01(c) and 4.01(d).

SECTION 4.02. Conditions Precedent to the Closing Date. The obligations of the Lenders to make Loans and the obligations of the Issuing Banks to issue Letters of Credit hereunder are subject to the satisfaction (or waiver by each Lender) on the Closing Date, of each of the following conditions:

(a) The Administrative Agent (or its counsel) shall have received (i) a counterpart signed by each Loan Party party thereto (or written evidence satisfactory to the Administrative Agent (which may include a copy transmitted by facsimile or other electronic method) that each such Loan Party has signed a counterpart) of (A) this Agreement, (B) the Security Documents, (C) any Revolving Note requested by a Lender at least three (3) Business Days prior to the Closing Date and (D) the Fee Letter and (ii) a Borrowing Request as required by Section 2.03.

(b) The Administrative Agent shall have received a customary written opinion of Kirkland & Ellis LLP, in its capacity as special counsel for the Loan Parties.

(c) The Borrower shall have delivered to the Administrative Agent and the Lenders the Audited Financial Statements and the Unaudited Financial Statements.

(d) The Administrative Agent shall have received with respect to the Borrower and each other Loan Party:

(i) copies of the Organizational Documents of such Loan Party (including each amendment thereto) certified as of a date reasonably near the Closing Date as being a true and complete copy thereof by the Secretary of State or other applicable Governmental Authority of the jurisdiction in which each such Loan

(ii) a certificate of the secretary or assistant secretary of each Loan Party dated the Closing Date and certifying (A) that attached thereto is a true and complete copy of the Organizational Documents of such Loan Party as in effect on the Closing Date, (B) that, except with respect to REMA, attached thereto is a true and complete copy of resolutions duly adopted by the board of directors or similar governing body of such Loan Party (and, if applicable, any parent company of such Loan Party) approving and authorizing the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party and the consummation of the Transactions, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, (C) that the certificate or articles of incorporation, formation or organization, as applicable, of such Loan Party have not been amended since the date of the last amendment thereto shown on the certificate of good standing furnished pursuant to clause (iv) below and (D) as to the incumbency and specimen signature of each Person authorized to execute any Loan Document or any other document delivered in connection herewith on behalf of such Loan Party;

(iii) a certificate of another officer as to the incumbency and specimen signature of the secretary or assistant secretary executing the certificate pursuant to clause (ii) above; and

(iv) a copy of the certificate of good standing of such Loan Party from the Secretary of State or other applicable Governmental Authority of the jurisdiction in which each such Loan Party is organized (dated as of a date reasonably near the Closing Date).

(e) In connection with the Plans of Reorganization and the exit transactions contemplated thereby or to occur on the Closing Date in connection therewith (collectively, the "Exit Transactions"): (i) any of the documents executed in connection with the implementation of the Plans of Reorganization (collectively, the "Plan Documents"), to the extent they contain provisions differing in any material respect from, or not described in, the Plans of Reorganization, that are adverse in any material respect to the rights or interest of any or all of the Arranger, the Administrative Agent and the Lenders (collectively, the "Finance Parties") shall be in form and substance satisfactory to the Arranger in its sole discretion; (ii) there shall have been no additional supplements, modifications, amendments, or waiver to the Plans of Reorganization (other than the Plan Amendment Orders) that, in the sole discretion of the Arranger, is adverse in any material respect to the rights of any or all of the Finance Parties or the creditworthiness of the Borrower unless, in each case, the Arranger shall have consented thereto in writing; and (iii) unless the Arranger shall have consented thereto in writing, the Confirmation Orders shall (A) have been entered by the Bankruptcy Court and shall not be subject to any stay pending appeal, (B) provide for terms and conditions substantially similar to those provided in the Plans of Reorganization and otherwise be satisfactory to the Arranger in its reasonable discretion, and (C) be in full force and effect. Notwithstanding anything to the contrary in the Plans of Reorganization or Confirmation Orders, the Bankruptcy Court's retention of jurisdiction under the Plans of Reorganization and the Confirmation Orders shall not govern the enforcement of the Loans or the related Loan Documents or any rights or remedies of the parties related thereto or arising thereunder.

(f) Substantially concurrently with the effectiveness of this Agreement on the Closing Date, the Arranger shall have received reasonably satisfactory evidence that all Indebtedness of the Borrower and its Subsidiaries (other than Indebtedness permitted under Section 6.01) shall have been extinguished, repaid or repurchased in full, all commitments relating thereto shall have been terminated, and all liens or security interests related thereto shall have been terminated or released, in each case to the extent set forth in or contemplated by the Plans of Reorganization (as the same may be supplemented, modified, amended, or waived in accordance with Section 4.02(e) above) and the Loan Documents.

(g) (i) All conditions precedent to the effectiveness of the Plans of Reorganization, as it may be amended, supplemented, modified, or waived in accordance with clause 4.02(e)(ii) above, shall have been satisfied in the reasonable judgment of the Arranger (or will be satisfied substantially concurrently with the effectiveness of this Agreement) or been waived (with the prior written consent of the Arranger), the Plans of Reorganization shall have been substantially consummated (as defined in Section 1101 of the Bankruptcy Code), and the effective date thereunder shall have occurred, in each case concurrently with the initial advance of Loans under this Agreement, (ii) all, or substantially all, assets of the Debtors shall have vested in the Reorganized Debtors (as provided for and defined in the Plans of Reorganization), (iii) the

Borrower shall have received all required regulatory approvals related to the Plans of Reorganization and (iv) the Borrower shall not have received any regulatory decision that could be expected to have a material adverse effect on the Finance Parties.

(h) The Borrower shall have received all required regulatory approvals for emergence and no adverse regulatory decisions.

(i) The Lenders, the Arranger and the Agents shall have received all fees and other amounts due and payable on or prior to the Closing Date, including, to the extent invoiced at least two (2) Business Days prior to the Closing Date, reimbursement or payment of all out-of-pocket expenses (including reasonable fees, disbursements and other charges of counsel) required to be reimbursed or paid under any Loan Document.

(j) The Administrative Agent shall have received a solvency certificate substantially in the form attached hereto as Exhibit J, dated the Closing Date and signed by the chief financial officer, chief accounting officer or other officer with equivalent duties of the Borrower acceptable to the Administrative Agent.

(k) Each Loan Party shall have delivered to the Collateral Trustee, subject to Section 5.13:

(i) evidence that each Loan Party shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument (including any amendments to the articles of incorporation or other constitutional documents or agreements of such Loan Party pursuant to which any restrictions or inhibitions relating to the enforcement of any Lien created by the Security Documents are removed) and authorized, made or caused to be made any other filing and recording required under the Security Documents, and each UCC financing statement shall have been filed, registered or recorded or shall have been delivered to the Collateral Trustee and shall be in proper form for filing, registration or recordation; and

(ii) (1) the certificates representing the shares of certificated Equity Interests pledged pursuant to the Guarantee and Collateral Agreement, together with an undated stock power and other instrument of transfer for each such certificate executed in blank by a duly authorized officer of the pledger thereof, (2) an acknowledgement and consent in form and substance reasonably satisfactory to the Administrative Agent, duly executed by any issuer of Equity Interests pledged pursuant to the Guarantee and Collateral Agreement that is not itself a party to the Guarantee and Collateral Agreement, (3) each promissory note pledged pursuant to the Guarantee and Collateral Agreement duly executed (without recourse) in blank (or accompanied by an undated instrument of transfer executed in blank and satisfactory to the Collateral Trustee) by the pledger thereof and (4) the Subordinated Intercompany Note executed by the parties thereto accompanied by an undated instrument of transfer duly executed in blank and satisfactory to the Collateral Trustee.

(l) Subject to Section 5.13, with respect to any interest in any Collateral consisting of real property or any lease of Collateral consisting of real property deliver: (i) an executed first priority Mortgage in favor of the Collateral Trustee, for the benefit of the Secured Parties, covering

such real property and complying with the provisions herein and in the Security Documents, (ii) to the Secured Parties (A) title and extended coverage insurance covering such real property in an amount as shall be reasonably specified by the Administrative Agent or the Collateral Trustee, together with such endorsements as are reasonably required by the Administrative Agent or the Collateral Trustee and are obtainable in the State in which such Mortgaged Property is located, and all of the other provisions herein and in the Security Documents, together with a surveyor's certificate and (B) any consents or estoppels reasonably deemed necessary or advisable by the Administrative Agent or the Collateral Trustee in connection with such Mortgage, each of the foregoing in form and substance reasonably satisfactory to the Administrative Agent and the Collateral Trustee, (iii) to the Administrative Agent, if any such Collateral (other than any Excluded Perfection Assets) consisting of real property is required to be insured pursuant to the Flood Disaster Protection Act of 1973 or the National Flood Insurance Act of 1968, and the regulations promulgated thereunder, because it is located in an area which has been identified by the Secretary of Housing and Urban Development as a "special flood hazard area," (A) a policy of flood insurance that (1) covers such Collateral and (2) is written in an amount reasonably satisfactory to the Administrative Agent, (B) a "life of loan" standard flood hazard determination with respect to such Collateral and (C) a confirmation that the Borrower or such other Loan Party has received the notice requested pursuant to Section 208(e)(3) of Regulation H of the Board, (iv) to the Administrative Agent and the Collateral Trustee, if reasonably requested by the Administrative Agent, legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent and the Collateral Trustee and (v) to the Administrative Agent a notice identifying the consultant's reports, environmental site assessments or other documents, if any, relied upon by the Borrower or any other Loan Party to determine that any such real property included in such Collateral does not contain Hazardous Materials of a form or type or in a quantity or location that could, or to determine that the operations on any such real property included in such Collateral is in compliance with Environmental Law except to the extent any non-compliance could not, reasonably be expected to result in a material Environmental Liability.

(m) The sum of (i) Available Liquidity and (ii) cash and Cash Equivalents of the Borrower and its Restricted Subsidiaries restricted in favor of Tenaska and the Shawville Qualifying Credit Support shall be no less than $50,000,000, and the portion of available Liquidity comprised of the Unrestricted Cash Amount shall be no less than $25,000,000.

(n) The Administrative Agent shall have received a certificate of the Borrower, dated the Closing Date, confirming satisfaction of the conditions set forth in Sections 4.02(e), (g) and (h).

(o) The Administrative Agent shall have received, at least three (3) Business Days prior to the Closing Date, all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the PATRIOT Act, as is reasonably requested in writing by the Administrative Agent at least ten (10) Business Days prior to the Closing Date, including, without limitation, any certifications regarding beneficial ownership of legal entity customers (the "Beneficial Ownership Certification").

(p) Subject to Section 5.14, with respect to the Choctaw Assets deliver in escrow: (i) an executed first priority Mortgage in favor of the Collateral Trustee, for the benefit of the Secured Parties, covering such real property and complying with the provisions herein and in the Security Documents, provided that such Mortgage shall not be filed until the occurrence of the conditions in Section 5.14(b) and (ii) to the Administrative Agent and the Collateral Trustee, if reasonably requested by the Administrative Agent, legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent and the Collateral Trustee.

Notwithstanding the forgoing or anything to the contrary contained herein, but subject to Section 4.02(e), the Administrative Agent and each Lender acknowledge and agree that the Exit Transactions occurring on the Closing Date are deemed not to be in contravention of this Agreement or any Loan Document all representations and warranties made hereunder or under the other Loan Documents as of the Closing Date shall be deemed made upon giving concurrent effect to the consummation of the Exit Transactions.

## ARTICLE V.

## Affirmative Covenants

The Borrower covenants and agrees with each Lender that so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document (other than indemnification and other contingent obligations that expressly survive pursuant to the terms of any Loan Document, in each case, not then due and payable) shall have been paid in full and all Letters of Credit have been canceled or have expired and all amounts drawn thereunder have been reimbursed in full or reimbursement thereof shall have been cash-collateralized in an amount equal to 103% of the Revolving L/C Exposure as of such time, the Borrower will, and will cause each of the Restricted Subsidiaries to:

SECTION 5.01. Corporate Existence. Subject to Section 6.08, do or cause to be done all things necessary to preserve and keep in full force and effect (a) its corporate existence, and the corporate, partnership or other existence of each of its Restricted Subsidiaries, in accordance with the respective Organizational Documents (as the same may be amended from time to time) of the Borrower or any such Restricted Subsidiary and (b) the rights (charter and statutory), licenses and franchises of the Borrower and its Restricted Subsidiaries; provided, however, that the Borrower shall not be required to preserve any such right, license or franchise, or the corporate, partnership or other existence of any of its Restricted Subsidiaries, if (i) the Borrower shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Borrower and its Restricted Subsidiaries, taken as a whole, and that the loss thereof is not adverse in any material respect to the Lenders and (ii) if a Restricted Subsidiary is to be dissolved, such Restricted Subsidiary has no assets.

SECTION 5.02. Insurance. (a) Except to the extent any such insurance is not generally available in the marketplace from commercial insurers, keep its properties that are of an

insurable character adequately insured in accordance with industry standards at all times by financially sound insurers (provided, however, that there shall be no breach of this Section 5.02 if any such insurer becomes financially unsound and such Loan Party obtains reasonably promptly insurance coverage from a different financially sound insurer), which, in the case of any insurance on any Mortgaged Property, are licensed to do business in the States where the applicable Mortgaged Property is located; maintain such other insurance, to such extent and against such risks (and with such deductibles, retentions and exclusions), in each case as is customary with companies of a similar size operating in the same or similar businesses; maintain such other insurance as may be required by law; and maintain such other insurance as otherwise required by the Security Documents.

(b) If any Mortgaged Property is required to be insured pursuant to the Flood Disaster Protection Act of 1973 or the National Flood Insurance Act of 1968, and the regulations promulgated thereunder, because it is located in an area which has been identified by the Secretary of Housing and Urban Development as a "special flood hazard area," provide, maintain and keep in force at all times (subject, in each case, to the terms and conditions of Section 5.09(b)) flood insurance covering such Mortgaged Property in an amount equal to maximum amount of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973 (or any greater limits to the extent required by applicable law from time to time) plus such excess flood insurance limits as approved by the Administrative Agent.

SECTION 5.03. Taxes. Pay, and cause each of its Restricted Subsidiaries to pay, prior to delinquency, all material Taxes, assessments, and governmental levies except such as are contested in good faith and by appropriate proceedings, and for which the applicable Restricted Subsidiary has set aside on its books adequate reserves in accordance with GAAP.

SECTION 5.04. Financial Statements, Reports, etc. In the case of the Borrower, furnish to the Administrative Agent for distribution to each Lender:

(a) within 90 days after the end of each fiscal year beginning with the fiscal year ending on December 31, 2018 (or 120 days in the case of the fiscal year ending on or around December 31, 2018), its consolidated balance sheet and related statements of income, stockholders' equity and cash flows showing the financial condition as of the close of such fiscal year of the Borrower and its consolidated Subsidiaries at such time and the results of its operations and the operations of such Subsidiaries during such year, together with comparative figures for the immediately preceding fiscal year (provided that for the fiscal year ending December 31, 2018, such comparative figures shall be with respect to GenOn Energy, Inc. and its consolidated Subsidiaries) and for the fiscal year ending December 31, 2018 the Scheduled G&A Expenses, all audited by KPMG LLC or other independent public accountants of recognized national standing and accompanied by an opinion of such accountants reasonably satisfactory to the Administrative Agent (which shall not be qualified in any material respect, except for qualifications as a result of maturities of Indebtedness within the following twelve (12)-month period, and/or relating to accounting changes (with which such independent public accountants shall concur) in response to FASB releases or other authoritative pronouncements) to the effect that such consolidated financial statements fairly present the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) within 60 days following the end of the fiscal quarter ending on March 31, 2019 and, thereafter, within 45 days after the end of each of the first three fiscal quarters of each fiscal year, its unaudited consolidated balance sheet and related statements of income, stockholders' equity and cash flows showing the financial condition as of the close of such fiscal quarter of the Borrower and its consolidated Subsidiaries at such time and the results of its operations and the operations of such Subsidiaries during such fiscal quarter and the then elapsed portion of the fiscal year, and comparative figures for the same periods in the immediately preceding fiscal year (provided that for the fiscal quarters ending March 31, 2019, June 30, 2019 and September 30, 2019, such comparative figures shall be with respect to GenOn Energy, Inc. and its consolidated Subsidiaries), all certified by one of its Financial Officers to the effect that such financial statements, while not examined by independent public accountants, reflect in the opinion of the Borrower all adjustments necessary to present fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis as of the end of and for such periods in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) concurrently with the delivery of each set of consolidated financial statements referred to in Sections 5.04(a) and 5.04(b) above, at any time that any Unrestricted Subsidiary has been designated under this agreement, supplemental information (which shall not be audited) that summarizes in reasonable detail the differences between the information relating to the Borrower and its consolidated Subsidiaries, on the one hand, and all consolidated Unrestricted Subsidiaries, on the other hand;

(d) (i) concurrently with any delivery of financial statements under Section 5.04(a), a letter from the independent public accountants rendering the opinion on such statements (which letter may be limited to accounting matters and disclaim responsibility for legal interpretations) stating whether, in connection with their audit examination, anything has come to their attention which would cause them to believe that any Default or Event of Default existed on the date of such financial statements and if such a condition or event has come to their attention, (ii) (A) concurrently with any delivery of financial statements under Section 5.04(a) or 5.04(b), an Officers' Certificate of a Financial Officer of the Borrower certifying that no Event of Default or Default has occurred or, if such an Event of Default or Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto, and (B) setting forth computations in reasonable detail as is reasonably satisfactory to the Administrative Agent demonstrating compliance with the financial covenants set forth in Section 6.09 as of the last day of the fiscal year or fiscal quarter with respect to which such financial statements are being delivered, (iii) concurrently with any delivery of financial statements under Section 5.04(a) or 5.04(b), such notice as is required pursuant to Section 5.7(g) and (k) of the Guarantee and Collateral Agreement and (iv) a schedule of any Liens utilizing clause (f) of the definition of "Permitted Liens";

(e) within 30 days following the commencement of each fiscal year of the Borrower, a detailed consolidated budget for such fiscal year (including a projected consolidated balance sheet and related statements of projected operations and cash flows as of the end of and for such fiscal year and setting forth the assumptions used for purposes of preparing such budget) and, promptly when available, any significant revisions of such budget;

(f) [*reserved*];

(g) promptly after the receipt thereof by the Borrower or any of the Subsidiaries, a copy of any "management letter" received by any such Person from its certified public accountants and the management's response thereto; and

(h) promptly, from time to time, such other information regarding the operations, business affairs and financial condition of the Borrower or any Restricted Subsidiary, or compliance with the terms of any Loan Document, as the Administrative Agent or any Lender (acting through the Administrative Agent) may reasonably request.

SECTION 5.05. Litigation and Other Notices. Furnish to the Administrative Agent written notice of the following promptly after the Borrower obtains knowledge thereof:

(a) any Event of Default or Default, specifying the nature and extent thereof and the corrective action (if any) taken or proposed to be taken with respect thereto;

(b) the filing or commencement of any action, suit or proceeding, whether at law or in equity or by or before any arbitrator or Governmental Authority, against the Borrower or any Restricted Subsidiary that could reasonably be expected to result in a Material Adverse Effect;

(c) the occurrence of any ERISA Event that could reasonably be expected to result in a Material Adverse Effect; and

(d) any development that has resulted in, or could reasonably be expected to result in, a Material Adverse Effect.

SECTION 5.06. Information Regarding Collateral. (a) Furnish, and will cause each Loan Party to furnish, to each of the Administrative Agent, and the Collateral Trustee prompt written notice of (i) any change (A) in any Loan Party's corporate name as set forth in its certificate of incorporation, certificate of formation or other relevant Organizational Documents, (B) any change in the chief executive office of a Loan Party, (C) in any Loan Party's corporate structure or (D) in any Loan Party's Federal Taxpayer Identification Number; (ii) any formation or acquisition after the Closing Date of any Subsidiary that is not an Excluded Subsidiary; (iii) any sale, transfer, lease, issuance or other disposition (by way of merger, consolidation, operation of law or otherwise) after the Closing Date of any Equity Interests of any Subsidiary that is not an Excluded Subsidiary to any Person other than the Borrower or a Restricted Subsidiary; and (iv) any Subsidiary that is an Excluded Subsidiary as of the Closing Date or at any time thereafter ceasing to be an Excluded Subsidiary. The Borrower agrees not to effect or permit any change referred to in the preceding sentence unless a reasonable period has been provided (such period to be at least three Business Days) for making all filings under the UCC or otherwise and taking all other actions, in each case that are required in order for the Collateral Trustee to continue at all times following such change to have a valid, legal and perfected (subject to the limitations set forth in Section 3.19) security interest in all the Collateral (other than any Excluded Perfection Assets). The Borrower also agrees promptly to notify each of the Administrative Agent, and the Collateral Trustee if any material portion of the Collateral is damaged or destroyed.

(b) In the case of the Borrower, each year, at the time of delivery of the annual financial statements with respect to the preceding fiscal year pursuant to Section 5.04(a), deliver to the Administrative Agent a certificate of a Financial Officer of the Borrower setting forth (i) the information required pursuant to Section 4.3 of the Guarantee and Collateral Agreement or confirming that there has been no change in such information since the Closing Date or the date of the most recent certificate delivered pursuant to this Section and (ii) any liquidation or dissolution during such preceding fiscal year of any Subsidiary other than an Excluded Subsidiary.

SECTION 5.07. Maintaining Records; Access to Properties and Inspections; Environmental Assessments. (a) Keep, and cause each Restricted Subsidiary to keep, proper books of record and account in which full, true and correct entries in conformity with GAAP and all applicable requirements of law are made of all financial operations. No more than once in any fiscal year (except if an Event of Default has occurred and is continuing) the Borrower will, and will cause each of its Restricted Subsidiaries to, permit, if reasonably requested by the Administrative Agent, any representatives designated by the Administrative Agent or any Lender to visit and inspect the financial records and the properties of the Borrower or any of its Restricted Subsidiaries at reasonable times and as reasonably requested and to make extracts from and copies of such financial records, and permit any representatives designated by the Administrative Agent or any Lender to discuss the affairs, finances and condition of the Borrower or any of its Restricted Subsidiaries with the officers thereof and independent accountants therefor.

(b) At its election, the Administrative Agent may retain, or require the Borrower to retain, an independent engineer or environmental consultant to conduct an environmental assessment of any Mortgaged Property or facility of the Borrower or any Restricted Subsidiary. Any such environmental assessments conducted pursuant to this Section 5.07(b) shall be at the Borrower's sole cost and expense only if conducted following the occurrence of (i) an Event of Default or (ii) any event, circumstance or condition that could reasonably be expected to result in an Event of Default, in the case of each of clause (i) and (ii) that concerns or relates to any Environmental Liabilities of the Borrower or any Restricted Subsidiary; provided that the Borrower shall only be responsible for such costs and expenses to the extent that such environmental assessment is limited to that which is reasonably necessary to asses the subject matter of such Event of Default or such event, circumstance or condition that could reasonably be expected to result in an Event of Default. In addition, environmental assessments conducted pursuant to this Section 5.07(b) shall not be conducted more than once every twelve (12) months with respect to any parcel of Mortgaged Property or any single facility of the Borrower or any Restricted Subsidiary unless such environmental assessments are conducted following the occurrence of (i) an Event of Default or (ii) any event, circumstance or condition that could reasonably be expected to result in an Event of Default, in the case of each of clause (i) and (ii) that concerns or relates to any Environmental Liabilities of the Borrower or any Restricted Subsidiary. The Borrower shall, and shall cause each of the Restricted Subsidiaries to, reasonably cooperate in the performance of any such environmental assessment and permit any such engineer or consultant designated by the Administrative Agent to have reasonable access to each property or facility at reasonable times and after reasonable notice to the Borrower of the plans to conduct such an environmental assessment. Environmental assessments conducted under this Section 5.07(b) shall be limited to visual inspections of the Mortgaged Property or facility, interviews with representatives of the Borrower or facility personnel, and review of applicable records and documents pertaining to the property or facility.

(c) In the event that the Administrative Agent reasonably believes that Hazardous Materials have been Released or are threatened to be Released on any Mortgaged Property or other facility of the Borrower or any Restricted Subsidiary or that any such property or facility is not being operated in compliance with applicable Environmental Law, in each case where the Release, threatened Release or failure to comply has resulted in, or could reasonably be expected to result in, an Environmental Liability of the Borrower or any of the Restricted Subsidiaries in excess of $10,000,000 from such single event, the Administrative Agent may, at its election and after reasonable notice to the Borrower, retain, or require the Borrower to retain, an independent engineer or other qualified environmental consultant to reasonably assess the subject matter of such Release, threatened Release or failure to comply with applicable Environmental Law. Such environmental assessments may include detailed visual inspections of the Mortgaged Property or facility, including any and all storage areas, storage tanks, drains, dry wells and leaching areas, and the taking of soil samples, surface water samples and groundwater samples as well as such other reasonable investigations or analyses in each case as are reasonable and necessary to assess the subject matter of the Release, threatened Release or failure to comply. The Borrower shall, and shall cause each of the Restricted Subsidiaries to, reasonably cooperate in the performance of any such environmental assessment and permit any such engineer or consultant designated by the Administrative Agent to have reasonable access to each property or facility at reasonable times and after reasonable notice to the Borrower of the plans to conduct such an environmental assessment. All environmental assessments conducted pursuant to this Section 5.07(c) shall be at the Borrower's sole cost and expense.

SECTION 5.08. Use of Proceeds. Use the proceeds of the Loans and request the issuance of Letters of Credit only for the purposes set forth in Section 3.13.

SECTION 5.09. Additional Collateral, etc. (a) With respect to any Collateral acquired after the Closing Date or with respect to any property or asset which becomes Collateral pursuant to the definition thereof after the Closing Date or any Collateral that ceases to be an Excluded Perfection Asset after the Closing Date, promptly (and, in any event, (A) with respect to any Deposit Account, Securities Account or Commodities Account, within the time period set forth in the second paragraph of Section 5.10 applicable to such Deposit Account, Securities Account or Commodities Account and (B) with respect to any other Collateral or any other property or asset which becomes Collateral, within 20 Business Days (or such later date as the Administrative Agent may agree in its sole discretion) following the date of such acquisition or designation) (i) execute and deliver to the Administrative Agent and the Collateral Trustee such amendments to the Guarantee and Collateral Agreement or such other Security Documents as the Administrative Agent or the Collateral Trustee, as the case may be, deems necessary or reasonably advisable to grant to the Collateral Trustee, for the benefit of the Secured Parties, a security interest in such Collateral and (ii) take all actions necessary or reasonably requested by the Administrative Agent to grant to the Collateral Trustee, for the benefit of the Secured Parties, a perfected (subject to the limitations set forth in Section 3.19) first priority security interest in such Collateral (other than any Excluded Perfection Assets and, except with respect to Pledged Securities in the possession of the Collateral Trustee, subject to Permitted Liens, and in respect of Pledged Securities in the possession of the Collateral Trustee, the Permitted Liens set forth in clause (g) of the definition thereof), including the filing of UCC financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be reasonably requested by the Administrative Agent or the Collateral Trustee (it being understood and agreed

that no Control Agreements shall be required pursuant to this Section 5.09(a) in respect of any Counterparty Accounts). Notwithstanding anything set forth herein or in any other Loan Document to the contrary, this Section 5.09(a) shall not apply to Intellectual Property Collateral acquired after the Closing Date or with respect to any property or asset which becomes Intellectual Property Collateral pursuant to the definition of Collateral after the Closing Date (it being agreed and understood that such Intellectual Property Collateral shall be subject to the applicable provisions of the Guarantee and Collateral Agreement).

(b) With respect to any fee interest in any Collateral consisting of real property or any lease of Collateral consisting of real property acquired or leased after the Closing Date by the Borrower or any other Loan Party or which becomes Collateral pursuant to the definition thereof (other than any Excluded Perfection Assets), promptly (and, in any event, within 60 days following the date of such acquisition or such longer period as consented to by the Administrative Agent in its sole discretion) (i) execute and deliver a first priority Mortgage in favor of the Collateral Trustee, for the benefit of the Secured Parties, covering such real property and complying with the provisions herein and in the Security Documents, (ii) provide the Secured Parties with (A) title and extended coverage insurance (or, if approved by the Administrative Agent in its sole discretion, a UCC title insurance policy) covering such real property in an amount at least equal to the purchase price of such real property (or such other amount as shall be reasonably specified by the Administrative Agent or the Collateral Trustee, which may be the value of the generation assets, if applicable, situated thereon), together with such endorsements as are reasonably required by the Administrative Agent or the Collateral Trustee and are obtainable in the State in which such Mortgaged Property is located, and all of the other provisions herein and in the Security Documents, together with a surveyor's certificate and (B) any consents or estoppels reasonably deemed necessary or advisable by the Administrative Agent or the Collateral Trustee in connection with such Mortgage, each of the foregoing in form and substance reasonably satisfactory to the Administrative Agent and the Collateral Trustee, (iii) if any such Collateral (other than any Excluded Perfection Assets) consisting of fee-owned real property is required to be insured pursuant to the Flood Disaster Protection Act of 1973 or the National Flood Insurance Act of 1968, and the regulations promulgated thereunder, because it is located in an area which has been identified by the Secretary of Housing and Urban Development as a "special flood hazard area," deliver to the Administrative Agent (A) a policy of flood insurance that (1) covers such Collateral and (2) is written in an amount reasonably satisfactory to the Administrative Agent, (B) a "life of loan" standard flood hazard determination with respect to such Collateral and (C) a confirmation that the Borrower or such other Loan Party has received the notice requested pursuant to Section 208(e)(3) of Regulation H of the Board, (iv) if reasonably requested by the Administrative Agent, deliver to the Administrative Agent and the Collateral Trustee legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent and the Collateral Trustee and (v) deliver to the Administrative Agent a notice identifying the consultant's reports, environmental site assessments or other material documents, if any, relied upon by the Borrower or any other Loan Party to determine that any such real property included in such Collateral does not contain Hazardous Materials of a form or type or in a quantity or location that could, or to determine that the operations on any such real property included in such Collateral is in compliance with Environmental Law except to the extent any non-compliance could not, reasonably be expected to result in a material Environmental Liability.

(c) With respect to any new Subsidiary (other than an Unrestricted Subsidiary or an Excluded Subsidiary) created or acquired after the Closing Date (which, for the purposes of this Section 5.09(c), shall include any existing Subsidiary that ceases to be an Unrestricted Subsidiary, or, in the Borrower's election, an Excluded Subsidiary) by the Borrower or any of the Subsidiaries, promptly (and, in any event, within 20 Business Days following such creation or the date of such acquisition) (or such later date as the Administrative Agent may agree in its sole discretion), (i) execute and deliver to the Administrative Agent and the Collateral Trustee such amendments to the Guarantee and Collateral Agreement as the Administrative Agent or the Collateral Trustee deems necessary or reasonably advisable to grant to the Collateral Trustee, for the benefit of the Secured Parties, a valid, perfected first priority security interest in the Equity Interests in such new Subsidiary that are owned by the Borrower or any of the Subsidiaries, (ii) deliver to the Collateral Trustee the certificates, if any, representing such Equity Interests, together with undated instruments of transfer or stock powers, in blank, executed and delivered by a duly authorized officer of the Borrower or such Subsidiary, as the case may be, (iii) cause such new Subsidiary that is not an Excluded Subsidiary or an Unrestricted Subsidiary (A) to become a party to the Guarantee and Collateral Agreement to, among other things, provide Guarantees of the Guaranteed Obligations hereunder, the Collateral Trust Agreement and the Intellectual Property Security Agreements and (B) to take such actions necessary or reasonably requested by the Administrative Agent to grant to the Collateral Trustee, for the benefit of the Secured Parties, a perfected (subject to the limitations set forth in Section 3.19) first priority security interest (except with respect to Pledged Securities, subject to Permitted Liens, and in respect of Pledged Securities, the Permitted Liens in clause (g) of the definition thereof) in the Collateral described in the Guarantee and Collateral Agreement and the Intellectual Property Security Agreement with respect to such new Subsidiary that is not an Excluded Subsidiary, including the recording of instruments in the United States Patent and Trademark Office and the United States Copyright Office (but not in any intellectual property offices in any jurisdiction outside the United States), the execution and delivery by all necessary Persons of Control Agreements (other than with respect to any Counterparty Accounts) and the filing of UCC financing statements in such jurisdictions as may be required by the Guarantee and Collateral Agreement or by law or as may be reasonably requested by the Administrative Agent or the Collateral Trustee, (iv) deliver to the Administrative Agent all documentation and other information required by regulatory authorities under the applicable "know your customer" and anti-money laundering rules and regulations, including the PATRIOT Act, as is reasonably requested in writing by the Administrative Agent and (v) deliver to the Administrative Agent and the Collateral Trustee, if reasonably requested, legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent and the Collateral Trustee.

(d) With respect to any new Excluded Foreign Subsidiary (other than an Unrestricted Subsidiary or an Excluded Subsidiary that is a subsidiary of an Excluded Foreign Subsidiary) created or acquired after the Closing Date by the Borrower or any of its Subsidiaries, promptly (and, in any event, within 20 Business Days following such creation or the date of such acquisition) (or such later date as the Administrative Agent may agree in its sole discretion) (i) execute and deliver to the Administrative Agent and the Collateral Trustee such amendments to the Guarantee and Collateral Agreement as the Administrative Agent or the Collateral Trustee deems necessary or advisable in order to grant to the Collateral Trustee, for the benefit of the Secured Parties, a perfected first priority security interest in the Equity Interests in such new Excluded Foreign Subsidiary that is directly owned by the Borrower or any of its Domestic Subsidiaries (provided

that in no event shall more than 65% of the total outstanding voting first-tier Equity Interests in any such new Excluded Foreign Subsidiary be required to be so pledged), (ii) deliver to the Collateral Trustee the certificates representing such Equity Interests, together with undated instruments of transfer or stock powers, in blank, executed and delivered by a duly authorized officer of the Borrower or such Domestic Subsidiary, as the case may be, and take such other action as may be necessary or, in the reasonable opinion of the Administrative Agent or the Collateral Trustee, desirable to perfect the security interest of the Collateral Trustee thereon and (iii) deliver to the Administrative Agent and the Collateral Trustee, if reasonably requested, legal opinions (which may be delivered by in-house counsel if admitted in the relevant jurisdiction) relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent and the Collateral Trustee.

SECTION 5.10. Further Assurances. (a) From time to time duly authorize, execute and deliver, or cause to be duly authorized, executed and delivered, such additional instruments, certificates, financing statements, agreements or documents, and take all such actions (including filing UCC and other financing statements), as the Administrative Agent or the Collateral Trustee may reasonably request, for the purposes of implementing or effectuating the provisions of this Agreement and the other Loan Documents, or perfecting or renewing the rights of the Administrative Agent, the Issuing Banks, the Collateral Trustee and the Secured Parties with respect to the Collateral (or with respect to any additions thereto or replacements or proceeds or products thereof or with respect to any other property or assets hereafter acquired by the Borrower or any Restricted Subsidiary which assets or property may be deemed to be part of the Collateral), as applicable, pursuant hereto or thereto. Upon the exercise by the Administrative Agent, the Issuing Bank, the Collateral Trustee or any Lender of any power, right, privilege or remedy pursuant to this Agreement or the other Loan Documents which requires any consent, approval, recording, qualification or authorization of any Governmental Authority, the Borrower will execute and deliver, or will cause the execution and delivery of, all applications, certifications, instruments and other documents and papers that the Administrative Agent, the Issuing Bank, the Collateral Trustee or such Lender may be required to obtain from the Borrower or any of the Restricted Subsidiaries for such governmental consent, approval, recording, qualification or authorization.

(b) On or prior to the 45th day after the date any additional Deposit Account, Securities Account or Commodities Account is opened after the Closing Date (or such later date as the Administrative Agent may agree in its sole discretion) (except to the extent any such account is an Excluded Asset, an Excluded Perfection Asset or a Counterparty Account), at its sole expense, with respect to any such Deposit Account, Securities Account or Commodities Account, each applicable Loan Party shall take any actions required for the Collateral Trustee to obtain "control" (within the meaning of the applicable Uniform Commercial Code) with respect thereto, including executing and delivering and causing the relevant depositary bank or securities intermediary to execute and deliver a Control Agreement in form and substance reasonably satisfactory to the Collateral Trustee.

SECTION 5.11. Maintenance of Energy Regulatory Authorizations and Status. (a) Each of the FPA-Jurisdictional Subsidiary Guarantors shall maintain and preserve its (i) and (ii) its ability to participate as a seller of electric energy, capacity and ancillary services in the RTO

Markets, except to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(b) Each Person listed on Schedule 3.23(g) shall maintain and preserve its status as an EWG within the meaning of PUHCA, except to the extent failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 5.12. MIRE Event. No MIRE Event may be closed until the date that is (a) if there are no Mortgaged Properties located in an area which has been identified by the Secretary of Housing and Urban Development as a "special flood hazard area," ten (10) Business Days or (b) if there are any Mortgaged Properties located in an area which has been identified by the Secretary of Housing and Urban Development as a "special flood hazard area,", thirty (30) days (in each case, the "Notice Period"), after the Administrative Agent has delivered to the Lenders the following documents in respect of such real property: (i) a completed "life of loan" standard flood hazard determination with respect to such real property from a third party vendor; (ii) if such real property is located in a "special flood hazard area", (A) a notification to the applicable Loan Parties of that fact and (if applicable) notification to the applicable Loan Parties that flood insurance coverage is not available and (B) evidence of the receipt by the applicable Loan Parties of such notice and (C) a notice about special flood hazard area status and flood disaster assistance executed by the Borrower and any applicable Loan Party relating thereto; and (iii) evidence of flood insurance in amount reasonably required by the Administrative Agent; provided that any such MIRE Event may be closed prior to the Notice Period if the Administrative Agent shall have received confirmation from each applicable Lender that such Lender has completed any necessary flood insurance due diligence to its reasonable satisfaction.

SECTION 5.13. Post-Closing Requirement. Deliver, or cause to be delivered, to Administrative Agent, in form and substance reasonably satisfactory to Administrative, the items described on Schedule 5.13 hereof on or before the dates specified with respect to such items, or such later dates as may be agreed to by the Administrative Agent in its reasonable discretion.

SECTION 5.14. Springing Lien. (a) So long as the requirements of Section 5.13 with respect to the Bowline Power Plant have not been satisfied, (i) promptly deposit into an account subject to a Control Agreement the Net Proceeds from the sale of the Choctaw Assets and (ii) cause the Net Proceeds from the sale of the Choctaw Assets to remain deposited in a Controlled Account until the requirements set forth in in Section 5.13 with respect to the Bowline Power Plant have been satisfied.

(b) So long as the requirements of Section 5.13 with respect to the Bowline Power Plant have not been satisfied, to the extent the Choctaw APA is terminated, (i) the documents delivered in escrow pursuant to Section 4.02(p) with respect to Choctaw Assets shall be released from escrow and (ii) within five Business Days (or such later date as agreed by the Administrative Agent) of the conditions in clause (b)(i), the Borrower shall deliver (A) to the Secured Parties (1) title and extended coverage insurance (or, if approved by the Administrative Agent in its sole discretion, a UCC title insurance policy) covering such real property in an amount at least equal to the purchase price of such real property (or such other amount as shall be reasonably specified by the Administrative Agent or the Collateral Trustee, which may be the value of the generation assets, if applicable, situated thereon), together with such endorsements as are reasonably required

by the Administrative Agent or the Collateral Trustee and are obtainable in the State in which such Mortgaged Property is located, and all of the other provisions herein and in the Security Documents, together with a surveyor's certificate and (2) use commercially reasonable efforts to deliver any consents or estoppels reasonably deemed necessary or advisable by the Administrative Agent or the Collateral Trustee in connection with such Mortgage, each of the foregoing in form and substance reasonably satisfactory to the Administrative Agent and the Collateral Trustee, (B) to the Administrative Agent, if any such Collateral (other than any Excluded Perfection Assets) consisting of real property is required to be insured pursuant to the Flood Disaster Protection Act of 1973 or the National Flood Insurance Act of 1968, and the regulations promulgated thereunder, because it is located in an area which has been identified by the Secretary of Housing and Urban Development as a "special flood hazard area," (1) a policy of flood insurance that (I) covers the Choctaw Assets and (II) is written in an amount reasonably satisfactory to the Administrative Agent, (2) a "life of loan" standard flood hazard determination with respect to such Collateral and (3) a confirmation that the Borrower or such other Loan Party has received the notice requested pursuant to Section 208(e)(3) of Regulation H of the Board, and (C) to the Administrative Agent a notice identifying the consultant's reports, environmental site assessments or other documents, if any, relied upon by the Borrower or any other Loan Party to determine that the Choctaw Assets do not contain Hazardous Materials of a form or type or in a quantity or location that could, or to determine that the operations on the Choctaw Assets is in compliance with Environmental Law except to the extent any non-compliance could not, reasonably be expected to result in a material Environmental Liability; provided that if the requirements of Section 5.13 with respect to the Bowline Power Plant have not been satisfied and to the extent the Choctaw APA is terminated within 30 days after the Closing Date, the Borrower and its Restricted Subsidiaries shall have until 30 days after the Closing Date (or such later date as agreed by the Administrative Agent in its reasonable discretion) to deliver the items set forth in Section 5.13(b)(ii)(A).

SECTION 5.15. Deposit of Certain Proceeds. (a) If the requirements set forth in Section 5.13 with respect to the Bowline Power Plant have not been satisfied, promptly, and in any event within one Business Day after receipt thereof, deposit into a Controlled Account the Net Proceeds from the sale of the Choctaw Assets and (b) cause the Net Proceeds from the sale of the Choctaw Assets to remain deposited in a Controlled Account until the requirements set forth in Section 5.13 with respect to the Bowline Power Plant have been satisfied.

## ARTICLE VI.

## Negative Covenants

The Borrower covenants and agrees with each Lender that, so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document (other than indemnification and other contingent obligations that expressly survive pursuant to the terms of any Loan Document, in each case, not then due and payable) shall have been paid in full and all Letters of Credit have been cancelled or have expired and all amounts drawn thereunder have been reimbursed in full or reimbursement thereof shall have been cash-collateralized in an amount equal to 103% of the Revolving L/C Exposure as of such time, the Borrower will not, nor will it cause or permit any of its Restricted Subsidiaries to:

SECTION 6.01. Incurrence of Indebtedness and Issuance of Preferred Stock. (a) Directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "incur") any Indebtedness (including Acquired Debt), and the Borrower shall not issue any Disqualified Stock and shall not permit any of its Restricted Subsidiaries to issue any shares of preferred stock; provided, however, that the Borrower may incur Indebtedness (including Acquired Debt) that is unsecured or secured on a junior lien basis to the Guaranteed Obligations or issue Disqualified Stock, and any Restricted Subsidiary may incur Indebtedness (including Acquired Debt) that is unsecured or secured on a junior lien basis to the Guaranteed Obligations or issue preferred stock, if (a) the Fixed Charge Coverage Ratio for the Borrower's most recently ended four (4) full fiscal quarters for which internal financial statements are publicly available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or preferred stock is issued would have been at least 2.00 to 1.00, determined on a pro forma basis (including a pro forma application of the net proceeds therefrom), as if the additional Indebtedness (including Acquired Debt) had been incurred or the Disqualified Stock or preferred stock had been issued, as the case may be, at the beginning of such four-quarter period and (b) such Indebtedness has a maturity date at least 180 days later than the Revolving Facility Maturity Date; provided, further, that any Indebtedness incurred pursuant to the foregoing proviso may be secured on a junior lien basis to the Guaranteed Obligations and subject to the Collateral Trust Agreement or an intercreditor agreement that is reasonably acceptable to the Administrative Agent, if the Consolidated Total Secured Leverage Ratio for the Borrower's most recently ended four (4) full fiscal quarters for which internal financial statements are publicly available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or preferred stock is issued would not have exceeded 5.00 to 1.00, determined on a pro forma basis (including a pro forma application of the net proceeds therefrom), as if the additional Indebtedness (including Acquired Debt) had been incurred or the Disqualified Stock or preferred stock had been issued, as the case may be, at the beginning of such four-quarter period.

(b) The provisions of Section 6.01(a) shall not prohibit the incurrence of any of the following items of Indebtedness (collectively, "Permitted Debt"):

(i) the incurrence of Indebtedness and reimbursement obligations in respect of Letters of Credit hereunder and under the other Loan Documents (including Indebtedness and Letters of Credit arising from New Revolving Commitments pursuant to and in accordance with Section 2.24);

(ii) the incurrence by the Borrower and its Restricted Subsidiaries of the Existing Indebtedness;

(iii) the incurrence by the Borrower of Indebtedness represented by the Second Lien Notes and the related Guarantees thereof by the Subsidiary Guarantors;

(iv) the incurrence by the Borrower or any of its Restricted Subsidiaries of Indebtedness represented by Capital Lease Obligations, mortgage financings or purchase money obligations, in each case, incurred for the purpose of financing all or any part of the purchase price or cost of design, construction, installation or improvement or lease of property (real or personal), plant or equipment used or useful in the business of the

Borrower or any of its Restricted Subsidiaries or incurred within 180 days thereafter, in an aggregate principal amount, including all Permitted Refinancing Indebtedness incurred to refund, refinance, replace, defease or discharge any Indebtedness incurred pursuant to this clause (iv) (including pursuant to clause (b)(v) below) not to exceed at any time outstanding $10,000,000;

(v) the incurrence by the Borrower or any of its Restricted Subsidiaries of Permitted Refinancing Indebtedness in exchange for, or the net proceeds of which are used to refund, refinance, replace, defease or discharge Indebtedness (other than intercompany Indebtedness) that was permitted by this Agreement to be incurred under Section 6.01(a) or Sections 6.01(b)(ii) (to the extent so noted on Schedule 6.01), 6.01(b)(iii), 6.01(b)(iv), 6.01(b)(v), 6.01(b)(xv), 6.01(b)(xvi), 6.01(b)(xvii), 6.01(b)(xx), 6.01(b)(xxii) and 6.01(xxiii);

(vi) the incurrence by the Borrower or any of its Restricted Subsidiaries of intercompany Indebtedness between or among the Borrower and any of its Restricted Subsidiaries; provided, however, that:

(1) if the Borrower or any Subsidiary Guarantor is the obligor on such Indebtedness and the payee is not the Borrower or a Subsidiary Guarantor, such Indebtedness must be expressly subordinated to the prior payment in full in cash of all Guaranteed Obligations; and

(2) (A) any subsequent issuance or transfer of Equity Interests that results in any such Indebtedness being held by a Person other than the Borrower or a Restricted Subsidiary and (B) any sale or other transfer of any such Indebtedness to a Person that is not either the Borrower or a Restricted Subsidiary; will be deemed, in each case, to constitute an incurrence of such Indebtedness by the Borrower or such Restricted Subsidiary, as the case may be, that was not permitted by this clause (vi);

(vii) the issuance by any of the Borrower's Restricted Subsidiaries to the Borrower or to any of its Restricted Subsidiaries of shares of preferred stock; provided, however, that:

(1) any subsequent issuance or transfer of Equity Interests that results in any such preferred stock being held by a Person other than the Borrower or a Restricted Subsidiary; and

(2) any sale or other transfer of any such preferred stock to a Person that is not either the Borrower or a Restricted Subsidiary; will be deemed, in each case, to constitute an issuance of such preferred stock by such Restricted Subsidiary that was not permitted by this clause (vii);

(viii) the incurrence by the Borrower or any of its Restricted Subsidiaries of non speculative Hedging Obligations; provided that, with respect to Commodity Hedging Obligations, the applicable Commodity Hedging Agreements are structured such that the net mark-to-market credit exposure of (a) the counterparties to such Commodity Hedging

Agreements (taken as a whole) to (b) the Borrower or any of the Restricted Subsidiaries, is positively correlated with the price of the relevant commodity or positively correlated with changes in the relevant spark spread; provided, further, that, notwithstanding the foregoing, the Borrower or any of its Restricted Subsidiaries may incur non speculative Hedging Obligations to hedge (i) the price of fuel, (ii) projected shortfalls in capacity and (iii) expected production through the purchase of put options and/or option spreads.

(ix) the Guarantee by (A) the Borrower or any of the Subsidiary Guarantors of Indebtedness of the Borrower or a Subsidiary Guarantor that was permitted to be incurred by another provision of this Section 6.01 and (B) any of the Excluded Foreign Subsidiaries of Indebtedness of any other Excluded Foreign Subsidiary; provided that if the Indebtedness being guaranteed is (x) subordinated in right of payment to the Guaranteed Obligations, then the guarantee shall be subordinated on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being guaranteed or (y) secured by the Collateral, then the Indebtedness shall be subject to the Collateral Trust Agreement or an intercreditor agreement that is reasonably acceptable to the Administrative Agent;

(x) the incurrence by the Borrower or any of its Restricted Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument (except in the case of daylight overdrafts) inadvertently drawn against insufficient funds in the ordinary course of business, so long as such Indebtedness is covered within five (5) Business Days;

(xi) the incurrence by the Borrower or any of its Restricted Subsidiaries of Indebtedness in respect of (A) workers' compensation claims, self-insurance obligations, bankers' acceptance and (B) performance and surety bonds provided by the Borrower or a Restricted Subsidiary in the ordinary course of business;

(xii) [reserved];

(xiii) the incurrence of Indebtedness that may be deemed to arise as a result of agreements of the Borrower or any Restricted Subsidiary providing for indemnification, adjustment of purchase price or any similar obligations, in each case, incurred in connection with the disposition of any business, assets or Equity Interests of any Subsidiary; provided that the aggregate maximum liability associated with such provisions may not exceed the gross proceeds (including non-cash proceeds) of such disposition;

(xiv) the incurrence by the Borrower or any Restricted Subsidiary of Indebtedness represented by letters of credit, guarantees or other similar instruments supporting Hedging Obligations of the Borrower or any of its Restricted Subsidiaries (other than Excluded Subsidiaries) permitted to be incurred by this Agreement;

(xv) Indebtedness, Disqualified Stock or preferred stock of Persons or assets that are acquired by the Borrower or any Restricted Subsidiary or merged into the Borrower or a Restricted Subsidiary in accordance with the terms of this Agreement; provided that such Indebtedness, Disqualified Stock or preferred stock is not incurred in contemplation of

such acquisition or merger; and provided, further, that after giving effect to such acquisition (1) the Fixed Charge Coverage Ratio for the Borrower's most recently ended four (4) full fiscal quarters for which internal financial statements are publicly available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or preferred stock is issued would have been at least 2.00 to 1.00, determined on a pro forma basis (including a pro forma application of the net proceeds therefrom), as if the additional Indebtedness had been incurred or the Disqualified Stock or preferred stock had been issued, as the case may be, at the beginning of such four-quarter period and (2) if any such Indebtedness incurred pursuant to this clause (xv) is secured, the Consolidated Total Secured Leverage Ratio as of the last day of the most recently ended fiscal quarter for which financial statements are required to be delivered pursuant to Sections 5.04(a) and 5.04(b) as measured immediately after giving effect to such incurrence and to such acquisition or merger would not have exceeded 5.00 to 1.00;

(xvi) Environmental CapEx Debt; provided that prior to the incurrence of any Environmental CapEx Debt, the Borrower shall deliver to the Administrative Agent an Officers' Certificate designating such Indebtedness as Environmental CapEx Debt, provided, further, that if such Indebtedness is secured by the Collateral, then such Indebtedness shall be secured on a junior lien basis to the Guaranteed Obligations and subject to an intercreditor agreement that is reasonably acceptable to the Administrative Agent;

(xvii) Indebtedness incurred to finance Necessary Capital Expenditures; provided that prior to the incurrence of any Indebtedness to finance Necessary Capital Expenditures, the Borrower shall deliver to the Administrative Agent an Officers' Certificate designating such Indebtedness as Necessary CapEx Debt, provided, further, that if such Indebtedness is secured by the Collateral, then such Indebtedness shall be secured on a junior lien basis to the Guaranteed Obligations and subject to an intercreditor agreement that is reasonably acceptable to the Administrative Agent;

(xviii) Indebtedness of the Borrower or any Restricted Subsidiary consisting of (A) the financing of insurance premiums or (B) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(xix) letters of credit issued or outstanding as of the Closing Date and related obligations under the Citi Letter of Credit Facility in an aggregate amount not to exceed $10,000,000;

(xx) the Shawville Qualifying Credit Support;

(xxi) to the extent constituting Indebtedness, obligations under the Shawville Pipeline Agreement, the Tenaska Secured Obligations and the LTSA Obligations;

(xxii) the incurrence by the Borrower and/or any of its Restricted Subsidiaries of additional unsecured Indebtedness that is subordinated in right of payment to the Guaranteed Obligations pursuant to a subordination agreement in form and substance reasonably acceptable to the Administrative Agent; provided that (a) the Fixed Charge

Coverage Ratio for the Borrower's most recently ended four (4) full fiscal quarters for which internal financial statements are publicly available immediately preceding the date on which such additional Indebtedness is incurred would have been at least 2.00 to 1.00 and (b) such Indebtedness has a maturity date at least 180 days later than the Revolving Facility Maturity Date; and

(xxiii) the incurrence by the Borrower and/or any of its Restricted Subsidiaries of additional Indebtedness in an aggregate principal amount (or accreted value, as applicable) at any time outstanding, including all Permitted Refinancing Indebtedness incurred to refund, refinance, replace, defease or discharge any Indebtedness incurred pursuant to this clause (xxiii) (including pursuant to clause (b)(v) above), not to exceed $50,000,000; provided that if such Indebtedness is secured it can only be secured by a Lien permitted by clause (aa) of "Permitted Liens".

(c) Incur any Indebtedness (including Permitted Debt) that is contractually subordinated in right of payment to any other Indebtedness of the Borrower or any Subsidiary Guarantor unless such Indebtedness is also contractually subordinated in right of payment to the Guaranteed Obligations on substantially identical terms; provided, however, that no Indebtedness of the Borrower shall be deemed to be contractually subordinated in right of payment to any other Indebtedness of the Borrower solely by virtue of being unsecured or by virtue of being secured on a first or junior Lien basis.

(d) For purposes of determining compliance with this Section 6.01, in the event that an item of proposed Indebtedness meets the criteria of more than one of the categories of Permitted Debt described in Sections 6.01(b)(i) through 6.01(b)(xxi), or is entitled to be incurred pursuant to Section 6.01(a), the Borrower shall be permitted to classify such item of Indebtedness on the date of its incurrence, or later reclassify all or a portion of such item of Indebtedness, in any manner that complies with this Section 6.01. Indebtedness under this Agreement will be deemed to have been incurred in reliance on the exception provided by Section 6.01(b)(i), the Second Lien Notes will be deemed to have been incurred in reliance on Section 6.01(b)(iii) and Hedging Obligations will be deemed to have been incurred in reliance on Section 6.01(b)(viii). The accrual of interest, the accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, and the payment of dividends on Disqualified Stock in the form of additional shares of the same class of Disqualified Stock shall not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Stock for purposes of this Section 6.01; provided, in each such case, that the amount thereof is included in the Fixed Charges of the Borrower as accrued.

(e) For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Indebtedness, the U.S. dollar-equivalent principal amount of Indebtedness denominated in a foreign currency will be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred; provided that if such Indebtedness is incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable U.S. dollar-dominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-dominated restriction shall be deemed not to have been exceeded so long as the

principal amount of such refinancing Indebtedness does not exceed the principal amount of the Indebtedness being refinanced.

(f) The amount of any Indebtedness outstanding as of any date will be (i) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue discount; (ii) the principal amount of the Indebtedness, in the case of any other Indebtedness; and (iii) in respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the lesser of (x) the Fair Market Value of such asset at the date of determination and (y) the amount of the Indebtedness of the other Person; provided that any changes in any of the above shall not give rise to a default under this Section 6.01.

SECTION 6.02. Liens. Create, incur, assume or otherwise cause or suffer to exist or become effective any Lien of any kind (other than Permitted Liens) upon any of their property or assets, now owned or hereafter acquired. Furthermore, neither the Borrower nor any Subsidiary Guarantor shall create, incur, assume or otherwise suffer or exist or become effective any Lien (other than Permitted Liens (exclusive of clause (i), (o), or (aa) of the definition of "Permitted Liens")) upon the respective portion of Post-Closing Real Property Collateral until such time as the Borrower and Subsidiary Guarantors have complied with their obligations under Section 5.13 or Section 5.09, as applicable, in respect of such portion of the Post-Closing Real Property Collateral.

SECTION 6.03. Limitation on Sale and Leaseback Transactions. Enter into any sale and leaseback transaction (other than any sale and leaseback transaction existing on the Closing Date and set forth on Schedule 6.03); provided that the Borrower or any Subsidiary Guarantor may enter into a sale and leaseback transaction if:

(a) the Borrower or that Subsidiary Guarantor, as applicable, could have (i) incurred Indebtedness in an amount equal to the Attributable Debt relating to such sale and leaseback transaction under the provisions of Section 6.01 and (ii) incurred a Lien to secure such Indebtedness pursuant to Section 6.02;

(b) the gross proceeds of that sale and leaseback transaction are at least equal to the Fair Market Value of the property that is the subject of that sale and leaseback transaction, as determined in good faith by a Financial Officer of the Borrower; and

(c) if such sale and leaseback transaction constitutes an Asset Sale, the transfer of assets in that sale and leaseback transaction is permitted by, and the Borrower applies the proceeds of such transaction in compliance with, the provisions of Section 2.13(b).

SECTION 6.04. Asset Sales. (a) Consummate an Asset Sale, including with respect to any Asset Sale Prepayment Property, unless:

(i) the Borrower (or the Restricted Subsidiary, as the case may be) receives consideration at the time of the Asset Sale at least equal to the Fair Market Value of the assets or Equity Interests issued or sold or otherwise disposed of;

(ii) no Default or Event of Default has occurred and is continuing or would occur as a result of such Asset Sale; and

(iii) at least 75% of the consideration received in the Asset Sale by the Borrower or such Restricted Subsidiary is in the form of cash. For purposes of this clause (iii):

(a) any Environmental Liabilities, as shown on the Borrower's most recent consolidated balance sheet, of the Borrower or any Restricted Subsidiary (other than contingent liabilities and liabilities that are by their terms subordinated to the Guaranteed Obligations) that are assumed by the transferee of any such assets pursuant to a customary novation agreement that releases the Borrower or such Restricted Subsidiary from further liability will be disregarded from the calculation under this clause (iii); and

(b) any securities, notes or other obligations received by the Borrower or any such Restricted Subsidiary from such transferee that are converted by the Borrower or such Restricted Subsidiary into cash within 90 days of the receipt of such securities, notes or other obligations, to the extent of the cash received in that conversion will be deemed to be cash.

(b) If such Asset Sale is of any Asset Sale Prepayment Property (an "Asset Sale Prepayment Event"), such Asset Sale shall meet the requirements of Section 6.04(a)(iii) and the Borrower shall make an Asset Sale Prepayment with the Net Proceeds from such Asset Sale pursuant to, in accordance with and to the extent required by Section 2.13(b).

(c) Solely in respect of any Asset Sale (but excluding any Asset Sale of the Canal Escrow or Canal Excess Fuel Payments in the event that such Asset Sale does not constitute a Specified Asset Sale at such time) with Net Proceeds exceeding $10,000,000, within 365 days after the receipt of such Net Proceeds from such Asset Sale (excluding any such Net Proceeds applied to the Borrowings or to cash collateralize Letters of Credit in accordance with Section 2.13(b)) the Borrower (or the applicable Restricted Subsidiary, as the case may be), must use at least 75% of the amount of such Net Proceeds (excluding any such Net Proceeds applied to the Borrowings or to cash collateralize Letters of Credit in accordance with Section 2.13(b)) to make an offer, at the Borrower's election, to holders of outstanding Indebtedness permitted under Sections 6.01(a), 6.01(b)(ii), (iii), (v) (solely with respect to Permitted Refinancing Debt refinancing Indebtedness permitted under Sections 6.01(a), 6.01(b)(ii), (iii), (v), (xv) and (xxiii)), (xv) and (xxiii) (to the extent any such Indebtedness is outstanding when such Net Proceeds are received) to repay such Indebtedness; provided that such offer to repay such Indebtedness shall not be required to the extent the Borrower or a Restricted Subsidiary uses such Net Proceeds to (x) prepay any outstanding Borrowings pursuant to Section 2.12 or (y)(i) within 365 days after the receipt of such Net Proceeds, reinvest such Net Proceeds in any assets constituting Collateral, which may include repairs or replacement of assets, owned by the Borrower or a Restricted Subsidiary or (ii) within 90 days after the receipt of such Net Proceeds, enter into a binding commitment to acquire an Additional Facility, provided such Additional Facility shall become Collateral pursuant to requirements set forth in Section 5.09.

SECTION 6.05. Dividend and Other Payment Restrictions Affecting Subsidiaries. (a) Directly or indirectly, create or permit to exist or become effective any consensual

encumbrance or restriction on the ability of any Restricted Subsidiary (other than an Excluded Subsidiary) to:

(i) pay dividends or make any other distributions on its Capital Stock to the Borrower or any of its Restricted Subsidiaries (other than Excluded Subsidiaries), or with respect to any other interest or participation in, or measured by, its profits, or pay any indebtedness owed to the Borrower or any of its Restricted Subsidiaries (other than Excluded Subsidiaries);

(ii) make loans or advances to the Borrower or any of its Restricted Subsidiaries (other than Excluded Subsidiaries);

(iii) transfer any of its properties or assets to the Borrower or any of its Restricted Subsidiaries (other than Excluded Subsidiaries); or

(iv) create, permit or grant a Lien on any of its properties or assets to secure the Guaranteed Obligations.

(b) The restrictions in Section 6.05(a) above shall not apply to encumbrances or restrictions existing under or by reason of:

(i) this Agreement and other agreements governing Existing Indebtedness on the Closing Date;

(ii) the Second Lien Notes Documents, documents evidencing Permitted Refinancing Indebtedness in respect of the Second Lien Notes and documents evidencing other Indebtedness permitted to be incurred under Section 6.01;

(iii) applicable law, rule, regulation or order;

(iv) customary non-assignment provisions in contracts, agreements, leases, permits and licenses;

(v) purchase money obligations for property acquired and Capital Lease Obligations that impose restrictions on the property purchased or leased of the nature described in Section 6.05(a)(iii);

(vi) any agreement for the sale or other disposition of the stock or assets of a Restricted Subsidiary that restricts distributions by that Restricted Subsidiary pending the sale or other disposition;

(vii) Permitted Refinancing Indebtedness; provided that the restrictions contained in the agreements governing such Permitted Refinancing Indebtedness are not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced;

(viii) Liens permitted to be incurred under Section 6.02 and associated agreements that limit the right of the debtor to dispose of the assets subject to such Liens;

(ix) provisions limiting the disposition or distribution of assets or property in joint venture, partnership, membership, stockholder and limited liability company agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements, including owners', participation or similar agreements governing projects owned through an undivided interest, which limitation is applicable only to the assets that are the subject of such agreements;

(x) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in connection with a Permitted Business;

(xi) restrictions or conditions contained in any trading, netting, operating, construction, service, supply, purchase, sale or similar agreement to which the Borrower or any Restricted Subsidiary is a party entered into in connection with a Permitted Business; provided that such agreement prohibits the encumbrance of solely the property or assets of the Borrower or such Restricted Subsidiary that are the subject of that agreement, the payment rights arising thereunder and/or the proceeds thereof and not to any other asset or property of the Borrower or such Restricted Subsidiary or the assets or property of any other Restricted Subsidiary;

(xii) any instrument governing Indebtedness or Capital Stock of a Person acquired by the Borrower or any of its Restricted Subsidiaries as in effect at the time of such acquisition (except to the extent such Indebtedness or Capital Stock was incurred in connection with or in contemplation of such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired; provided that, in the case of Indebtedness, such Indebtedness was permitted by the terms of this Agreement to be incurred;

(xiii) Indebtedness of a Restricted Subsidiary existing at the time it became a Restricted Subsidiary if such restriction was not created in connection with or in anticipation of the transaction or series of transactions pursuant to which such Restricted Subsidiary became a Restricted Subsidiary or was acquired by the Borrower;

(xiv) with respect only to Section 6.05(a)(iii), restrictions encumbering property at the time such property was acquired by the Borrower or any of its Restricted Subsidiaries, so long as such restriction relates solely to the property so acquired and was not created in connection with or in anticipation of such acquisition;

(xv) provisions limiting the disposition or distribution of assets or property in agreements governing Non-Recourse Debt, which limitation is applicable only to the assets that are the subject of such agreements;

(xvi) the Tenaska Transaction Documents and the Tenaska Energy Management Agreements;

(xvii) the Shawville Pipeline Agreement, Shawville Facility and ancillary documentation thereto; and

(xviii) any encumbrance or restrictions of the type referred to in Sections 6.05(a)(i), 6.05(a)(ii) and 6.05(a)(iii) imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (i) through (xvii) above; provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of a Financial Officer of the Borrower, no more restrictive with respect to such dividend and other payment restrictions than those contained in the dividend or other payment restrictions prior to such amendment, modification, restatement, renewals, increase, supplement, refunding, replacement or refinancing.

SECTION 6.06. Restricted Payments. (a) Directly or indirectly (w) declare or pay any dividend or make any other payment or distribution on account of the Borrower's or any of its Restricted Subsidiaries' Equity Interests (including any payment in connection with any merger or consolidation involving the Borrower or any of its Restricted Subsidiaries) or to the direct or indirect holders of the Borrower's or any of its Restricted Subsidiaries' Equity Interests in their capacity as such (other than dividends or distributions payable in Equity Interests (other than Disqualified Stock) of the Borrower or to the Borrower or a Restricted Subsidiary); (x) purchase, redeem or otherwise acquire or retire for value (including in connection with any merger or consolidation involving the Borrower) any Equity Interests of the Borrower or any direct or indirect parent of the Borrower (other than any such Equity Interests owned by the Borrower); (y) make any payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value any Indebtedness of the Borrower or any Subsidiary Guarantor that is contractually subordinated to the Guaranteed Obligations or secured on a junior lien basis to the Guaranteed Obligations (excluding any intercompany Indebtedness between or among the Borrower and any of its Restricted Subsidiaries), except (1) a payment of interest or principal at the Stated Maturity thereof, (2) a payment, purchase, redemption, defeasance, acquisition or retirement of any subordinated Indebtedness in anticipation of satisfying a sinking fund obligation, principal installment or payment at final maturity, in each case due within one year of the date of payment, purchase, redemption, defeasance, acquisition or retirement or (3) AHYDO Catch-Up Payments; or (z) make any Restricted Investment (all such payments and other actions set forth in these clauses (w) through (z) above being collectively referred to as "Restricted Payments"; provided for the avoidance of doubt that any compensation paid by the Borrower or its Restricted Subsidiaries that is included in the calculation of Consolidated Net Income shall not be considered a Restricted Payment for purposes hereunder), unless, at the time of and after giving effect to such Restricted Payment:

(i) no Default or Event of Default has occurred and is continuing or would occur as a consequence of such Restricted Payment;

(ii) on a pro forma basis after giving effect to such Restricted Payment and any transaction related thereto, the Consolidated First Lien Leverage Ratio as of the last day of the most recently ended fiscal quarter for which financial statements are required to be delivered pursuant to Sections 5.04(a) and 5.04(b) would not have exceeded 1.25 to 1.00;

(iii) available Liquidity shall be no less than $50,000,000; and

(iv) no Material Regulatory Event shall have occurred or result therefrom (the foregoing clauses (i) through (iv), the "Restricted Payment Conditions").

(b) The provisions of Section 6.06(a) shall not prohibit:

(i) the payment of any dividend within 90 days after the date of declaration of the dividend, if at the date of declaration the dividend payment would have complied with the provisions of this Agreement;

(ii) so long as no Default or Event of Default has occurred and is continuing or would be caused thereby, the making of any Restricted Payment in exchange for, or out of the aggregate proceeds of the substantially concurrent sale (other than to a Subsidiary) of, Equity Interests of the Borrower (other than Disqualified Stock) or from the contribution of equity capital (unless such contribution would constitute Disqualified Stock) to the Borrower;

(iii) so long as no Default has occurred and is continuing or would be caused thereby, the defeasance, redemption, repurchase or other acquisition of Indebtedness of the Borrower or any Subsidiary Guarantor that is contractually subordinated to the Guaranteed Obligations or secured on a junior lien basis to the Guaranteed Obligations with the proceeds from, or in exchange for, a substantially concurrent incurrence of Permitted Refinancing Indebtedness;

(iv) the payment of any dividend (or, in the case of any partnership or limited liability company, any similar distribution) by a Restricted Subsidiary to the holders of its Equity Interests on a *pro rata* basis;

(v) so long as no Default has occurred and is continuing or would be caused thereby, (A) the repurchase, redemption or other acquisition or retirement for value of any Equity Interests of the Borrower, any direct or indirect parent company thereof or any Restricted Subsidiary held by any current or former officer, director or employee of the Borrower or any of its Restricted Subsidiaries pursuant to any equity subscription agreement, stock option agreement, severance agreement, shareholders' agreement or similar agreement, employee benefit plan or (B) the cancellation of Indebtedness owing to the Borrower, any direct or indirect parent company or any of its Restricted Subsidiaries from any current or former officer, director or employee of the Borrower or any of its Restricted Subsidiaries in connection with a repurchase of Equity Interests of the Borrower, any direct or indirect parent company or any of its Restricted Subsidiaries; provided that the aggregate price paid for the actions in clause (A) may not exceed $1,000,000 in any 12-month period (with unused amounts in any period being carried over to succeeding periods) and may not exceed $3,000,000 in the aggregate since the Closing Date; provided, further, that (1) such amount in any calendar year may be increased by the cash proceeds of "key man" life insurance policies received by the Borrower and its Restricted Subsidiaries after the Closing Date less any amount previously applied to the making of Restricted Payments pursuant to this Section 6.06(b)(v) since the Closing Date and (2) cancellation of the Indebtedness owing to the Borrower from employees, officers, directors and consultants of the Borrower or any of its Restricted Subsidiaries in connection with a repurchase of Equity

Interests of the Borrower or any direct or indirect parent company from such Persons shall be permitted under this Section 6.06(b)(v) as if it were a repurchase, redemption, acquisition or retirement for value subject hereto;

(vi) the repurchase of Equity Interests in connection with the exercise of stock options to the extent such Equity Interests represent a portion of the exercise price of those stock options and the repurchases of Equity Interests in connection with the withholding of a portion of the Equity Interests granted or awarded to an employee to pay for the taxes payable by such employee upon such grant or award;

(vii) so long as no Default or Event of Default has occurred and is continuing or would be caused thereby, the making of any Restricted Payment with the Available Amount;

(viii) payments to holders of the Borrower's Capital Stock in lieu of the issuance of fractional shares of its Capital Stock;

(ix) the purchase, redemption, acquisition, cancellation or other retirement for a nominal value per right of any rights granted to all the holders of Capital Stock of the Borrower or any direct or indirect parent company pursuant to any shareholders' rights plan adopted for the purpose of protecting shareholders from unfair takeover tactics; provided that any such purchase, redemption, acquisition, cancellation or other retirement of such rights is not for the purpose of evading the limitations of this covenant (all as determined in good faith by a Financial Officer of the Borrower);

(x) the Borrower may make Restricted Payments to any direct or indirect parent of the Borrower:

(1) to pay its operating costs and expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including general and administrative services and, for the avoidance of doubt, excluding customary salary, bonus and other benefits and travel and entertainment expenses payable to officers and employees of any direct or indirect parent company of the Borrower to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Borrower and the Restricted Subsidiaries and payments to Independent Directors pursuant to Section 6.07(b)(xxi)), which are reasonable and customary and incurred in the ordinary course of business and attributable to the ownership or operations of the Borrower and its Restricted Subsidiaries and, any reasonable and customary indemnification claims made by directors, managers or officers of such parent attributable to the ownership or operations of the Borrower and its Restricted Subsidiaries;

(2) the proceeds of which shall be used by any direct or indirect parent of the Borrower that does not own any significant assets other than interests in the Borrower to pay its franchise and similar Taxes, and other

fees and expenses, required to maintain its (or any of its direct or indirect parents') corporate existence;

(xi) for so long as the Borrower is treated as a flow-through entity for U.S. federal income tax purposes, the payment of any dividend or distribution in an amount necessary for the Borrower to satisfy its obligations to make tax distributions under Section 4.01(b) of that certain Amended and Restated Limited Liability Company Agreement of GenOn Holdings, LLC, as in effect on the date hereof, for any taxable period; provided, that for each relevant taxable period the amount payable under this paragraph (xi) shall not exceed the greater of (A) the amount of U.S. federal corporate income taxes (and, if relevant, state, local, and non-U.S. income taxes) that the Borrower would have been liable for if the Borrower and its applicable subsidiaries have filed a separate consolidated (or, if relevant, combined or unitary) consolidated return with the Borrower as the parent, taking into account carryover of losses and other attributes that would have been available, and reduced by any such income taxes directly paid by the Borrower or its applicable subsidiaries and (B) the amount required to enable Direct GenOn Holdco, LLC to fund actual federal, state, local, and non-U.S. income taxes payable by the consolidated group of which it is a member that are attributable to Direct GenOn Holdco, LLC's ownership of Borrower, calculated as if Direct GenOn Holdco, LLC's only asset is its Equity Interest in Borrower, taking into account any net operating losses, capital losses and other attributes relating to the Borrower and its Subsidiaries;

(xii) Restricted Payments with the Net Proceeds of any Specified Asset Sale (other than any Specified Asset Sale in respect to the Choctaw Assets) (including, for the avoidance of doubt, upon satisfaction of the requirement of Section 5.13 in respect of the Bowline Power Plant, Restricted Payments with the Net Proceeds of the Canal Excess Fuel Payments received prior to compliance with the requirements of Section 5.13 with respect to the Bowline Power Plant); provided that (a) available Liquidity shall be no less than $50,000,000 immediately upon giving effect to such Restricted Payment, (b) no Default or Event of Default shall have occurred and be continuing or would occur as a consequence of such Restricted Payment and (c) to the extent the assets subject to the Specified Asset Sale are subject to asset retirement obligations or other similar liabilities, (x) to the extent any such obligations and liabilities are assumed by the purchaser of such Specified Asset Sale they shall be assumed with no remaining recourse to the Borrower and its Restricted Subsidiaries and/or (y) such asset retirement obligations or other similar liabilities shall be cash collateralized;

(xiii) Restricted Payments with the Net Proceeds of any Specified Asset Sale in respect of the Choctaw Assets; provided that (a) no Default or Event of Default shall have occurred and be continuing or would occur as a consequence of such Restricted Payment and (b) to the extent the Choctaw Assets subject to such Specified Asset Sale are subject to asset retirement obligations or other similar liabilities, (x) to the extent any such obligations and liabilities are assumed by the purchaser of such Specified Asset Sale they shall be assumed with no remaining recourse to the Borrower and its Restricted Subsidiaries and/or (y) such asset retirement obligations or other similar liabilities shall be cash collateralized; and

(xiv) Restricted Payments to the extent permitted under Section 6.04(c) with respect to Indebtedness permitted under Sections 6.01(a), 6.01(b)(ii), (iii) and (xv).

Notwithstanding the foregoing, until Section 5.13 has been satisfied with respect to the Bowline Power Plant, no Restricted Payment shall be made other than under clauses (b)(i) (solely to the extent relating to the clauses of Section 5.13 specifically identified in this sentence), (b)(ii), (b)(iii), (b)(iv), (b)(viii), (b)(x) (in an amount not to exceed $250,000 per fiscal year) or (b)(xi) of this Section 6.06.

The amount of all Restricted Payments (other than cash) will be the Fair Market Value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by the Borrower or such Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment. The Fair Market Value of any assets or securities that are required to be valued by this Section 6.06 will be determined by a Financial Officer of the Borrower whose certification with respect thereto will be delivered to the Administrative Agent.

SECTION 6.07. Transactions with Affiliates. (a) Make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Borrower (each, an "Affiliate Transaction") involving aggregate payments in excess of $3,000,000, unless:

(i) the Affiliate Transaction is on terms that are no less favorable to the Borrower (as reasonably determined by the Borrower) or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Borrower or such Restricted Subsidiary with an unrelated Person; and

(ii) the Borrower delivers to the Administrative Agent:

(1) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $20,000,000, a resolution of the Board of Directors set forth in an Officers' Certificate certifying that such Affiliate Transaction complies with this Section 6.07 and that such Affiliate Transaction has been approved by a majority of the disinterested members of the Board of Directors; and

(2) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $60,000,000, an opinion as to the fairness to the Borrower or such Restricted Subsidiary of such Affiliate Transaction from a financial point of view issued by an Independent Financial Advisor.

(b) The following items shall not be deemed to be Affiliate Transactions and, therefore, shall not be subject to the provisions of the prior paragraph:

(i) any employment agreement or director's engagement agreement, employee benefit plan, officer and director indemnification agreement or any similar arrangement

entered into by the Borrower or its direct or indirect parent or any of its Restricted Subsidiaries or approved by a Responsible Officer of the Borrower in good faith;

(ii) transactions between or among the Borrower and/or its Restricted Subsidiaries;

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

(iv) payment of directors' fees or retainers (whether on behalf of the borrower, any director or indirect parent of the Borrower or its Restricted Subsidiaries);

(v) any issuance of Equity Interests (other than Disqualified Stock) of the Borrower or its Restricted Subsidiaries;

(vi) Restricted Payments that do not violate the provisions of Section 6.06;

(vii) any agreement in effect as of the Closing Date or any amendment thereto or replacement thereof and any transaction contemplated thereby or permitted thereunder, so long as any such amendment or replacement agreement taken as a whole is not more disadvantageous to the Lenders than the original agreement as in effect on the Closing Date;

(viii) payments or advances to employees or consultants that are incurred in the ordinary course of business or that are approved by a Responsible Officer of the Borrower in good faith;

(ix) the existence of, or the performance by the Borrower or any of its Restricted Subsidiaries of its obligations under the terms of, any stockholders agreement (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of the Closing Date and any similar agreements which it may enter into thereafter; provided, however, that the existence of, or the performance by the Borrower or any of its Restricted Subsidiaries of obligations under, any future amendment to any such existing agreement or under any similar agreement entered into after the Closing Date shall only be permitted by this Section 6.07(b)(ix) to the extent that the terms of any such amendment or new agreement are not otherwise more disadvantageous to the Lenders in any material respect;

(x) transactions permitted by, and complying with, the provisions of Section 6.08;

(xi) transactions with customers, clients, suppliers, joint venture partners or purchasers or sellers of goods or services (including pursuant to joint venture agreements) in compliance with the terms of this Agreement that are fair to the Borrower and its Restricted Subsidiaries, in the reasonable determination of a Financial Officer of the Borrower, or are on terms not materially less favorable taken as a whole as might reasonably have been obtained at such time from an unaffiliated party;

(xii) any repurchase, redemption or other retirement of Capital Stock of the Borrower or any direct or indirect parent of the Borrower held by employees of the Borrower or any of its Subsidiaries;

(xiii) loans or advances to employees or consultants;

(xiv) any Permitted Investment in another Person involved in a Permitted Business;

(xv) transactions in which the Borrower or any Restricted Subsidiary, as the case may be, delivers to the Administrative Agent a letter from an Independent Financial Advisor stating that such transaction is fair to the Borrower or such Restricted Subsidiary from a financial point of view or meets the requirements of Section 6.07(a)(i);

(xvi) the issuance of any letters of credit to support obligations of any Excluded Subsidiary;

(xvii) transactions between or among Excluded Subsidiaries, and any Guarantee, guarantee and/or other credit support provided by the Borrower and/or any Restricted Subsidiary in respect of any Subsidiary or any Minority Investment so long as all holders of Equity Interests in such Subsidiary or Minority Investment (including the Borrower or any Restricted Subsidiary, as applicable) shall participate directly or indirectly in such applicable Guarantee, guarantee and/or other credit support or shall provide a commitment in respect of any related obligation, in each case, on a *pro rata* basis relative to their Equity Interests in such Minority Investment; provided that any such transaction shall be fair and reasonable and beneficial to the Borrower and its Restricted Subsidiaries (taken as a whole) and consistent with Prudent Industry Practice;

(xviii) transactions relating to management, marketing, administrative or technical services between the Borrower and its Restricted Subsidiaries, or between Restricted Subsidiaries;

(xix) any tax sharing agreement between or among the Borrower and its Subsidiaries so long as such tax sharing agreement is on fair and reasonable terms with respect to each participant therein;

(xx) transactions for shared services with GenOn Mid-Atlantic, LLC including, without limitation, fees for legal, financial, human resources, technology, accounting, and other professional services, and expense reimbursements related thereto as long as all payments in respect thereof are payable by GenOn Mid-Atlantic, LLC and its Subsidiaries to the Borrower and the Subsidiary Guarantors;

(xxi) transactions relating to the Management Incentive Plan; provided that the customary salary, bonus, other benefits and reasonable business travel and entertainment expenses of all Independent Directors shall not exceed $1,000,000 in the aggregate per fiscal year; and

(xxii) any agreement to do any of the foregoing.

SECTION 6.08. Merger, Consolidation or Sale of Assets. The Borrower will not, directly or indirectly: (a) consolidate or merge with or into another Person (whether or not the Borrower is the surviving corporation); or (b) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Borrower and its Restricted Subsidiaries taken as a whole, in one or more related transactions, to another Person; unless:

(i) either (A) the Borrower is the surviving corporation or (B) the Person formed by or surviving any such consolidation or merger (if other than the Borrower) or to which such sale, assignment, transfer, conveyance or other disposition has been made is a corporation, partnership or limited liability company organized or existing under the laws of the United States, any state of the United States or the District of Columbia;

(ii) the Person formed by or surviving any such consolidation or merger (if other than the Borrower) or the Person to which such sale, assignment, transfer, conveyance or other disposition has been made assumes all the obligations of the Borrower under the Loan Documents pursuant to joinder agreements or other documents and agreements reasonably satisfactory to the Administrative Agent, and such Person or the Borrower has delivered to the Administrative Agent and each Lender (x) any documentation and other information about such Person as shall have been reasonably requested in writing by the Administrative Agent or any Lender that the Administrative Agent or such Lender shall have reasonably determined is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations including, without limitation, the PATRIOT Act and (y) to the extent such Subsidiary qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, a Beneficial Ownership Certification in relation to such Person,;

(iii) immediately after such transaction, no Default or Event of Default exists and no Change of Control shall have occurred; and

(iv) (a) the Consolidated Total Secured Leverage Ratio of the Borrower or the Person formed by or surviving any such consolidation or merger (if other than the Borrower) as of the last day of the most recently ended fiscal quarter for which financial statements are required to be delivered pursuant to Sections 5.04(a) and 5.04(b), as measured on a pro forma basis immediately after giving effect to such consolidation or merger and any related financing transactions as if the same had occurred at the beginning of the applicable four-quarter period does not exceed 5.00 to 1.00 and (b) the Fixed Charge Coverage Ratio of the Borrower or the Person formed by or surviving any such consolidated or merger (if other than the Borrower) is at least 2.00 to 1.00 as of the last day of the most recently ended fiscal quarter for which financial statements are required to be delivered pursuant to Sections 5.04(a) and 5.04(b) as measured immediately after giving effect to such consolidation or merger.

(b) The Borrower will not permit any Restricted Subsidiary to (x) consolidate or merge with or into another Person (whether or not such Restricted Subsidiary is the surviving corporation); or (y) sell, assign, transfer, convey or otherwise dispose of all or substantially all of its properties or assets, in one or more related transactions, to another Person; except:

(i) any Restricted Subsidiary may merge into or consolidate or amalgamate with any Loan Party, so long as either (A) the Loan Party is the surviving entity or (B) such surviving entity becomes a Loan Party substantially concurrently with the consummation of such transaction and complies with Section 5.09;

(ii) any Restricted Subsidiary that is not a Loan Party may merge into or consolidate or amalgamate with (A) any other Restricted Subsidiary that is not a Loan Party or (B) any Loan Party so long as such Loan Party is the surviving entity or such surviving Person shall assume the obligations of the applicable Loan Party hereunder and under the Loan Documents;

(iii) any Person may merge into or consolidate or amalgamate with any Restricted Subsidiary that is a Subsidiary Guarantor in connection with an Investment in such Person pursuant to clause (f) of the definition of Permitted Investments;

(iv) any Restricted Subsidiary may sell, assign, transfer, convey or otherwise dispose of all or substantially all of its properties or assets, in one or more related transactions to any (A) Loan Party or (B) to any Person that becomes a Loan Party substantially concurrently with the consummation of such transaction and complies with Section 5.09; and

(v) any Restricted Subsidiary that is not a Loan Party may sell, assign, transfer, convey or otherwise dispose of all or substantially all of its properties or assets, in one or more related transactions to any Restricted Subsidiary that is not a Loan Party.

(c) In addition, neither the Borrower nor any Restricted Subsidiary shall, directly or indirectly, lease all or substantially all of its properties or assets, in one or more related transactions, to any other Person except, in the case of a Restricted Subsidiary:

(i) the Borrower or any Loan Party;

(ii) any Person that becomes a Loan Party substantially concurrently with the consummation of such transaction and complies with Section 5.09;

(iii) any Restricted Subsidiary that is not a Loan Party may directly or indirectly, lease all or substantially all of its properties or assets, in one or more related transactions, to another Restricted Subsidiary that is not a Loan Party.

(d) This Section 6.08 shall not apply to (i) a merger of the Borrower with an Affiliate solely for the purpose of reincorporating the Borrower in another jurisdiction or forming a direct holding company of the Borrower; (ii) a merger of a Restricted Subsidiary with an Affiliate solely for the purpose of reincorporating such Restricted Subsidiary in another jurisdiction or forming a direct holding company of such Restricted Subsidiary; and (iii) any sale, transfer, assignment, conveyance, lease or other disposition of assets between or among the Borrower and the Subsidiary Guarantors, including by way of merger or consolidation.

(e) Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets of the Borrower and its

Restricted Subsidiaries taken as a whole in a transaction that is subject to, and that complies with the provisions of, Section 6.08(a) through and including 6.08(d), the successor Person formed by such consolidation or into or with which the Borrower is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for the Borrower (so that from and after the date of such consolidation, merger, sale, lease, conveyance or other disposition, the provisions of this Agreement and the other Loan Documents referring to the "Borrower" shall refer instead to the successor Person and not to the Borrower), and may exercise every right and power of the Borrower under this Agreement and the other Loan Documents with the same effect as if such successor Person had been named as the Borrower herein; provided, however, that the predecessor Borrower shall not be relieved from its payment obligations hereunder except in the case of a sale of all of the Borrower's assets in a transaction that is subject to, and that complies with the provisions of, Section 6.08(a) through and including 6.08(d).

SECTION 6.09. Consolidated First Lien Leverage Ratio. Permit the Consolidated First Lien Leverage Ratio as of the last day of any fiscal quarter (commencing with the first full fiscal quarter ending after the Closing Date) to be greater than 2.50 to 1.00.

SECTION 6.10. Designation of Restricted and Unrestricted Subsidiaries. (a) The Borrower may designate, by a certificate executed by a Responsible Officer of the Borrower, any Restricted Subsidiary (other than any Subsidiary constituting or owning Core Collateral) to be an Unrestricted Subsidiary if the Borrower is in compliance with the Restricted Payment Conditions at the time of, and after giving effect to, such designation. If a Restricted Subsidiary is designated as an Unrestricted Subsidiary, the aggregate Fair Market Value of all outstanding Investments owned by the Borrower and its Restricted Subsidiaries in the Subsidiary designated as an Unrestricted Subsidiary will be deemed to be an Investment made as of the time of the designation and will reduce the amount available for Restricted Payments under the provisions of Section 6.06 or under one or more clauses of the definition of Permitted Investments, as determined by the Borrower; provided, however, that to the extent an Excluded Subsidiary is designated as an Unrestricted Subsidiary, the amount of the Investment deemed to have been made in respect of such Unrestricted Subsidiary will be calculated without duplication of the amount of the Investment made as a result of such Excluded Subsidiary's initial designation as such plus any subsequent Investments made in such Excluded Subsidiary prior to such subsequent designation. That designation will only be permitted if the Investment would be permitted at that time and if the Restricted Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. A Responsible Officer of the Borrower may redesignate any Unrestricted Subsidiary to be a Restricted Subsidiary if that redesignation would not cause a Default or Event of Default.

(b) [Reserved].

(c) Any designation of a Subsidiary as an Unrestricted Subsidiary will be evidenced to the Administrative Agent by delivering to the Administrative Agent a certified copy of a resolution of the Board of Directors giving effect to such designation and an Officers' Certificate certifying that such designation complied with the preceding conditions and was permitted by Section 6.06. If, at any time, any Unrestricted Subsidiary should fail to meet the preceding requirements as, respectively, an Unrestricted Subsidiary, it will thereafter cease to be an Unrestricted Subsidiary for the purposes of this Agreement and any Indebtedness of such Subsidiary will be deemed to be

incurred by a Restricted Subsidiary o as of such date and, if such Indebtedness is not permitted to be incurred as of such date under Section 6.01, the Borrower will be in default of such covenant. The Board of Directors of the Borrower may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary; provided that such designation will be deemed to be an incurrence of Indebtedness and Liens by a Restricted Subsidiary of any outstanding Indebtedness and Liens of such Unrestricted Subsidiary, and such designation will only be permitted if (i) such Indebtedness and Liens are permitted under Section 6.01(a) and 6.02, calculated on a pro forma basis as if such designation had occurred at the beginning of the applicable four-quarter reference period and (ii) no Default or Event of Default would be in existence following such designation.

SECTION 6.11. Fiscal Year. With respect to the Borrower, change its fiscal year-end to a date other than December 31.

SECTION 6.12. Use of Proceeds. Directly or, to the knowledge of the Borrower, indirectly use the proceeds of any Loan or Letter of Credit or otherwise make available such proceeds to any Subsidiary or any other Person (i) in violation of the Anti-Corruption Laws or (ii) to fund, finance or facilitate any activities or business of or with any Person that is, at the time of such funding, a Sanctioned Person or in any country or territory that is at the time of such funding a Sanctioned Country or in any other manner that would result in a violation of Sanctions by any Person (including a Lender, Arranger, Administrative Agent, Issuing Bank or otherwise).

SECTION 6.13. Deposit Accounts. Transfer cash to a Deposit Account or Securities Account that is an Excluded Perfection Asset (other than Deposit Accounts or Securities Accounts used for third party payments in the ordinary course of business or used exclusively for payroll, employee benefits or tax as well as any other fiduciary or trust account) in an amount in excess of $500,000 individually or $3,000,000 in the aggregate.

## ARTICLE VII.

SECTION 7.01. Events of Default In case of the happening of any of the following events ("Events of Default"):

(a) any representation or warranty made or deemed made in or in connection with any Loan Document (other than those specified in clause (l) below) or the Borrowings or issuances of Letters of Credit hereunder, or any representation, warranty, statement or information contained in any report, certificate, financial statement or other instrument furnished in connection with or pursuant to any Loan Document by any Loan Party, shall prove to have been false or misleading in any material respect when so made, deemed made or furnished;

(b) default shall be made in the payment of any principal of any Loan or the reimbursement with respect to any L/C Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise;

(c) default shall be made in the payment of any interest on any Loan or any L/C Disbursement or any Fee or any other amount (other than an amount referred to in clause (b) above) due under any Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of five (5) Business Days;

(d) default shall be made in the due observance or performance by the Borrower or any Subsidiary of any covenant, condition or agreement contained in Section 5.01(a), 5.05, 5.08, 5.11, 5.13 or 5.14 or in Article VI;

(e) default shall be made in the due observance or performance by the Borrower or any Subsidiary of any covenant, condition or agreement contained in any Loan Document (other than those specified in clauses (b), (c) or (d) above or clause (l) below) and such default shall continue unremedied for a period of 30 days after notice thereof from the Administrative Agent (or 15 days with respect to Section 5.04), the Collateral Trustee or any Lender to the Borrower;

(f) the Borrower or any Restricted Subsidiary shall (A) fail to pay any principal or interest, regardless of amount, due in respect of any Material Indebtedness (other than Indebtedness hereunder), when and as the same shall become due and payable, or (B) any other event or condition occurs that results in any Material Indebtedness (other than Indebtedness hereunder) becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness (other than Indebtedness hereunder) or any trustee or agent on its or their behalf to cause any Material Indebtedness (other than Indebtedness hereunder) to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that clause (B) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness; provided, further, that clauses (A) and (B) shall not apply to (1) Non-Recourse Debt and (2) any other Non-Recourse Debt of the Borrower and the Restricted Subsidiaries (except to the extent that the Borrower or any of the Restricted Subsidiaries that are not parties to such Non-Recourse Debt is then liable for any such Non-Recourse Debt of a Significant Subsidiary that is Indebtedness for borrowed money thereunder and such liability, individually or in the aggregate, exceeds $25,000,000);

(g) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against the Borrower or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary in an involuntary case; (ii) appoints a custodian of the Borrower or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary or for all or substantially all of the property of the Borrower or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary; or (iii) orders the liquidation of the Borrower or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary; and, in each of clauses (i), (ii) or (iii), the order or decree remains unstayed and in effect for 60 consecutive days;

(h) the Borrower or any of its Restricted Subsidiaries (that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, pursuant to or within the meaning of Bankruptcy Law (i) commences a voluntary case; (ii) consents to the entry of an order for relief against it in an involuntary case; (iii) consents to the appointment of a custodian of it or for all or substantially all of its property; (iv) makes a general

assignment for the benefit of its creditors; or (v) generally is not paying its debts as they become due;

(i) one or more judgments for the payment of money in an aggregate amount in excess of $25,000,000 (excluding therefrom any amount covered by insurance) shall be rendered against the Borrower or any Restricted Subsidiary or any combination thereof and the same shall remain undischarged for a period of 60 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to levy upon assets or properties of the Borrower or any of its Restricted Subsidiaries to enforce any such judgment; provided that this clause (i) shall not apply to (A) Non-Recourse Debt and (B) any other Non-Recourse Debt of the Borrower and the Restricted Subsidiaries (except to the extent that the Borrower or any of the Restricted Subsidiaries that are not parties to such Non-Recourse Debt is then liable for any such Non-Recourse Debt of a Significant Subsidiary that is Indebtedness for borrowed money thereunder and such liability, individually or in the aggregate, exceeds $25,000,000);

(j) an ERISA Event shall have occurred that, when taken together with all other such ERISA Events, could reasonably be expected to result in liability assessed against the Borrower and its ERISA Affiliates in an aggregate amount exceeding $25,000,000;

(k) except as permitted by this Agreement or as a result of the discharge of such Subsidiary Guarantor in accordance with the terms of the Loan Documents, any Guarantee by a Significant Subsidiary (or group of Subsidiaries that taken as a whole would be deemed a Significant Subsidiary) under the Guarantee and Collateral Agreement shall be held by a final decision issued in any judicial proceeding to be unenforceable or invalid or shall cease for any reason to be in full force and effect or any Subsidiary Guarantor (or any group of Subsidiary Guarantors) that constitutes a Significant Subsidiary shall deny or disaffirm in writing its or their obligations under its or their Guarantee(s) under the Guarantee and Collateral Agreement;

(l) material breach by the Borrower or any of the other Loan Parties of any material representation or warranty or covenant, condition or agreement in the Security Documents, the repudiation by the Borrower or any of the other Loan Parties of any of its material obligations under any of the Security Documents or the unenforceability of any of the Security Documents against the Borrower or any of the other Loan Parties for any reason with respect to Collateral having an aggregate Fair Market Value of $25,000,000 or more in the aggregate; or

(m) there shall have occurred a Change of Control;

then, and in every such event (other than an event with respect to the Borrower described in paragraph (g) or (h) above), and at any time thereafter during the continuance of such event either or both of the following actions may be taken: (i) the Administrative Agent may with the consent of the Required Lenders, and at the request of the Required Lenders shall, by notice to the Borrower, terminate forthwith the Revolving Commitments (including, for the avoidance of doubt, any New Revolving Commitments and Refinancing Revolving Commitments) and (ii) the Administrative Agent may with the consent of the Required Lenders, and at the request of the Required Lenders shall, by notice to the Borrower, declare the Revolving Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of such Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued

Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding, and the Administrative Agent and the Collateral Trustee shall have the right to take all or any actions and exercise any remedies available to a secured party under the Security Documents or applicable law or in equity (including, without limitation, to require that the Borrower deposit an amount in cash equal to the Revolving L/C Exposure as of such date pursuant to Section 2.23(j)); and in any event with respect to an event in respect of the Borrower described in paragraph (g) or (h) above, the Revolving Commitments shall automatically terminate and the principal of such Loans so declared to be due and payable then outstanding, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, shall automatically become due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding, and the Administrative Agent and the Collateral Trustee shall have the right to take all or any actions and exercise any remedies available to a secured party under the Security Documents or applicable law or in equity.

Without limitation of, and after giving effect to, Section 6.7 of the Guarantee and Collateral Agreement and Section 3.4 of the Collateral Trust Agreement, all proceeds received by the Administrative Agent either from the Collateral Trustee or any other Person in respect of any sale of, collection from, or other realization upon all or any part of the Collateral under any Security Document shall be held by the Administrative Agent as Collateral for, and applied in full or in part by the Administrative Agent against, the applicable Guaranteed Obligations hereunder then due and owing in the following order of priority: *first*, to the ratable payment of (a) all costs and expenses of such sale, collection or other realization, including reasonable and documented fees, costs and expenses of the Agents and their agents and counsel, and all other expenses, liabilities and advances made or incurred by the Agents in connection therewith, and all amounts in each case for which such Agents are entitled to payment, reimbursement or indemnification under the Loan Documents (in their capacity as such), and to the payment of all costs and expenses paid or incurred by the Agents in connection with the exercise of any right or remedy under the Loan Documents, all in accordance with the terms of the Loan Documents, (b) any principal and interest owed to the Administrative Agent in respect of outstanding Revolving Loans advanced on behalf of any Lender by the Administrative Agent for which the Administrative Agent has not then been reimbursed by such Lender or the Borrower, (c) [*reserved*] and (d) any amounts owed to the Issuing Bank under a Letter of Credit issued by it for which it has not then been reimbursed by any Lender or the Borrower; *second*, to the payment of that portion of the Guaranteed Obligations constituting accrued and unpaid interest on the Revolving Loans and any interest due on amounts unpaid under Specified Hedging Agreements ratably among the Secured Parties in proportion to the respective amounts described in this clause *second* payable to them; *third*, to the extent of any excess proceeds, to the payment of all other Guaranteed Obligations hereunder for the ratable benefit of the holders thereof; and *fourth*, to the extent of any excess proceeds, to the payment to or upon the order of the applicable Loan Party or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

SECTION 7.02. Cure Right.

(a) In the event that Borrower fails to comply with the requirements of Section 6.09 as of the end of any fiscal quarter, at the Borrower's option, from the end of such fiscal quarter until the expiration of the 10th day subsequent to the date the Officers' Certificate of a Financial Officer of the Borrower for such fiscal quarter is required to be delivered pursuant to Section 5.04(c) (the "Cure Expiration Date"), Borrower shall have the right to cure such failure (the "Cure Right") by issuing (or by having a direct or indirect parent company issue) Permitted Cure Securities for cash (the amount thereof, the "Cure Amount"), so long as such cash is immediately contributed to the capital of the Borrower as common equity; provided that (i) no more than four Cure Rights may be exercised after the Closing Date; (ii) no more than two Cure Rights may be exercised during any consecutive four fiscal quarters; and (iii) no Cure Amount shall exceed the amount necessary to cause compliance with the requirements of Section 6.09 for the period then ended.

(b) Upon the receipt by the Borrower of the cash proceeds of any capital contribution referred to in Section 7.02(a), Consolidated Cash Flow for the fiscal quarter as to which such Cure Right is exercised (the "Cure Right Fiscal Quarter") shall be deemed to have been increased by the Cure Amount in determining the Consolidated First Lien Leverage Ratio for such Cure Right Fiscal Quarter and for any subsequent period that includes such Cure Right Fiscal Quarter; provided that (i) no increase in Consolidated Cash Flow on account of the exercise of any Cure Right shall be applicable for any other purpose under this Agreement or any other Loan Document, including determining of any fee or the availability or amount of any covenant basket, carve-out or compliance on a pro forma basis with the Consolidated First Lien Leverage Ratio; (ii) the prepayment of the Loans with the proceeds of any Cure Amount shall be disregarded in determining the Consolidated First Lien Leverage Ratio for the applicable Cure Right Fiscal Quarter; and (iii) no Cure Amount shall be "netted" in the determination of Indebtedness for the calculation of any leverage ratio for the applicable Cure Right Fiscal Quarter.

(c) If after giving effect to the recalculations set forth in Section 7.02(a), the Borrower shall then be in compliance with the Consolidated First Lien Leverage Ratio, the Borrower shall be deemed to have satisfied the requirements of such covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable Event of Default with respect to any such covenant that had occurred shall be deemed cured for all purposes of this Agreement and the other Loan Documents.

(d) Upon receipt by the Administrative Agent of written notice, prior to the Cure Expiration Date, that the Borrower intends to exercise the Cure Right prior to the Cure Expiration Date in respect of a fiscal quarter, neither the Administrative Agent nor the Lenders shall be permitted to accelerate Loans held by them and none of the Administrative Agent, Collateral Trustee or Lenders shall be permitted to exercise any remedies against the Collateral on the basis of a failure to comply with the requirements of the covenant set forth in Section 6.09 until such failure is not cured pursuant to the exercise of the Cure Right on or prior to the Cure Expiration Date; provided that no Lender shall be required, from the applicable date of receipt by the Administrative Agent of the notice of the Borrower's intent to exercise the Cure Right until the applicable Event of Default has been cured in accordance with the terms of this Section 7.02, to make any extension of credit (including issuance, extension or increase of any Letter of Credit (including any increase contemplated by the terms of any such Letter of Credit)) under this Agreement.

ARTICLE VIII.

The Agents, the Arranger and the Lenders

Each of the Lenders and the Issuing Banks hereby irrevocably appoints the Administrative Agent (the Administrative Agent and any other agent appointed in connection herewith by the Lenders are referred to collectively as the "Agents") as its agent and authorizes the Agents to take such actions on its behalf and to exercise such powers as are delegated to such Agent by the terms of the Loan Documents, together with such actions and powers as are reasonably incidental thereto. Without limiting the generality of the foregoing, the Agents are hereby expressly authorized by the Lenders to execute any and all documents (including releases and documents pursuant to the Collateral Trust Agreement and the other Security Documents) with respect to the Collateral and the rights of the Secured Parties with respect thereto. Each of the Lenders and the Issuing Banks hereby irrevocably (a) acknowledges and agrees that the Collateral Trustee (as defined in the Collateral Trust Agreement) has been appointed as the Secured Parties' agent in respect of the Collateral Trust Agreement and the other Security Documents, in each case as contemplated by and in accordance with the provisions of this Agreement and the Security Documents and (b) expressly authorizes and directs the Collateral Trustee (as defined in the Collateral Trust Agreement) to execute such documents or instruments as may be required or contemplated by the Collateral Trust Agreement and the other Security Documents, in each case, as contemplated by and in accordance with the provisions of this Agreement and the Security Documents. Each of the Lenders and the Issuing Banks hereby agrees to be bound by the priority of the security interests and allocation of the benefits of the Collateral and proceeds thereof set forth in the Security Documents.

Each institution serving as an Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or any Subsidiary or any Affiliate thereof as if it were not an Agent hereunder.

Notwithstanding anything herein to the contrary, if at any time the Required Lenders determine that the Person serving as Administrative Agent is (without taking into account any provision in the definition of "Defaulting Lender" requiring notice from the Administrative Agent or any other party) a Defaulting Lender, the Required Lenders (determined after giving effect to Section 9.08) may, by notice to the Borrower and such Person, remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a replacement Administrative Agent hereunder. Such removal will, to the fullest extent permitted by Applicable Law, be effective on the earlier of (a) the date a replacement Administrative Agent is appointed and (b) the date 30 days after the giving of such notice by the Required Lenders (regardless of whether a replacement Administrative Agent has been appointed).

No Agent or Lender shall have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) none of any Agent, the Arranger or any Lender shall be subject to any fiduciary or other implied duties, regardless of whether a Default or an Event of Default has occurred and is continuing and, in performing its functions and duties hereunder, each Agent shall act solely as an agent of Lenders and does not

assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for the Borrower or any of its Subsidiaries, (b) no Agent shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that the Administrative Agent is required to exercise as directed in writing by the Required Lenders or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.08, as applicable, provided that no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose it to liability or that is contrary to any Loan Document or Applicable Law, including for the avoidance of doubt, any action that may be in violation of the automatic stay under any Bankruptcy Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Bankruptcy Law, and (c) except as expressly set forth in the Loan Documents, no Agent shall have any duty to disclose, nor shall it be liable for the failure to disclose, any information relating to the Borrower or any of the Subsidiaries that is communicated to or obtained by the bank serving as any Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it under or in connection with any Loan Document except to the extent caused by its own bad faith, gross negligence or willful misconduct, as determined by a court of competent jurisdiction by final and nonappealable judgment. No Agent shall be deemed to have knowledge of any Default or Event of Default unless and until written notice thereof is given to such Agent by the Borrower or a Lender, and no Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to such Agent.

The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Lenders. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Lender or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Lender.

Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. Each Agent may also rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. Each Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Each Agent may perform any and all of its duties and exercise its rights and powers by or through any one or more sub-agents appointed by it. Each Agent and any such sub-agent may

perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of each Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent.

Each Agent may resign at any time by notifying the Lenders, the Issuing Banks and the Borrower. Upon any such resignation of the Administrative Agent, the Required Lenders shall have the right to appoint a successor, subject to the Borrower's approval (not to be unreasonably withheld or delayed) so long as no Default or Event of Default shall have occurred and be continuing. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation, then the retiring Agent may, on behalf of the Lenders and the Issuing Banks, appoint a successor Agent which shall be a financial institution with an office in New York, New York, or an Affiliate of any such bank; provided that the resignation of the retiring Agent shall nonetheless become effective thirty (30) days after the retiring Agent gives notice of its resignation regardless of any successor being appointed. Upon the acceptance of its appointment as Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent; the retiring Agent shall be discharged from its duties and obligations hereunder upon the earlier to occur of the thirtieth ($30^{th}$) day after the retiring Agent gave notice of its resignation and such acceptance by a new Agent. The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After an Agent's resignation hereunder, the provisions of this Article and Section 9.05 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while acting as Agent.

The Arranger, in its capacity as such, shall have no duties or responsibilities, and shall incur no liability, under this Agreement or any other Loan Document.

Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent, the Arranger, or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent, the Arranger, or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement or any other Loan Document, any related agreement or any document furnished hereunder or thereunder.

To the extent required by any Applicable Law, the Administrative Agent may withhold from any interest payment to any Lender an amount equivalent to any applicable withholding tax. If any payment has been made to any Lender by the Administrative Agent without the applicable withholding Tax being withheld from such payment and the Administrative Agent has paid over the applicable withholding Tax to the Internal Revenue Service or any other Governmental Authority, or the Internal Revenue Service or any other Governmental Authority asserts a claim that the Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender because the appropriate form was not delivered or was not properly

executed or because such Lender failed to notify the Administrative Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding tax ineffective or for any other reason, such Lender shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as tax or otherwise, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the Administrative Agent under this paragraph. This paragraph shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other obligations hereunder.

## ARTICLE IX.

## Miscellaneous

SECTION 9.01. Notices. (a) Notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail, sent by fax or by any other telecommunication device capable of creating a written record (including electronic mail), as follows:

(i) if to the Borrower, to its address at

GenOn Holdings, LLC
1360 Post Oak Blvd
Suite 2000
Houston TX 77056
Attention: Darren Olagues, CFO and Executive VP
Email: Darren@genon.com

with copies to (which shall not constitute notice):

GenOn Holdings, LLC
1360 Post Oak Blvd
Suite 2000
Houston TX 77056
Attention: Daniel McDevitt, General Counsel & Executive VP
Email: Daniel.McDevitt@genon.com

and

Kirkland & Ellis LLP
609 Main Street
Houston, Texas 77002
Attention: Mary Kogut Brawley
Telephone: (713) 836-3650

Facsimile: (713) 836-3601
Email: mary.kogut@kirkland.com

(ii) if to the Administrative Agent or to Barclays, in its capacity as an Issuing Bank hereunder, to Barclays Bank PLC, 745 Seventh Avenue, 8th Floor, New York, New York 10019, Attention of Charlie Goetz (Tel No. (212) 526-7000; Email: Charlie.Goetz@barclays.com); and

(iii) if to an Issuing Bank (other than Barclays, in its capacity as an Issuing Bank hereunder) or a Lender, to it at its address (or fax number) set forth on the Administrative Questionnaire delivered by such Issuing Bank or such Lender to the Administrative Agent or the Assignment and Assumption or the Joinder Agreement pursuant to which such Issuing Bank or such Lender shall have become a party hereto.

(b) All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given (i) on the date of receipt if delivered by hand or overnight courier service or sent by fax, (ii) on the date five (5) Business Days after dispatch by certified or registered mail if mailed, (iii) on the date on which such notice or other communication has been made generally available on an Approved Electronic Platform, Internet website or similar telecommunication device to the class of Person(s) being notified (regardless of whether any such Person must accomplish, and whether or not any such Person shall have accomplished, any action prior to obtaining access to such items, including registration, disclosure of contact information, compliance with a standard user agreement or undertaking a duty of confidentiality) and such Person has been notified in respect of such posting that a communication has been posted to such Approved Electronic Platform, Internet website or similar telecommunication device if delivered by posting to such Approved Electronic Platform, Internet website or similar telecommunication device requiring that a user have prior access to such Approved Electronic Platform, Internet website or similar telecommunication device or (iv) on the date on which transmitted to an electronic mail address (or by another means of electronic delivery) if delivered by electronic mail or any other telecommunications device, in the case of each of clauses (i)-(iv), delivered, sent or mailed (properly addressed) to such party as provided in this Section 9.01 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 9.01; provided, however, that notices and other communications to the Administrative Agent pursuant to Article II or Article VIII shall not be effective until received by the Administrative Agent.

(c) Notwithstanding Sections 9.01(a) and 9.01(b) (unless the Administrative Agent requests that the provisions of Sections 9.01(a) and 9.01(b) be followed) and any other provision in this Agreement or any other Loan Document providing for the delivery of any Approved Electronic Communication by any other means, the Loan Parties shall deliver all Approved Electronic Communications to the Administrative Agent by properly transmitting such Approved Electronic Communications in an electronic/soft medium in a format acceptable to the Administrative Agent to Charlie.Goetz@barclays.com or such other electronic mail address (or similar means of electronic delivery) as the Administrative Agent may notify to the Borrower. Nothing in this Section 9.01(c) shall prejudice the right of the Administrative Agent or any Lender to deliver any Approved Electronic Communication to any Loan Party in any manner authorized in this Agreement or to request that the Borrower effect delivery in such manner.

(d) Posting of Approved Electronic Communications. (i) Each Lender and each Loan Party agree that the Administrative Agent may, but shall not be obligated to, make the Approved Electronic Communications available to the Lenders by posting such Approved Electronic Communications on IntraLinks™ or a substantially similar electronic platform chosen by the Administrative Agent to be its electronic transmission system (the "Approved Electronic Platform").

(ii) Although the Approved Electronic Platform and its primary web portal are secured with generally-applicable security procedures and policies implemented or modified by the Administrative Agent from time to time (including, as of the Closing Date, a dual firewall and a User ID/Password Authorization System) and the Approved Electronic Platform is secured through a single-user-per-deal authorization method whereby each user may access the Approved Electronic Platform only on a deal-by-deal basis, each Lender and each Loan Party acknowledges and agrees that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution. In consideration for the convenience and other benefits afforded by such distribution and for the other consideration provided hereunder, the receipt and sufficiency of which is hereby acknowledged, each Lender and each Loan Party hereby approves distribution of the Approved Electronic Communications through the Approved Electronic Platform and understands and assumes the risks of such distribution.

(iii) THE APPROVED ELECTRONIC PLATFORM AND THE APPROVED ELECTRONIC COMMUNICATIONS ARE PROVIDED "AS IS" AND "AS AVAILABLE". NONE OF THE ADMINISTRATIVE AGENT NOR ANY OF ITS AFFILIATES WARRANT THE ACCURACY, ADEQUACY OR COMPLETENESS OF THE APPROVED ELECTRONIC COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM AND EACH EXPRESSLY DISCLAIMS ANY LIABILITY FOR ERRORS OR OMISSIONS IN THE APPROVED ELECTRONIC COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE ADMINISTRATIVE AGENT OR ANY OF ITS AFFILIATES IN CONNECTION WITH THE APPROVED ELECTRONIC COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM.

(iv) Each Lender and each Loan Party agree that the Administrative Agent may, but (except as may be required by applicable law) shall not be obligated to, store the Approved Electronic Communications on the Approved Electronic Platform in accordance with the Administrative Agent's generally-applicable document retention procedures and policies.

SECTION 9.02. Survival of Agreement. All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document shall

be considered to have been relied upon by the Lenders and the Issuing Banks and shall survive the making by the Lenders of the Loans and the issuance of Letters of Credit by the Issuing Bank, regardless of any investigation made by the Lenders or the Issuing Banks or on their behalf, and shall continue in full force and effect (but such representations and warranties shall be deemed made by the Borrower only at such times and as of such dates as set forth in Section 4.01(b)) as long as the principal of or any accrued interest on any Loan or any Fee or any other amount payable (other than indemnification and other contingent obligations that expressly survive pursuant to the terms of any Loan Document, in each case, not then due and payable) under this Agreement or any other Loan Document is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not been terminated. The provisions of Sections 2.14, 2.16, 2.20, 2.21 and 9.05 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 Loans, the expiration of the Commitments, the expiration of any Letter of Credit, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Administrative Agent, any Lender or the Issuing Bank.

SECTION 9.03. Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrower and the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto. Upon the satisfaction of the conditions precedent set forth in Section 4.02, this Agreement shall become effective, binding upon and enforceable against the Borrower and each of the Administrative Agent, the Issuing Bank and the Lenders.

SECTION 9.04. Successors and Assigns. (a) Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower, the Administrative Agent, the Issuing Banks or the Lenders that are contained in this Agreement shall bind and inure to the benefit of their respective successors and assigns.

(b) Each Lender may assign to one or more assignees that are Acceptable Financial Institutions (other than any natural person, any Disqualified Lender, the Borrower or any of its Affiliates) all or a portion of its interests, rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided, however, that (x) the Administrative Agent, the Issuing Banks and the Borrower must give its prior written consent to such assignment (which consent shall not be unreasonably withheld or delayed); provided that the consent of the Borrower shall not be required to any such assignment (1) during the continuance of any Event of Default or (2) to a Lender or an Affiliate or Related Fund of a Lender, and the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof, and (y) except in the case of an assignment to a Lender or an Affiliate or Related Fund of a Lender, the amount of the Commitment or Loan of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than $2,500,000 (or if less, the entire remaining amount of such Lender's Commitment or Loans, as the case may be, and Related Funds shall be aggregated for this purpose), (ii) the parties to each such assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption,

together with a processing and recordation fee of $3,500 (which shall be payable by either the assignor or the assignee, as they may agree), provided, however, that no such processing and recordation fee shall be payable in connection with assignments made by a Lender to an affiliate thereof, by or to the Arranger or an affiliate thereof or to a Lender or an affiliate or Related Fund of a Lender or a Person under common management with a Lender and (iii) the assignee, if it shall not be a Lender immediately prior to the assignment, shall deliver to the Administrative Agent an Administrative Questionnaire. No Lender is permitted to assign all or any portion of its interests, rights or obligations under this Agreement (including all or a portion of its Commitment and the Loans at any time owing to it) except as specifically set forth in the immediately preceding sentence and any purported assignment not in conformity therewith shall be null and void. Upon acceptance and recording pursuant to Section 9.04(e), from and after the effective date specified in each Assignment and Assumption, (A) the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement and (B) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits and obligations of Sections 2.14, 2.16, 2.20, 2.21 and 9.05, as well as to any Fees accrued for its account and not yet paid). Notwithstanding the foregoing (but subject to the consent rights set forth in the first sentence of this Section 9.04(b)), an assignment by a Lender to one of its Affiliates or Related Funds will be effective, valid, legal and binding without regard to whether the assignor has delivered an Assignment and Assumption or Administrative Questionnaire to the Administrative Agent (and the acceptance and recordation thereof under paragraph (e) of this Section shall not be required); provided that the Administrative Agent and the Borrower shall be entitled to deal solely with the assignor unless and until the date that an Assignment and Assumption and Administrative Questionnaire have been delivered to the Administrative Agent with respect to the applicable assignee.

(c) By executing and delivering (to the Administrative Agent or the assigning Lender in the case of an assignment by a Lender to one of its Affiliates or Related Funds pursuant to the last sentence of paragraph (b) of this Section) an Assignment and Assumption, the assigning Lender thereunder and the assignee thereunder shall be deemed to confirm to and agree with each other and the other parties hereto as follows: (i) such assigning Lender represents and warrants that it is the legal and beneficial owner of the interest being assigned thereby and that its Commitment, and the outstanding balances of its Loans, in each case without giving effect to assignments thereof which have not become effective, are as set forth in such Assignment and Assumption; (ii) unless otherwise agreed to by the assigning Lender and the assignee, the interest being assigned by such assigning Lender is free and clear of any lien, encumbrance or other adverse claim; (iii) such assigning Lender has full power and authority, and has taken all action necessary, to execute and deliver the applicable Assignment and Assumption and to consummate the transactions contemplated thereby; (iv) such assigning Lender assumes no responsibility with respect to (A) any statements, warranties or representations made in or in connection with this Agreement or any other Loan Document, (B) the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto or any Collateral thereunder, (C) the financial condition of the Borrower, any Subsidiary, any Affiliate of the Borrower or any other Person

obligated in respect of any Loan Document or (D) the performance or observance by the Borrower, any Subsidiary, any Affiliate of the Borrower or any other Person obligated in respect of any Loan Document of any of their respective obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto; (v) such assignee represents and warrants that (A) it has full power and authority, and has taken all action necessary, to execute and deliver the applicable Assignment and Assumption and to consummate the transactions contemplated thereby and to become a Lender under this Agreement, (B) it meets all the requirements to be an assignee under Section 9.04(b) (subject to such consents, if any, as may be required under Section 9.04(b)), (C) from and after the effective date set forth in the applicable Assignment and Assumption, it shall be bound by the provisions of this Agreement as a Lender hereunder and, to the extent of the interest being assigned to it pursuant to the applicable Assignment and Assumption, shall have the obligations of a Lender hereunder, (D) it is sophisticated with respect to decisions to acquire assets of the type represented by the interest being assigned to it pursuant to the applicable Assignment and Assumption and either it, or the Person exercising discretion in making its decision to acquire such interest, is experienced in acquiring assets of such type, (E) it has received a copy of this Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements referred to in Section 3.05(a) or delivered pursuant to Section 5.04, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into the applicable Assignment and Assumption and to purchase the interest being assigned to it thereby and (F) it has, independently and without reliance upon the Administrative Agent, the Arranger, such assigning Lender or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into the applicable Assignment and Assumption and to purchase the interest assigned thereby; (vi) such assignee will independently and without reliance upon the Administrative Agent, the Arranger, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (vii) such assignee appoints and authorizes the Administrative Agent and the Collateral Trustee to take such action as agent on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Administrative Agent and the Collateral Trustee by the terms hereof and thereof, together with such powers as are reasonably incidental thereto; and (viii) such assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment will be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to such assignment make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or sub-participations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable *pro rata* share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (i) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the Issuing Banks and each other Lender hereunder (and interest accrued thereon) and (ii) acquire (and fund as appropriate) its full *pro rata* share of all Loans and participations in Letters of Credit in accordance with its applicable

percentage thereof. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder becomes effective under Applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest will be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(e) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices in the City of New York a copy of each Assignment and Assumption delivered to it and one or more registers for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error and the Borrower, the Administrative Agent, the Issuing Bank, and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Issuing Bank, the Arranger and any Lender, at any reasonable time and from time to time upon reasonable prior notice. In the case of any assignment made in accordance with the last sentence of paragraph (b) of this Section that is not reflected in the Register, the assigning Lender shall maintain a comparable register reflecting such assignment. This Section 9.04(e) and Section 2.04 shall be construed so that all Loans are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Tax Code and any related Treasury Regulations (or any other relevant or successor provisions of the Tax Code or of such Treasury Regulations).

(f) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, an Administrative Questionnaire completed in respect of the assignee (unless the assignee shall already be a Lender hereunder) and, if required, the written consent of the Issuing Banks and the Administrative Agent to such assignment, the Administrative Agent shall (i) accept such Assignment and Assumption, (ii) record the information contained therein in the Register and (iii) give prompt notice thereof to the Lenders, the Issuing Bank and the Borrower. No assignment shall be effective unless it has been recorded in the Register as provided in this Section 9.04(f). Notwithstanding the foregoing, an assignment by a Lender to an Affiliate or Related Fund pursuant to the last sentence of paragraph (b) of this Section shall not be required to be recorded in the Register to be effective; provided that (i) such assignment is recorded in a comparable register maintained by the assignor as provided in paragraph (b) of this Section and (ii) the Administrative Agent and the Borrower shall be entitled to deal solely and directly with the assignor unless and until the date that an Assignment and Assumption and Administrative Questionnaire have been delivered to the Administrative Agent with respect to the applicable assignee.

(g) Each Lender may, without the consent of the Borrower, the Issuing Banks or the Administrative Agent, sell participations to one or more banks or other entities (other than, for the avoidance of doubt, any natural person) in all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided, however, that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) the participating banks or other entities shall be entitled to the benefit of the cost protection provisions and related obligations contained in Sections 2.14, 2.16, 2.20 and 2.21 to the same extent as if they were Lenders (but, with respect to any particular participant, to no greater

extent than the Lender that sold the participation to such participant), and such participating banks or other entities shall deliver any forms required to be delivered under such Sections directly to such Lender, (iv) the Borrower, the Administrative Agent, the Issuing Banks 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 such Lender shall retain the sole right to enforce the obligations of the Borrower relating to the Loans or L/C Disbursements and to approve any amendment, modification or waiver of any provision of this Agreement (other than amendments, modifications or waivers decreasing any fees payable hereunder or the amount of principal of or the rate at which interest is payable on the Loans, extending any scheduled principal payment date or date fixed for the payment of interest on the Loans, increasing or extending the Commitments or releasing any Subsidiary Guarantor or all or substantially all of the Collateral), (v) each Lender that sells a participation shall, acting solely for this purpose as a nonfiduciary agent of the Borrower, maintain a register on which it enters the name and address of each participating bank or other entity and the principal amounts (and stated interest) of each such participating bank's or other entity's interest in the Loans or other obligations under the Loan Documents; provided, further, that no Lender shall have any obligation to disclose all or any portion of any such register to any Person (including the identity of any participating bank or other entity or any information relating to interests in any Commitments, Loans, Letters of Credit or its other obligations under any Loan Document) except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under Section-5f.103-1(c) of the Treasury Regulations and Section 1.163-5(b) of the Proposed Treasury Regulations; provided, further, 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 participation for all purposes of this Agreement notwithstanding any notice to the contrary and (vi) in the case of any participation sold or proposed to be sold to an Identified Competitor (or potential participation offered to a prospective Participant that is an Identified Competitor), such Lender shall not provide any information to such Participant or proposed Participant concerning the Loan Parties that such Lender is required to keep confidential under the Loan Documents (notwithstanding that such confidential information may generally be shared with other Participants or proposed Participants that are not Identified Competitors).

(h) Any Lender or participant may, in connection with any assignment, pledge or participation or proposed assignment, pledge or participation pursuant to this Section 9.04, disclose to the assignee or participant or proposed assignee or participant any information relating to the Borrower furnished to such Lender by or on behalf of the Borrower; provided that each such disclosure shall be subject to an agreement by such assignee or participant or proposed assignee or participant pursuant to and in accordance with Section 9.16(f).

(i) Each Lender may, without the consent of the Borrower, the Issuing Banks or the Administrative Agent, at any time pledge or assign all or any portion of its rights under this Agreement to secure extensions of credit to such Lender or in support of obligations owed by such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and, in the case of any Lender that is a fund that invests in bank loans, such Lender may, without the consent of the Borrower, the Issuing Banks or the Administrative Agent, collaterally pledge or assign all or any portion of its rights under this Agreement, including the Loans and promissory notes or any other instrument evidencing its rights as a Lender hereunder, to any holder of, trustee for, or any other representative of any holders of, obligations owed or securities issued by such

fund as security for such obligations or securities; provided that no such pledge or assignment described in this clause (i) shall release such Lender from any of its obligations hereunder or substitute any such assignee for such Lender as a party hereto.

(j) Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle (an "SPC"), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower, the option to provide to the Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to the Borrower pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to make any Loan and (ii) if an 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 an 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 one year and one 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 9.04, any SPC may (i) with notice to, but without the prior written consent of, the Borrower and the 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 the Borrower and Administrative Agent) providing liquidity and/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.

(k) The Borrower shall not assign or delegate any of its rights or duties hereunder without the prior written consent of the Administrative Agent, each Issuing Bank and each Lender, and any attempted assignment without such consent shall be null and void.

SECTION 9.05. Expenses; Indemnity. (a) The Borrower agrees to pay all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent, the Arranger and the Issuing Banks, including the reasonable fees, charges and disbursements of Latham & Watkins LLP, counsel for the Administrative Agent, in connection with the syndication of the credit facilities provided for herein and the preparation and administration of this Agreement and the other Loan Documents or in connection with any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions hereby or thereby contemplated shall be consummated); provided that the Borrower shall not be responsible for the reasonable fees, charges and disbursements of more than one separate law firm (in addition to one local counsel per relevant jurisdiction or special counsel, including special workout or regulatory counsel) pursuant to its obligations under this sentence only. The Borrower also agrees to pay all documented out-of-pocket expenses incurred by the Administrative Agent, the Arranger, the Issuing Banks or any Lender in connection with the enforcement or protection of its rights in

connection with this Agreement and the other Loan Documents or in connection with the Loans made or Letters of Credit issued hereunder, including the fees, charges and disbursements of Latham & Watkins LLP, counsel for the Administrative Agent and, in connection with any such enforcement or protection, the fees, charges and disbursements of any other counsel (including special workout counsel) for the Administrative Agent, the Collateral Trustee, the Arranger, the Issuing Banks or any Lender.

(b) The Borrower agrees to indemnify the Administrative Agent, the Arranger, each Lender, the Issuing Banks and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including reasonable and documented counsel fees, charges and disbursements, incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of (i) the execution or delivery of this Agreement or any other Loan Document or any agreement or instrument contemplated thereby, the performance by the parties thereto of their respective obligations thereunder or the consummation of the Transactions and the other transactions contemplated thereby, (ii) the use of the proceeds of the Loans or issuance of Letters of Credit, (iii) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto, or (iv) any actual or alleged presence or Release of Hazardous Materials, or any non-compliance with Environmental Law, on any property owned or operated by the Borrower or any of the Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of the Subsidiaries; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnitee, or to the extent such judgment finds that any such loss, claim, damage, liability or related expense has resulted from such Indemnitee's material breach of the Loan Documents, (y) arises out of any claim, litigation, investigation or proceeding brought by such Indemnitee against another Indemnitee (other than any claim, litigation, investigation or proceeding that is brought by or against the Administrative Agent or any other Agent or Arranger, acting in its capacity as such) that does not involve any act or omission of the Borrower or any of its Subsidiaries or (z) apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) To the extent that the Borrower fails to pay any amount required to be paid by them to the Administrative Agent, the Arranger or the Issuing Banks under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent, the Arranger or the Issuing Banks, as the case may be, such Lender's *pro rata* share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent, the Arranger or the Issuing Banks in its capacity as such. For purposes hereof, a Lender's "*pro rata* share" shall be determined based upon its share of the sum of the Aggregate Revolving Exposure (including, for the avoidance of doubt any New Revolving Loans and Refinancing Revolving Loans) and unused Commitments at the time (or, if such Commitments shall have expired or been terminated, in accordance with the Commitments as in effect immediately prior to such expiration or termination).

(d) To the extent permitted by applicable law, the Borrower shall not assert, and each hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) The provisions of this Section 9.05 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 Loans, the expiration of the Commitments, the expiration of any Letter of Credit, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Administrative Agent, the Arranger, any Lender or the Issuing Banks. All amounts due under this Section 9.05 shall be payable promptly upon written demand therefor.

SECTION 9.06. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, except to the extent prohibited by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender to or for the credit or the account of the Borrower (but excluding amounts held in accounts used exclusively for payroll, employee benefits or tax as well as any other fiduciary or trust accounts) against any of and all the obligations of the Borrower now or hereafter existing under this Agreement and other Loan Documents held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or such other Loan Document and although such obligations may be unmatured and shall notify the Administrative Agent promptly of any such setoff. The rights of each Lender under this Section 9.06 are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 9.07. Applicable Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN LETTERS OF CREDIT AND AS EXPRESSLY SET FORTH IN OTHER LOAN DOCUMENTS) SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. EACH LETTER OF CREDIT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OR RULES DESIGNATED IN SUCH LETTER OF CREDIT, OR IF NO SUCH LAWS OR RULES ARE DESIGNATED, WITH RESPECT TO ANY STANDBY LETTER OF CREDIT, THE RULES OF THE "INTERNATIONAL STANDBY PRACTICES 1998" PUBLISHED BY THE INSTITUTE OF INTERNATIONAL BANKING LAW & PRACTICE (OR SUCH LATER VERSION THEREOF AS MAY BE IN EFFECT AT THE TIME OF ISSUANCE) ("ISP98") SHALL APPLY TO EACH STANDBY LETTER OF CREDIT OR, WITH RESPECT TO ANY DOCUMENTARY LETTER OF CREDIT, THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS MOST RECENTLY PUBLISHED AND IN EFFECT, ON THE DATE SUCH LETTER OF CREDIT WAS ISSUED, BY THE INTERNATIONAL CHAMBER OF COMMERCE (THE "UNIFORM CUSTOMS")

AND, AS TO MATTERS NOT GOVERNED BY ISP98 OR THE UNIFORM CUSTOMS, AS APPLICABLE, THE LAWS OF THE STATE OF NEW YORK.

SECTION 9.08. Waivers; Amendment; Replacement of Non-Consenting Lenders. (a) No failure or delay of the Administrative Agent, any Lender or the Issuing Banks in exercising any power or right hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Bank and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

(b) Other than pursuant to Section 2.08(b), neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders; provided, however, that no such waiver, agreement or modification shall (i) decrease or forgive the principal amount of, or extend the maturity of or any scheduled principal payment date or date for the payment of any interest on any Loan or any date for reimbursement of an L/C Disbursement, or waive or excuse any such payment or any part thereof, or decrease the rate of interest on any Loan or L/C Disbursement, without the prior written consent of each Lender directly affected thereby (other than any waiver, extension of payment date or reduction in (x) the default interest as provided under Section 2.07 or (y) any mandatory prepayment or mandatory commitment reduction which shall require the prior written consent of the Required Lenders), (ii) increase or extend the Commitment or decrease or extend the date for payment of any Fees of any Lender without the prior written consent of such Lender, (iii) amend or modify the *pro rata* requirements of Section 2.17, the provisions of Sections 2.02, 2.09 and 2.18 requiring ratable distribution or sharing or ratable funding, the provisions of Section 9.04(k), the provisions of this Section or the definition of the term "Required Lenders" or release any Subsidiary Guarantor, except in connection with a release expressly permitted under the Loan Documents, without the prior written consent of each Lender, (iv) [*reserved*], (v) [*reserved*], (vi) except upon payment in full of the Guaranteed Obligations hereunder (other than indemnification and other contingent obligations that expressly survive pursuant to the terms of any Loan Document, in each case, not then due and payable), release all or substantially all of the Collateral, except in connection with a disposition expressly permitted under the Loan Documents, without the prior written consent of each Lender, (vii) change the provisions of any Loan Document in a manner that by its terms adversely affects the rights in respect of payments due to Lenders holding Loans of one Class differently from the rights of Lenders holding Loans of any other Class without the prior written consent of Lenders holding a majority in interest of the then outstanding Loans and unused Commitments of each adversely affected Class or (viii) modify the protections afforded to an SPC pursuant to the provisions of Section 9.04(j) without the written consent of such SPC; provided, further, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or the Issuing Bank hereunder or under any

other Loan Document without the prior written consent of the Administrative Agent or the Issuing Bank, as applicable (it being understood and agreed that only the prior written consent of the Borrower and the applicable Issuing Bank will be required to establish, increase or decrease the maximum Revolving L/C Exposure in respect of Letters of Credit at any time outstanding issued by such Issuing Bank pursuant to and in accordance with Section 2.23(a)).

(c) Each Lender grants (i) to the Administrative Agent the right (with the prior written consent of the Borrower) to purchase all, or all of any Class, of such Lender's Commitments and Loans owing to it and any related promissory notes held by it and all its rights and obligations hereunder and under the other Loan Documents and (ii) to the Borrower the right to cause an assignment of all, or all of any Class, of such Lender's Commitments and Loans owing to it and any related promissory notes held by it and all its rights and obligations hereunder and under the other Loan Documents to one or more eligible assignees pursuant to Section 9.04, which right may be exercised by the Administrative Agent or the Borrower, as the case may be, if such Lender (a "Non-Consenting Lender") refuses to execute any amendment, modification, termination, waiver or consent which requires the written consent of Lenders other than the Required Lenders and to which the Required Lenders and the Borrower have otherwise agreed; provided that such Non-Consenting Lender shall receive in connection with such purchase or assignment, payment equal to the aggregate amount of outstanding Loans owed to such Lender, together with all accrued and unpaid interest, fees and other amounts (other than indemnification and other contingent obligations that expressly survive pursuant to the terms of any Loan Document, in each case, not then due and payable) owed to such Lender under the Loan Documents at such time; and provided, further, that any such assignee shall agree to such amendment, modification, termination, waiver or consent. Each Lender agrees that, if the Administrative Agent or the Borrower, as the case may be, exercises its option under this Section 9.08(c), such Lender shall, promptly after receipt of written notice of such election, execute and deliver all documentation necessary to effectuate such assignment in accordance with Section 9.04 (including an Assignment and Assumption duly executed by such Lender with respect to such assignment). In the event that a Lender does not comply with the requirements of the immediately preceding sentence within one Business Day after receipt of such notice, the Borrower shall be entitled (but not obligated), and such Lender authorizes, directs and grants an irrevocable power of attorney (which power is coupled with an interest) to the Borrower, to execute and deliver, on behalf of such Lender as assignor, all documentation necessary to effectuate such assignment in accordance with Section 9.04 (including an Assignment and Assumption duly executed by such Lender with respect to such assignment) in the circumstances contemplated by this Section 9.08(c) and any documentation so executed and delivered by the Borrower shall be effective for all purposes of documenting an assignment pursuant to and in accordance with Section 9.04.

(d) Notwithstanding anything herein to the contrary, during such period as a Lender is a Defaulting Lender, to the fullest extent permitted by Applicable Law, such Defaulting Lender shall not be entitled to vote in respect of waivers, amendments or modifications to any Loan Document and the Commitment and the outstanding Loans or other extensions of credit of such Defaulting Lender hereunder shall not be taken into account in determining whether the Required Lenders, all of the Lenders or any other class of Lenders, as required by this Section 9.08 or otherwise, have approved any such waiver, amendment or modification (and the definition of "Required Lenders" will automatically be deemed modified accordingly for the duration of such period); provided that any such waiver, amendment or modification that would increase or extend

the term of the Commitment of such Defaulting Lender, extend the date fixed for the payment of principal or interest owing to such Defaulting Lender hereunder, reduce the principal amount of any obligation owing to such Defaulting Lender, reduce the amount of or the rate or amount of interest on any amount owing to such Defaulting Lender or of any fee payable to such Defaulting Lender hereunder, or alter the terms of this proviso, shall require the prior written consent of such Defaulting Lender.

SECTION 9.09. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan or participation in any L/C Disbursement, together with all fees, charges and other amounts which are treated as interest on such Loan or participation in such L/C Disbursement under applicable law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan or participation in accordance with applicable law, the rate of interest payable in respect of such Loan or participation hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan or participation but were not payable as a result of the operation of this Section 9.09 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or participations or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

SECTION 9.10. Entire Agreement. This Agreement, the other Loan Documents, the Engagement Letter and the Fee Letter constitute the entire contract between the parties relative to the subject matter hereof. Any other previous agreement among the parties with respect to the subject matter hereof is superseded by this Agreement, the other Loan Documents, the Engagement Letter and the Fee Letter. Nothing in this Agreement or in the other Loan Documents, expressed or implied, is intended to confer upon any Person (other than the parties hereto and thereto, their respective successors and assigns permitted hereunder (including any Affiliate of any Issuing Bank that issues any Letter of Credit) and, to the extent expressly contemplated hereby or thereby, the Related Parties of each of the Administrative Agent, the Collateral Trustee, the Arranger, the Issuing Banks and the Lenders) any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

SECTION 9.11. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.11.

SECTION 9.12. Severability. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 9.13. Counterparts. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract, and shall become effective as provided in Section 9.03. Delivery of an executed signature page to this Agreement by facsimile or other electronic transmission (including in .pdf or .tif format) shall be as effective as delivery of a manually signed counterpart of this Agreement.

SECTION 9.14. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 9.15. Jurisdiction; Consent to Service of Process. (a) The Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New York State court located in New York City, Borough of Manhattan, or Federal court of the United States of America sitting in the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents (other than with respect to any action or proceeding by the Administrative Agent, the Collateral Trustee, the Borrower or any other Loan Party in respect of rights under any Security Document governed by laws other than the laws of the State of New York or with respect to any Collateral subject thereto), or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Administrative Agent, the Collateral Trustee, the Arranger, the Issuing Banks or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or the other Loan Documents against the Borrower or its properties in the courts of any jurisdiction.

(b) The Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any New York State or Federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.16. Confidentiality. Each of the Administrative Agent, the Issuing Banks and the Lenders agrees to maintain the confidentiality of the Information, except that Information may be disclosed (a) to its respective Affiliates and to its and its Affiliates' respective partners, trustees, controlling persons, members, officers, directors, employees, representatives and agents, including accountants, legal counsel and other advisors (it being understood 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), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it or any of its affiliates (including any self-regulatory authority, such as the National Association of Insurance Commissioners or any bank regulatory authority), (c) to the extent required by Applicable Laws or by any subpoena or similar legal or administrative process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document (or any of the transactions contemplated hereby or thereby) or the enforcement of its rights hereunder or thereunder, (f) subject to an agreement containing provisions at least as restrictive as those of this Section 9.16 (including any "click through" or similar agreement), to (i) any actual or prospective assignee of or participant in any of its rights or obligations under this Agreement and the other Loan Documents, (ii) any pledgee referred to in Section 9.04(h) or (iii) any actual or prospective counterparty (or its advisors) to any interest rate swap or other similar derivative transaction relating to this Agreement, (g) to credit insurance providers, (h) with the consent of the Borrower, (i) to the extent such Information becomes publicly available other than as a result of a breach of this Section 9.16, (j) to ratings agencies or (k) to market data collectors, similar services providers to the lending industry, and service providers to the Administrative Agent, the Issuing Banks and the Lenders in connection with the administration and management of this Agreement and the other Loan Documents. For the purposes of this Section, "Information" shall mean all financial statements, certificates, reports, agreements and other information received from the Borrower or its Subsidiaries and related to the Borrower or its business, other than any such financial statements, certificates, reports, agreements and other information that was available to the Administrative Agent, any Issuing Bank or any Lender on a nonconfidential basis prior to its disclosure by the Borrower or is or was independently developed by the Administrative Agent, any Issuing Bank, any Lender or any of their respective affiliates; provided that any Information received from the Borrower after the Closing Date shall be clearly identified in writing at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 9.16 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord its own confidential information. Notwithstanding any other express or implied agreement, arrangement or understanding to the contrary, each of the parties hereto agrees that each other party hereto (and each of its employees, representatives or agents) are permitted to disclose to any Persons, without limitation, the tax treatment and tax structure of the Loans and the other transactions contemplated by the Loan Documents and all materials of any kind (including opinions and tax analyses) that are provided to the Loan Parties, the Lenders, the Arranger or any Agent related to such tax treatment and tax aspects. To the extent not inconsistent with the immediately preceding sentence, this authorization does not extend to

disclosure of any other information or any other term or detail not related to the tax treatment or tax aspects of the Loans or the transactions contemplated by the Loan Documents.

SECTION 9.17. Mortgage Modifications. As a condition precedent to the Borrower's incurrence of additional Indebtedness pursuant to Section 2.24 or 2.25 and to the extent applicable additional Indebtedness is required by its terms to be secured by a first priority Lien pursuant to clause (a) of the definition of "Permitted Liens," the Borrower shall satisfy the following requirements:

(a) the Subsidiary Guarantors shall enter into, and deliver to the Administrative Agent and the Collateral Trustee, at the direction and in the sole discretion of the Administrative Agent and/or the Collateral Trustee (i) in the case of additional Indebtedness incurred pursuant to Section 2.24 or 2.25, a mortgage modification or new Mortgage, and (ii) in the case of additional Indebtedness required by its terms to be secured by a first priority Lien pursuant to clause (a) of the definition of "Permitted Liens," a new Mortgage; in each case in proper form for recording in the relevant jurisdiction and in a form reasonably satisfactory to the Administrative Agent;

(b) [reserved];

(c) the Borrower shall have caused a title company approved by the Administrative Agent to have delivered to the Administrative Agent and the Collateral Trustee an endorsement to the title insurance policy delivered pursuant to Section 5.09(b)(ii)(A) date down(s) or other evidence reasonably satisfactory to the Administrative Agent and/or the Collateral Trustee insuring that (i) the priority of the liens evidenced by insuring the continuing priority of the Lien of the Mortgage as security for such Indebtedness has not changed and (ii) confirming and/or insuring that (A) since the immediately prior incurrence of such additional Indebtedness, there has been no change in the condition of title and (B) there are no intervening liens or encumbrances which may then or thereafter take priority over the Lien of the Mortgage, other than the Permitted Liens (without adding any additional exclusions or exceptions to coverage);

(d) with respect to each Mortgaged Property required to be insured pursuant to the Flood Disaster Protection Act of 1973 or the National Flood Insurance Act of 1968, and the regulations promulgated thereunder, because it is located in an area which has been identified by the Secretary of Housing and Urban Development as a "special flood hazard area," the Borrower or the applicable Subsidiary Guarantor shall deliver to the Administrative Agent (i) a policy of flood insurance that (A) covers such Mortgaged Property and (B) is written in an amount reasonably satisfactory to the Administrative Agent, (ii) a "life of loan" standard flood hazard determination with respect to such Collateral and (iii) a confirmation that the Borrower or such Subsidiary Guarantor has received the notice requested pursuant to Section 208(e)(3) of Regulation H of the Board; and

(e) the Borrower shall, upon the reasonable request of the Administrative Agent and/or the Collateral Trustee, deliver to the approved title company, the Collateral Trustee, the Administrative Agent and/or all other relevant third parties all other items reasonably necessary to maintain the continuing priority of the Lien of the Mortgage as security for such Indebtedness.

SECTION 9.18. [*Reserved*].

SECTION 9.19. Extension Amendments. (a) The Borrower may, by written notice to the Administrative Agent from time to time, make one or more offers to all Lenders of an applicable Class to make one or more Extension Amendments pursuant to procedures reasonably specified by the Administrative Agent and reasonably acceptable to the Borrower. Such notice shall set forth (i) the terms and conditions of the requested Extension Amendments and (ii) the date on which responses from the applicable Lenders in respect of such Extension Amendment are required to be received (which shall not be less than three Business Days after the date of such notice). Only those Lenders that consent to such Extension Amendment (the "Accepting Lenders") will have the maturity of their applicable Loans and Commitments extended and be entitled to receive any increase in the Applicable Margin and any fees (including prepayment premiums or fees), in each case, as provided therein.

(b) The Borrower and each Accepting Lender shall execute and deliver to the Administrative Agent such documentation as the Administrative Agent shall reasonably specify to evidence the acceptance of the Extension Amendments and the terms and conditions thereof. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Extension Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Extension Amendment, this Agreement shall be deemed amended, as may be necessary or appropriate, in the opinion of the Administrative Agent, to effect the terms and provisions of the Extension Amendment with respect to the Loans and Commitments of the Accepting Lenders (including any amendments necessary to treat the Loans and Commitments of the Accepting Lenders in a manner consistent with the other Loans and Commitments under this Agreement). Notwithstanding the foregoing, no Extension Amendment shall become effective under this Section 9.19 unless the Administrative Agent, to the extent so reasonably requested by the Administrative Agent, shall have received legal opinions, board resolutions and Officers' Certificates consistent with those delivered pursuant to Section 4.02.

SECTION 9.20. [*Reserved*].

SECTION 9.21. [*Reserved*].

SECTION 9.22. PATRIOT Act; Beneficial Ownership Certification. Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower and each other Loan Party that (a) pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or Administrative Agent, as applicable, to identify such Loan Party in accordance with the PATRIOT Act, and (b) it is required to obtain a Beneficial Ownership Certification if the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation.

SECTION 9.23. No Fiduciary Duty. Each Agent, the Arranger, each Lender and their respective Affiliates (collectively, solely for purposes of this Section 9.23, the "Lenders"), may have economic interests that conflict with those of the Loan Parties, their equity holders and/or their Affiliates. The Borrower hereby agrees that nothing in the Loan Documents will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and the Borrower, its equity holders or its Affiliates, on the other

hand. The Borrower hereby acknowledges and agrees that (a) the transactions contemplated by this Agreement and the other Loan Documents are arm's-length commercial transactions between the Lenders, on the one hand, and the Loan Parties, on the other hand, and (b) in connection therewith and with the process leading thereto, (i) no Lender has assumed an advisory or fiduciary responsibility in favor of any Loan Party, its equity holders or its Affiliates with respect to the transactions contemplated by this Agreement and the other Loan Documents (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise any Loan Party, its equity holders or its Affiliates on other matters) or any other obligation to any Loan Party except the obligations expressly set forth in the Loan Documents and (ii) each Lender is acting solely as principal and not as the agent or fiduciary of any Loan Party, its management, stockholders, creditors or any other Person. Each Loan Party acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Loan Party agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary duty to such Loan Party, in connection with such transaction or the process leading thereto.

SECTION 9.24. Acknowledgment and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

SECTION 9.25. 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 Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the prohibited transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable so as to exempt from the prohibitions of Section 406 of ERISA and Section 4975 of the Code such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of 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, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that none of the Administrative Agent, or the Arranger, or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender involved in the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto).

For purposes of this Section 9.25, "Benefit Plan" shall mean 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."

SECTION 9.26. Conflicts.

(a) In the case of any conflicts between this Agreement and the Collateral Trust Agreement, the provisions of the Collateral Trust Agreement shall govern and control.

(b) Notwithstanding anything herein to the contrary, solely with respect to any Shared Collateral (as defined in the Tenaska Intercreditor Agreement) (i) the liens and security interests granted to the Collateral Trustee pursuant to the Security Documents are expressly subject and subordinate to the liens and security interests granted in favor of the Tenaska (as defined in the Tenaska Intercreditor Agreement) and (ii) the exercise of any right or remedy by the Collateral Trustee hereunder or under the Collateral Trust Agreement is subject to the limitations and provisions of the Tenaska Intercreditor Agreement. In the event of any conflict between the terms of the Tenaska Intercreditor Agreement and the terms of this Agreement, the terms of the Tenaska Intercreditor Agreement shall govern.

[Signature pages to follow]

**Exhibit 4.2**

**EXECUTION VERSION**

GenOn Energy, Inc.

as the Company

NRG Americas, Inc.

as the Co-Issuer

and

the Guarantors party hereto

FLOATING RATE SENIOR SECURED SECOND LIEN NOTES DUE 2023

INDENTURE

Dated as of December 14, 2018

Wells Fargo Bank, National Association

as Trustee

U.S. Bank National Association

as Collateral Trustee

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N.A. means not applicable.

INDENTURE dated as of December 14, 2018 between GenOn Energy, Inc., a Delaware limited liability company (the "*Company*"), and NRG Americas, Inc., a Delaware corporation (the "*Co-Issuer*," and together with the Company, the "*Issuers*"), the Guarantors party hereto, Wells Fargo Bank, National Association, as trustee (the "*Trustee*"), and U.S. Bank National Association, as collateral trustee (the "*Collateral Trustee*").

The Issuers, the Guarantors and the Trustee agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders (as defined herein) of the Floating Rate Senior Secured Second Lien Notes due 2023 (the "*Notes*"):

## ARTICLE 1
## DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 *Definitions.*

For purposes of the Notes, the following terms will have the meanings set forth in this Section 1.01. All other terms used in this Indenture that are defined in the Trust Indenture Act (except as herein otherwise expressly provided or unless the context otherwise requires) shall have the meanings assigned to such terms in the Trust Indenture Act, as in force at the date of the execution of this Indenture.

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

"*Accredited Investor*" means a Person that is an "accredited investor" as defined in Rule 501(a)(1), (2), (3), (5), (6) or (7) under the Securities Act and that is not also a QIB.

"*Accrued Interest*" means the amount of accrued interest that the Company shall pay with respect to the Notes for any Interest Period, which shall be calculated by multiplying the face amount of the Notes then outstanding by the Accrued Interest Factor.

"*Accrued Interest Factor*" means the sum of the Interest Factor calculated for each day from the Issue Date, or from the last date for which the Company paid interest to the Holders of the Notes, to, but excluding, the date for which Accrued Interest is being calculated.

"*Acquired Debt*" means, with respect to any specified Person:

(1) Indebtedness of any other Person or asset existing at the time such other Person or asset is merged with or into, is acquired by, or became a Subsidiary of such specified Person, as the case may be, whether or not such Indebtedness is incurred in connection with, or in contemplation of, such other Person merging with or into, or becoming a Restricted Subsidiary of, such specified Person; and

(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

"*Administrative Agent*" shall have the meaning assigned to such term in the Collateral Agreement.

"*Affiliate*" of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, the terms "controlling," "controlled by" and "under common control with" have correlative meanings.

"*Agent*" means any Registrar, co-registrar, Paying Agent, additional paying agent, the Collateral Trustee or the Calculation Agent.

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

"*Annualized G&A Expenses*" means (1) for the four fiscal quarter period ending December 31, 2018, the G&A Expenses for the fiscal quarter ended December 31, 2018, *multiplied by* 4, (2) for the four fiscal quarter period ending March 31, 2019, the G&A Expenses for the fiscal quarter ended March 31, 2019, *multiplied by* 4, (3) for the four fiscal quarter period ending June 30, 2019, the G&A Expenses for the two consecutive fiscal quarters ended June 30, 2019, *multiplied by* 2 and (4) for the four fiscal quarter period ending September 30, 2019, the G&A Expenses for the three consecutive fiscal quarters ended September 30, 2019, *multiplied by* 4/3; *provided*, *however*, for purposes of this definition, that G&A Expenses shall be calculated excluding charges and expenses incurred by the Company and its Restricted Subsidiaries in connection with their Chapter 11 proceedings, parent separation transactions and other one-time expenses, costs and charges related to restructuring charges including nonrecurring expenses, costs or charges for severance and bonus including, without limitation, transaction, incentive, completion, milestone or retention bonuses.

"*Applicable Law*" means, as to any Person, any law, rule, regulation, ordinance or treaty, or any determination by an arbitrator or a court or other governmental authority, including the Electric Reliability Council of Texas, in each case, applicable to, or binding on, such Person or any of its property or assets or to which such Person or any of its property is subject.

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

"*Asset Sale*" means:

(1) the sale, lease (other than an operating lease), conveyance or other disposition of any assets or rights (including by merger or consolidation); *provided* that the sale, conveyance or other disposition of all or substantially all of the assets of the Company and its Restricted Subsidiaries taken as a whole will be governed by Sections 4.14 and 5.01 hereof, and not by Section 4.10(c) hereof; and

(2) the issuance of Equity Interests in any of the Company's Restricted Subsidiaries or the sale of Equity Interests in any of its Subsidiaries.

Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale:

(1) any single transaction or series of related transactions for which the Company or its Restricted Subsidiaries receive aggregate consideration of less than $10 million;

(2) a transfer of assets or Equity Interests (a) between or among the Company, the Co-Issuer and the Guarantors or (b) between or among Restricted Subsidiaries that are not Guarantors;

(3) an issuance of Equity Interests by a Restricted Subsidiary of the Company to the Company or to a Restricted Subsidiary of the Company;

(4) the sale or lease of products or services (including power, capacity, energy, ancillary services, and other products or services, or the sale of any other inventory or contracts related to any of the foregoing (in each case, whether in physical, financial or any other form), or fuel or emission credits) and any sale or other disposition of damaged, worn-out or obsolete assets;

(5) the sale or discount, in each case without recourse, of accounts receivable, but only in connection with the compromise or collection thereof;

(6) the licensing of intellectual property;

(7) the sale, lease, conveyance or other disposition for value of energy, fuel or emission credits or contracts for any of the foregoing;

(8) the sale or other disposition of cash or Cash Equivalents;

(9) a Restricted Payment that does not violate Section 4.07 hereof or a Permitted Investment;

(10) to the extent allowable under Section 1031 of the Code, any exchange of like property (excluding any "boot" thereon) for use in a Permitted Business;

(11) a disposition of assets in connection with a foreclosure, transfer or deed in lieu of foreclosure or other exercise of remedial action;

(12) any transfer of the Assigned Pipeline Interests pursuant to the Shawville Pipeline Agreement;

(13) any transfer of interests in NRG ECA Pipeline, LLC;

(14) any Specified Asset Sale for Fair Market Value, so long as no Default or Event of Default is continuing or would result therefrom provided that such limitation shall not apply so long as no Default or Event of Default shall have occurred and be continuing at the time of entering into a binding commitment to make such Specified Asset Sale for Fair Market Value; and

(15) any payments necessary for the Company to satisfy its obligations to make tax distributions under Section 4.01(b) of that certain Amended and Restated Limited Liability Company Agreement of GenOn Holdings, LLC; as in effect on the date hereof.

"*Assigned Pipeline Interests*" has the meaning assigned to such term in the Shawville Pipeline Agreement as of the date hereof.

"*Attributable Debt*" in respect of a sale and leaseback transaction means, at the time of determination, the present value of the obligation of the lessee for net rental payments during the remaining term of the lease included in such sale and leaseback transaction including any period for which such lease has been extended or may, at the option of the lessor, be extended. Such present value shall be calculated using a discount rate equal to the rate of interest implicit in such transaction, determined in accordance with GAAP; *provided*, *however*, that if such sale and leaseback transaction results in a Capital Lease Obligation, the amount of Indebtedness represented thereby will be determined in accordance with the definition of "Capital Lease Obligation."

"*Available Amount*" means, at any date, an amount, determined on a cumulative basis equal to, without duplication: (1)(a) the Designated Cash Amount, *plus* (b) the Net Proceeds of Specified Asset Sales (other than to a Subsidiary), *plus* (c) the aggregate proceeds of the sale (other than to a Subsidiary) of Equity Interests of the Company (other than Disqualified Stock) or from the contribution of equity capital (unless such contribution would constitute Disqualified Stock) to the Company, *minus* an amount equal to the sum of (2)(a) Investments pursuant to clause (2) of the definition of "Permitted Investments," *plus* (b) Restricted Payments made pursuant to Section 4.07(b)(14), in each case, made after the Issue Date and prior to such date, or contemporaneously therewith.

"*Bankruptcy Law*" means Title 11, U.S. Code or any similar federal or state law for the relief of debtors.

"*Beneficial Owner*" has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act. The terms "Beneficially Owns," "Beneficially Owned" and "Beneficial Ownership" have a corresponding meaning.

"*Board of Directors*" means:

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

(2) with respect to a partnership, the board of directors (or person or entity serving a similar function) of the general partner of the partnership;

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

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

"*Board Resolution*" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been adopted by the Board of Directors or pursuant to authorization by the Board of Directors and to be in full force and effect on the date of the certificate and delivered to the Trustee.

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

"*CAISO Settlement*" means the amount arising from that confidential settlement communication letter dated August 6, 2018 from the California Independent System Operator Corporation and acknowledged by NRG California South, LP.

"*Calculation Agent*" means Wells Fargo Bank, National Association, or any successor appointed by the Company.

"*Canal Escrow*" means the amount due to NRG Canal LLC and/or its affiliates pursuant to that certain Purchase and Sale Agreement, dated as of March 22, 2018, by and among Stonepeak Kestrel Holdings LLC, NRG Canal LLC, and GenOn Holdco 10, LLC, as amended from time to time, on account of the Escrow Amount (as such term is used in such Purchase and Sale Agreement) subject to the provisions therein.

"*Canal Excess Fuel Payments*" means the payments due to NRG Canal LLC and/or its affiliates pursuant to that certain Purchase and Sale Agreement, dated as of March 22, 2018, by and among Stonepeak Kestrel Holdings LLC, NRG Canal LLC, and GenOn Holdco 10, LLC, as amended from time to time, on account of Excess Fuel Inventory (as such term is used in such Purchase and Sale Agreement).

"*Capital Lease Obligation*" means, at the time any determination is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet in accordance with GAAP, and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be prepaid by the lessee without payment of a penalty.

"*Capital Stock*" means:

(1) in the case of a corporation, corporate stock;

(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(3) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests; and

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

"*Cash Equivalents*" means:

(1) United States dollars, Euros or, in the case of any Foreign Subsidiary, any local currencies held by it from time to time;

(2) (a) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government (*provided* that the full faith and credit of the United States is pledged in support of those securities) and (b) debt obligations issued by the Government National Mortgage Association, Farm Credit System, Federal Home Loan Banks, Federal Home Loan Mortgage Corporation, Financing Corporation and Resolution Funding Corporation, in each case, having maturities of not more than 12 months from the date of acquisition;

(3) certificates of deposit and eurodollar time deposits with maturities of six months or less from the date of acquisition, bankers' acceptances with maturities not exceeding 12 months and overnight bank deposits, in each case, with any domestic commercial bank having

capital and surplus in excess of $500.0 million and whose long-term debt, or whose parent company's long-term debt, has a rating of A2 or higher from Moody's and A or higher from S&P or, if Moody's and S&P do not rate the relevant bank, an equivalent rating issued by an equivalent non-U.S. rating agency, if any;

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

(5) commercial paper and auction rate securities having one of the two highest ratings obtainable from Moody's or S&P and in each case maturing within 12 months after the date of acquisition;

(6) readily marketable direct obligations issued by any state of the United States or any political subdivision thereof, in either case having one of the two highest rating categories obtainable from either Moody's or S&P; and

(7) money market funds that invest primarily in securities described in clauses (1) through (6) of this definition.

"*Change of Control*" shall mean the occurrence of, after the Exit Transactions, any Person other than the Permitted Holders, in the aggregate, beneficially own, directly or indirectly, more than 50% of the Voting Stock of the Company, measured by voting power rather than number of shares; *provided*, *however*, that a transaction in which a direct or indirect parent entity of the Company is formed and no Person (other than the Permitted Holders) beneficially owning, directly or indirectly, more than 50% of the Voting Stock of the Company, measured by voting power rather than number of shares, shall not be deemed to be a Change of Control.

"*Change of Control Triggering Event*" means a Change of Control has occurred.

"*Choctaw Assets*" means the approximately 800 MW, 3 x 1 combined-cycle natural gas-fueled electrical generation plant located on the approximately 200-acre parcel of land located near French Camp, Choctaw County, Mississippi commonly known as the "Choctaw Generation Facility", and all related assets and properties, real, personal and mixed, and interests therein.

"*Citi Letter of Credit Facility*" means that certain Letter of Credit Agreement, dated as of July 14, 2017 by and among GenOn Energy, Inc., a Delaware corporation, and CitiBank, N.A., as may be amended, amended and restated, supplemented or otherwise modified from time to time.

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

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

"*Collateral*" means all property and assets of the Issuers and the Guarantors, now owned or hereafter acquired, other than the Excluded Assets. "Collateral" shall include all Core Collateral.

"*Collateral Agreement*" means the Guarantee and Collateral Agreement, dated as of the Issue Date, by and among GenOn Energy, Inc., the Guarantors party thereto from time to time, U.S. Bank National Association, as Priority Collateral Trustee and Parity Collateral Trustee, Barclays Bank PLC, as Administrative Agent, and the Trustee.

"*Collateral Trust Agreement*" means the Collateral Trust Agreement, dated as of the Issue Date, among GenOn Holdings, LLC, each Guarantor, the Collateral Trustee and the other parties thereto, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"*Collateral Trustee*" means U.S. Bank National Association, as collateral trustee, and any and all successors thereto.

*"Co-Issuer"* means NRG Americas, Inc., a Delaware corporation, and any and all successors thereto.

"*Company*" means GenOn Energy, Inc., a Delaware limited liability company, and any and all successors thereto.

"*Consolidated Debt Ratio*" means, as of any date of determination, the ratio of (1) GenOn's Consolidated Total Indebtedness as of the applicable ratio calculation date, *minus* Cash Equivalents included on the balance sheet of the Company as of the end of the most recent fiscal quarter ended prior to such date for which internal financial statements are available, to (2) GenOn's EBITDA for the most recently ended Test Period.

"*Consolidated Net Income*" means, with respect to any specified Person for any period, the aggregate of the Net Income of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, determined in accordance with GAAP; *provided* that:

(1) the Net Income of any Person that is not a Restricted Subsidiary or that is accounted for by the equity method of accounting shall be included only to the extent of the amount of dividends or similar distributions (including pursuant to other intercompany payments) actually received by the specified Person or a Restricted Subsidiary of the specified Person (the "Designated Income"), *provided* that Designated Income shall be excluded from Consolidated Net Income to the extent it is designated as a "Designated Cash Amount;"

(2) for purposes of Section 4.07 hereof only, the Net Income of any Restricted Subsidiary shall be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that Net Income is not at the date of determination permitted without any prior governmental approval (that has not been obtained) or, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders;

(3) the cumulative effect of a change in accounting principles will be excluded;

(4) any net after-tax nonrecurring or unusual gains, losses (less all fees and expenses relating thereto) or other charges or revenue or expenses (including relating to severance, relocation and one-time compensation charges) shall be excluded;

(5) any non-cash compensation expense recorded from grants of stock appreciation or similar rights, stock options, restricted stock or other rights to officers, directors or employees shall be excluded, whether under Financial Accounting Standards Board Statement No. 123R, "Accounting for Stock-Based Compensation" or otherwise;

(6) any net after-tax income (loss) from disposed or discontinued operations and any net after-tax gains or losses on disposal of disposed or discontinued operations shall be excluded;

(7) any gains or losses (less all fees and expenses relating thereto) attributable to asset dispositions (other than asset dispositions in the ordinary course of business) shall be excluded;

(8) any impairment charge or asset write-off pursuant to Financial Accounting Statement No. 142 and No. 144 or any successor pronouncement shall be excluded;

(9) solely for each of the first four fiscal quarters ended after the Issue Date, the amount of recurring selling, general and administrative expenses reducing Consolidated Net Income shall be deemed to be the "Annualized G&A Expenses" regardless of the actual amount of such expense;

(10) payments to directors permitted under Section 4.11(b)(21) shall reduce Consolidated Net Income to the extent such payments are not already reflected in such calculation; and

(11) customary salary, bonus, and other benefits payable to officers and employees of any direct or indirect parent company of the Company to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Company and the Restricted Subsidiaries shall reduce Consolidated Net Income to the extent such payments are not already reflected in such calculation and are made pursuant to Section 4.07.

"*Consolidated Total Indebtedness*" means, as at any date of determination, an amount equal to the sum of (1) the aggregate outstanding Indebtedness of GenOn and its Restricted Subsidiaries and (2) the aggregate amount of all of GenOn's outstanding Disqualified Stock and all preferred stock of GenOn's Restricted Subsidiaries, with the amount of such Disqualified Stock and preferred stock equal to the greater of their respective voluntary or involuntary liquidation preferences and their Maximum Fixed Repurchase Prices, in each case, determined on a consolidated basis in accordance with GAAP; *provided*, *however*, that Consolidated Total Indebtedness will exclude (i) any Hedging Obligations; (ii) any undrawn letters of credit of GenOn or its Restricted Subsidiaries; and (iii) any obligations under the Tenaska Transaction Documents, the Shawville Facility and the Shawville Pipeline Agreement.

For purposes hereof, the "Maximum Fixed Repurchase Price" of any Disqualified Stock or preferred stock means the price at which such Disqualified Stock or preferred stock could be redeemed or repurchased by the issuer thereof in accordance with its terms at the option of the holder thereof, in each case, determined on any date on which Consolidated Total Indebtedness shall be required to be determined.

"*Contribution Indebtedness*" means Indebtedness of the Company in an aggregate principal amount not to exceed the aggregate amount of cash received by the Company after the Issue Date from the sale of its Equity Interests (other than Disqualified Stock) or as a contribution to its common equity capital (in each case, other than to or from a Subsidiary of the Company); *provided* that such Indebtedness (a) is incurred within 180 days after the sale of such Equity Interests or the making of such capital contribution and (b) is designated as "Contribution Indebtedness" pursuant to an Officer's Certificate on the date of its incurrence. Any sale of Equity Interests or capital contribution that forms the basis for an incurrence of Contribution Indebtedness will not be considered to be a sale of Qualifying Equity Interests and will be disregarded for purposes of the "Restricted Payments" covenant.

"*continuing*" means, with respect to any Default or Event of Default, that such Default or Event of Default has not been cured or waived.

"*Core Collateral*" means all Equity Interests in, and property and assets of, any Core Collateral Subsidiary, in each case whether now owned or hereafter acquired but excluding, for the avoidance of doubt, any property or assets in respect of or subject to a Specified Asset Sale.

"*Core Collateral Subsidiary*" means each of REMA, NRG Power Midwest LP, NRG Canal LLC, NRG Bowline LLC.

"*Corporate Trust Office of the Trustee*" means the office of the Trustee at which at any particular time this Indenture shall be administered, which office at the date of the execution of this instrument is located at the address of the Trustee specified in Section 13.02 hereof, or such other address as the Trustee may designate from time to time by notice to the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Issuers). With respect to registration for transfer or exchange, presentation at maturity or for redemptions, such office shall also mean the office or agency of the Trustee located at the date hereof at Wells Fargo Bank, National Association, 1445 Ross Avenue, Suite 4300, MAC T9216-430, Dallas, TX 75202-2812, attention: Corporate Trust Services—Administrator for GenOn Inc.

"*Credit Facilities*" means one or more debt facilities (including, without limitation, the Exit Credit Agreement), credit agreements, financings, commercial paper facilities, note purchase agreements, indentures, or other agreements, in each case with banks, lenders, purchasers, investors, trustees, agents or other representatives of any of the foregoing, providing for revolving credit loans, term loans, asset-backed credit facilities, receivables financing (including through the sale of receivables or interests in receivables to such lenders or other persons or to special purpose entities formed to borrow from such lenders or other persons against such receivables or sell such receivables or interests in receivables and including receivables financings), letters of credit, notes or other borrowings or other extensions of credit, including any notes, mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, in each case, as amended, restated, modified, renewed, refunded, restated, restructured, increased, supplemented, replaced or refinanced in whole or in part from time to time, including any replacement, refunding or refinancing facility or agreement that increases the amount permitted to be borrowed thereunder or alters the maturity thereof or adds entities as additional borrowers or guarantors thereunder and whether by the same or any other agent, lender, group of lenders, or otherwise.

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

"*Default*" means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

"*Definitive Note*" means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 2.07 hereof. Definitive Notes will be substantially in the form of Exhibit A hereto except that such Note shall not bear the Global Legend and shall not have the "Schedule of Exchanges of Interests in the Global Note" attached thereto.

"*Definitive Security*" means a certificated Security registered in the name of the Holder thereof and issued in accordance with Section 2.07 hereof.

"*Designated Cash Amount*" shall mean Designated Income that has not been included in the calculation of Consolidated Net Income (or EBITDA) pursuant to clause (1) of the definition of Consolidated Net Income *less* any tax distributions (not otherwise funded in cash separately by such Unrestricted Subsidiary) made by the Company or a Restricted Subsidiary to the extent attributable to any Unrestricted Subsidiaries for the relevant period (provided that Designed Cash Amount shall not be reduced to less than zero); *provided* that any such Designated Income is designated by the Company as "Designated Cash" in an Officer's Certificate delivered to the Trustee within 10 Business Days of receipt thereof.

"*Designated Income*" has the meaning assigned to it in clause (1) of "Consolidated Net Income."

"*Discharge of Priority Lien Obligations*" has the meaning assigned to it in the Collateral Trust Agreement.

"*Disqualified Stock*" means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder of the Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the date that is 91 days after the date on which the Notes mature (other than pursuant to Section 4.14 hereof.)

"*Depositary*" means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.03 hereof as the Depositary with respect to the Notes, and any and all successors thereto appointed as depositary hereunder and having become such pursuant to the applicable provision of this Indenture.

"*Domestic Subsidiary*" means any Restricted Subsidiary of the Company that was formed under the laws of the United States or any state of the United States or the District of Columbia.

"*EBITDA*" means, with regard to any specified Person, for any period, the Consolidated Net Income of such Person for such period; *plus*, without duplication:

(1) an amount equal to any extraordinary loss (including any loss on the extinguishment or conversion of Indebtedness), to the extent such losses were deducted in computing such Consolidated Net Income; *plus*

(2) any net loss realized by such Person or any of its Restricted Subsidiaries in connection with an Asset Sale (without giving effect of the threshold provided in the definition thereof), to the extent such losses were deducted in computing such Consolidated Net Income; *plus*

(3) provision for taxes based on income or profits of such Person and its Restricted Subsidiaries for such period, to the extent that such provision for taxes was deducted in computing such Consolidated Net Income; *plus*

(4) the Fixed Charges of such Person and its Restricted Subsidiaries for such period, to the extent that such Fixed Charges were deducted in computing such Consolidated Net Income; *plus*

(5) any expenses or charges related to any equity offering, Permitted Investment, acquisition, disposition, recapitalization or Indebtedness permitted to be incurred under this

Agreement including a refinancing thereof (in each case, whether or not successful), including such fees, expenses or charges related to the Exit Transactions and this Agreement, to the extent such fees, expenses or charges were deducted in computing such Consolidated Net Income; *plus*

(6) any professional and underwriting fees related to any equity offering, Permitted Investment, acquisition, recapitalization or Indebtedness permitted to be incurred under this Agreement and, in each case, deducted in such period in computing Consolidated Net Income; *plus*

(7) the amount of any minority interest expense deducted in calculating Consolidated Net Income (less the amount of any cash dividends paid to the holders of such minority interests); *plus*

(8) any non-cash gain or loss attributable to Mark-to-Market Adjustments in connection with Hedging Obligations; *plus*

(9) without duplication, any writeoffs, writedowns or other non-cash charges reducing Consolidated Net Income for such period, excluding any such charge that represents an accrual or reserve for a cash expenditure for a future period; *plus*

(10) all items classified as nonrecurring non-cash losses or charges (including non-cash severance, relocation and other restructuring costs), and related tax effects according to GAAP to the extent such non-cash charges or losses were deducted in computing such Consolidated Net Income; *plus*

(11) the non-cash lease expense for the Shawville Facility incurred by the Company or any Restricted Subsidiary during such period according to GAAP to the extent such lease expense was in excess of cash lease expense for the Shawville Facility during such period and was deducted in computing such Consolidated Net Income; *plus*

(12) any and all fees, expenses and related transaction costs incurred by the Issuers and any Restricted Subsidiaries in connection with the Plans of Reorganization, their Chapter 11 proceedings and the Exit Transactions; *plus*

(13) one-time or nonrecurring restructuring charges, fees or expenses (including, without limitation, professional fees, severance costs, retention bonuses and management and operational transition fees and expenses) to the extent deducted in computing such Consolidated Net Income; *provided* that the aggregate amount of the items added pursuant to this clause (13) shall not exceed 10% of Consolidated Cash Flow (calculated before giving effect to the items added pursuant to this clause (13)); *plus*

(14) solely for each of the first five fiscal quarters ended after the Issue Date, nonrecurring selling, general and administrative expenses in connection with management and operational transitions (collectively, the "*G&A Expenses*") in an amount (other than in respect of the fiscal quarter ending December 31, 2018) not to exceed $15,000,000 in the aggregate and solely to the extent deducted in computing such Consolidated Net Income; *plus*

(15) any fees and expenses related to fresh start accounting pursuant to FASB 852; *plus*

(16) any non-cash costs or expenses incurred pursuant to any management incentive plan, equity plan or stock option plan or any other management or employee benefit plan or agreement or any equity subscription or equity holder agreement, including, bonuses and similar payments made to management, employees and directors in connection therewith; *plus*

(17) depreciation, depletion, amortization (including amortization of intangibles but excluding amortization of prepaid cash expenses that were paid in a prior period) and other non-cash charges and expenses (excluding any such non-cash expense to the extent that it represents an accrual of or reserve for cash expenses in any future period or amortization of a prepaid cash expense that was paid in a prior period) of such Person and its Restricted Subsidiaries for such period to the extent that such depreciation, depletion, amortization and other non-cash expenses were deducted in computing such Consolidated Net Income; *minus*

(18) non-cash items increasing such Consolidated Net Income for such period, other than the accrual of revenue in the ordinary course of business; in each case, on a consolidated basis and determined in accordance with GAAP; *minus*

(19) interest income for such period;

*provided*, *however*, that EBITDA of the Company shall exclude the EBITDA attributable to Excluded Subsidiaries and Unrestricted Subsidiaries, except to the extent of any dividends, distributions or other returns in respect of any Investments in any Excluded Subsidiary or Unrestricted Subsidiary, in each case, paid in cash to the Company or a Restricted Subsidiary that is not an Excluded Subsidiary.

"*Environment*" shall mean ambient and indoor air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata or sediment, natural resources such as flora and fauna or as otherwise defined in any Environmental Law.

"*Environmental CapEx Debt*" means Indebtedness of the Company or its Restricted Subsidiaries incurred for the purpose of financing capital expenditures deemed necessary by the Company or its Restricted Subsidiaries to comply with Environmental Laws.

"*Environmental Claim*" shall mean any and all actions, suits, demands, demand letters, claims, Liens, notices of non-compliance or violation, notices of liability or potential liability, investigations, proceedings, consent orders or consent agreements relating in any way to any Environmental Law or the release of or human exposure to any Hazardous Material.

"*Environmental Law*" means any applicable federal, state, foreign or local statute, law, rule, regulation, ordinance, code and rule of common law now or hereafter in effect and in each case as amended, and any binding judicial or administrative interpretation thereof, including any binding judicial or administrative order, consent decree or judgment, relating to the environment, human health or safety or Hazardous Materials.

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

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

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

"*Excluded Assets*" shall have the meaning assigned to it in the Collateral Agreement.

"*Excluded Foreign Subsidiary*" means, at any time, any Foreign Subsidiary that is a Restricted Subsidiary and that is (or is treated as) for United States federal income tax purposes either (1) a corporation or (2) a pass-through entity owned directly or indirectly by another Foreign Subsidiary that is (or is treated as) a corporation; *provided* that none of the Subsidiaries constituting or owning Core Collateral may at any time be an Excluded Foreign Subsidiary.

"*Excluded Subsidiaries*" means (1) the Excluded Foreign Subsidiaries, (2) any Subsidiary all of whose assets constitute Scheduled Excluded Assets Post-Closing Excluded Assets, (3) any captive insurance Subsidiary, (4) any not-for-profit Subsidiary, (5) the Immaterial Subsidiaries or (6) any special purpose vehicle; *provided* that, the Company may, at its option, designate any Excluded Subsidiary as a Guarantor upon such Excluded Subsidiary otherwise complying with the requirements under Section 4.18 as if it were a new Subsidiary and upon such compliance such Excluded Subsidiary shall cease to constitute an "Excluded Subsidiary."

"*Existing Indebtedness*" means Indebtedness of GenOn and its Subsidiaries (other than the Indebtedness under the Exit Credit Agreement) in existence on the Issue Date (including any Indebtedness reinstated pursuant to the Plan of Reorganization), until such amounts are repaid.

"*Existing Liens*" means Liens on the property or assets of the Company and/or any of its Subsidiaries existing on the date of this Indenture securing Indebtedness of the Company or any of its Subsidiaries.

"*Exit Credit Agreement*" means that certain Revolving Credit Agreement, dated as of December 14, 2018, by and among the Company, the lenders and issuing banks from time to time party thereto, Barclays Bank PLC as administrative agent for the lenders and issuing banks (in such capacity and together with any and all successors thereto and replacements thereof, the "*Priority Lien Agent*"), and as further amended, amended and restated, refinanced, replaced, substituted or otherwise modified from time to time.

"*Exit Transactions*" means the Plans of Reorganization and the transactions contemplated thereby.

"*Facility*" means a power or energy related facility.

"*Fair Market Value*" means the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party, determined in good faith by an Officer of the Company.

"*First Lien Net Secured Leverage Ratio*" means, as of any date of determination, the ratio of (1) GenOn's Consolidated Total Indebtedness as of the applicable ratio calculation date that is secured by a first priority lien, minus Cash Equivalents included on the balance sheet of the Company as of the end of the most recent fiscal quarter ended prior to such date for which internal financial statements are available, to (2) GenOn's EBITDA for the most recently ended Test Period.

"*Fixed Charge Coverage Ratio*" means with respect to any specified Person for the applicable Test Period, the ratio of the EBITDA of such Person for such Test Period to the Fixed Charges of such Person for such Test Period. In the event that the specified Person or any of its Restricted Subsidiaries incurs, assumes, Guarantees, repays, repurchases, redeems, defeases or otherwise discharges any Indebtedness (other than ordinary working capital borrowings) or issues, repurchases or redeems preferred stock subsequent to the commencement of the Test Period for which the Fixed Charge Coverage Ratio is being calculated and on or prior to the date on which the event for which the calculation of the

Fixed Charge Coverage Ratio is made (for purposes of this definition, the "*Calculation Date*"), then the Fixed Charge Coverage Ratio will be calculated giving pro forma effect to such incurrence, assumption, Guarantee, repayment, repurchase, redemption, defeasance or other discharge of Indebtedness, or such issuance, repurchase or redemption of preferred stock, and the use of the proceeds therefrom, as if the same had occurred at the beginning of the most recently ended Test Period.

In addition, for purposes of calculating the Fixed Charge Coverage Ratio:

(1) Investments and acquisitions that have been made by the specified Person or any of its Restricted Subsidiaries, including through mergers or consolidations, or any Person or any of its Restricted Subsidiaries acquired by the specified Person or any of its Restricted Subsidiaries, and including any related financing transactions and including increases in ownership of Restricted Subsidiaries, during the applicable Test Period or subsequent to such reference Test Period and on or prior to the Calculation Date will be given pro forma effect (in accordance with Regulation S-X, but including all Pro Forma Cost Savings) as if they had occurred on the first day of such Test Period and EBITDA for such Test Period will be calculated on the same pro forma basis;

(2) the EBITDA attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded;

(3) the Fixed Charges attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded, but only to the extent that the obligations giving rise to such Fixed Charges will not be obligations of the specified Person or any of its Restricted Subsidiaries following the Calculation Date;

(4) any Person that is a Restricted Subsidiary on the Calculation Date will be deemed to have been a Restricted Subsidiary at all times during such Test Period;

(5) any Person that is not a Restricted Subsidiary on the Calculation Date will be deemed not to have been a Restricted Subsidiary at any time during such Test Period; and

(6) if any Indebtedness that is being incurred on the Calculation Date bears a floating rate of interest, the interest expense on such Indebtedness will be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the Test Period (taking into account any Hedging Obligation applicable to such Indebtedness).

If since the beginning of such Test Period any Person (that subsequently became a Restricted Subsidiary or was merged with or into the Company or any Restricted Subsidiary since the beginning of such Test Period) shall have made any Investment, acquisition, disposition, merger, consolidation or disposed operation that would have required adjustment pursuant to this definition, then the Fixed Charge Coverage Ratio shall be calculated giving pro forma effect thereto (including any Pro Forma Cost Savings) for such period as if such Investment, acquisition or disposition, or classification of such operation as discontinued had occurred at the beginning of the applicable Test Period.

"*Fixed Charges*" means, with respect to any specified Person for any period, the sum, without duplication, of:

(1) the consolidated interest expense of such Person and its Restricted Subsidiaries (other than interest expense of any Excluded Subsidiary the EBITDA of which is excluded from the EBITDA of such Person pursuant to the definition of "EBITDA") for such period, whether paid or accrued, including, without limitation, amortization of debt issuance costs and original issue discount, non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments associated with Capital Lease Obligations, imputed interest with respect to Attributable Debt, and net of the effect of all payments made or received pursuant to Hedging Obligations in respect of interest rates; *plus*

(2) the consolidated interest of such Person and its Restricted Subsidiaries that was capitalized during such period; *plus*

(3) any interest accruing on Indebtedness of another Person that is Guaranteed by such Person or one of its Restricted Subsidiaries or secured by a Lien on assets of such Person or one of its Restricted Subsidiaries, whether or not such Guarantee or Lien is called upon; *plus*

(4) the product of (a) all dividends, whether paid or accrued and whether or not in cash, on any series of preferred stock of such Person or any of its Restricted Subsidiaries, other than dividends on Equity Interests payable in Equity Interests of the Company (other than Disqualified Stock) or to the Company or a Restricted Subsidiary of the Company, times (b) a fraction, the numerator of which is one and the denominator of which is one *minus* the then current combined federal, state and local statutory tax rate of such Person, expressed as a decimal, in each case, on a consolidated basis and in accordance with GAAP; *minus*

(5) interest income for such period.

"*Foreign Subsidiary*" means any Restricted Subsidiary that is (1) not a Domestic Subsidiary or (2) a Foreign Subsidiary Holding Company.

"*Foreign Subsidiary Holding Company*" shall mean any Domestic Subsidiary that is a direct or indirect parent of one or more Foreign Subsidiaries and holds, directly or indirectly, no other assets other than Equity Interests (or Equity Interests and Indebtedness) of Foreign Subsidiaries and other *de minimis* assets related thereto.

"*G&A Expenses*" shall have the meaning assigned to such term in the definition of EBITDA.

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

"*GenMA*" means GenOn Mid-Atlantic, LLC, a Delaware limited liability company, or any successor thereto, and its direct and indirect subsidiaries.

"*GenOn*" means GenOn Energy, Inc., a Delaware limited liability company, or any successor thereto.

"*GenOn Confirmation Order*" means the *Order Confirming the Third Amended Joint Chapter 11 Plan of Reorganization of GenOn Energy, Inc. and Its Debtor Affiliates*, dated December 12, 2017 [Docket No. 1250], as modified by: (i) the *Revised Order Pursuant to 11 U.S.C § 1127(b) Modifying the*

*Third Amended Joint Plan of Reorganization of GenOn Energy, Inc. and Its Debtor Affiliates*, dated April 2, 2018 [Docket No. 1549]; (ii) the *Revised Order Pursuant to 11 U.S.C § 1127(b) Modifying the Third Amended Joint Plan of Reorganization of GenOn Energy, Inc. and Its Debtor Affiliates*, dated April 5, 2018 [Docket No. 1560]; (iii) the *Revised Order Pursuant to 11 U.S.C § 1127(b) Modifying the Third Amended Joint Plan of Reorganization of GenOn Energy, Inc. and Its Debtor Affiliates*, dated April 30, 2018 [Docket No. 1607]; (iv) the *Revised Order Pursuant to 11 U.S.C § 1127(b) Modifying the Third Amended Joint Plan of Reorganization of GenOn Energy, Inc. and Its Debtor Affiliates*, dated September 18, 2018 [Docket No. 1847]; and (v) the Revised Order (I) Modifying (A) the Third Amended Joint Plan of Reorganization of GenOn Energy, Inc. and Its Debtor Affiliates and (B) the Cash Incentive Plan, and (II) Granting Related Relief, dated November 1, 2018 [Docket No. 1953] (with respect to (i) through (v), the "*Plan Amendment Orders*").

"*GenOn Plan of Reorganization*" means the *Third Amended Joint Chapter 11 Plan of Reorganization of GenOn Energy, Inc. and Its Debtor Affiliates*, dated December 10, 2017 [Docket No. 1213], as amended by the Plan Amendment Orders.

"*GenOn Security Agreement*" shall have the meaning assigned to such term in the definition of the Tenaska Transaction Document.

"*Global Legend*" means the legend set forth in Section 2.07(g)(2) hereof, which is required to be placed on all Global Securities issued under this Indenture.

"*Global Notes*" means, individually and collectively, each Global Note deposited with or on behalf of and registered in the name of the Depositary or its nominee that bears the Global Legend and that has the "Schedule of Exchanges of Interests in the Global Security" attached thereto, issued in accordance with Section 2.01, 2.07(b)(3), 2.07(b)(4), 2.07(d)(2) or 2.07(e) hereof.

"*Global Securities*" means, individually and collectively, each Restricted Global Security and Unrestricted Global Security deposited with or on behalf of and registered in the name of the Depositary or its nominee that bears the Global Legend and that has the "Schedule of Exchanges of Interests in the Global Security" attached thereto, issued in accordance with Section Section 2.01, 2.07(b)(3), 2.07(b)(4), 2.07(d)(2) or 2.07(e) hereof. The Global Security in respect of the Notes will be in the form of Exhibit A hereto.

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

"*Governmental Authority*" means any nation or government, any state, province, territory or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, or any non-governmental authority regulating the generation and/or transmission of energy.

"*Guarantee*" means a guarantee other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner including, without limitation, by way of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Indebtedness (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take or pay or to maintain financial statement conditions or otherwise).

"*Guarantors*" means each of the Company's current Restricted Subsidiaries that guarantees the Indebtedness under the Exit Credit Agreement as of the Issue Date, and each of:

(1) the Company's future Core Collateral Subsidiaries and Restricted Subsidiaries other than the Excluded Subsidiaries; and

(2) any other Restricted Subsidiary that executes a Subsidiary Guarantee in accordance with the provisions of the Indenture,

and their respective successors and assigns.

"*Hazardous Materials*" means (1) any petroleum products or byproducts, coal ash, coal combustion byproducts or waste, boiler slag, scrubber residue, flue desulfurization material, radon gas, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, radioactive materials, radioactive waste or radioactive byproducts, chlorofluorocarbons and all other ozone-depleting substances and (2) any chemical, material, substance or waste that is prohibited, limited or regulated by or pursuant to any Environmental Law due to its hazardous or dangerous properties or characteristics.

"*Hedging Obligations*" means, with respect to any specified Person, the obligations of such Person under:

(1) currency exchange, interest rate or commodity swap agreements, currency exchange, interest rate or commodity cap agreements and currency exchange, interest rate or commodity collar agreements; and

(2) (i) agreements or arrangements designed to protect such Person against fluctuations in currency exchange, interest rates, commodity prices or commodity transportation or transmission pricing or availability; (ii) any netting arrangements, power purchase and sale agreements, fuel purchase and sale agreements, swaps, options and other agreements, in each case, that fluctuate in value with fluctuations in energy, power or gas prices; and (iii) agreements or arrangements for commercial or trading activities with respect to the purchase, transmission, distribution, sale, lease or hedge of any energy related commodity or service.

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

"*Immaterial Subsidiary*" means, at any time, any Restricted Subsidiary of the Company other than the Co-Issuer that is designated by the Company as an "Immaterial Subsidiary" if and for so long as such Restricted Subsidiary, together with all other Immaterial Subsidiaries, has (i) total assets at such time not exceeding 5% of the Company's consolidated assets as of the most recent fiscal quarter for which balance sheet information is available and (ii) total revenues and operating income for the most recent 12-month period for which income statement information is available not exceeding 5% of the Company's consolidated revenues and operating income, respectively; *provided* that such Restricted Subsidiary shall be an Immaterial Subsidiary only to the extent that and for so long as all of the above requirements are satisfied.

"*Indebtedness*" shall mean, with respect to any specified Person, any indebtedness of such Person (excluding accrued expenses and trade payables except as provided in clause (5) below), whether or not contingent (1) in respect of borrowed money; (2) the undrawn amount of all outstanding letters of credit and banker's acceptances; (3) evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof); (4) in respect of banker's acceptances; (5) representing Capital Lease Obligations or Attributable Debt in respect of sale and leaseback

transactions; (6) representing the balance deferred and unpaid of the purchase price of any property (including trade payables) or services due more than six months after such property is acquired or such services are completed; or (7) representing the net amount owing under any Hedging Obligations, if and to the extent any of the preceding items (other than letters of credit, Attributable Debt and Hedging Obligations) would appear as a liability upon a balance sheet of the specified Person prepared in accordance with GAAP. In addition, the term "Indebtedness" includes all Indebtedness of others secured by a Lien on any asset of the specified Person (whether or not such Indebtedness is assumed by the specified Person) and, to the extent not otherwise included, the Guarantee by the specified Person of any Indebtedness of any other Person; *provided* that the amount of such Indebtedness shall be deemed not to exceed the lesser of the amount secured by such Lien and the value of the Person's property securing such Lien.

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

"*Independent Financial Advisor*" means an accounting, appraisal, investment banking firm or consultant to Persons engaged in a Permitted Business of nationally recognized standing that is, in the good faith judgment of the Company, qualified to perform the task for which it has been engaged.

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

"*Interest Determination Date*" means, for an Interest Period with respect to the Floating Rate Notes, the second London Business Day preceding the relevant Interest Reset Date.

"*Interest Factor*" means, for each day, the quotient of the per annum interest rate applicable to such day divided by 360.

"*Interest Maturity*" means six months.

"*Interest Payment Date*" means June 1 and December 1 of each year.

"*Interest Period*" means the period from the Issue Date to, but excluding, the first Interest Payment Date and then from, and including, the immediately preceding Interest Payment Date to, but excluding, the next Interest Payment Date or Maturity Date, as the case may be.

"*Interest Reset Date*" means the Issue Date and each Interest Payment Date of the Notes thereafter.

"*Investments*" means, with respect to any Person, all direct or indirect investments by such Person in other Persons (including Affiliates) in the forms of loans (including Guarantees or other obligations), advances or capital contributions (excluding commission, travel and similar advances to officers and employees), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities (including the Company's Capital Stock or Disqualified Stock), together with all items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP. If the Company or any Restricted Subsidiary of the Company sells or otherwise disposes of any Equity Interests of any direct or indirect Restricted Subsidiary of the Company such that, after giving effect to any such sale or disposition, such Person is no longer a Restricted Subsidiary of the Company, the Company will be deemed to have made an Investment on the date of any such sale or disposition equal to the Fair Market Value of the Company's Investments in such Restricted Subsidiary that were not sold or disposed of in an amount determined as provided in Section 4.07(c) hereof. Except as otherwise provided in the

Indenture, the amount of an Investment will be determined at the time the Investment is made and without giving effect to subsequent changes in value.

Notwithstanding anything to the contrary herein, in the case of any Investment made by the Company or a Restricted Subsidiary of the Company in a Person substantially concurrently with a cash distribution by such Person to the Company, the Co-Issuer or a Guarantor (a "*Concurrent Cash Distribution*"), then:

(1) the Concurrent Cash Distribution shall be deemed to be Net Proceeds received in connection with an Asset Sale and applied as set forth above under Section 4.10(c) hereof; and

(2) the amount of such Investment shall be deemed to be the Fair Market Value of the Investment, less the amount of the Concurrent Cash Distribution.

"*Issue Date*" means December 14, 2018.

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

"*LIBOR*" shall be determined in accordance with the following provisions:

(a) With respect to any Interest Period, LIBOR shall be the rate (expressed as a percentage per annum) for deposits in United States dollars having a maturity of the Interest Maturity commencing on the first day of the applicable Interest Period that appears on Reuters Screen LIBOR01 Page as of 11:00 a.m., London time, on that Interest Determination Date. If no rate appears, LIBOR for that Interest Determination Date shall be determined in accordance with the provisions described in clause (b) below.

(b) With respect to an Interest Determination Date on which no rate appears on Reuters Screen LIBOR01 Page, as specified in clause (a) above, the Company shall request the principal London offices of each of four major reference banks in the London interbank market, as selected by the Company, to provide the Calculation Agent with its offered quotation for deposits in United States dollars for the Interest Maturity, commencing on the first day of the applicable interest period, to prime banks in the London interbank market at approximately 11:00 a.m., London time, on that Interest Determination Date and in a principal amount that is representative for a single transaction in United States dollars in that market at that time. If at least two quotations are provided, then LIBOR on that Interest Determination Date shall be the arithmetic mean (rounded to the nearest one hundred-thousandth of a percentage point, with five one-millionths of a percentage point rounded upward) of those quotations. If fewer than two quotations are provided, then LIBOR on the Interest Determination Date shall be the arithmetic mean (rounded to the nearest one hundred-thousandth of a percentage point, with five one-millionths of a percentage point rounded upward) of the rates quoted at approximately 11:00 a.m., in the City of New York, on the Interest Determination Date by three major banks in the City of New York selected by the Company for loans in United States dollars to leading European banks, having an Interest Maturity and in a principal amount that is representative for a single transaction in United States dollars in that market at that time, and provided to the Calculation Agent. If, however, the banks selected by the Company are not providing quotations in the manner described by the previous sentence, LIBOR determined as of that Interest Determination Date shall be LIBOR in effect prior to that Interest Determination Date.

(c) Notwithstanding clause (b) above, if the Company determines that LIBOR has been permanently discontinued, the Calculation Agent will use, as a substitute for LIBOR (the "*Alternative Rate*") and for each future Interest Determination Date, the alternative reference rate selected by the central bank, reserve bank, monetary authority or any similar institution (including any committee or working group thereof) that is consistent with accepted market practice, as determined by the Company in a notice to the Calculation Agent. As part of such substitution, the Company shall make such adjustments ("*Adjustments*") to the Alternative Rate or the spread thereon, as well as the business day convention, Interest Determination Dates and related provisions and definitions, in each case that are consistent with accepted market practice for the use of such Alternative Rate for debt obligations such as the Floating Rate Notes. If the Company determines, and communicates such determination in a notice to the Calculation Agent, that there is no clear market consensus as to whether any rate has replaced LIBOR in customary market usage, (i) Wells Fargo Bank, National Association shall have the right to resign (regardless of whether or not a replacement calculation agent has been appointed, and without requiring the consent of any party) as Calculation Agent in respect of the Notes and (ii) the Company shall appoint, in its sole discretion, a new Calculation Agent to replace Wells Fargo Bank, National Association, solely in its role as Calculation Agent in respect of the Notes, to determine the Alternative Rate and make any Adjustments thereon, and whose determinations will be binding on the Company, the Trustee and the Holders of the Notes. If, however, the Company determines that LIBOR has been discontinued, but for any reason an Alternative Rate has not been determined, the Company shall instruct the Calculation Agent that LIBOR shall be equal to such rate on the Interest Determination Date when LIBOR was last available on the Reuters Screen LIBOR01 Page.

By its acquisition of Notes, each Holder and Beneficial Owner of the Notes and each subsequent Holder and Beneficial Owner acknowledges, accepts, agrees to be bound by, and consents to, the Calculation Agent's determination of the Alternative Rate, as applicable, as contemplated by and in accordance with this section, and to any amendment or alteration of the terms and conditions of the Notes, including an amendment of the amount of interest due on the Notes, as may be required in order to give effect to this section. The Trustee and the Calculation Agent shall be entitled to rely on this deemed consent in connection with any supplemental indenture or amendment which may be necessary to effect the Alternative Rate.

By its acquisition of Notes, each Holder and Beneficial Owner of the Notes and each subsequent Holder and Beneficial owner waives any and all claims in law and/or equity against the Trustee, the Calculation Agent and any paying agent for, agrees not to initiate a suit against the Trustee, the Calculation Agent and any paying agent in respect of, and agrees that neither the Trustee, the Calculation Agent or any paying agent will be liable for, any action that the Trustee, the Calculation Agent or any paying agent, as the case may be, takes, or abstains from taking, in each case in accordance with this definition or any losses suffered in connection therewith.

By its acquisition of Notes, each Holder and Beneficial Owner of the Notes and each subsequent Holder and Beneficial Owner agrees that neither the Trustee, the Calculation Agent or any paying agent will have any obligation to determine any Alternative Rate, as applicable, including in the event of any failure by the company to determine any Alternative Rate, as applicable.

All determinations and any calculations made by the Calculation Agent for the purposes of calculating LIBOR shall be conclusive and binding on holders of the Notes, the Company and the Trustee, absent manifest error. The Calculation Agent and the Trustee shall not be responsible to the Company, Holders of the Notes, or any third party for any unavailability of LIBOR or failure of the reference banks to provide quotations as requested of them or as a result of the Calculation Agent and the Trustee having acted on any quotation or other information given by any reference bank which subsequently may be found to be incorrect or inaccurate in any way. The Calculation Agent and the

Trustee shall have no liability to the Company, to Holders or to any third party as a result of losses suffered due to the lack of an applicable rate of interest or in connection with the use of an alternative rate.

"*Lien*" means, with respect to any property or asset, any mortgage, deed of trust, deed to secure debt, lien, pledge, hypothecation, encumbrance, restriction, collateral assignment, charge or security interest in, on or of such property or asset.

"*London Business Day*" means any day on which dealings in deposits in United States dollars are transacted in the London interbank market.

"*LTSA Obligations*" means obligations arising from that certain Long Term Service Agreement by and among NRG Wholesale Generation LP, (as successor-in-interest to Reliant Energy Choctaw, LLC) and General Electric International Inc., amended by that certain First Amendment to the Long Term Service Agreement dated as of June 1, 2004, that certain Second Amendment to the Long Term Service Agreement dated December 11, 2015, that Third Amendment to the Long Term Service Agreement dated December 21, 2016, and that certain Fourth Amendment to Long Term Service Agreement, as may be amended, amended and restated, supplemented or otherwise modified from time to time.

"*Management Incentive Plan*" means that Management Incentive Plan of GenOn Holdings, LLC which shall be entered into on or after the Closing Date, as modified from time to time.

"*Mark-to-Market Adjustments*" means (1) any non-cash loss attributable to the mark-to-market movement in the valuation of Hedging Obligations (to the extent the cash impact resulting from such loss has not been realized) or other derivative instruments pursuant to Financial Accounting Standards Board Statement No. 133, "Accounting for Derivative Instruments and Hedging Activities," or any similar successor provision; *plus* (2) any loss relating to amounts paid in cash prior to the stated settlement date of any Hedging Obligation that has been reflected in Consolidated Net Income in the current period; *plus* (3) any gain relating to Hedging Obligations associated with transactions recorded in the current period that has been reflected in Consolidated Net Income in prior periods and excluded from EBITDA pursuant to clauses (5) and (6) below; *minus* (4) any non-cash gain attributable to the mark-to-market movement in the valuation of Hedging Obligations (to the extent the cash impact resulting from such gain has not been realized) or other derivative instruments pursuant to Financial Accounting Standards Board Statement No. 133, "Accounting for Derivative Instruments and Hedging Activities," or any similar successor provision; *minus* (5) any gain relating to amounts received in cash prior to the stated settlement date of any Hedging Obligation that has been reflected in Consolidated Net Income in the current period; *minus* (6) any loss relating to Hedging Obligations associated with transactions recorded in the current period that has been reflected in Consolidated Net Income in prior periods and excluded from EBITDA pursuant to clauses (2) and (3) above.

"*Maturity Date*" means December 1, 2023.

"*Minority Investment*" means any Person (other than a Subsidiary) in which the Company or any Restricted Subsidiary owns Capital Stock.

"*Moody's*" means Moody's Investors Service, Inc. or any successor entity.

"*Necessary CapEx Debt*" means Indebtedness of the Company or its Restricted Subsidiaries incurred for the purpose of financing Necessary Capital Expenditures.

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

"*Net Income*" means, with respect to any specified Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends or accretion, excluding, however, (a) any gain or loss, together with any related provision for taxes on such gain or loss, realized in connection with (i) any Asset Sale (without giving effect to the threshold provided for in the definition thereof) or (ii) the disposition of any securities by such Person or any of its Restricted Subsidiaries or the extinguishment of any Indebtedness of such Person or any of its Restricted Subsidiaries; and (b) any infrequent, unusual or nonrecurring gain or loss, together with any related provision for taxes on such infrequent, unusual or nonrecurring gain or loss.

"*Net Proceeds*" means the aggregate cash proceeds received by the Company or any of its Restricted Subsidiaries in respect of any Asset Sale or Specified Asset Sale (including, without limitation, any cash received upon the sale or other disposition of any non-cash consideration received in any Asset Sale or Specified Asset Sale), net of the direct costs relating to such Asset Sale or Specified Asset Sale, including, without limitation, legal, accounting and investment banking fees, and sales commissions, and any relocation expenses incurred as a result of the Asset Sale or Specified Asset Sale, taxes paid or payable as a result of the Asset Sale or Specified Asset Sale, and in the case of the Choctaw Assets, net of any seller holdbacks, in each case, after taking into account any available tax deductions and any tax sharing arrangements, and amounts required to be applied to the repayment of Indebtedness (other than Indebtedness under a Credit Facility or debt secured by a Lien that is subject to the Collateral Trust Agreement) secured by a Lien on the asset or assets that were the subject of such Asset Sale or Specified Asset Sale, and any reserve for adjustment in respect of the sale price of such asset or assets established in accordance with GAAP.

"*Non-Recourse Debt*" means Indebtedness:

(1) as to which neither the Company nor any of its Restricted Subsidiaries (other than an Excluded Domestic Subsidiary) (a) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness) other than pursuant to any arrangement to provide or guarantee to provide goods and services on an arm's-length basis; or (b) is directly or indirectly liable as a guarantor or otherwise; and no default with respect to which (including any rights that the holders of the Indebtedness may have to take enforcement action against an Unrestricted Subsidiary) would permit upon notice, lapse of time or both any holder of any other Indebtedness of the Company or any of its Restricted Subsidiaries (excluding in each case, for the avoidance of doubt, any Priority Lien Obligation or Parity Lien Obligation to declare a default on such other Indebtedness or cause the payment of such other Indebtedness to be accelerated or payable prior to its Stated Maturity; and

(2) to the extent constituting Indebtedness, any Investments in a Subsidiary and, for the avoidance of doubt, pledges by the Company or any Subsidiary of the Capital Stock of any Excluded Subsidiary that are directly owned by the Company or any Subsidiary in favor of the agent or lenders in respect of such Excluded Subsidiary's Non-Recourse Debt, to the extent otherwise not prohibited by the Indenture.

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

"*Note Security Documents*" means the Collateral Agreement, the Collateral Trust Agreement and any mortgages, deeds of trust, security agreements, collateral agreements, pledge agreements or other instruments and intercreditor arrangements evidencing or creating or governing priority on Liens on the assets of the Issuers and the Guarantors to secure the obligations under the Notes and the Indenture, as amended, restated, amended and restated, replaced, supplemented, waived or otherwise modified from time to time.

"*Notes*" has the meaning assigned to such term in the preamble to this Indenture.

"*Obligations*" means any principal (including any accretion), interest (including any interest accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable state, federal or foreign law), penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and banker's acceptances), damages and other liabilities, and Guarantees of payment of such principal (including any accretion), interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities, payable under the documentation governing any Indebtedness.

"*Officer*" means, with respect to the Issuers, the Chairman of the Board of Directors, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Chief Accounting Officer, the Treasurer, any Assistant Treasurer, the Secretary, the Controller, Assistant Secretary or any Vice-President of such Person.

"*Officer's Certificate*" means a certificate signed on behalf of the Issuers by any Officer of the Issuers that meets the requirements of Section 13.05 hereof, and delivered to the Trustee.

"*Opinion of Counsel*" means an opinion from legal counsel who is reasonably acceptable to the Trustee, that meets the requirements of Section 13.05 hereof, and delivered to the Trustee. The counsel may be an employee of or counsel to the Company or any Subsidiary of the Company.

"*Owner Lessors*" shall mean Conemaugh Lessor Genco LLC, Keystone Lessor Genco LLC and Shawville Lessor Genco LLC, and their respective successors and permitted assigns.

"*Owner Participants*" shall mean PSEGR Conemaugh Generation, LLC, PSEGR Keystone Generation, LLC, PSEGR Shawville Generation, LLC, and their respective successors and permitted assigns. "Owner Participant" includes any affiliated group of corporations (and any member thereof) of which the Owner Participant is or shall become a member, if consolidated, unitary or combined returns are or shall be filed for such affiliated group for U.S. federal, state, or local income tax purposes.

"*Parity Lien Obligations*" has the meaning assigned to such term in the Collateral Trust Agreement.

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

"*Permitted Business*" means the business of acquiring, constructing, managing, developing, improving, maintaining, leasing, owning and operating Facilities, together with any related assets or facilities, as well as any other activities reasonably related to, ancillary to, or incidental to, any of the foregoing activities (including acquiring and holding reserves), including investing in Facilities.

"*Permitted Holder*" means, collectively, (i) Strategic Value Partners, LLC and its Affiliates and (ii) any Person that is managed or sub-advised by Strategic Value Partners, LLC or its Affiliates.

"*Permitted Investments*" means:

(1) any Investment in the Company, the Co-Issuer or in a Restricted Subsidiary of the Company that is a Guarantor;

(2) so long as no Default or Event of Default has occurred and is continuing, or would be caused thereby, any Investments made utilizing the Available Amount;

(3) any issuance of letters of credit on the Issue Date to support the obligations of any of the non-Guarantor Subsidiaries;

(4) any Investment in Cash Equivalents (and, in the case of non-Guarantor Subsidiaries only, Cash Equivalents or other liquid investments permitted under any Credit Facility to which it is a party);

(5) any Investment by the Company or any Restricted Subsidiary of the Company in a Person, if as a result of such Investment:

(a) such Person becomes a Restricted Subsidiary of the Company and a Guarantor or an Immaterial Subsidiary; or

(b) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Company, the Co-Issuer or a Restricted Subsidiary of the Company that is a Guarantor;

(6) any Investment made as a result of the receipt of non-cash consideration from an Asset Sale that was made pursuant to and in compliance with Section 4.10(c) hereof;

(7) Investments made as a result of the sale of Equity Interests of any Person that is a Restricted Subsidiary of the Company such that, after giving effect to any such sale, such Person is no longer a Restricted Subsidiary of the Company, if the sale of such Equity Interests constitutes an Asset Sale and the Net Proceeds received from such Asset Sale are applied as set forth in Section 4.10(c) hereof;

(8) Investments to the extent made in exchange for the issuance of Equity Interests (other than Disqualified Stock) of the Company;

(9) any Investments received in compromise or resolution of (a) obligations of trade creditors or customers of the Company or any of its Restricted Subsidiaries, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer; or (b) litigation, arbitration or other disputes with Persons who are not Affiliates;

(10) Investments represented by Hedging Obligations;

(11) loans or advances to employees in an aggregate amount not in excess of $5 million at any one time outstanding (loans as advances that are forgiven shall continue to be deemed outstanding);

(12) (a) repurchases of the Priority Lien Obligations, the Notes or other Parity Lien Obligations; and (b) repurchases of Indebtedness that is unsecured or subordinated to the Notes or repurchases of the

Company's Capital Stock or Disqualified Stock, in each case of this clause (b) in an amount not to exceed an aggregate repurchase price of $25 million;

(13) any Investment in securities of trade creditors, trade counterparties or customers received in compromise of obligations of those Persons, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers;

(14) negotiable instruments held for deposit or collection;

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

(16) payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes;

(17) Investments resulting from the acquisition of a Person that at the time of such acquisition held instruments constituting Investments that were not acquired in contemplation of the acquisition of such Person;

(18) Investments made pursuant to a commitment that, when entered into, would have complied with the provisions of the Indenture;

(19) Investments in any non-Guarantor Subsidiary made by another non-Guarantor Subsidiary;

(20) other Investments made since the Issue Date in any Person having an aggregate Fair Market Value (measured on the date each such Investment was made and without giving effect to subsequent changes in value), when taken together with all other Investments made pursuant to this clause (20) that are at the time outstanding not to exceed the greater of (a) $30 million and (b) 15% of EBITDA for the most recently ended Test Period (calculated on a pro forma basis); *provided*, *however*, that if any Investment pursuant to this clause (20) is made in any Person that is not a Restricted Subsidiary of the Company and a Guarantor at the date of the making of the Investment and such Person becomes a Restricted Subsidiary and a Guarantor after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (1) above, and shall cease to have been made pursuant to this clause (20);

(21) contributions of cash to GenMA in an amount necessary for GenMA to satisfy tax obligations asserted directly against GenMA by any state, local, or foreign Governmental Authority; and

(22) Investments existing on or prior to the Closing Date.

"*Permitted Refinancing Indebtedness*" means any Indebtedness of the Company or any of its Restricted Subsidiaries issued in exchange for, or the net proceeds of which are used to refund, refinance, replace, defease or discharge other Indebtedness of the Company or any of its Restricted Subsidiaries (other than intercompany Indebtedness); *provided* that:

(1) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness extended, refinanced, renewed, replaced, defeased or refunded (plus all accrued interest on the Indebtedness and the amount of all expenses and premiums incurred in connection therewith);

(2) such Permitted Refinancing Indebtedness has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded;

(3) if the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is (a) subordinated in right of payment to the Notes, such Permitted Refinancing Indebtedness is subordinated in right of payment to, the Notes on terms at least as favorable to the holders of Notes as those contained in the documentation governing the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded or (b) subordinated in right of security to the Notes or is unsecured, such Permitted Refinancing Indebtedness shall not constitute Priority Lien Obligations or Parity Lien Obligations;

(4) such Indebtedness is incurred either by the Company (and may be guaranteed by any Guarantor), the Co-Issuer or by the Restricted Subsidiary who is the obligor on the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded; and

(5) (i) if the Stated Maturity of the Indebtedness being refinanced is earlier than the Stated Maturity of the Notes, the Permitted Refinancing Indebtedness has a Stated Maturity no earlier than the Stated Maturity of the Indebtedness being refinanced or (ii) if the Stated Maturity of the Indebtedness being refinanced is later than the Stated Maturity of the Notes, the Permitted Refinancing Indebtedness has a Stated Maturity at least 91 days later than the Stated Maturity of the Notes.

"*Permitted Tax Lease*" means a sale and leaseback transaction consisting of a "payment in lieu of taxes" program or any similar structure (including leases, sale-leasebacks, etc.) primarily intended to provide tax benefits (and not primarily intended to create Indebtedness).

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

"*Plan Amendment Orders*" shall have the meaning assigned to such term in the definition of GenOn Confirmation Order.

"*Plans of Reorganization*" means collectively the GenOn Plan of Reorganization and the REMA Plan of Reorganization.

"*Scheduled Excluded Assets*" shall have the meaning set forth in the Collateral Agreement.

"*Potrero Escrow*" means the amounts to be received by the Company or its Subsidiaries pursuant to that Escrow Holdback Agreement dated as of September 26, 2016 by and among NRG Potrero, LLC, California Barrel Company LLC and Fidelity National Title Company, as may be amended, amended and restated, supplemented or otherwise modified from time to time

"*Priority Lien Obligations*" has the meaning given such term in the Collateral Trust Agreement.

"*Private Placement Legend*" means the legend set forth in Section 2.07(g)(1) hereof that is required to be placed on Notes issued under this Indenture as a result of such Notes being transferred by an Affiliate of the Company, except where otherwise permitted by the provisions of this Indenture.

"*Pro Forma Cost Savings*" shall mean, without duplication, with respect to any period, reductions in costs and related adjustments that have been actually realized or are projected by the Company's Chief Financial Officer in good faith to result from reasonably identifiable and factually supportable actions or events, but only if such reductions in costs and related adjustments are so projected by the Company to be

realized during the consecutive four-quarter period commencing after the transaction giving rise to such calculation.

"*Prudent Industry Practice*" means those practices and methods as are commonly used or adopted by Persons in the Permitted Business in the United States in connection with the conduct of the business of such industry, in each case as such practices or methods may evolve from time to time, consistent in all material respects with all applicable legal requirements.

"*PSEG*" means, collectively, the PSEG Equity Investors, the Owner Lessors and the Owner Participants, or one or more of the PSEG Equity Investors, Owner Lessors and/or Owner Participants, as the context may require.

"*PSEG Equity Investors*" means PSEG Resources L.L.C., PSEGR PJM, LLC, PSEGR Conemaugh, LLC, PSEGR Keystone, LLC, PSEGR Shawville, LLC, and their respective successors and permitted assigns.

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

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

"*Refinancing Liens*" means Liens granted in connection with extending, renewing, replacing or refinancing in whole or in part any Indebtedness secured by Liens described in clauses (1) through (7), (18), (20), (21) and (23) of Section 4.12 hereof; *provided* that (a) if the original Lien was required to be subordinated to the Liens securing the Notes when initially incurred, such new Lien shall be subordinated to at least the same extent, and (b) Refinancing Liens do not (i) extend to property or assets other than property or assets of the type that were subject to the original Lien or (ii) secure Indebtedness having a principal amount in excess of the amount of Indebtedness being extended, renewed, replaced or refinanced (plus all accrued interest on the Indebtedness and the amount of all expenses and premiums incurred in connection therewith).

"*Receivables Collateral*" means the "Senior Collateral" as defined in the Tenaska Intercreditor Agreement.

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

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

"*Release*" shall mean any placing, spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dumping, disposing or depositing in, into, onto or through the Environment.

"*REMA*" means NRG REMA LLC, a Delaware limited liability company, or any successor thereto.

"*REMA Confirmation Order*" means *Order Confirming the Debtor's Disclosure Statement for and Confirming the Joint Prepackaged Chapter 11 Plan of Reorganization of NRG REMA LLC. and Its Debtor Affiliates*, dated November 1, 2018 [Docket No. 1955].

"*REMA Plan of Reorganization*" means the *Joint Prepackaged Chapter 11 Plan of Reorganization of NRG REMA LLC and Its Debtor Affiliates* [Docket No. 1867].

"*REMA Security Agreement*" shall have the meaning assigned to such term in the definition of the Tenaska Transaction Document.

"*Responsible Officer*" of a Person means the chief executive officer, chief financial officer, treasurer or general counsel of such Person.

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

"*Restricted Definitive Security*" means a Definitive Security bearing the Private Placement Legend.

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

"*Restricted Global Security*" means a Global Security bearing the Private Placement Legend.

"*Restricted Investment*" means an Investment other than a Permitted Investment.

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

"*Restricted Subsidiary*" means any Subsidiary of the Company (including the Co-Issuer) that is not an Unrestricted Subsidiary.

"*Reuters Screen LIBOR01 Page*" means the display designated as the Reuters Screen LIBOR01 Page, or such other screen as may replace the Reuters Screen LIBOR01 Page on the service or successor service as may be nominated by the British Bankers' Association for the purpose of displaying the London interbank offered rates for United States dollar deposits.

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

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

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

"*S&P*" means Standard & Poor's Ratings Group or any successor entity.

"*SEC*" means the Securities and Exchange Commission.

"*Securities*" means all Notes authenticated and delivered under this Indenture.

"*Securities Act*" means the Securities Act of 1933, as amended.

"*Seward Inventory Payments*" means the payments due to NRG Wholesale Generation LP and/or its affiliates pursuant to (i) that certain Asset Purchase Agreement, dated as of November 24, 2015, among NRG Wholesale Generation LP, Seward Generation, LLC, and the other parties thereto and (ii) that certain Inventory Management and Purchase and Sale Agreement, dated as of February 2, 2016, among NRG Wholesale Generation LP, Seward Generation, LLC, and the other parties thereto, in each case, as may be amended, amended and restated, supplemented or otherwise modified from time to time.

"*Shawville Facility*" means collectively (i) that certain Facility Lease Agreement, dated as of August 24, 2000, by and between NRG REMA LLC, a Delaware limited liability company, as successor to Reliant Energy Mid-Atlantic Power Holdings, LLC, as Facility Lessee, and Shawville Lessor Genco LLC, a Delaware limited liability company, as Owner Lessor and (ii) that certain Participation Agreement, dated as of August 24, 2000, as amended by that certain First Amendment to Participation Agreement dated as of December 1, 2001, and as further amended by that certain Second Amendment to Participation Agreement dated as of June 18, 2003, by and between NRG REMA LLC, a Delaware limited liability company, as successor to Reliant Energy Mid-Atlantic Power Holdings, LLC, as Facility Lessee, POSER Shawville Generation, LLC, a Delaware limited liability company, as Owner Participant, Shawville Lessor Geno LLC, a Delaware limited liability company, as Owner Lessor, and Wilmington Trust Company, a Delaware banking corporation, in each case, as may be amended, amended and restated, supplemented or otherwise modified from time to time.

"*Shawville Pipeline Agreement*" means that certain Pipeline Assignment and Pledge and Security Agreement, dated on or about the Issue Date, by and between REMA, certain Affiliates thereof party thereto and the other parties thereto, as may be amended, amended and restated, supplemented or otherwise modified from time to time.

"*Shawville Qualifying Credit Support*" means (a) cash and Cash Equivalents held in favor of Shawville Lessor Genco LLC securing REMA's obligation to pay scheduled rent under the Shawville Facility, (b) one or more irrevocable unconditional standby letters of credit issued in favor of Shawville Lessor Genco LLC securing REMA's obligation to pay scheduled rent pursuant to the terms of the Shawville Facility and (c) one or more surety bonds issued in favor of Shawville Lessor Genco LLC securing REMA's obligation to pay scheduled rent under the Shawville Facility.

"*Significant Subsidiary*" means any Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such Regulation is in effect on the Issue Date and shall in any event include the Core Collateral Subsidiaries; *provided* that clause (3) of such definition will be disregarded.

"*Specified Asset Sale*" means (a) the disposition of any of the California subsidiaries' assets, the Elrama, Lovett, Osceola and Reeves County Plants, immaterial property located in Portland and Heller Town and the Choctaw Assets, (b) the receipt of payments or remittance of funds resulting from the Canal Escrow, Canal Excess Fuel Payments, Seward Inventory Payments, Potrero Escrow or CAISO Settlement and (c) the disposition of any Capital Stock of any Unrestricted Subsidiary.

"*Stated Maturity*" means, with respect to any installment of interest or principal on any series of Indebtedness, the date on which the payment of interest or principal was scheduled to be paid in the documentation governing such Indebtedness as of the first date it was incurred in compliance with the terms of this Indenture, and will not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

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

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

(2) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

"*Subsidiary Guarantee*" means the Guarantee by each Guarantor of the Issuers' obligations under this Indenture and on the Notes, executed pursuant to the provisions of this Indenture.

"*Swap Agreement*" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; *provided* that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of GenOn or its Subsidiaries shall be a "Swap Agreement."

"*Tenaska*" means Tenaska Power Services Co.

"*Tenaska Energy Management Agreements*" means, collectively, (a) the Energy Management Agreement, dated as of May 23, 2018 by and between Tenaska and GenOn Energy Management, LLC and (b) the Energy Management Agreement, dated as of May 23, 2018 by and between Tenaska and NRG REMA LLC, in each case, as may be amended, amended and restated, supplemented or otherwise modified from time to time

"*Tenaska Intercreditor Agreement*" means the Shared Collateral Intercreditor Agreement among the Collateral Trustee, Tenaska Power Services Co., the Issuers, the guarantors party thereto and the other parties from time to time party thereto, to be entered into on the Issue Date, as may be amended, restated, amended and restated, supplemented, replaced or otherwise modified from time to time.

"*Tenaska Secured Obligations*" means "Secured Obligations" as such term is defined in each of the GenOn Security Agreement and REMA Security Agreement, in each case, as in effect on the date hereof (or as in effect from time to time upon giving effect to any amendments, amendments restatements, modifications or supplements thereto approved by the Priority Lien Agent). For the avoidance of doubt, it is agreed and understood that the "Senior Obligations" are obligations that arise from Tenaska's provision of fuel procurement, energy management and related services to the Borrower and other Guarantors pursuant to the Tenaska Energy Management Agreements, Tenaska Transaction Documents and ancillary documentation and are not funded indebtedness obligations.

"*Tenaska Transaction Documents*" means (a) the Depositary Agreement, dated as of August 2, 2018, among GenOn Energy Management, LLC, Tenaska and the Bank of New York Mellon, (b) the Depositary Agreement, dated as of May 23, 2018, among NRG REMA LLC, Tenaska and the Bank of New York Mellon, (c) the Security Agreement, dated as of May 23, 2018, by and among GenOn Energy Management, LLC and Tenaska (the "*GenOn Security Agreement*"), and (d) the Security Agreement, dated as of May 23, 2018, by and among NRG REMA LLC and Tenaska (the "*REMA Security Agreement*"), in each case, as may be amended, amended and restated, supplemented or otherwise modified from time to time.

"*Test Period*" means, for any determination hereunder, the four consecutive fiscal quarters of GenOn then last ended for which financial statements pursuant to Section 4.03 have been furnished (or were required to be furnished) to Holders pursuant thereto (or before the first furnishing of such financial statements, the most recent period of four consecutive fiscal quarters for which financial statements are available, as determined in good faith by GenOn).

"*Total Net Secured Leverage Ratio*" means, as of any date of determination, (1) GenOn's Consolidated Total Indebtedness as of the applicable ratio calculation date that is secured by a lien, minus Cash Equivalents included on the balance sheet of the Company as of the end of the most recent fiscal quarter ended prior to such date for which internal financial statements are available, to (2) GenOn's EBITDA for the most recently ended Test Period.

"*Trust Indenture Act*" means the Trust Indenture Act of 1939, as amended, as in effect on the date of this Indenture; *provided* that if the Trust Indenture Act of 1939 is amended after the date hereof, the term "Trust Indenture Act" shall mean, to the extent required by such amendment, the Trust Indenture Act of 1939, as so amended.

"*Trust Officer*" means, with respect to the Trustee, any officer assigned to the Corporate Trust Division - Corporate Trust Services (or any successor division or unit) of the Trustee located at the Corporate Trust Office of the Trustee, who shall have direct responsibility for the administration of this Indenture, and, for the purposes of Section 7.01(c)(2) hereof, shall also include any other officer of the Trustee to whom any corporate trust matter is referred because of such officer's knowledge of and familiarity with the particular subject.

"*Trustee*" means Wells Fargo Bank, National Association, as trustee, and any and all successors thereto.

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

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

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

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

"*Unrestricted Subsidiary*" means (1) GenMA and (2) any Subsidiary of the Company (other than the Co-Issuer or any Subsidiary that constitutes or owns Core Collateral) that is designated by the Company as an Unrestricted Subsidiary pursuant to a certificate executed by a Responsible Officer of the Company, but only to the extent that such Subsidiary upon such designation (i) has no Indebtedness other than Non-Recourse Debt; (ii) except as permitted by Section 4.11 hereof, is not party to any agreement, contract, arrangement or understanding with the Company or any Restricted Subsidiary unless the terms of any such agreement, contract, arrangement or understanding are no less favorable to the Company or such Restricted Subsidiary than those that might be obtained at the time from Persons who are not Affiliates of the Company; (iii) is a Person with respect to which neither the Company nor any of its Restricted Subsidiaries has any direct or indirect obligation (a) to subscribe for additional Equity Interests or (b) to maintain or preserve such Person's financial condition or to cause such Person to achieve any specified levels of operating results except as otherwise permitted by this Indenture; and (iv) has not guaranteed or otherwise directly or indirectly provided credit support for any Indebtedness of the Company or any of its Restricted Subsidiaries except as otherwise permitted by this Indenture. Any designation of a Subsidiary of the Company as an Unrestricted Subsidiary will be evidenced to the Trustee by delivering to the Trustee a certified copy of the certificate executed by a Responsible Officer of the Company giving effect to such designation and certifying that such designation complied with the conditions described under Section 4.19 hereof and was permitted by Section 4.07 hereof. If, at any time,

any Unrestricted Subsidiary fails to meet the requirements as an Unrestricted Subsidiary, it will thereafter cease to be an Unrestricted Subsidiary for purposes of this Indenture and (x) any Indebtedness and Liens of such Subsidiary will be deemed to be incurred by a Restricted Subsidiary as of such date and, if such Indebtedness and Liens are not permitted to be incurred as of such date under Section 4.09 and Section 4.12 hereof, the Company will be in default of such covenants and (y) any assets of such Subsidiary will be deemed to be held by a Restricted Subsidiary as of such date. The Company may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that such designation will be deemed to be an incurrence of Indebtedness and Liens by a Restricted Subsidiary of any outstanding Indebtedness of such Unrestricted Subsidiary and such designation will only be permitted if (A) such Indebtedness and Liens are permitted under Section 4.09 and Section 4.12 hereof, calculated on a pro forma basis as if such designation had occurred at the beginning of the Test Period and (B) no Default or Event of Default would be in existence following such designation.

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

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

"*Weighted Average Life to Maturity*" means, when applied to any Indebtedness at any date, the number of years obtained by dividing:

(1) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect of the Indebtedness, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by

(2) the then–outstanding principal amount of such Indebtedness.

Section 1.02 *Other Definitions.*

For purposes of the Notes, the following terms will have the meanings set forth in this Section 1.02.

| Term | Defined in Section |
|---|---|
| "*Affiliate Transaction*" | 4.11 |
| "*Authentication Order*" | 2.02 |
| "*Change of Control Offer*" | 4.14 |
| "*Change of Control Payment*" | 4.14 |
| "*Change of Control Payment Date*" | 4.14 |
| "*Covenant Defeasance*" | 8.03 |
| "*DTC*" | 2.03 |
| "*Event of Default*" | 6.01 |
| "*Legal Defeasance*" | 8.02 |
| "*Paying Agent*" | 2.03 |
| "*Payment Default*" | 6.01 |
| "*Permitted Debt*" | 4.09 |
| "*Registrar*" | 2.03 |

Section 1.03 *[Reserved]*.

Section 1.04 *Rules of Construction.*

Unless the context otherwise requires:

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

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

(3) "or" is not exclusive;

(4) "including" is not limiting;

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

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

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

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

## ARTICLE 2
## THE ISSUANCE OF NOTES

Section 2.01 *Form and Dating of Notes.*

(a) *The Notes*. The Notes shall be issued in registered global form without interest coupons. The Notes and the Trustee's certificate of authentication shall be substantially in the form of Exhibit A hereto. The Notes may have notations, legends or endorsements required by law, stock exchange rule or usage. The Issuers shall furnish any such notations, legends or endorsements to the Trustee in writing. Each Note shall be dated the date of its authentication. The Notes shall be in minimum denominations of $1.00 and integral multiples of $1.00 in excess thereof.

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

(b) *Global Securities*. Notes issued in global form shall be substantially in the form of Exhibit A attached hereto (including the Global Legend thereon and the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Notes issued in definitive form shall be substantially in the form of Exhibit A attached hereto (but without the Global Legend thereon and without the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Each Global Security shall represent such of the outstanding Securities as will be specified therein and each shall provide that it represents the aggregate principal amount of outstanding Securities from time to time as reflected in the records of the Trustee and that the aggregate principal amount of outstanding Securities represented thereby may from

time to time be reduced or increased, as appropriate, to reflect exchanges and redemptions. The Trustee's records shall be noted to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Securities represented thereby, in accordance with instructions given by the Holder thereof as required by Section 2.06 hereof.

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

Section 2.02 *Execution and Authentication.*

At least one Officer of each of the Issuers must sign the Securities for the Issuers by manual or facsimile signature.

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

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

The Trustee shall, upon receipt of a written order of the Issuers signed by an Officer of each of the Issuers (an "*Authentication Order*"), authenticate Securities for original issue under this Indenture. The aggregate principal amount of Securities outstanding at any time may not exceed the aggregate principal amount of Securities authorized for issuance by the Issuers pursuant to one or more Authentication Orders, except as provided in Section 2.09 hereof.

The Trustee may appoint an authenticating agent acceptable to the Issuers to authenticate Securities. An authenticating agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with Holders, the Issuers or an Affiliate of the Issuers.

Section 2.03 *Registrar and Paying Agent.*

The Issuers will maintain an office or agency with respect to the Notes issued pursuant to this Indenture, where such securities may be presented for registration of transfer or for exchange ("*Registrar*") and an office or agency where such Securities may be presented for payment ("*Paying Agent*"). The Registrar will keep a register of all such Securities and of their transfer and exchange. The Issuers may appoint one or more co-registrars and one or more additional paying agents. The term "Registrar" includes any co-registrar and the term "Paying Agent" includes any additional paying agent. The Issuers may change any Paying Agent or Registrar without notice to any Holder. The Issuers will notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Issuers fail to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. The Issuers or any of their respective Subsidiaries may act as Paying Agent or Registrar.

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

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

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

The Issuers will require each Paying Agent other than the Trustee to agree in writing that the Paying Agent will hold in trust for the benefit of Holders of the Securities for which it is acting as Paying Agent or the Trustee all money held by the Paying Agent for the payment of principal of, premium, if any, and interest on, the Notes, and will notify the Trustee of any default by the Issuers in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Issuers at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Issuers or their respective Subsidiary) will have no further liability for the money. If either of the Issuers or their respective Subsidiary acts as Paying Agent, it will segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent.

Section 2.05 *[Reserved]*.

Section 2.06 *Holder Lists*.

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders. If the Trustee is not the Registrar, the Issuers shall furnish to the Trustee at least seven Business Days before each interest payment date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders. The Trustee shall otherwise comply with Section 312(a) of the Trust Indenture Act. Holders of Notes may communicate pursuant to Section 312(b) of the Trust Indenture Act with other holders of Notes with respect to their rights under this Indenture or the Notes and the Trustee will comply with its obligations under said Section 312(b). The Issuers, the Trustee, the Registrar and other covered persons shall have the protection of Section 312(c) of the Trust Indenture Act.

Section 2.07 *Transfer and Exchange*.

(a) *Transfer and Exchange of Global Securities*. A Global Security may not be transferred except as a whole by the Depositary to a nominee of the Depositary, by a nominee of the Depositary to the Depositary or to another nominee of the Depositary, or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary. All Global Securities shall be exchanged by the Issuers for Definitive Securities if:

(1) the Issuers deliver to the Trustee notice from the Depositary that it is unwilling or unable to continue to act as Depositary or that it is no longer a clearing agency registered under the Exchange Act and, in either case, a successor Depositary is not appointed by the Issuers within 120 days after the date of such notice from the Depositary;

(2) the Issuers in their sole discretion determine that the Global Securities (in whole but not in part) should be exchanged for Definitive Securities and deliver a written notice to such effect to the Trustee; or

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

Upon the occurrence of any of the preceding events in clause (1), (2) or (3) above, Definitive Securities shall be issued in such names and in any approved denominations as the Depositary shall instruct the Trustee. Global Securities also may be exchanged or replaced, in whole or in part, as provided in Sections 2.09 and 2.12 hereof. Every Security authenticated and delivered in exchange for, or in lieu of, a Global Security or any portion thereof, pursuant to this Section 2.07 or Section 2.09 or 2.12 hereof, shall be authenticated and delivered in the form of, and shall be, a Global Security. A Global Security may not be exchanged for another Security other than as provided in this Section 2.07(a) however, beneficial interests in a Global Security may be transferred and exchanged as provided in Sections 2.07(b) and (c) hereof.

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

(1) *Transfer of Beneficial Interests in the Same Global Security*. Beneficial interests in any Restricted Global Security may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Restricted Global Security in accordance with the transfer restrictions set forth in the Private Placement Legend; *provided, however*, that prior to the expiration of the Restricted Period, transfers of beneficial interests in the applicable Regulation S Global Security may not be made to a U.S. Person or for the account or benefit of a U.S. Person. Beneficial interests in any Unrestricted Global Security may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global Security. Any person who transfers a beneficial interest in the Regulation S Global Security prior to the expiration of the Restricted Period shall be deemed to have certified that such transfer was not made to a U.S. person or for the account or benefit of a U.S. person. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.07(b)(1).

(2) *All Other Transfers and Exchanges of Beneficial Interests in Global Securities.* In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.07(b)(1) above, the transferor of such beneficial interest must deliver to the Registrar either:

(A) both:

(i) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to credit or cause to be credited a beneficial interest in another Global Security in an amount equal to the beneficial interest to be transferred or exchanged; and

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

(B) both:

(i) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing

the Depositary to cause to be issued a Definitive Security in an amount equal to the beneficial interest to be transferred or exchanged; and

(ii) instructions given by the Depositary to the Registrar containing information regarding the Person in whose name such Definitive Security shall be registered to effect the transfer or exchange referred to in clause (1) above.

Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Securities contained in this Indenture and the Notes or otherwise applicable under the Securities Act, the Trustee shall adjust the principal amount of the relevant Global Security(ies) pursuant to Section 2.07(h) hereof.

(3) *Transfer of Beneficial Interests to Another Restricted Global Security.* A beneficial interest in any Restricted Global Security may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Restricted Global Security if the transfer complies with the requirements of Section 2.07(b)(2) above and the Registrar receives the following:

(A) if the transferee will take delivery in the form of a beneficial interest in the 144A Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof; and

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

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

(4) *Transfer and Exchange of Beneficial Interests in a Restricted Global* Security *for Beneficial Interests in an Unrestricted Global* Security. A beneficial interest in any Restricted Global Security may be exchanged by any holder thereof for a beneficial interest in an Unrestricted Global Security or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Security if the exchange or transfer complies with the requirements of Section 2.076(b)(2) above and the Registrar receives the following:

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

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

and, in each such case set forth in this clause (4), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

Beneficial interests in an Unrestricted Global Security cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, a beneficial interest in a Restricted Global Security.

(c) *Transfer or Exchange of Beneficial Interests in Global Securities for Definitive Securities.* Transfers or exchanges of beneficial interests in Global Securities for Definitive Securities shall in each case be subject to the satisfaction of any applicable conditions set forth in Section 2.07(b)(2) hereof, and to the requirements set forth below in this Section 2.07(c).

(1) *Beneficial Interests in Restricted Global Securities to Restricted Definitive Securities.* If any holder of a beneficial interest in a Restricted Global Security proposes to exchange such beneficial interest for a Restricted Definitive Security or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Restricted Definitive Security, then, upon receipt by the Registrar of the following documentation:

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

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

(C) if such beneficial interest is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (2) thereof;

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

(E) if such beneficial interest is being transferred to an Accredited Investor in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (B) through (D) above, a certificate to the effect set forth in Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable;

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

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

the Trustee shall cause the aggregate principal amount of the applicable Global Security to be reduced accordingly pursuant to Section 2.07(h) hereof, and the Company shall execute and, upon receipt of an Authentication Order, the Trustee shall authenticate and deliver to the Person designated in the instructions a Definitive Security in the appropriate principal amount. Any Definitive Security issued in exchange for a beneficial interest in a Restricted Global Security pursuant to this Section 2.07(c) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from the Depositary and the Participant or Indirect Participant. The Trustee shall deliver such Definitive Securities to the Persons in whose names such Securities are so registered. Any Definitive Security issued in exchange for a beneficial interest in a Restricted Global Security pursuant to this Section 2.07(c)(1) shall bear the Private Placement Legend and shall be subject to all restrictions on transfer contained therein.

(2) *Beneficial Interests in Restricted Global Securities to Unrestricted Definitive Securities.* A holder of a beneficial interest in a Restricted Global Security may exchange such beneficial interest for an Unrestricted Definitive Security or may transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Security only if the Registrar receives the following:

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

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

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

(3) *Beneficial Interests in Global Securities to Definitive Securities.* If any holder of a beneficial interest in a Global Security proposes to exchange such beneficial interest for a Definitive Security or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Definitive Security, then, upon satisfaction of the conditions set forth in Section 2.07(b)(2) hereof, the Trustee shall cause the aggregate principal amount of the applicable Global Security to be reduced accordingly pursuant to Section 2.07(h) hereof, and the Issuers shall execute and the Trustee shall authenticate and deliver to the Person designated in the instructions a Definitive Security in the appropriate principal amount. Any Definitive Security issued in exchange for a beneficial interest pursuant to this Section 2.07(c) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest requests through instructions to the Registrar from or through the Depositary and the

Participant or Indirect Participant. The Trustee shall deliver such Definitive Securities to the Persons in whose names such Securities are so registered.

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

(1) *Restricted Definitive Securities to Beneficial Interests in Restricted Global Securities.* If any Holder of a Restricted Definitive Security proposes to exchange such Security for a beneficial interest in a Restricted Global Security or to transfer such Restricted Definitive Securities to a Person who takes delivery thereof in the form of a beneficial interest in a Restricted Global Security, then, upon receipt by the Registrar of the following documentation:

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

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

(C) if such Restricted Definitive Security is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (2) thereof;

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

(E) if such Restricted Definitive Security is being transferred to an Accredited Investor in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (B) through (D) above, a certificate to the effect set forth in Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable;

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

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

the Trustee will cancel the Restricted Definitive Security, increase or cause to be increased the aggregate principal amount of, in the case of clause (A) above, the appropriate Restricted Global Security, in the case of clause (B) above, the 144A Global Note, in the case of clause (C) above, the Regulation S Global Security, and in all other cases, the AI Global Security.

(2) *Restricted Definitive Securities to Beneficial Interests in Unrestricted Global Securities.* A Holder of a Restricted Definitive Security may exchange such Security for a

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

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

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

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

Upon satisfaction of the conditions of any of the subparagraphs in this Section 2.07(d)(2), the Trustee will cancel the Restricted Definitive Securities and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Security.

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

(e) *Transfer and Exchange of Definitive Securities for Definitive Securities.* Upon request by a Holder of Definitive Securities and such Holder's compliance with the provisions of this Section 2.07(e), the Registrar shall register the transfer or exchange of Definitive Securities. Prior to such registration of transfer or exchange, the requesting Holder must present or surrender to the Registrar the Definitive Securities duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or by its attorney, duly authorized in writing. In addition, the requesting Holder must provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.07(e).

(1) *Definitive Securities to Definitive Securities.* A Holder of Definitive Securities may transfer such Securities to a Person who takes delivery thereof in the form of a Definitive Security. Upon receipt of a request to register such a transfer, the Registrar shall register the Definitive Securities pursuant to the instructions from the Holder thereof.

(f) *[Reserved]*.

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

(1) *Private Placement Legend*.

(A) Except as permitted by clause (B) below, each Restricted Global Note and each Restricted Definitive Note (and all Notes issued in exchange therefor or substitution thereof) shall bear the legend in substantially the following form:

"THIS NOTE HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT AS SET FORTH BELOW. BY ITS ACQUISITION HEREOF, THE HOLDER (1) REPRESENTS THAT (A) IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) OR (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING THIS NOTE IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH REGULATION S UNDER THE SECURITIES ACT, (2) AGREES THAT IT WILL NOT RESELL OR OTHERWISE TRANSFER THIS NOTE EXCEPT (A) TO THE ISSUER OR ANY SUBSIDIARY THEREOF, (B) INSIDE THE UNITED STATES TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 903 OR RULE 904 UNDER THE SECURITIES ACT, (D) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), (E) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (AND BASED UPON AN OPINION OF COUNSEL IF THE ISSUER SO REQUESTS), (F) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (g) TO AN "ACCREDITED INVESTOR" WITHIN THE MEANING OF RULE 501(A)(1), (2), (3), (5), (6) OR (7) UNDER THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS NOTE IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. AS USED HEREIN, THE TERMS "OFFSHORE TRANSACTION," "UNITED STATES" AND "U.S. PERSON" HAVE THE MEANING GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT."

(B) Notwithstanding the foregoing, any Global Note or Definitive Note issued pursuant to subparagraphs (b)(4), (c)(2), (c)(3), (d)(2), (d)(3), (e)(2), (e)(3) or (f) of this Section 2.07 (and all Notes issued in exchange therefor or substitution thereof) will not bear the Private Placement Legend.

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

"THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (1) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 2.07 OF THE INDENTURE, (2) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.07(a) OF THE INDENTURE, (3) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.13 OF THE INDENTURE AND (4)

THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE ISSUERS.

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

THE FOLLOWING INFORMATION IS SUPPLIED SOLELY FOR U.S. FEDERAL INCOME TAX PURPOSES. THIS NOTE MAY BE ISSUED WITH "ORIGINAL ISSUE DISCOUNT" (WITHIN THE MEANING OF SECTION 1273 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED) OR "OID", AND THIS LEGEND IS REQUIRED BY SECTION 1275(C) OF THE CODE. HOLDERS MAY OBTAIN INFORMATION REGARDING THE AMOUNT OF OID, THE ISSUE PRICE, THE ISSUE DATE AND THE YIELD TO MATURITY RELATING TO THE NOTES BY CONTACTING THE ISSUERS AT GENON ENERGY, INC., 1601 BRYAN STREET, SUITE 2200, DALLAS, TEXAS 75201, ATTENTION: CHIEF FINANCIAL OFFICER."

(h) *Cancellation and/or Adjustment of Global Securities.* At such time as all beneficial interests in a particular Global Security have been exchanged for Definitive Securities or a particular Global Security has been redeemed, repurchased or canceled in whole and not in part, each such Global Security shall be returned to or retained and canceled by the Trustee in accordance with Section 2.13 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Security is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Security or for Definitive Securities, the principal amount of Securities represented by such Global Security will be reduced accordingly and a notation will be made on the records maintained by the Trustee or by the Depositary at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Security, such other Global Security will be increased accordingly and a notation will be made on the records maintained by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

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

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

(2) No service charge shall be made to a Holder of a beneficial interest in a Global Security or to a Holder of a Definitive Security for any registration of transfer or exchange, but the Issuers may require payment of a sum sufficient to cover any transfer tax or similar

governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.12, 3.06, 4.14 and 9.05 hereof).

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

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

(5) Neither the Registrar nor the Issuers shall be required:

(A) to issue, to register the transfer of or to exchange any Securities during a period beginning at the opening of business 15 days before the day of any selection of Securities for redemption and ending at the close of business on the day of selection;

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

(C) to register the transfer of or to exchange a Security between a record date and the next succeeding interest payment date.

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

(7) The Trustee shall authenticate Global Securities and Definitive Securities in accordance with the provisions of Section 2.02 hereof.

(8) All orders, certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 2.07 to effect a registration of transfer or exchange may be submitted by facsimile or email in .pdf format.

(9) None of the Trustee, the Paying Agent or the Registrar shall have any obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among Participants or Indirect Participants in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(10) None of the Trustee, the Paying Agent or the Registrar shall have any responsibility or obligation to any Beneficial Owner in a Global Security, any Participant,

Indirect Participant or other Person with respect to the accuracy of the records of the Depositary or its nominee or of any Participant, with respect to any ownership interest in the Securities or with respect to the delivery to any Participant, Indirect Participant, Beneficial Owner or other Person (other than the Depositary) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such Securities. All notices and communications to be given to the Holders and all payments to be made to Holders under the Securities and this Indenture shall be given or made only to or upon the order of the registered holders (which shall be the Depositary or its nominee in the case of the Global Security). The rights of Beneficial Owners in the Global Security shall be exercised only through the Depositary subject to the applicable procedures. The Trustee, the Paying Agent and the Registrar shall be entitled to rely and shall be fully protected in relying upon information furnished by the Depositary with respect to its Participants, Indirect Participants members, participants and any Beneficial Owners. The Trustee, the Paying Agent and the Security Registrar shall be entitled to deal with the Depositary, and any nominee thereof, that is the registered holder of any Global Security for all purposes of this Indenture relating to such Global Security (including the payment of principal, premium, if any, and interest and additional amounts, if any, and the giving of instructions or directions by or to the owner or holder of a Beneficial Ownership interest in such Global Security) as the sole holder of such Global Security and shall have no obligations to the Beneficial Owners thereof. None of the Trustee, the Paying Agent or the Security Registrar shall have any responsibility or liability for any acts or omissions of the Depositary with respect to such Global Security, for the records of any such depositary, including records in respect of Beneficial Ownership interests in respect of any such Global Security, for any transactions between the Depositary and any Agent Member or between or among the Depositary, any such Agent Member and/or any holder or owner of a Beneficial Ownership interest in such Global Security, or for any transfers of beneficial interests in any such Global Security.

(11) Notwithstanding the foregoing, with respect to any Global Security, nothing herein shall prevent the Issuers, the Trustee, or any agent of the Issuers or the Trustee from giving effect to any written certification, proxy or other authorization furnished by any Depositary (or its nominee), as a Holder, with respect to such Global Security or shall impair, as between such Depositary and owners of beneficial interests in such Global Security, the operation of customary practices governing the exercise of the rights of such Depositary (or its nominee) as Holder of such Global Security.

Section 2.08 *[Reserved]*.

Section 2.09 *Replacement Securities.*

If any mutilated Security is surrendered to the Trustee or the Issuers and the Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Security, the Issuers will issue and the Trustee, upon receipt of an Authentication Order, will authenticate a replacement Security if the Trustee's requirements are met. If required by the Trustee or the Issuers, an indemnity bond must be supplied by the Holder that is sufficient in the judgment of the Trustee and the Issuers to protect the Issuers, the Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Security is replaced. The Issuers may charge for their expenses in replacing a Security.

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

Section 2.10 *Outstanding Securities.*

The Securities outstanding at any time are all the Notes authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, those reductions in the interest in a Global Security effected by the Trustee in accordance with the provisions hereof, and those described in this Section 2.10 as not outstanding. A Security does not cease to be outstanding because the Issuers or an Affiliate of the Issuers holds the Security.

If a Security is replaced pursuant to Section 2.09 hereof, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Security is held by a protected purchaser.

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

If the Paying Agent (other than the Issuers, a Subsidiary or an Affiliate of any thereof) holds, by 10 a.m. Eastern Time on a redemption date or maturity date, money sufficient to pay Securities payable on that date, then on and after that date such Securities will be deemed to be no longer outstanding and will cease to accrue interest.

Section 2.11 *[Reserved].*

Section 2.12 *Temporary Securities.*

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

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

Section 2.13 *Cancellation.*

The Issuers at any time may deliver Securities to the Trustee for cancellation. The Registrar and Paying Agent will forward to the Trustee any Securities surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else will cancel all Securities surrendered for registration of transfer, exchange, payment, replacement or cancellation and will dispose of canceled Securities (subject to the record retention requirements of the Trustee and the Exchange Act) in accordance with its customary procedures. The Issuers may not issue new Securities to replace Securities that it has paid or that have been delivered to the Trustee for cancellation.

Section 2.14 *Defaulted Interest.*

If the Issuers default in a payment of interest on the Notes, it will pay the defaulted interest in any lawful manner plus, to the extent lawful, interest payable on the defaulted interest, to the Persons who are Holders on a subsequent special record date, in each case at the rate provided in the Notes and in Section 4.01 hereof. The Issuers will notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Note and the date of the proposed payment. The Issuers will fix or cause to be fixed each such special record date and payment date. At least 10 days before the special record date, the Issuers (or, upon the written request of the Issuers, the Trustee in the name and at the expense of the Issuers) will mail

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

Section 2.15 *CUSIP Numbers.*

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

## ARTICLE 3
## REDEMPTION AND PREPAYMENT

For purposes of the Notes, Article 3 hereof provides the terms upon which redemption and prepayment may occur.

Section 3.01 *Notices to Trustee.*

If the Issuers elect to redeem Notes pursuant to the optional redemption provisions of Section 3.07 hereof, they must furnish to the Trustee, at least three Business Days prior to the date on which the Trustee will send the redemption notice, an Officer's Certificate setting forth:

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

(2) the redemption date;

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

(4) the redemption price.

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

If fewer than all of the Notes are to be redeemed at any time, the Trustee shall select Notes for redemption pro rata or by lot (subject to the customary procedures of the Trustee and DTC, as applicable) among all outstanding Notes or, if the Notes are listed on any national securities exchange, in compliance with the requirements of the principal national securities exchange on which the Notes are listed, in either case, unless otherwise required by law or depositary requirements.

The Trustee shall promptly notify the Issuers in writing of the Notes selected for redemption and, in the case of any Note selected for partial redemption, the principal amount thereof to be redeemed. Notes and portions of Notes selected shall be in amounts of $1.00 or whole multiples of $1.00 in excess thereof; except that if all of the Notes of a Holder are to be redeemed or purchased, the entire outstanding amount of Notes held by such Holder, even if not a multiple of $1.00, shall be redeemed or purchased. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption also apply to portions of Notes called for redemption.

No Notes of $1.00 or less shall be redeemed in part. Notices of redemption shall be delivered by first-class mail or electronically for Notes held in book entry form at least 10 but not more than 60 days before the redemption date to each Holder of Notes to be redeemed at its registered address, except that redemption notices may be delivered more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture.

If any Note is to be redeemed in part only, the notice of redemption that relates to that Note shall state the portion of the principal amount of that Note that is to be redeemed. A new Note in principal amount equal to the unredeemed portion of the original Note shall be issued in the name of the Holder of Notes upon cancellation of the original Note. Notes called for redemption become due on the date fixed for redemption. On and after the redemption date, interest ceases to accrue on Notes or portions of them called for redemption.

Section 3.03 *Notice of Redemption.*

At least 10 days but not more than 60 days before a redemption date, the Issuers shall mail or cause to be delivered, by first-class mail or electronically, a notice of redemption to each Holder whose Notes are to be redeemed at its registered address, except that redemption notices may be delivered more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture pursuant to Articles 8 or 11 hereof.

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

(1) the redemption date;

(2) the redemption price;

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

(4) that Notes called for redemption must be surrendered to the Paying Agent or in accordance with the Applicable Procedures of the Depositary, as applicable, to collect the redemption price;

(5) if to be surrendered to the Paying Agent, the name and address of the Paying Agent;

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

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

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

At the Issuers' request, the Trustee shall give the notice of redemption in the Issuers' name and at its expense; *provided*, *however*, that the Issuers have delivered to the Trustee, at least three Business Days prior to the date that the notice of redemption is to be given (or such shorter period as the Trustee in its

sole discretion may allow), an Officer's Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

Any redemption and notice thereof may, in the Issuers' discretion, be subject to the satisfaction of one or more conditions precedent. In such event, the related notice of redemption shall describe each such condition and, if applicable, shall state that, at the Issuer's discretion, the date of redemption may be delayed until such time (including more than 60 days after the date the notice of redemption was mailed or delivered, including by electronic transmission) as any or all such conditions shall be satisfied (or waived by the Issuers in their sole discretion), or such redemption may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied or waived by the date of redemption, or by the date of redemption as so delayed. The Issuers shall provide written notice to the Trustee prior to the close of business two Business Days prior to the Redemption Date if any such redemption has been rescinded or delayed, and upon receipt the Trustee shall provide such notice to each Holder of the Notes in the same manner in which the notice of redemption was given.

Section 3.04 *Effect of Notice of Redemption.*

Once notice of redemption is delivered in accordance with Section 3.03 hereof, Notes called for redemption become, subject to any conditions precedent set forth in the notice of redemption, irrevocably due and payable on the redemption date at the redemption price.

Section 3.05 *Deposit of Redemption or Purchase Price.*

One Business Day prior to the redemption or purchase date, the Issuers shall deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption or purchase price of, accrued interest and premium, if any, on all Notes to be redeemed or purchased on that date. Promptly after the Issuers' written request, the Trustee or the Paying Agent shall promptly return to the Issuers any money deposited with the Trustee or the Paying Agent by the Issuers in excess of the amounts necessary to pay the redemption or purchase price of, accrued interest and premium, if any, on, all Notes to be redeemed or purchased.

If the Issuers comply with the provisions of the preceding paragraph, on and after the redemption or purchase date, interest will cease to accrue on the Notes or the portions of Notes called for redemption or purchase. If a Note is redeemed or purchased on or after an interest record date but on or prior to the related interest payment date, then any accrued and unpaid interest shall be paid to the Person in whose name such Note was registered at the close of business on such record date. If any Note called for redemption or purchase is not so paid upon surrender for redemption or purchase because of the failure of the Issuers to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption or purchase date until such principal is paid, and to the extent lawful on any interest not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 4.01 hereof.

Section 3.06 *Notes Redeemed or Purchased in Part.*

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

Section 3.07 *Optional Redemption.*

(a) The Issuers may on any one or more occasions redeem all or a part of the Notes, upon not less than 10 nor more than 60 days' prior notice, at the redemption prices (expressed as percentages of principal amount) set forth below, plus accrued and unpaid interest, if any, on the Notes redeemed, to, but excluding, the applicable date of redemption, if redeemed during the period indicated below, subject to the rights of Holders on the relevant record date to receive interest on the relevant interest payment date:

| Date | Percentage |
|---|---|
| Issue Date to, but excluding, June 14, 2019 ..... | 101.000% |
| From, and including, June 14, 2019 and thereafter ..... | 100.000% |

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

Section 3.08 *Mandatory Redemption.*

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

## ARTICLE 4
## COVENANTS

For purposes of the Notes, Article 4 hereof provides the terms of the various covenants to which the Notes are subject.

Section 4.01 *Payment of Notes.*

The Issuers, jointly and severally, shall pay or cause to be paid the principal of, premium, if any, and interest on, the Notes on the dates and in the manner provided in the Notes. Principal, premium, if any, and interest will be considered paid on the date due if the Paying Agent, if other than the Issuers or a respective Subsidiary thereof, holds as of 10:00 a.m. Eastern Time on the due date money deposited by the Issuers in immediately available funds and designated for and sufficient to pay all principal, premium, if any, and interest then due.

Section 4.02 *Maintenance of Office or Agency.*

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

The Issuers may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided*, *however*, that no such designation or rescission will in any manner relieve the Issuers of their obligation to maintain an office or agency in the continental United States for such

purposes. The Issuers will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Issuers hereby designates the Corporate Trust Office of the Trustee as one such office or agency of the Issuers in accordance with Section 2.03 hereof.

Section 4.03 *Reporting.*

The Company shall make available to Holders and the prospective purchasers of the Notes in substantially the same form and substance, and in accordance with the same deadlines, the reports and other information required under Article 6 of the Stockholders Agreement dated as of December 14, 2018 by and among GenOn Holdings, Inc., Intermediate GenOn HoldCo, LLC, Direct GenOn HoldCo, LLC, GenOn Holdings, LLC and each of the stockholders party thereto, as applicable.

Section 4.04 *Compliance Certificate.*

(a) The Issuers shall deliver to the Trustee, within 90 days after the end of each fiscal year, an Officer's Certificate signed by its principal executive, principal financial officer or principal accounting officer stating that a review of the activities of the Issuers and their respective Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Officers with a view to determining whether the Issuers have kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to each such Officer signing such certificate, that to the best of his or her knowledge the Issuers have kept, observed, performed and fulfilled each and every covenant contained in this Indenture and is not in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (or, if a Default or Event of Default has occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Issuers are taking or propose to take with respect thereto) and that to the best of his or her knowledge no event has occurred and remains in existence by reason of which payments on account of the principal of, premium, if any, and interest, if any, on the Notes is prohibited or if such event has occurred, a description of the event and what action the Issuers are taking or propose to take with respect thereto. The Issuers' fiscal year ends December 31.

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

Section 4.05 *[Reserved].*

Section 4.06 *Stay, Extension and Usury Laws.*

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

Section 4.07 *Restricted Payments.*

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

(1) declare or pay any dividend or make any distribution (whether made in cash, securities or other property) on or in respect of its Capital Stock (including any payment in connection with any merger or consolidation involving the Company or any of its Restricted Subsidiaries) except (A) dividends or distributions payable in its Capital Stock (other than Disqualified Stock), and (B) dividends or distributions payable by any of its Restricted Subsidiaries on a pro rata basis (or on more favorable terms from the perspective of the Company and its Restricted Subsidiaries);

(2) purchase, redeem, retire or otherwise acquire for value any Capital Stock of the Company or any direct or indirect parent of the Company (including in connection with any merger or consolidation) held by Persons other than the Company or any of its Restricted Subsidiaries (other than in exchange for its Capital Stock (other than Disqualified Stock));

(3) make any principal payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value any Indebtedness of the Company, the Co-Issuer or any Guarantor that is unsecured or is contractually subordinated to the Notes or any Subsidiary Guarantee of the Notes (excluding any intercompany Indebtedness between or among us and any of the Restricted Subsidiaries), except (1) a payment of interest or principal at the Stated Maturity thereof, or (2) a payment, purchase, redemption, defeasance, acquisition or retirement of any subordinated Indebtedness in anticipation of satisfying a sinking fund obligation, principal installment or payment at final maturity, in each case due within one year of the date of payment, purchase, redemption, defeasance, acquisition or retirement; or

(4) make any Restricted Investment (all such payments and other actions set forth in these clauses (1) through (4) being collectively referred to as "*Restricted Payments*"); *provided*, for the avoidance of doubt, that any compensation paid by the Company or its Restricted Subsidiaries that is included in the calculation of Consolidated Net Income shall not be considered a Restricted Payment for purposes hereunder,

unless, at the time of and after giving effect to such Restricted Payment:

(A) no Default or Event of Default has occurred and is continuing or would occur as a consequence of such Restricted Payment; and

(B) on a pro forma basis after giving effect to such Restricted Payment and any transaction related thereto, the Consolidated Debt Ratio does not exceed 5.00:1.00.

(b) The provisions of Section 4.07(a) hereof will not prohibit:

(1) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of indebtedness that is unsecured or is contractually subordinated to the Notes, the Company's Capital Stock or Disqualified Stock made by, in exchange for or out of the proceeds of the substantially concurrent sale of, the Company's Capital Stock (other than Disqualified Stock and other than Capital Stock issued or sold to, or a capital contribution by, any of the Company's Restricted Subsidiaries or an employee stock ownership plan or similar trust to the extent such sale to, or contribution by, an employee stock ownership plan or similar trust is financed by loans from or guaranteed by the Company or any of its Restricted Subsidiaries unless

such loans have been repaid with cash on or prior to the date of determination) or a cash capital contribution to the Company;

(2) any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Disqualified Stock of the Company or any of its Restricted Subsidiaries made by, in exchange for or out of the proceeds of the substantially concurrent sale of Disqualified Stock of ours or such Restricted Subsidiary, as the case may be;

(3) the purchase, repurchase, redemption, defeasance, repayment or other acquisition or retirement for value of unsecured Indebtedness of the Company or any of its Restricted Subsidiaries or any Indebtedness of the Company, the Co-Issuer or any Guarantor that is contractually subordinated to the Notes or to any Subsidiary Guarantee, in each case, (i) solely with the net cash proceeds from a substantially concurrent incurrence of Permitted Refinancing Indebtedness, (ii) in exchange for Indebtedness constituting Permitted Refinancing Indebtedness or Equity Interests issued by the Company or (iii) any combination of the foregoing clauses (i) and (ii);

(4) dividends paid within 90 days after the date of declaration if at such date of declaration such dividend would have complied with this provision;

(5) so long as no Default or Event of Default has occurred and is continuing,

(A) (i) the repurchase, redemption or other acquisition or retirement for value of any Capital Stock of the Company, any Restricted Subsidiaries of the Company or any direct or indirect parent of the Company held by any current or former officer, director or employee (or any estate, heir or assigns of any such person) of the Company or any of its Restricted Subsidiaries pursuant to any equity subscription agreement, stock option agreement, severance agreement, shareholders' agreement or similar agreement or employee benefit plan or (ii) the cancellation of Indebtedness owing to the Company, any Restricted Subsidiaries of the Company or any direct or indirect parent of the Company from any current or former officer, director or employee (or any estate, heir or assigns of any such person) of the Company or of any of its Restricted Subsidiaries in connection with a repurchase of Capital Stock of the Company, any Restricted Subsidiaries of the Company, or any direct or indirect parent of the Company; *provided* that the aggregate price paid for the actions in clause (i) may not exceed $5 million in any 12-month period and $15 million in the aggregate since the Issue Date; *provided, further* (with unused amounts in any period being carried forward to any subsequent periods) that (A) such amount in any calendar year may be increased by the cash proceeds of "key man" life insurance policies received by, or contributed to, the Company and its Restricted Subsidiaries after the Issue Date less any amount previously applied to the making of Restricted Payments pursuant to this clause (A), and (B) cancellation of Indebtedness owing to the Company or any of its Restricted Subsidiaries from employees, officers, directors and consultants (or any estate, heir or assigns of any such person) of the Company or any of its Restricted Subsidiaries in connection with a repurchase of Capital Stock of the Company, any Restricted Subsidiaries of the Company or any direct or indirect parent of the Company from such Persons shall be permitted under this clause (A) as if it were a repurchase, redemption, acquisition or retirement for value subject hereto; and

(B) loans or advances to employees or directors of the Company or any of its Restricted Subsidiaries, the proceeds of which are used to purchase Capital Stock of the Company in an aggregate amount not in excess of $5 million at any one time outstanding (loans or advances that are forgiven shall continue to be deemed outstanding);

(6) so long as no Default or Event of Default has occurred and is continuing, the declaration and payment of dividends to holders of any class or series of Disqualified Stock of the Company or any of its Restricted Subsidiaries or Preferred Stock of the Company or any of its Restricted Subsidiaries issued in accordance with the terms of the Indenture, to the extent such dividends reduce the amount of Consolidated Net Income pursuant to the definition thereof;

(7) repurchases of Capital Stock deemed to occur upon the exercise of stock options, warrants or other convertible securities if such Capital Stock represents a portion of the exercise price thereof and repurchases of Capital Stock in connection with the withholding of a portion of the Capital Stock granted or awarded to an employee to pay for the taxes payable by such employee upon the vesting of such grant or award;

(8) payments to holders of the Company's Capital Stock in lieu of the issuance of fractional shares of its Capital Stock;

(9) [Reserved];

(10) so long as no Default has occurred and is continuing or would be caused thereby, upon the occurrence of a Change of Control or Asset Sale and after the completion of a Change of Control Offer pursuant to Section 4.14 hereof or an Asset Sale Offer pursuant to Section 4.10(c) hereof, as applicable (including the purchase of all Notes tendered), any purchase, defeasance, retirement, redemption or other acquisition of Parity Lien Obligations or Indebtedness that is unsecured or contractually subordinated to the Notes or any Subsidiary Guarantee required under the terms of such Indebtedness, or any Disqualified Stock, with, in the case of an Asset Sale, Net Proceeds, as a result of such Change of Control or Asset Sale;

(11) [Reserved];

(12) so long as no Default or Event of Default has occurred and is continuing, Restricted Payments in an amount not to exceed the greater of (a) $30 million and (b) 15% of EBITDA for the most recently ended Test Period since the Issue Date;

(13) the payment of any dividend or distribution in an amount necessary for the Company to satisfy its obligations to make tax distributions under Section 4.01(b) of that certain Amended and Restated Limited Liability Company Agreement of GenOn Holdings, LLC, as in effect on the date hereof, for any taxable period;

(14) so long as no Default or Event of Default has occurred and is continuing, or would be caused thereby, the making of any Restricted Payment with the Available Amount;

(15) Restricted Payments to any direct or indirect parent of the Company:

(A) to pay its operating costs and expenses incurred in the ordinary course of business and other corporate overhead costs and expenses (including general and administrative services and, for the avoidance of doubt, excluding customary

salary, bonus and other benefits and travel and entertainment expenses payable to officers and employees of any direct or indirect parent company of the Company to the extent such salaries, bonuses and other benefits are attributable to the ownership or operation of the Company and the Restricted Subsidiaries and payments to directors pursuant to Section 4.11(b)(21)), which are reasonable and customary and incurred in the ordinary course of business and attributable to the ownership or operations of the Company and its Restricted Subsidiaries and, any reasonable and customary indemnification claims made by directors, managers or officers of such parent attributable to the ownership or operations of the Company and its Restricted Subsidiaries;

(B) the proceeds of which shall be used by any direct or indirect parent of the Company to pay its franchise and similar taxes, and other fees and expenses, required to maintain its (or any of its direct or indirect parents') corporate existence; and

(16) contributions of cash to GenMA in an amount necessary for GenMA to satisfy Tax obligations asserted directly against GenMA by any state, local, or foreign Governmental Authority.

(c) The amount of all Restricted Payments (other than cash) shall be the Fair Market Value on the date of such Restricted Payment of the asset(s) or securities proposed to be paid, transferred or issued by the Company or such Restricted Subsidiary, as the case may be, pursuant to such Restricted Payment. The Fair Market Value of any cash Restricted Payment shall be its face amount.

Section 4.08 *Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries.*

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiaries to:

(1) pay dividends or make any other distributions on its Capital Stock to the Company or any of its Restricted Subsidiaries, or with respect to any other interest or participation in, or measured by, its profits, or pay any indebtedness owed to the Company or any of its Restricted Subsidiaries;

(2) make loans or advances to the Company or any of its Restricted Subsidiaries; or

(3) transfer any of its properties or assets to the Company or any of its Restricted Subsidiaries.

(b) The restrictions in Section 4.08(a) hereof will not apply to encumbrances or restrictions existing under or by reason of:

(1) the Exit Credit Agreement and other agreements governing Existing Indebtedness, on the Issue Date;

(2) this Indenture, the Notes and the Subsidiary Guarantees;

(3) applicable law, rule, regulation or order;

(4) customary non-assignment provisions in contracts, agreements, leases, permits and licenses;

(5) purchase money obligations for property acquired and Capital Lease Obligations that impose restrictions on the property purchased or leased of the nature described in Section 4.08(a)(3) hereof;

(6) any agreement for the sale or other disposition of the stock or assets of a Restricted Subsidiary that restricts distributions by that Restricted Subsidiary pending the sale or other disposition;

(7) Permitted Refinancing Indebtedness; *provided* that the restrictions contained in the agreements governing such Permitted Refinancing Indebtedness are not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced;

(8) Liens permitted to be incurred under Section 4.12 hereof and associated agreements that limit the right of the debtor to dispose of the assets subject to such Liens;

(9) provisions limiting the disposition or distribution of assets or property in joint venture, partnership, membership, stockholder and limited liability company agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements, including owners', participation or similar agreements governing projects owned through an undivided interest, which limitation is applicable only to the assets that are the subject of such agreements;

(10) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in connection with a Permitted Business;

(11) restrictions or conditions contained in any trading, netting, operating, construction, service, supply, purchase, sale or similar agreement to which the Company or any Restricted Subsidiary of the Company is a party entered into in connection with a Permitted Business; *provided* that such agreement prohibits the encumbrance of solely the property or assets of the Company or such Restricted Subsidiary that are the subject of that agreement, the payment rights arising thereunder and/or the proceeds thereof and not to any other asset or property of the Company or such Restricted Subsidiary or the assets or property of any other Restricted Subsidiary;

(12) any instrument governing Indebtedness or Capital Stock of a Person acquired by the Company or any of its Restricted Subsidiaries as in effect at the time of such acquisition (except to the extent such Indebtedness or Capital Stock was incurred in connection with or in contemplation of such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired; *provided* that, in the case of Indebtedness, such Indebtedness was permitted by the terms of the Indenture to be incurred;

(13) Indebtedness of a Restricted Subsidiary of the Company existing at the time it became a Restricted Subsidiary if such restriction was not created in connection with or in anticipation of the transaction or series of transactions pursuant to which such Restricted Subsidiary became a Restricted Subsidiary or was acquired by the Company;

(14) with respect to Section 4.08(a)(3) hereof only, restrictions encumbering property at the time such property was acquired by the Company or any of its Restricted Subsidiaries, so long as such restriction relates solely to the property so acquired and was not created in connection with or in anticipation of such acquisition;

(15) provisions limiting the disposition or distribution of assets or property in agreements governing Non-Recourse Debt, which limitation is applicable only to the assets that are the subject of such agreements;

(16) the Tenaska Transaction Documents and the Tenaska Energy Management Agreements;

(17) the Shawville Pipeline Agreement and Shawville Facility and ancillary documentation thereto; and

(18) any encumbrance or restrictions of the type referred to in Section 4.08(a) hereof imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (1) through (17) of this Section 4.08(b); *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of a senior financial officer of the Company, no more restrictive with respect to such dividend and other payment restrictions than those contained in the dividend or other payment restrictions prior to such amendment, modification, restatement, renewals, increase, supplement, refunding, replacement or refinancing.

Section 4.09 *Incurrence of Indebtedness and Issuance of Preferred Stock.*

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "*incur*") any Indebtedness (including Acquired Debt), and the Company will not issue any Disqualified Stock and will not permit any of its Restricted Subsidiaries to issue any shares of preferred stock; *provided, however*, that the Company may incur Indebtedness (including Acquired Debt) or issue Disqualified Stock, and the Co-Issuer or any Guarantor may incur Indebtedness (including Acquired Debt) or issue preferred stock, if the Company's Fixed Charge Coverage Ratio for the Company's most recent Test Period for which financial statements are publicly available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or preferred stock is issued would have been at least 2.00 to 1.00, determined on a pro forma basis (including a pro forma application of the net proceeds therefrom), as if the additional Indebtedness (including Acquired Debt) had been incurred or Disqualified Stock or the preferred stock had been issued, as the case may be, at the beginning of such Test Period.

(b) The provisions of Section 4.09(a) hereof will not prohibit the incurrence of any of the following items of Indebtedness (collectively, "*Permitted Debt*"):

(1) the incurrence by the Company (and the guarantee thereof by the Guarantors) of additional Indebtedness and letters of credit under Credit Facilities in an aggregate principal amount at any one time outstanding under this clause (1) (with letters of credit being deemed to have a principal amount equal to the face value thereof) not to exceed $175 million, less the aggregate amount of all repayments, optional or mandatory, of the principal of any term Indebtedness under a Credit Facility that have been made by the Company or any of its Restricted Subsidiaries since the Issue Date with the Net Proceeds of Asset Sales and less, without

duplication, the aggregate amount of all repayments or commitment reductions with respect to any revolving credit borrowings under a Credit Facility that have been made by the Company or any of its Restricted Subsidiaries since the Issue Date as a result of the final application of the Net Proceeds of Asset Sales, in each case in accordance with Section 4.10(c) hereof (excluding temporary reductions in revolving credit borrowings as contemplated by that covenant);

(2) the incurrence by the Company and its Restricted Subsidiaries of the Existing Indebtedness;

(3) the incurrence by the Company and the Guarantors of Indebtedness represented by the Notes and the related Subsidiary Guarantees to be issued on the Issue Date;

(4) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness represented by Capital Lease Obligations, mortgage financings or purchase money obligations, in each case, incurred for the purpose of financing all or any part of the purchase price or cost of design, construction, installation or improvement or lease of property (real or personal), plant or equipment used or useful in the business of the Company or any of its Restricted Subsidiaries or incurred within 180 days thereafter, in an aggregate principal amount, including all Permitted Refinancing Indebtedness incurred to refund, refinance, replace, defease or discharge any Indebtedness incurred pursuant to this clause (4), not to exceed at any time outstanding the greater of (a) $25 million and (b) 15% of EBITDA for the most recently ended Test Period (calculated on a pro forma basis) at the time of incurrence;

(5) the incurrence by the Company or any of its Restricted Subsidiaries of Permitted Refinancing Indebtedness in exchange for, or the net proceeds of which are used to refund, refinance, replace, defease or discharge Indebtedness (other than intercompany Indebtedness) that was permitted by the Indenture to be incurred under Section 4.09(a) hereof or clauses (2), (3), (4), (5), (15), (16), (17), (18), (19), (21), (22), (23) and (24) of this Section 4.09(b);

(6) the incurrence by the Company or any of its Restricted Subsidiaries of intercompany Indebtedness between or among the Company and any of its Restricted Subsidiaries; *provided*, *however*, that:

(A) if the Company, the Co-Issuer or any Guarantor is the obligor on such Indebtedness and the payee is not the Company, the Co-Issuer or a Guarantor, such Indebtedness must be expressly subordinated to the prior payment in full in cash of all obligations then due with respect to the Notes, in the case of the Company or the Co-Issuer, or the Subsidiary Guarantee, in the case of a Guarantor; and

(B) (i) any subsequent issuance or transfer of Equity Interests that results in any such Indebtedness being held by a Person other than the Company or a Restricted Subsidiary of the Company and (ii) any sale or other transfer of any such Indebtedness to a Person that is not either the Company or a Restricted Subsidiary of the Company, will be deemed, in each case, to constitute an incurrence of such Indebtedness by the Company or such Restricted Subsidiary, as the case may be, that was not permitted by this clause (6);

(7) the issuance by any of the Company's Restricted Subsidiaries to the Company or to any of its Restricted Subsidiaries of shares of preferred stock; *provided*, *however*, that:

(A) any subsequent issuance or transfer of Equity Interests that results in any such preferred stock being held by a Person other than the Company or a Restricted Subsidiary of the Company; and

(B) any sale or other transfer of any such preferred stock to a Person that is not either the Company or a Restricted Subsidiary of the Company, will be deemed, in each case, to constitute an issuance of such preferred stock by such Restricted Subsidiary that was not permitted by this clause (7);

(8) the incurrence by the Company or any of its Restricted Subsidiaries of Hedging Obligations to the extent constituting Indebtedness;

(9) (A) the guarantee by (i) the Company or any of the Guarantors of Indebtedness of the Company or a Guarantor that was permitted to be incurred by another provision of this Section 4.09; (ii) any of the non-Guarantor Subsidiaries of Indebtedness of any other non-Guarantor Subsidiary; and (iii) any of the Excluded Foreign Subsidiaries of Indebtedness of any other Excluded Foreign Subsidiary; *provided* that if the Indebtedness being guaranteed is subordinated to the Notes, then the guarantee shall be subordinated to the same extent as the Indebtedness guaranteed and (B) any incurrence by the Co-Issuer of Indebtedness as a co-issuer of Indebtedness of the Issuers that was permitted to be incurred by another provision of this Section 4.09;

(10) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument (except in the case of daylight overdrafts) inadvertently drawn against insufficient funds in the ordinary course of business, so long as such Indebtedness is covered within five Business Days;

(11) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness in respect of (i) workers' compensation claims, self-insurance obligations, bankers' acceptance and (ii) performance and surety bonds provided by the Company or a Restricted Subsidiary in the ordinary course of business;

(12) [Reserved]

(13) the incurrence of Indebtedness that may be deemed to arise as a result of agreements of the Company or any Restricted Subsidiary of the Company providing for indemnification, adjustment of purchase price or any similar obligations, in each case, incurred in connection with the disposition of any business, assets or Equity Interests of any Subsidiary; *provided* that the aggregate maximum liability associated with such provisions may not exceed the gross proceeds (including non-cash proceeds) of such disposition;

(14) to the extent constituting Indebtedness, the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness represented by letters of credit, guarantees or other similar instruments supporting Hedging Obligations of the Company or any of its Restricted Subsidiaries (other than non-Guarantor Subsidiaries) permitted to be incurred by this Indenture;

(15) Indebtedness, Disqualified Stock or preferred stock of Persons or assets that are acquired by the Company or any Restricted Subsidiary of the Company or merged into the Company or a Restricted Subsidiary of the Company in accordance with the terms of the Indenture; *provided* that such Indebtedness, Disqualified Stock or preferred stock is not incurred

in contemplation of such acquisition or merger; and *provided further* that after giving effect to such acquisition or merger, either:

(A) the Company would be permitted to incur at least $1 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.09(a) hereof; or

(B) the Fixed Charge Coverage Ratio would be greater than immediately prior to such acquisition or merger;

(16) Environmental CapEx Debt; *provided*, that prior to the incurrence of any Environmental CapEx Debt, the Company shall deliver to the Trustee an officer's certificate designating such Indebtedness as Environmental CapEx Debt;

(17) Indebtedness incurred to finance Necessary Capital Expenditures; *provided*, that prior to the incurrence of any Indebtedness to finance Necessary Capital Expenditures, the Company shall deliver to the Trustee an Officer's Certificate designating such Indebtedness as Necessary CapEx Debt;

(18) Indebtedness of the Company or any Restricted Subsidiary consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(19) the incurrence by the Company or any of its Restricted Subsidiaries of Contribution Indebtedness;

(20) the incurrence by the Company and/or any of its Restricted Subsidiaries of Indebtedness that constitutes a Permitted Tax Lease;

(21) Indebtedness of the Company or any Restricted Subsidiary provided that the Total Net Secured Leverage Ratio shall not exceed 5.00 to 1.00 determined on a pro forma basis;

(22) the incurrence by the Company and/or any of its Restricted Subsidiaries of additional Indebtedness in an aggregate principal amount (or accreted value, as applicable) at any time outstanding, including all Permitted Refinancing Indebtedness incurred to refund, refinance, replace, defease or discharge any Indebtedness incurred pursuant to this clause (22), not to exceed the greater of (a) $35 million and (b) 20% of EBITDA for the most recently ended Test Period (calculated on a pro forma basis) at the time of incurrence and any Permitted Refinancing Indebtedness in respect thereof;

(23) (a) the Shawville Qualifying Credit Support and (b) to the extent constituting Indebtedness, obligations under the Shawville Pipeline Agreement, the Tenaska Secured Obligations and the LTSA Obligations; and

(24) letters of credit issued or outstanding as of the Issue Date and related obligations under the Citi Letter of Credit Facility in an aggregate amount not to exceed $10,000,000.

(c) For purposes of determining compliance with this Section 4.09, in the event that an item of proposed Indebtedness meets the criteria of more than one of the categories of Permitted Debt described in clauses (1) through (24) of Section 4.09(b), or is entitled to be incurred pursuant to Section 4.09(a) hereof, the Company will be permitted to classify such item of Indebtedness on the date of its

incurrence, or later reclassify all or a portion of such item of Indebtedness, in any manner that complies with this Section 4.09; *provided* that Indebtedness incurred under the Exit Credit Agreement and any Permitted Refinancing Indebtedness that refunds, refinances or replaces the Exit Credit Agreement or any such Permitted Refinancing Indebtedness shall be deemed incurred in reliance on the exception provided by clause (1) of the definition of "Permitted Debt" and may not be reclassified. The accrual of interest, the accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, and the payment of dividends on Disqualified Stock in the form of additional shares of the same class of Disqualified Stock will not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Stock for purposes of this Section 4.09; *provided*, in each such case, that the amount thereof is included in Fixed Charges of the Company as accrued.

(d) For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Indebtedness, the U.S. dollar-equivalent principal amount of Indebtedness denominated in a foreign currency will be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred; *provided* that if such Indebtedness is incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable U.S. dollar-dominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-dominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of the Indebtedness being refinanced.

The amount of any Indebtedness outstanding as of any date will be:

(A) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue discount;

(B) the principal amount of the Indebtedness, in the case of any other Indebtedness; and

(C) in respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the lesser of:

(i) the Fair Market Value of such assets at the date of determination; and

(ii) the amount of the Indebtedness of the other Person,

*provided* that any changes in any of the above shall not give rise to a default under this Section 4.09.

Section 4.10 *Asset Sales.*

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, consummate an Asset Sale unless:

(1) the Company (or the Restricted Subsidiary, as the case may be) receives consideration at the time of the Asset Sale at least equal to the Fair Market Value of the assets or Equity Interests issued or sold or otherwise disposed of; and

(2) at least 75% of the consideration received in the Asset Sale by the Company or such Restricted Subsidiary is in the form of cash. For purposes of this provision, each of the following will be deemed to be cash:

(A) any liabilities, as shown on the Company's most recent consolidated balance sheet, of the Company or any Restricted Subsidiary (other than contingent liabilities and liabilities that are by their terms subordinated to the Notes or any Subsidiary Guarantee) that are assumed by the transferee of any such assets pursuant to a customary novation agreement that releases the Company or such Restricted Subsidiary from further liability; and

(B) any securities, Notes or other obligations received by the Company or any such Restricted Subsidiary from such transferee that are converted by the Company or such Restricted Subsidiary into cash within 365 days of the receipt of such securities, Notes or other obligations, to the extent of the cash received in that conversion.

(b) Within 365 days after the receipt of any Net Proceeds from an Asset Sale (but excluding any Asset Sale of the Canal Escrow or Canal Excess Fuel Payments in the event that such Asset Sale does not constitute a Specified Asset Sale at such time), the Issuers (or the applicable Restricted Subsidiary, as the case may be) may apply those Net Proceeds or, at its option, enter into a binding commitment to apply such Net Proceeds no later than 90 days following the initial 365-day period (an "*Acceptable Commitment*"):

(1) to repay:

(a) Priority Lien Obligations (including any permanent reductions on revolving credit borrowings thereunder or any cash collaterization of letters of credit); and

(b) Second Lien Priority Obligations (including, at the Issuers' option, the Notes through open-market purchases or by making an offer, in accordance with the procedures set forth below for an Asset Sale Offer, to all Holders of the Notes and Parity Lien Priority Obligations to purchase their Notes at 100% of the principal amount thereof, plus accrued but unpaid interest) containing provisions similar to those set forth in the Indenture with respect to sales of assets and use of proceeds therefrom on a pro rata basis (based on the outstanding aggregate principal amount);

(2) in the case of an Asset Sale by a Restricted Subsidiary that is not the Co-Issuer or a Guarantor, to repay Indebtedness of a Restricted Subsidiary that is not a Guarantor (other than Indebtedness owed to the Issuers or another Restricted Subsidiary of the Issuers);

(3) to acquire all or substantially all of the assets of, or any Capital Stock of, another Person engaged primarily in a Permitted Business, if, after giving effect to any such acquisition of Capital Stock, such Person is or becomes a Restricted Subsidiary of the Issuers and a Guarantor;

(4) to make a capital expenditure;

(5) to acquire other assets that are not classified as current assets under GAAP and that are used or useful in a Permitted Business; or

(6) any combination of the foregoing clauses (1) to (5).

Pending the final application of any such Net Proceeds, to the extent that the Net Proceeds exceed $10 million, the Company shall maintain the Net Proceeds in a bank account that is subject to a deposit account control agreement in favor of the Collateral Trustee, and otherwise may

temporarily reduce revolving credit borrowings or otherwise use such Net Proceeds in any manner that is not prohibited by this Indenture.

Notwithstanding the preceding paragraph, in the event that regulatory approval is necessary for an asset or investment, or construction, repair or restoration of any asset or investment has commenced, then the Issuers or any of their Restricted Subsidiaries shall have an additional 180 days to apply the Net Proceeds from such Asset Sale in accordance with the preceding paragraph.

(c) Any Net Proceeds from Asset Sales (but excluding any Asset Sale of the Canal Escrow or Canal Excess Fuel Payments in the event that such Asset Sale does not constitute a Specified Asset Sale at such time) that are not applied or invested as provided in Sections 4.10(b) hereof will constitute "*Excess Proceeds*." When the aggregate amount of Excess Proceeds exceeds $50 million, or at such earlier date as may be selected by the Issuers, the Issuers will apply 100% of such Excess Proceeds to make an Asset Sale Offer to all Holders of the Notes and all holders of other Parity Lien Obligations containing provisions similar to those set forth in this Indenture with respect to offers to purchase or redeem with the proceeds of sales of assets to purchase the maximum principal amount of the Notes and, as applicable, such other Parity Lien Obligations that may be purchased out of the Excess Proceeds. The offer price in any Asset Sale Offer will be equal to 100% of the principal amount plus accrued and unpaid interest, if any, to the date of purchase and will be payable in cash. If any Excess Proceeds remain after consummation of an Asset Sale Offer, the Issuers may use those Excess Proceeds for any purpose not otherwise prohibited by this Indenture. If the aggregate principal amount of the Notes and, as applicable, other Priority Lien Obligations tendered into such Asset Sale Offer exceeds the amount of Excess Proceeds, the Company will select the Notes and, as applicable, such other Parity Lien Obligations to be purchased on a pro rata basis. Upon completion of each Asset Sale Offer, the amount of Excess Proceeds will be reset at zero.

(d) The Issuers will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the that extent those laws and regulations are applicable in connection with each repurchase of Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 4.10, the Issuers will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Section 4.10 by virtue of such compliance.

Section 4.11 *Transactions with Affiliates.*

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Company (each, an "*Affiliate Transaction*") involving aggregate payments or consideration in excess of $10 million, unless:

(1) the Affiliate Transaction is on terms that are no less favorable to the Company (as reasonably determined by the Company) or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Company or such Restricted Subsidiary with an unrelated Person; and

(2) the Company delivers to the Trustee, with respect to any Affiliate Transaction or series of related Affiliate Transactions involving an aggregate consideration in excess of $25 million, a resolution of the Board of Directors set forth in an Officer's Certificate certifying that such Affiliate Transaction or series of related Affiliate Transactions complies with this

Section 4.11 and that such Affiliate Transaction or series of related Affiliate Transactions has been approved by a majority of the disinterested members of the Board of Directors.

(b) The following items will not be deemed to be Affiliate Transactions and, therefore, will not be subject to the provisions of Section 4.11(a) hereof:

(1) any employment agreement or director's engagement agreement, employee benefit plan, officer and director indemnification agreement or any similar arrangement entered into by the Company or its direct or indirect parent, or any of its Restricted Subsidiaries or approved by a Responsible Officer of the Company in good faith;

(2) [Reserved];

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

(4) payment of directors' fees or retainers (whether on behalf of the Company, any direct or indirect parent of the Company, or the Restricted Subsidiaries);

(5) any issuance of Equity Interests (other than Disqualified Stock) of the Company or its Restricted Subsidiaries;

(6) Restricted Payments that do not violate the provisions of Section 4.07 hereof;

(7) any agreement in effect as of the Issue Date or any amendment thereto or replacement thereof and any transaction contemplated thereby or permitted thereunder, so long as any such amendment or replacement agreement taken as a whole is not more disadvantageous to the Holders of the Notes than the original agreement as in effect on the Issue Date;

(8) payments or advances to employees or consultants that are incurred in the ordinary course of business or that are approved by a Responsible Officer of the Company in good faith;

(9) the existence of, or the performance by the Company or any of its Restricted Subsidiaries of its obligations under the terms of, any stockholders agreement (including any registration rights agreement or purchase agreement related thereto) to which it (or its direct or indirect parent) is a party as of the Issue Date and any similar agreements which it may enter into thereafter; *provided*, *however*, that the existence of, or the performance by the Company or any of its Restricted Subsidiaries of obligations under, any future amendment to any such existing agreement or under any similar agreement entered into after the Issue Date shall only be permitted by this clause (9) to the extent that the terms of any such amendment or new agreement are not otherwise more disadvantageous to the Holders of the Notes in any material respect;

(10) transactions permitted by, and complying with, the provisions of Section 5.01 hereof;

(11) transactions with customers, clients, suppliers, joint venture partners or purchasers or sellers of goods or services (including pursuant to joint venture agreements) in compliance with the terms of the Indenture that are fair to the Company and its Restricted Subsidiaries, in the reasonable determination of a senior financial officer of the Company, or are

on terms not materially less favorable taken as a whole as might reasonably have been obtained at such time from an unaffiliated party;

(12) any repurchase, redemption or other retirement of Capital Stock of the Company or any direct or indirect parent of the Company held by employees of the Company or any of its Subsidiaries;

(13) loans or advances to employees or consultants;

(14) any Permitted Investment in another Person involved in a Permitted Business;

(15) transactions in which the Company or any Restricted Subsidiary of the Company, as the case may be, delivers to the Trustee a letter from an Independent Financial Advisor stating that such transaction is fair to the Company or such Restricted Subsidiary from a financial point of view or meets the requirements of clause (1) of Section 4.11(a) hereof;

(16) the issuance of any letters of credit to support obligations of any non-Guarantor Subsidiary;

(17) transactions necessary for the Company to satisfy its obligations to make tax distributions under Section 4.01(b) of that certain Amended and Restated Limited Liability Company Agreement of GenOn Holdings, LLC, as in effect on the date hereof;

(18) transactions between or among non-Guarantor Subsidiaries, and any Guarantee, guarantee and/or other credit support provided by the Company and/or any Restricted Subsidiary in respect of any Subsidiary or any Minority Investment so long as all holders of Equity Interests in such Subsidiary or Minority Investment (including the Company or any Restricted Subsidiary, as applicable) shall participate directly or indirectly in such applicable Guarantee, guarantee and/or other credit support or shall provide a commitment in respect of any related obligation, in each case, on a pro rata basis relative to their Equity Interests in such Minority Investment; *provided* that any such transaction shall be fair and reasonable and beneficial to the Company and its Restricted Subsidiaries (taken as a whole) and consistent with Prudent Industry Practice;

(19) any tax sharing agreement between or among the Company and its Subsidiaries so long as such tax sharing agreement is on fair and reasonable terms with respect to each participant therein;

(20) transactions for shared services with GenMA including, without limitation, fees for legal, financial, human resources, technology, accounting, and other professional services, and expense reimbursements related thereto as long as all payments in respect thereof are payable by GenMA to the Company and the Guarantors;

(21) transactions related to the Management Incentive Plan; and

(22) any agreement to do any of the foregoing.

Section 4.12 *Liens.*

The Company will not, and will not permit any of its Restricted Subsidiaries to create or permit to exist any Lien upon any property or assets owned at any time by the Company or any Restricted Subsidiary to secure any Indebtedness; *provided*, *however*, that this restriction will not apply to:

(1) Existing Liens;

(2) Liens securing the Notes issued on the Issue Date;

(3) Liens on the Collateral securing Indebtedness under Credit Facilities, including any letter of credit facility relating thereto, that was permitted to be incurred pursuant to clause (1) of Section 4.09(b) hereof, and Hedging Obligations pursuant to the Collateral Trust Agreement;

(4) purchase money Liens securing Indebtedness having a principal amount that does not exceed the cost or value of the purchased property (including any Liens securing acquired indebtedness, *provided* that such Liens are not created in connection with, or in contemplation of, such acquisition);

(5) Liens in favor of either the Company or any Restricted Subsidiary;

(6) Liens on the Collateral securing Parity Lien Obligations, including all Refinancing Liens granted in connection with extending, renewing, replacing or refinancing in whole or in part any Indebtedness secured by Liens incurred pursuant to this clause (6);

(7) [Reserved];

(8) Refinancing Liens;

(9) any interest or title of a lessor, sublessor, licensor or sublicensor under any ground leases or subleases, licenses or sublicenses in respect of real property on which facilities owned or leased by the Company or any of its Restricted Subsidiaries are located, *provided* that such ground leases, subleases, licenses or sublicenses are permitted under the Agreement or are entered into in the ordinary operation of the business of the Company or any Restricted Subsidiary;

(10) easements, rights-of-way, licenses, servitudes, permits, conditions, covenants, restrictions (including zoning restrictions), oil, gas and other mineral interests, royalty interests and leases, minor defects, exceptions or irregularities in title, encroachments, protrusions and other similar charges or encumbrances, affecting any properties of the Company or any Restricted Subsidiary, which do not in the aggregate materially adversely affect the value of such properties or the use of such properties for the purposes for which such properties are held by the Company and/or the applicable Restricted Subsidiaries, taken as a whole, or interfere in any material respect with the ordinary operation of business of the Company and the Restricted Subsidiaries, taken as a whole;

(11) (i) any exception shown on a final survey delivered to the Collateral Trustee pursuant to the terms of the Collateral Trust Agreement incidental to the conduct of the business of the Company or any Restricted Subsidiary or to the ownership of the property to which such exception relates, which was not incurred in connection with Indebtedness for borrowed money and which does not individually or in the aggregate materially adversely affect the value of said property or materially impair its use in the ordinary operation of the business of the Company or any of the Restricted Subsidiaries and (ii) any exception shown on any final title policy issued to the Collateral Trustee in connection with any mortgaged property;

(12) leases, licenses, subleases or sublicenses granted to others not interfering in any material respect with the business of the Company and its Restricted Subsidiaries, taken as a whole;

(13) any zoning, land use, environmental or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary use of such Property or the conduct of the business of the Company or its Restricted Subsidiaries;

(14) any Lien arising by reason of deposits with or the giving of any form of security to any Governmental Authority for any purpose at any time as required by Applicable Law as a condition to the transaction of any business or the exercise of any privilege or license, or to enable the Company or any Restricted Subsidiary to maintain self-insurance or to participate in any fund for liability on any insurance risks;

(15) rights reserved to or vested in any Governmental Authority by the terms of any right, power, franchise, grant, license or permit, or by any provision of Applicable Law, to terminate or modify such right, power, franchise, grant, license or permit or to purchase or recapture or to designate a purchaser of any of the property of such person;

(16) Liens arising under any obligations or duties affecting any of the property, the Company or any Restricted Subsidiary to any Governmental Authority with respect to any franchise, grant, license or permit which do not materially impair the use of such property for the purposes for which it is held;

(17) rights reserved to or vested in any Governmental Authority to use, control or regulate any property of such Person, which do not materially impair the use of such property for the purposes for which it is held;

(18) Liens on the Assigned Pipeline Interests in favor of PSEG granted under the Shawville Pipeline Agreement and Liens on cash and Cash Equivalents constituting Shawville Qualifying Credit Support;

(19) Liens on the Collateral securing Priority Lien Obligations, permitted to be incurred pursuant to Section 4.09, *provided* that the First Lien Net Secured Leverage Ratio shall not exceed 2.00 to 1.00 determined on a pro rata basis;

(20) Liens securing Indebtedness of the Company or any Restricted Subsidiary permitted to be incurred pursuant to Section 4.09(b)(21), *provided* that such Lien must be junior or *pari passu* to the Liens securing the Notes and shall be subject to the Collateral Trust Agreement or another customary intercreditor agreement;

(21) Liens securing Indebtedness and other obligations permitted to be incurred pursuant to Section 4.09 in an aggregate principal amount not to exceed the greater of (a) $35 million or (b) 20% of EBITDA; and

(22) Liens to secure letter of credit and related obligations under the Citi Letter of Credit Facility in an amount not to exceed 103% of the face amount of any such outstanding letters of credit issued pursuant to the Citi Letter of Credit Facility;

(23) Liens to secure obligations with respect to (i) contracts (other than for Indebtedness) for commercial and trading activities for the purchase, transmission, distribution, sale, lease or hedge of any energy related commodity or service and (ii) Hedging Obligations (which Liens may but shall not be required to be, in each case, held by the Collateral Trustee pursuant to and in accordance with the Collateral Trust Agreement);

(24) Liens consisting of cash collateral, letters of credit or other similar instruments required by Governmental Authorities, quasi-Governmental Authorities (including, without limitation, independent system operators and regional transmission organizations) or contract counterparties, incurred in the ordinary course of business, in an aggregate amount not exceeding $45,000,000 at any time outstanding;

(25) Liens for taxes, assessments or governmental charges or claims that are not yet delinquent or that are being contested in good faith by appropriate proceedings promptly instituted and diligently concluded; provided that any reserve or other appropriate provision as is required in conformity with GAAP has been made therefor; and

(26) Liens on the Receivables Collateral in favor of Tenaska granted under the Tenaska Transaction Documents; *provided* that such Lien is subject to the Tenaska Intercreditor Agreement.

Notwithstanding the foregoing, the Company will not, and the Company will not permit any of its Restricted Subsidiaries to, directly or indirectly, create or permit to exist any Lien on any asset or property of the Company or such Restricted Subsidiary that secures Obligations under Indebtedness that is contractually senior in priority (without regard to control of remedies) to any security interest at any time granted to secure the Notes or the Subsidiary Guarantees and is also contractually junior in priority (without regard to control of remedies) to any security interest at any time granted to secure any other Indebtedness.

If at any time any Restricted Subsidiary creates or permits to exist any Lien that secures any Priority Lien Obligation or any Parity Lien Obligation (other than the Obligations in respect of the Notes) upon any property or assets of the Company or any of its Restricted Subsidiaries, the Company shall cause such Restricted Subsidiary to create a Lien on such assets or property on substantially similar terms to secure the Obligations in respect of the Notes in accordance with Section 4.18 hereto.

The Collateral Trustee shall take no action pursuant to Article 4 of the Collateral Trust Agreement to subordinate its Liens, in whole or in part, as to any Lien on any Collateral other than any subordination requested by the Company to Liens permitted pursuant to clauses (4), and (8) (solely in the case of clause (8), to the extent constituting Refinancing Liens with respect to the clauses specifically referenced in this paragraph), (10), (13), (17), (23), (24) or (26) of this Section 4.12.

Section 4.13 *Corporate Existence*.

Subject to Article 5 hereof, the Issuers shall do or cause to be done all things necessary to preserve and keep in full force and effect:

(1) its corporate existence, and the corporate, partnership or other existence of each of its Subsidiaries, in accordance with the respective organizational documents (as the same may be amended from time to time) of the Issuers or any such Subsidiary; and

(2) the rights (charter and statutory), licenses and franchises of the Issuers and their respective Subsidiaries; *provided*, *however*, that the Issuers shall not be required to preserve any

such right, license or franchise, or the corporate, partnership or other existence of any of its Subsidiaries, if (a) the Issuers shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Issuers and their respective Subsidiaries, taken as a whole, and that the loss thereof is not adverse in any material respect to the Holders of the Notes, or (b) if a Subsidiary is to be dissolved, such Subsidiary has no assets.

Section 4.14 *Offer to Repurchase Upon Change of Control Triggering Event.*

(a) Upon the occurrence of a Change of Control Triggering Event, the Issuers will make an offer (a *"Change of Control Offer"*) to each Holder to repurchase all or any part (equal to $1.00 or an integral multiple of $1.00 in excess of $1.00) of that Holder's Notes at a purchase price in cash equal to 101% of the aggregate principal amount of Notes repurchased, plus accrued and unpaid interest, if any, on the Notes repurchased to, but excluding, the date of repurchase, subject to the rights of Holders of Notes on the relevant record date to receive interest due on the relevant interest payment date (the *"Change of Control Payment"*). Within 30 days following any Change of Control Triggering Event, the Issuers will deliver a notice to each Holder describing the transaction or transactions that constitute the Change of Control and stating:

(1) that the Change of Control Offer is being made pursuant to this Section 4.14 and that all Notes tendered will be accepted for payment;

(2) the purchase price and the purchase date, which shall be no earlier than 10 days and no later than 60 days from the date such notice is delivered (the *"Change of Control Payment Date"*);

(3) that any Note not tendered will continue to accrue interest;

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

(5) that Holders electing to have any Notes purchased pursuant to a Change of Control Offer shall be required to surrender the Notes, with the form entitled "Option of Holder to Elect Purchase" on the reverse of the Notes completed, to the Paying Agent at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date; Notes held in book entry form shall be surrendered in accordance with DTC's applicable procedure;

(6) that Holders will be entitled to withdraw their election if the Paying Agent receives, not later than the close of business on the second Business Day preceding the Change of Control Payment Date, facsimile transmission or letter setting forth the name of the Holder, the principal amount of Notes delivered for purchase, and a statement that such Holder is withdrawing his election to have the Notes purchased; Notes held in book entry form shall be withdrawn in accordance with DTC's applicable procedures; and

(7) that Holders whose Notes are being purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered, which unpurchased portion must be equal to $1.00 in principal amount or an integral multiple of $1.00 in excess thereof.

The Issuers shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent that those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change of Control. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 4.14, the Issuers shall comply with the applicable securities laws and regulations and shall not be deemed to have breached their obligations under this Section 4.14 by virtue of such compliance.

(b) On the Change of Control Payment Date, the Issuers shall, to the extent lawful:

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

(2) no later than 10:00 a.m. Eastern Time deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all Notes or portions of Notes properly tendered; and

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

The Paying Agent shall promptly distribute to each Holder of Notes properly tendered the Change of Control Payment for the Notes, and the Trustee shall promptly authenticate and deliver (or cause to be transferred by book entry) to each Holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; *provided* that each new Note shall be in a principal amount of $1.00 or an integral multiple of $1.00 in excess thereof. The Issuers shall publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

(c) The provisions described in Sections 4.14(a) and (b) shall apply whether or not other provisions of this Indenture are applicable. Except as described in Sections 4.14(a) and (b) hereof, Holders of Notes shall not be permitted to require that the Issuers repurchase or redeem the Notes in the event of a takeover, recapitalization or similar transaction.

(d) Notwithstanding anything to the contrary in this Section 4.14, the Issuers shall not be required to make a Change of Control Offer upon a Change of Control Triggering Event if (1) a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Section 4.14 and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer, or (2) notice of redemption has been given pursuant to Section 3.07 hereof, unless and until there is a default in payment of the applicable redemption price. A Change of Control Offer may be made in advance of a Change of Control Triggering Event, with the obligation to pay and the timing of payment conditioned upon the occurrence of a Change of Control Triggering Event, if a definitive agreement to effect a Change of Control is in place at the time the Change of Control Offer is made.

Section 4.15 *[Reserved]*.

Section 4.16 *No Layering of Debt.*

The Company will not incur, and will not permit the Co-Issuer or any Guarantor to incur, any Indebtedness (including Permitted Debt) that is contractually subordinated in right of payment to any other Indebtedness of the Company, the Co-Issuer or such Guarantor unless such Indebtedness is also contractually subordinated in right of payment to the Notes and the applicable Subsidiary Guarantee on

substantially identical terms; *provided*, *however*, that no Indebtedness will be deemed to be contractually subordinated in right of payment to any other Indebtedness of the Company solely by virtue of being unsecured or by virtue of being secured on a first or junior Lien basis.

Section 4.17 *Limitation on Sale and Leaseback Transactions.*

The Company will not, and will not permit any of its Restricted Subsidiaries to, enter into any sale and leaseback transaction (other than a Permitted Tax Lease, which shall not be restricted by this covenant); *provided* that the Company, the Co-Issuer or any Guarantor may enter into a sale and leaseback transaction if:

(1) the Company, the Co-Issuer or that Guarantor, as applicable, could have (a) incurred Indebtedness in an amount equal to the Attributable Debt relating to such sale and leaseback transaction under Section 4.09 hereof and (b) incurred a Lien to secure such Indebtedness pursuant to Section 4.12 hereof;

(2) the gross proceeds of that sale and leaseback transaction are at least equal to the Fair Market Value of the property that is subject of that sale and leaseback transaction, as determined in good faith by a senior financial officer of the Company; and

(3) if such sale and leaseback transaction constitutes an Asset Sale, the transfer of assets in that sale and leaseback transaction is permitted by, and the Company applies the proceeds of such transaction in compliance with Section 4.10(c) hereof.

Section 4.18 *Subsidiary Guarantees; Additional Collateral.*

(a) If:

(1) the Company or any of its Restricted Subsidiaries acquires or creates another Domestic Subsidiary (other than an Unrestricted Subsidiary or an Excluded Subsidiary) after the Issue Date, or

(2) any Excluded Subsidiary that is a Domestic Subsidiary ceases to be an Excluded Subsidiary after the Issue Date, or

(3) any Unrestricted Subsidiary ceases to be an Unrestricted Subsidiary after the Issue Date,

then such newly acquired or created Domestic Subsidiary, former Excluded Subsidiary or former Unrestricted Subsidiary, as the case may be, will become a Guarantor of the Notes and execute a supplemental indenture in the form attached hereto as Exhibit E and deliver an Opinion of Counsel satisfactory to the Trustee within 30 Business Days of the date on which it was acquired or created or ceased to be an Excluded Subsidiary, as the case may be.

(b) With respect to the real properties identified on Schedule 1.01(c) of the Exit Credit Agreement, the Issuers or applicable Guarantor shall (i) execute and deliver to the Collateral Trustee mortgages (and related mortgage deliverables), for the benefit of the holders of the Notes, at such times and to the extent required to be delivered by Sections 4.02(l) and 4.02(p) of the Exit Credit Agreement, and (ii) comply with Sections 5.13 and 5.14 of the Exit Credit Agreement. Prior to the Discharge of Priority Lien Obligations, any delivery, filing, perfection or other action with respect to Collateral pursuant to this Section 4.18(b) (including any notice in respect thereof) will only be required to the

extent such delivery, filing, perfection or other action has been requested by the Administrative Agent with respect to the Priority Lien Obligations and the time period for any of the foregoing shall be deemed extended to the extent it has been extended by the Administrative Agent, in each case acting in good faith.

(c) The Issuers or applicable Guarantor shall (1) execute and deliver to the Collateral Trustee such amendments to the Collateral Agreement as are necessary or reasonably advisable to grant to the Collateral Trustee, for the benefit of the Holders, a valid, perfected second priority security interest in the Equity Interests in any new Subsidiary that is owned by the Issuers or any of the Guarantors (unless such Equity Interests are Excluded Assets), (2) deliver to the Collateral Trustee the certificates, if any, representing such Equity Interests (unless such Equity Interests are Excluded Assets), together with undated instruments of transfer or stock powers, in blank, executed and delivered by a duly authorized officer of the Issuers or such Subsidiary, as the case may be, (3) cause such new Subsidiary that is not an Excluded Subsidiary or an Unrestricted Subsidiary to become a party to the Collateral Agreement to, among other things, take such actions necessary or reasonably requested by the Collateral Trustee to grant to the Collateral Trustee, for the benefit of the Secured Parties, a perfected second priority security interest (subject to Permitted Liens) in the Collateral described in the Collateral Agreement with respect to such new Subsidiary that is not an Excluded Subsidiary, including the taking of all steps required to be taken pursuant to the Collateral Agreement and (4) deliver to the Collateral Trustee customary legal opinions relating to the matters described above. Prior to the Discharge of Priority Lien Obligations, any delivery, filing, perfection or other action with respect to Collateral pursuant to this Section 4.18(b) (including any notice in respect thereof) will only be required to the extent such delivery, filing, perfection or other action has been requested by the Administrative Agent with respect to the Priority Lien Obligations and the time period for any of the foregoing shall be deemed extended to the extent it has been extended by the Administrative Agent, in each case acting in good faith.

(d) The Issuers and each Guarantor shall comply with the covenants in the Note Security Documents and, with respect to any Collateral acquired after the Issue Date or with respect to any property or asset which becomes Collateral pursuant to the definition thereof after the Issue Date, promptly (1) execute and deliver to the Collateral Trustee such amendments to the Collateral Agreement or such other Note Security Documents as may be reasonably advisable to grant to the Collateral Trustee, for the benefit of the Holders, a perfected second-priority security interest in such Collateral and (2) take all actions necessary to grant to the Collateral Trustee, for the benefit of the Holders, a second priority security interest in such Collateral (other than any Excluded Perfection Assets (as defined in the Collateral Agreement) and subject to Permitted Liens, including the filing of UCC financing statements in such jurisdictions as may be required by the Collateral Agreement or by law. Notwithstanding anything set forth herein to the contrary, (i) this Section 4.18(c) shall not apply to intellectual property acquired after the Issue Date or with respect to any property or asset which becomes intellectual property after the Closing Date (it being agreed and understood that such intellectual property shall be subject to the applicable provisions of the Collateral Agreement) and (ii) prior to the Discharge of Priority Lien Obligations, any delivery, filing, perfection or other action with respect to Collateral pursuant to this Section 4.18(c) (including any notice in respect thereof) will only be required to the extent it has been requested by the Administrative Agent with respect to the Priority Lien Obligations and the time period for any of the foregoing shall be deemed extended to the extent it has been extended by the Administrative Agent, in each case acting in good faith.

(e) With respect to any fee interest in any Collateral consisting of real property or any lease of Collateral consisting of real property (1) acquired or leased after the Issue Date by the Issuers or any other Guarantor or which becomes Collateral pursuant to the definition thereof, and (2) owned or leased by any new Subsidiary (other than an Unrestricted Subsidiary or an Excluded Subsidiary) created or acquired after the Closing Date by the Issuers or any of the Subsidiaries, Issuers shall promptly, (i) execute and deliver or cause to be executed and delivered in favor of the Collateral Trustee, a mortgage

covering such real property, (ii) provide the Collateral Trustee with (A) title insurance covering such real property in an amount at least equal to the purchase price of such real property (or such other amount as shall equal the value of the generation assets, if applicable, situated thereon), together with a surveyor's certificate and (B) any consents or estoppels reasonably deemed necessary or advisable by the Collateral Trustee in connection with such mortgage, each of the foregoing in form and substance reasonably satisfactory to the Collateral Trustee, and (iii) deliver customary legal opinions relating to the matters described above; provided that, (x) prior to the Discharge of Priority Lien Obligations, the deliverables pursuant to this Section 4.18(e) (including any notice in respect thereof) shall be required only with respect to real property for which such deliverables have been provided for the benefit of the Administrative Agent, and shall be delivered at the same time and in substantially similar form as for the benefit of the Administrative Agent, and (y) after the Discharge of Priority Lien Obligations, the deliverables pursuant to this Section 4.18(e) shall be required only to the extent and in such form as the real estate deliverables that have been made prior to the Discharge of Priority Lien Obligations.

(f) With respect to any new Excluded Foreign Subsidiary (other than an Unrestricted Subsidiary or an Excluded Subsidiary that is a subsidiary of an Excluded Foreign Subsidiary) created or acquired after the Issue Date by the Issuers or any of the Guarantors, promptly (1) execute and deliver to the Collateral Trustee such amendments to the Collateral Agreement, if any, as are necessary or advisable in order to grant to the Collateral Trustee, for the benefit of the Holders, a perfected second priority security interest in the Equity Interests in such new Excluded Foreign Subsidiary that is directly owned by the Issuers or any of the Guarantors (*provided* that in no event shall more than 65% of the total outstanding voting first-tier Equity Interests in any such new Excluded Foreign Subsidiary be required to be so pledged), (2) deliver to the Collateral Trustee the certificates representing such Equity Interests, together with undated instruments of transfer or stock powers, in blank, executed and delivered by a duly authorized officer of the Issuers or such Guarantor, as the case may be, and take such other action as may be necessary or, in the reasonable opinion of the Collateral Trustee, desirable to perfect the security interest of the Collateral Trustee thereon and (3) deliver to the Collateral Trustee, if reasonably requested, legal opinions (which may be delivered by in-house counsel if admitted in the relevant jurisdiction) relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Collateral Trustee. Prior to the Discharge of Priority Lien Obligations, any delivery, filing, perfection or other action with respect to Collateral pursuant to this Section 4.18(e) (including any notice in respect thereof) will only be required to the extent such delivery, filing, perfection or other action has been requested by the Administrative Agent with respect to the Priority Lien Obligations and the time period for any of the foregoing shall be deemed extended to the extent it has been extended by the Administrative Agent, in each case acting in good faith.

Section 4.19 *Designation of Restricted and Unrestricted Subsidiaries.*

The Company may designate, by a certificate executed by a Responsible Officer of the Company, any Restricted Subsidiary other than the Co-Issuer to be an Unrestricted Subsidiary if that designation would not cause a Default. If a Restricted Subsidiary is designated as an Unrestricted Subsidiary, the aggregate Fair Market Value of all outstanding Investments owned by the Company and its Restricted Subsidiaries in the Subsidiary designated as Unrestricted will be deemed to be an Investment made as of the time of the designation and will reduce the amount available for Restricted Payments under Section 4.07 hereof or under one or more clauses of the definition of Permitted Investments, as determined by the Company. That designation will only be permitted if the Investment would be permitted at that time and if the Restricted Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. A Responsible Officer of the Company may redesignate any Unrestricted Subsidiary to be a Restricted Subsidiary if that redesignation would not cause a Default or Event of Default.

Any designation of a Subsidiary of the Company as an Unrestricted Subsidiary will be evidenced to the Trustee by delivering to the Trustee a certified copy of a resolution of the Board of Directors of the Company giving effect to such designation and an Officer's Certificate certifying that such designation complied with the preceding conditions and was permitted by Section 4.07 hereof. If, at any time, any Unrestricted Subsidiary should fail to meet the preceding requirements as, respectively, an Unrestricted Subsidiary, it will thereafter cease to be an Unrestricted Subsidiary for the purposes of this Indenture and any Indebtedness of such Subsidiary will be deemed to be incurred by a Restricted Subsidiary of the Company, as of such date and, if such Indebtedness is not permitted to be incurred as of such date under Section 4.09 hereof, the Company will be in default of such covenant. The Board of Directors of the Company may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary of the Company; *provided* that such designation will be deemed to be an incurrence of Indebtedness by a Restricted Subsidiary of the Company of any outstanding Indebtedness of such Unrestricted Subsidiary, and such designation will only be permitted if (1) such Indebtedness is permitted under Section 4.09 hereof, calculated on a pro forma basis as if such designation had occurred at the beginning of the applicable reference period; and (2) no Default or Event of Default would be in existence following such designation.

Section 4.20 *Restrictions on Activities of the Co-Issuer.*

The Co-Issuer may not hold any assets, become liable for any obligations or engage in any business activities; *provided* that the Co-Issuer may be a co-obligor under (i) the Notes and this Indenture and (ii) any other Indebtedness incurred by the Company pursuant to Section 4.09, and in each case may engage in any activities directly related or necessary in connection therewith.

## ARTICLE 5
## SUCCESSORS

For purposes of the Notes, Article 5 hereof provides the terms upon which a Person can succeed the Obligations of the Issuers or the Guarantors.

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

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

(1) either:

(A) the Company is the surviving corporation; or

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

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

(3) (A) the Company or the Person formed by or surviving any such consolidation or merger (if other than the Company), or to which such sale, assignment, transfer, conveyance or other disposition has been made will, on the date of such transaction after giving pro forma effect thereto and any related financing transactions as if the same had occurred at the beginning of the most recently ended Test Period, be permitted to incur at least $1 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.09(a) hereof, or (B) the Fixed Charge Coverage Ratio of the Company or the Person formed by or surviving any such consolidation or merger (if other than the Company) is greater after giving pro forma effect to such consolidation or merger and any related financing transactions as if the same had occurred at the beginning of the most recently ended Test Period, than the Company's actual Fixed Charge Coverage Ratio for the period.

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

(b) This Section 5.01 shall not apply to:

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

(2) a merger of a Restricted Subsidiary with an Affiliate solely for the purpose of reincorporating such Restricted Subsidiary in another jurisdiction or forming a direct holding company of such Restricted Subsidiary; or

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

(c) The Co-Issuer shall not, directly or indirectly: (1) consolidate or merge with or into another Person (whether or not the Co-Issuer is the surviving corporation), or (2) sell, assign, transfer, convey, lease or otherwise dispose of all or substantially all of its properties and assets, in one or more related transactions, to another Person or Persons, unless:

(1) either: (a) the Co-Issuer shall be the surviving corporation; or (b) the Person formed by or surviving such consolidation or merger (if other than the Co-Issuer) or to which such sale, assignment, transfer, conveyance, lease or other disposition shall have been made (i) shall be a corporation organized or existing under the laws of the United States, any state or territory thereof or the District of Columbia and (ii) assumes all the obligations of the Co-Issuer under the Notes and this Indenture pursuant to agreements reasonably satisfactory to the Trustee;

(2) immediately after giving effect to such transaction, at least one obligor on the Notes shall be a corporation organized and validly existing under the laws of the United States, any state or territory thereof or the District of Columbia;

(3) immediately after giving effect to such transaction no Event of Default exists; and

(4) the Co-Issuer or, if applicable, the Person described in clause (1)(b) above shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each to the effect that such transaction complies with the requirements of this Indenture.

Section 5.02 *Successor Corporation Substituted.*

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

## ARTICLE 6
## DEFAULTS AND REMEDIES

For purposes of the Notes, Article 6 hereof provides the terms defaults and remedies.

Section 6.01 *Events of Default.*

Each of the following is an "*Event of Default*":

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

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

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

(4) the acceleration of the maturity of any Indebtedness for money borrowed (other than the Notes of such series) by the Company or any of its Restricted Subsidiaries (other than any Excluded Subsidiaries) having an aggregate principal amount outstanding in excess of $75 million, if such acceleration is not rescinded or annulled, or such indebtedness shall not have been discharged, within 15 days after the date of such acceleration;

(5) failure by the Company or any of its Restricted Subsidiaries (other than any Excluded Subsidiaries) to pay final and non-appealable judgments aggregating in excess of $75 million, which judgments are not covered by indemnities or third-party insurance, which judgments are not paid, discharged, vacated or stayed for a period of 60 days;

(6) [Reserved];

(7) [Reserved];

(8) except as permitted by the Indenture, the Subsidiary Guarantee of any Restricted Subsidiary (other than any Excluded Subsidiaries) shall for any reason cease to be in full force and effect or be declared null and void or any responsible officer of such Guarantor, as the case may be, denies that it has any further liability under its Guarantee or gives notice to such effect, in each case, other than by reason of the termination of this Indenture or the release of any such Guarantee in accordance with this Indenture;

(9) with respect to any Collateral, individually or in the aggregate, having a Fair Market Value in excess of $75 million, any of the Note Security Documents ceases to be in full force and effect, or any of the Note Security Documents ceases to give the Holders of the Notes the Liens purported to be created thereby, or any of the Note Security Documents is declared null and void or either of the Issuers or any Guarantor denies in writing that it has any further liability under any Note Security Document (in each case other than in accordance with the terms of the Indenture or any of the Note Security Documents), except to the extent that any loss of perfection or priority results from the failure of the Collateral Trustee to maintain possession of certificates actually delivered to it representing securities, promissory notes or other instruments pledged under the Note Security Documents, or otherwise results from the gross negligence or willful misconduct of the Trustee or the Collateral Trustee;

(10) after the Issue Date, the Company or any of its Restricted Subsidiaries (other than its Excluded Subsidiaries):

(A) commences a voluntary case;

(B) consents to the entry of an order for relief against it in an involuntary case;

(C) consents to the appointment of a custodian of it or for all or substantially all of its property;

(D) makes a general assignment for the benefit of its creditors; or

(E) generally is not paying its debts as they become due; or

(11) after the Issue Date, a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against the Company or any of its Restricted Subsidiaries (other than its Excluded Subsidiaries);

(B) appoints a custodian of the Company or any of its Restricted Subsidiaries (other than its Excluded Subsidiaries) for all or substantially all of the property of the Issuers or any Guarantor; or

(C) orders the liquidation of the Issuers or any of its Restricted Subsidiaries (other than its Excluded Subsidiaries);

and the order or decree remains unstayed and in effect for 60 consecutive days.

Section 6.02 *Acceleration.*

In the case of an Event of Default specified in clause (10) or (11) of Section 6.01 hereof, with respect to the Company or any of its Restricted Subsidiaries (other than any of its Excluded Subsidiaries), all outstanding Notes will become due and payable immediately without any further action, declaration or notice on the part of the Trustee or the Holders. If any other Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of the then outstanding Notes may declare all the Notes to be due and payable immediately. Upon any such declaration, the Notes shall become due and payable immediately.

Subject to certain limitations, holders of a majority in principal amount of the outstanding Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from holders of Notes notice of any continuing Default or Event of Default if it determines that withholding notice is in their interest, except a Default or Event of Default relating to the payment of principal or interest.

Section 6.03 *Other Remedies.*

If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal of, premium, if any, or interest on, the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Note in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

Section 6.04 *Waiver of Past Defaults.*

The Holders of a majority in aggregate principal amount of the then outstanding Notes by written notice to the Trustee may, on behalf of the Holders of all of the Notes, waive any existing Default or Event of Default and its consequences hereunder, except a continuing Default or Event of Default in the payment of the principal of, premium, if any, or interest on, the Notes (including in connection with an offer to purchase); *provided*, *however*, that the Holders of a majority in aggregate principal amount of the then outstanding Notes may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 6.05 *Control by Majority.*

Subject to certain limitations, Holders of a majority in principal amount of the Notes that are then outstanding may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee in its exercise of any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines in good faith may be unduly prejudicial to the rights of other Holders of Securities (it being understood that the Trustee shall not have an affirmative duty to ascertain whether or not any such direction is unduly prejudicial to any other Holder), is otherwise contrary to applicable law or that may involve the Trustee in personal liability or expense for which the Trustee has not received an indemnity against cost, loss, liability or expense satisfactory to it, and the Trustee may take any other action it deems proper which is not inconsistent with any such direction received from the Holders.

Section 6.06 *Limitation on Suits.*

No Holder of a Note may pursue any remedy with respect to this Indenture or the Notes unless:

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

(2) Holders of at least 25% in aggregate principal amount of the then outstanding Notes make a written request to the Trustee to pursue the remedy;

(3) such Holder or Holders have offered the Trustee security and/or indemnity satisfactory to the Trustee against any loss, liability or expense it may incur;

(4) the Trustee does not comply with such request within 60 days after receipt of the request and the offer of security and/or indemnity; and

(5) during such 60-day period, Holders of a majority in aggregate principal amount of the then outstanding Notes do not give the Trustee a direction inconsistent with such request.

A Holder of a Note may not use this Indenture to prejudice the rights of another Holder of a Note or to obtain a preference or priority over another Holder of a Note.

Section 6.07 *Rights of Holders of Notes to Receive Payment.*

Notwithstanding any other provision of this Indenture, the contractual right of any Holder of a Note to receive payment of principal of, premium, if any, or interest on, the Note, on or after the respective due dates expressed in the Note (including in connection with an offer to purchase), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 6.08 *Collection Suit by Trustee.*

If an Event of Default specified in Section 6.01(1) or (2) hereof occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Issuers for the whole amount of principal of, premium, if any, and interest on, remaining unpaid on the Notes and interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

Section 6.09 *Trustee May File Proofs of Claim.*

The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel), the Agent and the Holders of the Notes allowed in any judicial proceedings relative to the Issuers (or any other obligor upon the Notes), its creditors or its property and shall be entitled and empowered to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to each of the Trustee and the Agent any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, or the Agent and any other amounts due to the Trustee or the Agent under this Indenture, including, without limitation, under Section 7.07 hereof. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, or the Agent and any other amounts due to the Trustee or the Agent under this Indenture, including, without limitation, under Section 7.07 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.10 *Priorities.*

If the Trustee collects any money pursuant to this Article 6 or, after an Event of Default, any money or other property distributable in respect of the Issuers' obligations under this Indenture shall be applied in the following order:

*First*: to the Trustee (including any predecessor trustee) and the Agent, and their respective agents and attorneys for amounts due under Section 7.07 hereof, including payment of all compensation, expenses and liabilities incurred, and all advances made, by the Trustee or the Agents and the costs and expenses of collection;

*Second*: to Holders of Notes for amounts due and unpaid on the Notes for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium, if any, and interest, respectively; and

*Third*: to the Issuers or to such party as a court of competent jurisdiction shall direct.

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

Section 6.11 *Undertaking for Costs.*

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in

the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder of a Note pursuant to Section 6.07 hereof, or a suit by Holders of more than 10% in aggregate principal amount of the then outstanding Notes.

## ARTICLE 7
## TRUSTEE

Section 7.01 *Duties of Trustee.*

(a) If an Event of Default with respect to the Notes has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default:

(1) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts, statements, opinions or conclusions stated therein).

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(1) this paragraph does not limit the effect of paragraph (b) of this Section 7.01;

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

(3) the Trustee shall not be liable with respect to any action taken, suffered or omitted to be taken in respect of the Notes in accordance with a direction received by it pursuant to Section 6.05 hereof.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to this Section 7.01.

(e) No provision of this Indenture shall require the Trustee to expend or risk its own funds or incur any liability. The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security and/or indemnity satisfactory to the Trustee against any cost, loss, liability or expense.

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

(g) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder (including as Paying Agent, Custodian, Calculation Agent and Registrar), the Collateral Trustee, and each agent, custodian and other Person employed to act hereunder.

(h) Prior to an occurrence of an Event of Default, the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture and the Trust Indenture Act, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants, duties or obligations shall be read into this Indenture and the Trust Indenture Act against the Trustee.

Section 7.02 *Rights of Trustee.*

(a) The Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee need not investigate any fact or matter stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Issuers, personally or by agent or attorney at the sole cost of the Issuers and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(b) Whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, request and conclusively rely upon an Officers' Certificate and/or an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion. The Trustee may consult with counsel of its selection and the written and verbal advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through attorneys and agents and shall not be responsible for the misconduct or negligence of any attorney or agent appointed with due care. No Depositary shall be deemed to be an attorney or agent of the Trustee and the Trustee shall not be responsible for any action or omission by any Depositary.

(d) The Trustee shall not be liable for any action it takes, suffers or omits to take in good faith that it believes to be authorized or within the discretion or rights or powers conferred upon it by this Indenture.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Issuers will be sufficient if signed by an Officer of one of the Issuers and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution.

(f) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee indemnity or security reasonably satisfactory to the Trustee against the losses, liabilities and expenses that might be incurred by it in compliance with such request or direction.

(g) The Trustee shall not be deemed to have notice or be charged with knowledge of any Default or Event of Default unless a Trust Officer of the Trustee has received written notice thereof at the Corporate Trust Office of the Trustee from the Issuers or any Holder, and such notice references the Notes and this Indenture.

(h) In no event shall the Trustee be liable for the selection of investments or for investment losses incurred thereon. The Trustee shall have no liability in respect of losses incurred as a result of the liquidation of any investment prior to its stated maturity or failure to provide timely written direction.

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

(j) In no event shall the Trustee be liable for any failure or delay in the performance of its obligations under this Indenture or any related documents because of circumstances beyond the Trustee's control, including, but not limited to, a failure, termination, or suspension of a clearing house, securities depositary, settlement system or central payment system in any applicable part of the world or acts of God, flood, war (whether declared or undeclared), civil or military disturbances or hostilities, nuclear or natural catastrophes, political unrest, explosion, severe weather or accident, earthquake, terrorism, fire, riot, labor disturbances, strikes or work stoppages for any reason, embargo, government action, including any laws, ordinances, regulations or the like (whether domestic, federal, state, county or municipal or foreign) which delay, restrict or prohibit the providing of the services contemplated by this Indenture or any related documents, or the unavailability of communications or computer facilities, the failure of equipment or interruption of communications or computer facilities, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility, or any other causes beyond the Trustee's control whether or not of the same class or kind as specified above.

(k) The permissive right of the Trustee or the Collateral Trustee to take or refrain from taking action hereunder or any other document shall not be construed as a duty.

(l) Each of the Trustee and the Collateral Trustee may request that the Issuers deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which certificate may be signed by any person authorized to sign an Officer's Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded.

(m) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

(n) Under no circumstances shall the Trustee be liable in its individual capacity for the obligations evidenced by the Notes.

(o) The Collateral Agent is appointed by the Company and the Trustee shall have no liability or responsibility for any action (or actions) of the Collateral Agent or any agent, designee or nominee thereof or any successor Collateral Agent or any agent, designee or nominee thereof. The Trustee further has no liability or responsibility for the payment or reimbursement of any fees or expenses of the Collateral Agent, or any other claims of the Collateral Agent.

Section 7.03 *Individual Rights of Trustee.*

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Issuers or any Affiliate of the Company with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any "conflicting interest," as defined in §310(b) of the Trust Indenture Act, it must eliminate such conflict within 90 days or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Section 7.10 hereof.

Section 7.04 *Trustee's Disclaimer.*

The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes. The Trustee or any authenticating agent shall not be accountable for the Issuers' use of the proceeds from the Notes or any money paid to the Issuers or upon the Issuers' direction under any provision of this Indenture. The Trustee shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee. The recitals and statements contained herein, in the Notes or any other document in connection with the sale of the Notes or pursuant to this Indenture, except the Trustee's certificates of authentication, shall be taken as the statements of the Issuers, and the Trustee or any authenticating agent assumes no responsibility for their correctness. The Trustee shall not be responsible to make any calculation with respect to any matter under this Indenture. The Trustee shall have no duty to monitor or investigate the Issuers' compliance with or the breach of, or cause to be performed or observed, any representation, warranty, or covenant, or agreement of any Person, other than the Trustee, made in this Indenture.

Neither the Trustee nor the Collateral Trustee shall make any representations as to and shall not be responsible for the existence, genuineness, value or condition of any of the Collateral or as to the security afforded or intended to be afforded thereby, hereby or by any of the Note Security Documents, or for the validity, perfection, priority or enforceability of the Liens or security interests in any of the Collateral created or intended to be created by any of the Note Security Documents, whether impaired by operation of law or by reason of any action or omission to act on its part hereunder, for the validity or sufficiency of the Collateral, any of the Note Security Documents or any agreement or assignment contained in any thereof, for the validity of the title of the Issuers to the Collateral, for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral. Neither the Trustee nor the Collateral Trustee shall have any duty to ascertain or inquire as to the performance or observance of any of the terms of this Indenture or any of the Note Security Documents by the Issuers or any other Person that is a party thereto or bound thereby. Neither the Trustee nor the Collateral Trustee shall be responsible or liable for seeing to or monitoring the attachment, perfection, or priority of any lien or security interest created or intended to be created in the Collateral hereby or by any of the Note Security Documents. Neither the Trustee nor the Collateral Trustee shall be responsible for the preparation, correctness, filing, re-filing, recording or re-recording of any security documents or instruments, including UCC financing statements or continuation statements in any public office at any time or times or otherwise perfecting or maintaining the perfection of any lien or security interest in any of the Collateral.

Section 7.05 *Notice of Defaults.*

If a Default or Event of Default with respect to the Notes occurs and is continuing and if it is actually known to a Trust Officer of the Trustee, the Trustee will mail to Holders of such Securities a notice of the Default or Event of Default within 90 days after it occurs or, if later, after a Trust Officer has knowledge of any Default or Event of Default and as otherwise required in Section 313(c) of the Trust Indenture Act. Except in the case of a Default or Event of Default in payment of principal of, premium, if any, or interest on, any Security, the Trustee may withhold the notice if and so long as it determines in good faith that withholding the notice is in the interests of the Holders of the Securities.

Section 7.06 *Trustee Notices.*

The Trustee shall transmit to holders of Notes reports that comply with Section 313(a) of the Trust Indenture Act. In the event that no events have occurred under the applicable sections of the Trust Indenture Act, the Trustee shall be under no duty or obligation to provide such reports. The Trustee will also comply with Sections 313(b) and (c) of the Trust Indenture Act.

Section 7.07 *Compensation and Indemnity.*

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

(b) The Issuers and the Guarantors shall, jointly and severally, indemnify each of the Trustee or any predecessor Trustee, and the Agents and their officers, agents, directors and employees for, and to hold them harmless against, any and all loss, damage, claims, liability or expense, including fees and expenses of counsel, including taxes (other than taxes based upon, measured by or determined by the income of the Trustee or the Agents, respectively) arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses of enforcing this Indenture against the Issuers and the Guarantors (including reasonable counsel fees and expenses, and court costs in connection with enforcing this Section 7.07) and defending itself against any claim (whether asserted by the Issuers, the Guarantors, any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, except to the extent any such loss, damage, claim, liability or expense may be attributable to its gross negligence or willful misconduct. The Trustee or Agent, as applicable, will notify the Issuers promptly of any claim for which it may seek indemnity. Failure by the Trustee or the Agent to so notify the Issuers will not relieve the Issuers or any of the Guarantors of their obligations hereunder. The Issuers or such Guarantor will defend the claim and the Trustee or the Agent, respectively, will cooperate in the defense. The Trustee or the Agent, as applicable, may have separate counsel and the Issuers will pay the reasonable fees and expenses of such counsel. Neither the Issuers nor any Guarantor need pay for any settlement made without its consent, which consent will not be unreasonably withheld.

(c) The Issuers' and Guarantors' obligations under this Section 7.07 shall survive the resignation or removal of the Trustee or the Agent, as applicable, the termination for any reason of this Indenture, including any termination or rejection of this Indenture in any insolvency or similar proceeding

and the repayment of all the Securities, and the resignation or removal of the Trustee or the Agent, as applicable.

(d) To secure the Issuers' and the Guarantors' payment obligations in this Section 7.07, the Trustee will have a Lien prior to the Securities upon the Collateral and all other money or property held or collected by the Trustee, except that held in trust to pay principal of, premium, if any, or interest on, particular Securities. Such Lien will survive the satisfaction and discharge of this Indenture.

(e) When the Trustee or any Agent incurs expenses or renders services after an Event of Default specified in clause (10) or (11) of Section 6.01 hereof occurs, the expenses and the compensation for the services (including the fees and expenses of their agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

(f) "Trustee" for purposes of this Section shall include any predecessor Trustee; *provided*, *however*, that the gross negligence or willful misconduct of any Trustee hereunder shall not affect the rights of any other Trustee hereunder.

(g) Without limiting the generality of the foregoing, the Issuers agree to indemnify the Trustee, the Agents and each of their officers, agents, directors and employees (each an "*Indemnitee*") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including reasonable counsel or consultant fees, charges and disbursements, incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of (i) any Environmental Claim to the extent related in any way to the Issuers or any of its Affiliates or (ii) any actual or alleged presence, Release or threatened Release of Hazardous Materials at, under, on or from any real property, any property owned, leased or operated by any predecessor of the Issuers or any of its Affiliates, or, to the extent related in any way to the Issuers or any of their respective Affiliates, any property at which the Issuers or any of their respective Affiliates has sent Hazardous Materials for treatment, storage or disposal; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses result from the gross negligence or willful misconduct of such Indemnitee, as determined by the final judgment of a court of competent jurisdiction.

Section 7.08 *Replacement of Trustee.*

(a) A resignation or removal of the Trustee and appointment of a successor Trustee will become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.08.

(b) The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying the Issuers, with 30 days' advance notice. The Holders of a majority in aggregate principal amount of the then outstanding Securities may remove the Trustee by so notifying the Trustee and the Issuers in writing. The Issuers may remove the Trustee, with at least 30 days' advance notice, if:

(1) the Trustee fails to comply with Section 7.10 hereof;

(2) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(3) a custodian or public officer takes charge of the Trustee or its property; or

(4) the Trustee becomes incapable of acting.

(c) If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Issuers will promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in aggregate principal amount of the then outstanding Securities may appoint a successor Trustee to replace the successor Trustee appointed by the Issuers.

(d) If a successor Trustee does not take office within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Issuers, or the Holders of at least 10% in aggregate principal amount of the then outstanding Securities may, at the expense of the Company, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(e) A successor Trustee will deliver a written acceptance of its appointment to the retiring Trustee and to the Issuers. Thereupon, the resignation or removal of the retiring Trustee will become effective, and the successor Trustee will have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee will deliver a notice of its succession to Holders. The retiring Trustee will promptly transfer all property held by it as Trustee to the successor Trustee; *provided* that all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 7.07 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 7.08, the Issuers' obligations under Section 7.07 hereof will continue for the benefit of the retiring Trustee.

Section 7.09 *Successor Trustee by Merger, Etc.*

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another Person, the successor Person without any further act will be the successor Trustee.

Section 7.10 *Eligibility; Disqualification.*

There will at all times be a Trustee hereunder that is a Person organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least $50.0 million as set forth in its most recent published annual report of condition. This Indenture shall always have a Trustee that satisfies the requirements of Sections 310(a)(1), (2) and (5) of the Trust Indenture Act in every respect. If the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall (i) eliminate such interest within 90 days, (ii) apply to the Commission for permission to continue as trustee or (iii) resign, in each case to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture. The Trustee is subject to Section 310(b) of the Trust Indenture Act. The Trustee is subject to Section 311(a) of the Trust Indenture Act, excluding any creditor relationship listed in Section 311(b) of the Trust Indenture Act. A Trustee who has resigned or been removed shall be subject to Section 311(a) of the Trust Indenture Act to the extent indicated therein.

Section 7.11 *Tax Withholding.*

Notwithstanding any other provision of this Agreement, the Trustee shall be entitled to make a deduction or withholding from any payment which it makes under this Indenture for or on account of any present or future taxes, duties or charges if and to the extent so required by any applicable law and any current or future regulations or agreements thereunder or official interpretations thereof or any law implementing an intergovernmental approach thereto or by virtue of the relevant holder failing to satisfy any certification or other requirements in respect of the Notes, in which event the Trustee shall make such payment after such withholding or deduction has been made and shall account to the relevant authorities

for the amount so withheld or deducted and shall have no obligation to gross up any payment hereunder or pay any additional amount as a result of such withholding tax.

The Issuers hereby covenant with the Trustee that it will use best efforts to provide the Trustee with sufficient information, to the extent such information is within the control of the Issuers, so as to enable the Trustee to determine whether or not the Trustee is obliged, in respect of any payments to be made by it pursuant to the Transaction Documents, to make any withholding or deduction pursuant to an agreement described in Section 1471(b) of the Code or otherwise imposed pursuant to Sections 1471 through 1474 of the Code and any regulations, or agreements thereunder or official interpretations thereof or any intergovernmental agreement between the United States and another jurisdiction facilitating the implementation thereof (or any law implementing such an intergovernmental agreement); *provided*, *however*, that for the avoidance of doubt, nothing about the foregoing language shall require the Issuers to seek information from holders of the Notes.

Section 7.12 *Co-Trustee.*

(a) Notwithstanding any other provisions of this Indenture, at any time and including for the purpose of meeting any legal requirement of any jurisdiction (including any jurisdiction in which any part of the Collateral may at the time be located), the Trustee shall have the power and may execute and deliver all instruments necessary for the appointment of one or more Persons to act as a co-trustee or co-trustees, or separate trustee or separate trustees (including with respect to all or any part of the Collateral), and to vest in such Person or Persons, in such capacity and for the benefit of the Holders, subject to the other provisions of this Section, such powers, duties, obligations, rights and trusts as the Trustee may consider necessary or desirable (including title to the Collateral, or any part thereof). No co-trustee or separate trustee hereunder shall be required to meet the terms of eligibility as a successor trustee under Section 7.10 hereof and no notice to Holders of the appointment of any co-trustee is or separate trustee shall be required under Section 7.08 hereof.

(b) Every separate trustee and co-trustee shall, to the extent permitted by law, be appointed and act subject to the following provisions and conditions:

(1) all rights, powers, duties and obligations conferred or imposed upon the Trustee shall be conferred or imposed upon and exercised or performed by the Trustee and such separate trustee or co-trustee jointly (it being understood that such separate trustee or co-trustee is not authorized to act separately without the Trustee joining in such act), except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations (including the holding of title to the Collateral or any portion thereof in any such jurisdiction) shall be exercised and performed singly by such separate trustee or co-trustee, but solely at the direction of the Trustee;

(2) the Trustee shall not have any responsibility for or be personally liable relating to such appointment or by reason of any act or omission of any co-trustee or separate trustee hereunder. No co-trustee hereunder shall be personally liable by reason of any act or omission of the Trustee, any separate trustee or any other co-trustee hereunder. No separate trustee hereunder shall be personally liable by reason of any act or omission of the Trustee, any co-trustee or any other separate trustee hereunder; and

(3) the Trustee may at any time accept the resignation of or remove any separate trustee or co-trustee.

(c) Any notice, request or other writing given to the Trustee shall be deemed to have been given to each of the then separate trustees and co-trustees, as effectively as if given to each of them. Every instrument appointing any separate trustee or co-trustee shall refer to this Indenture and the conditions of this Article 7. Each separate trustee and co-trustee, upon its acceptance of the trusts conferred, shall be vested with the estates or property specified in its instrument of appointment, either jointly with the Trustee or separately, as may be provided therein, subject to all the provisions of this Indenture, specifically including every provision of this Indenture relating to the conduct of, affecting the liability of, or affording protection or rights (including the rights to compensation, reimbursement and indemnification hereunder) to, the Trustee. Every such instrument shall be filed with the Trustee.

(d) Any separate trustee or co-trustee may at any time constitute the Trustee its agent or attorney-in-fact with full power and authority, to the extent not prohibited by law, to do any lawful act under or in respect of this Indenture on its behalf and in its name. If any separate trustee or co-trustee shall die, become incapable of acting, resign or be removed, all of his, her or its estates, properties, rights, remedies and trusts shall vest in and be exercised by the Trustee, to the extent permitted by law, without appointment of a new or successor trustee.

## ARTICLE 8
## LEGAL DEFEASANCE AND COVENANT DEFEASANCE

For purposes of the Notes, Article 8 hereof provides the terms upon which legal defeasance and covenant defeasance can occur.

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

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

Section 8.02 *Legal Defeasance and Discharge.*

Upon the Issuers' exercise under Section 8.01 hereof of the option applicable to this Section 8.02, the Issuers and each of the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be deemed to have been discharged from their obligations with respect to all outstanding Notes (including the Subsidiary Guarantees) on the date the conditions set forth in Section 8.04 hereof are satisfied (hereinafter, "*Legal Defeasance*"). For this purpose, Legal Defeasance means that the Issuers and the Guarantors shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes (including the Subsidiary Guarantees), which will thereafter be deemed to be "outstanding" only for the purposes of Section 8.05 hereof and the other Sections of this Indenture referred to in clauses (1) and (2) below, and to have satisfied all their other obligations under such Notes, the Subsidiary Guarantees and this Indenture (and the Trustee, on demand of and at the expense of the Issuers, shall execute proper instruments acknowledging the same), except for the following provisions which will survive until otherwise terminated or discharged hereunder:

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

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

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

(4) this Article 8.

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

Section 8.03 *Covenant Defeasance.*

Upon the Issuers' exercise under Section 8.01 hereof of the option applicable to this Section 8.03, the Issuers and the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be released from each of their obligations under Sections 4.07, 4.09, 4.10, 4.11 and 4.14 hereof with respect to the outstanding Notes on and after the date the conditions set forth in Section 8.04 hereof are satisfied (hereinafter, "*Covenant Defeasance*"), and the Notes will thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but will continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes will not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes and Subsidiary Guarantees, the Issuers and the Guarantors may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply will not constitute a Default or an Event of Default under Section 6.01 hereof, but, except as specified above, the remainder of this Indenture and such Notes and Subsidiary Guarantees shall be unaffected thereby. In addition, upon the Issuers' exercise under Section 8.01 hereof of the option applicable to this Section 8.03, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, Sections 6.01(3), (4), (5) and (8) hereof shall not constitute Events of Default.

Section 8.04 *Conditions to Legal or Covenant Defeasance.*

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

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

(2) in the case of an election under Section 8.02 hereof, the Issuers must deliver to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that:

(A) the Issuers have received from, or there has been published by, the Internal Revenue Service a ruling; or

(B) since the date of this Indenture, there has been a change in the applicable federal income tax law,

in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders of the outstanding Notes will not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(3) in the case of an election under Section 8.03 hereof, the Issuers must deliver to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that the Holders of the outstanding Notes will not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(4) no Default or Event of Default shall have occurred and is continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit (and any similar concurrent deposit relating to other Indebtedness), and the granting of Liens to secure such borrowings);

(5) such Legal Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than this Indenture and the agreements governing any other Indebtedness being defeased, discharged or replaced) to which the Issuers or any of their respective Subsidiaries is a party or by which the Issuers or any of their respective Subsidiaries is bound;

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

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

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

Subject to Section 8.06 hereof, all money and non-callable Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.05, the "*Trustee*") pursuant to Section 8.04 hereof in respect of the outstanding Notes shall be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Company, the Co-Issuer or a Guarantor acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium, if any, and interest, but such money need not be segregated from other funds except to the extent required by law.

The Issuers shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable Government Securities deposited pursuant to Section 8.04 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

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

Section 8.06 *Repayment to the Issuers.*

Subject to applicable escheatment laws, any money deposited with the Trustee or any Paying Agent, or then held by the Issuers, in trust for the payment of the principal of, premium, if any, or interest on, any Note and remaining unclaimed for two years after such principal, premium, if any, or interest has become due and payable shall be paid to the Issuers on its written request or (if then held by the Issuers) will be discharged from such trust; and the Holder of such Note will thereafter be permitted to look only to the Issuers for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Issuers as trustee thereof, will thereupon cease.

Section 8.07 *Reinstatement.*

If the Trustee or Paying Agent is unable to apply any United States dollars or non-callable Government Securities in accordance with Section 8.02 or 8.03 hereof, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Issuers' and the Guarantors' obligations under this Indenture and the Notes and the Subsidiary Guarantees will be revived and reinstated as though no deposit had occurred pursuant to Section 8.02 or 8.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.02 or 8.03 hereof, as the case may be; *provided*, *however*, that, if the Issuers make any payment of principal of, premium, if any, or interest on, any Note following the reinstatement of its obligations, the Issuers shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

## ARTICLE 9
## AMENDMENT, SUPPLEMENT AND WAIVER

Section 9.01 *Without Consent of Holders of Notes.*

Notwithstanding Section 9.02 of this Indenture, without the consent of any Holder of Securities, the Issuers, the Guarantors and the Trustee may amend or supplement this Indenture, the Securities, the Subsidiary Guarantees, any Note Security Document, the Collateral Trust Agreement (subject to the rights of the other parties to the Collateral Trust Agreement) or the Tenaska Intercreditor Agreement (subject to the rights of the other parties to the Tenaska Intercreditor Agreement):

(1) to cure any ambiguity, mistake, defect or inconsistency;

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

(3) to provide for the assumption of the Issuers' Obligations to Holders of Securities in the case of a merger or consolidation or sale of all or substantially all of the Issuers' assets;

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

(5) to evidence and provide for the acceptance and appointment under this Indenture of a successor trustee pursuant to the requirements hereof;

(6) to allow any Guarantor to execute a supplemental indenture and/or a Subsidiary Guarantee with respect to the Securities;

(7) to release, terminate or discharge the Subsidiary Guarantee of any Guarantor or any Lien as provided for in this Indenture;

(8) to comply with any requirement of the SEC in connection with any qualification of this Indenture under the Trust Indenture Act;

(9) to evidence and provide for the acceptance of an appointment under this Indenture or any Note Security Document of a successor Trustee or Collateral Trustee; *provided* that the successor Trustee or Collateral Trustee is otherwise qualified and eligible to act as such under the terms of this Indenture;

(10) to provide additional Collateral securing the Notes or the Subsidiary Guarantees;

(11) to make, complete or confirm any grant of Liens on Collateral permitted or required by this Indenture or any of the Note Security Documents; or

(12) to release or subordinate Liens on Collateral in accordance with this Indenture and the Note Security Documents.

Upon the request of the Issuers accompanied by a Board Resolution authorizing the execution of any such amended or supplemental indenture, and upon receipt by the Trustee or the Collateral Trustee, as applicable, of the documents described in Section 7.02 hereof, the Trustee or the Collateral Trustee, as applicable, shall join with the Issuers and the Guarantors in the execution of any amended or supplemental indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee or Collateral Trustee, as applicable, shall not be obligated to enter into such amended or supplemental indenture that affects its own rights, duties or immunities under this Indenture or otherwise.

Section 9.02 *With Consent of Holders of Notes.*

Except as provided below in this Section 9.02, the Issuers and the Trustee may amend or supplement this Indenture, the Notes, the Subsidiary Guarantees, any Note Security Document or the Collateral Trust Agreement or the Tenaska Intercreditor Agreement with the consent of the Holders of at least a majority in aggregate principal amount of the then outstanding Securities (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, any Securities), and, subject to Sections 6.04 and 6.07 hereof, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium, if any, or interest on, any Securities, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture, the Notes or the Subsidiary Guarantees may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Securities (including, without limitation, consents obtained in connection with a tender offer or exchange offer for,

or purchase of, any Securities). Section 2.09 hereof shall determine which Securities are considered to be "outstanding" for purposes of this Section 9.02.

Upon the request of the Issuers accompanied by a Board Resolution and upon the filing with the Trustee of evidence satisfactory to the Trustee of the consent of the Holders of Securities as aforesaid, and upon receipt by the Trustee of an Officer's Certificate and Opinion of Counsel, the Trustee shall join with the Issuers and the Guarantors in the execution of such amended or supplemental indenture unless such amended or supplemental indenture directly affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but will not be obligated to, enter into such amended or supplemental Indenture.

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

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

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

(2) reduce the principal of, or change the fixed maturity of, any Security or alter the provisions with respect to the redemption of the Securities (other than provisions relating to the covenants described in Section 4.09 hereof and provisions relating to the number of days' notice to be given in case of redemption);

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

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

(5) make any Security payable in currency other than that stated in the Securities;

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

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

In addition, without the consent of the holders of at least 66⅔% in principal amount of the Securities then outstanding, no amendment, supplement or waiver may (1) make any change to any Note Security Document, the Collateral Trust Agreement (subject to the rights of the other parties to the

Collateral Trust Agreement), the Tenaska Intercreditor Agreement (subject to the rights of the other parties to the Tenaska Intercreditor Agreement) or to any provisions in Article 11 hereof, that would release any material Collateral from the Liens of the Note Security Documents or that would release any of the Subsidiary Guarantees (except as otherwise permitted by the terms of this Indenture, the Note Security Documents, the Collateral Trust Agreement and, if applicable, the Tenaska Intercreditor Agreement), or that would change or alter the priority of the security interests in the Collateral under the Collateral Trust Agreement or Tenaska Intercreditor Agreement in any manner adverse to Holders in any material respect, or (2) make any other change to any Note Security Document, the Collateral Trust Agreement (subject to the rights of the other parties to the Collateral Trust Agreement), the Tenaska Intercreditor Agreement (subject to the rights of the other parties to the Tenaska Intercreditor Agreement) or the specified provisions in the Indenture dealing with the Collateral or the Note Security Documents, or the application of trust proceeds of the Collateral pursuant to the Indenture, that would adversely affect Holders in any material respect, in each case other than in accordance with the terms of this Indenture, the Note Security Documents, the Collateral Trust Agreement and, if applicable, the Tenaska Intercreditor Agreement.

Section 9.03 *[Reserved]*.

Section 9.04 *Revocation and Effect of Consents.*

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of a Security is a continuing consent by the Holder of a Security and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent is not made on any Security. However, any such Holder of a Security or subsequent Holder of a Security may revoke the consent as to its Security if the Trustee receives written notice of revocation before the date the amendment, supplement or waiver becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

Section 9.05 *Notation on or Exchange of Securities.*

The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Security thereafter authenticated. The Issuers in exchange for all Securities may issue and the Trustee shall, upon receipt of an Authentication Order, authenticate new Securities that reflect the amendment, supplement or waiver.

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

Section 9.06 *Trustee to Sign Amendments, Etc.*

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

ARTICLE 10
SUBSIDIARY GUARANTEES

For purposes of the Notes, Article 10 hereof provides the terms of Subsidiary Guarantees of the Notes.

Section 10.01 *Guarantee.*

(a) Subject to this Article 10, each of the Guarantors hereby, jointly and severally, unconditionally and irrevocably guarantees to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the obligations of the Issuers hereunder or thereunder, that:

(1) the principal of, premium, if any, and interest on, the Notes shall be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of, premium, if any, and interest on, the Notes, if lawful, and all other obligations of the Issuers to the Holders or the Trustee hereunder or thereunder shall be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and

(2) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise.

Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors will be jointly and severally obligated to pay the same immediately. Each Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

(b) The Guarantors hereby agree that their obligations hereunder are unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against the Issuers, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor. Each Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Issuers, any right to require a proceeding first against the Issuers, protest, notice and all demands whatsoever and covenant that this Subsidiary Guarantee will not be discharged except by complete performance of the obligations contained in the Notes and this Indenture.

(c) If any Holder or the Trustee is required by any court or otherwise to return to the Issuers, the Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to either the Issuers or the Guarantors, any amount paid by either to the Trustee or such Holder, this Subsidiary Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

(d) Each Guarantor agrees that it will not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (1) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 hereof for the purposes of this Subsidiary Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (2) in the event of any declaration of acceleration of such obligations

as provided in Article 6 hereof, such obligations (whether or not due and payable) will forthwith become due and payable by the Guarantors for the purpose of this Subsidiary Guarantee. The Guarantors will have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Subsidiary Guarantee.

Section 10.02 *Subrogation; Limitation on Guarantor Liability.*

Upon payment in full of all obligations guaranteed hereby, each Guarantor may assert any and all claims in respect of any rights of subrogation against the Issuers (a "*Guarantor Subrogation Claim*"), and any Guarantor Subrogation Claim may be set off or otherwise offset against any amounts owed by such Guarantor or any other Guarantor to the Issuers, and to the extent that all or any portion of the Guarantor Subrogation Claim of a Guarantor is set off or otherwise offset against amounts owed to the Issuers by another Guarantor, the latter Guarantor shall have an intercompany liability to the former Guarantor in the amount of such set-off or other offset.

Each Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Subsidiary Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Subsidiary Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantors hereby irrevocably agree that the obligations of such Guarantor will be limited to the maximum amount that will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under this Article 10, in each case determined based on the respective net assets (i.e., assets less liabilities) of all the Guarantors at the time of such payment, contribution or collection (or, as applicable, at the time of such liquidation or distribution), determined in accordance with GAAP or in any other amount as may be required or appropriate under applicable law, result in the obligations of such Guarantor under its Subsidiary Guarantee not constituting a fraudulent transfer or conveyance; *provided* that the basis for determining any contribution claims in respect of the Subsidiary Guarantees shall also be the basis for determining any contribution claims in respect of the Exit Credit Agreement.

Section 10.03 *Execution and Delivery of Subsidiary Guarantee.*

The execution by a Guarantor of this Indenture (or a supplemental indenture in the form of Exhibit E hereto) evidences its Subsidiary Guarantee set forth in Section 10.01.

Each Guarantor hereby agrees that its Subsidiary Guarantee set forth in Section 10.01 hereof will remain in full force and effect notwithstanding any failure to endorse on each Note a notation of such Subsidiary Guarantee.

If an Officer whose signature is on this Indenture or on the Subsidiary Guarantee no longer holds that office at the time the Trustee authenticates the Note on which a Subsidiary Guarantee is endorsed, the Subsidiary Guarantee will be valid nevertheless.

The delivery of any Note by the Trustee, after the authentication thereof hereunder, will constitute due delivery of the Subsidiary Guarantee set forth in this Indenture on behalf of the Guarantors.

Section 10.04 *Guarantors May Consolidate, Etc., on Certain Terms.*

Except as otherwise provided in Section 10.05 hereof, no Guarantor may sell or otherwise dispose of all or substantially all of its assets to, or consolidate with or merge with or into (whether or not such Guarantor is the surviving Person) another Person, other than the Issuers or another Guarantor, unless:

(1) immediately after giving effect to such transaction, no Default or Event of Default exists; and

(2) either (i) the Person acquiring the property in any such sale or disposition or the Person formed by or surviving any such consolidation or merger unconditionally assumes all the obligations of that Guarantor under its Subsidiary Guarantee, this Indenture, the Note Security Documents, the Collateral Trust Agreement and the Tenaska Intercreditor Agreement on the terms set forth herein or therein, pursuant to a supplemental indenture in form satisfactory to the Trustee; or (ii) such sale or other disposition is otherwise consistent with this Indenture and the Net Proceeds of such sale or other disposition are applied in accordance with the applicable provisions of this Indenture.

In case of any such consolidation, merger, sale or conveyance and upon the assumption by the successor Person, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the Subsidiary Guarantee endorsed upon the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Guarantor, such successor Person shall succeed to and be substituted for the Guarantor with the same effect as if it had been named herein as a Guarantor. Such successor Person thereupon may cause to be signed any or all of the Subsidiary Guarantees to be endorsed upon all of the Notes issuable hereunder which theretofore shall not have been signed by the Issuers and delivered to the Trustee. All the Subsidiary Guarantees so issued will in all respects have the same legal rank and benefit under this Indenture as the Subsidiary Guarantees theretofore and thereafter issued in accordance with the terms of this Indenture as though all of such Subsidiary Guarantees had been issued at the date of the execution hereof.

Except as set forth in Articles 4 and 5 hereof, and notwithstanding clause (2) above, nothing contained in this Indenture or in any of the Notes will prevent any consolidation or merger of a Guarantor with or into the Company, the Co-Issuer or another Guarantor, or will prevent any sale or conveyance of the property of a Guarantor as an entirety or substantially as an entirety to the Company, the Co-Issuer or another Guarantor.

Section 10.05 *Releases.*

(a) The Subsidiary Guarantee of a Guarantor shall be released automatically:

(1) in connection with any sale or other disposition of all or substantially all of the assets of that Guarantor (including by way of merger or consolidation) to a Person that is not (either before or after giving effect to such transaction) the Company or a Restricted Subsidiary of the Company, if the sale or other disposition does not violate the provisions of Section 4.10 hereof;

(2) in connection with any sale or other disposition of Capital Stock of that Guarantor to a Person that is not (either before or after giving effect to such transaction) the Company or a Restricted Subsidiary of the Company, if (i) the sale or other disposition does not violate the provisions of Section 4.10 hereof, and (ii) following such sale or other disposition, that Guarantor is not a direct or indirect Subsidiary of the Company;

(3) if the Company designates any Restricted Subsidiary that is a Guarantor to be an Unrestricted Subsidiary in accordance with Section 4.19 hereof;

(4) upon a Subsidiary that is not an Excluded Subsidiary becoming an Excluded Subsidiary, other solely by operation of clause (1) or (2) of the definition of "Excluded Subsidiary";

(5) upon defeasance or satisfaction and discharge of the Notes as provided in Sections 8.01, 8.02, 8.03, 8.04 and 12.01 hereof;

(6) upon the dissolution of a Guarantor that is permitted under this Indenture;

(7) as provided for in the Note Security Documents; or

(8) otherwise with respect to the Subsidiary Guarantee of any Guarantor, upon the prior consent of Holders of at least 66⅔% in aggregate principal amount of the Notes then outstanding; or

(9) in the case of NRG Wholesale Generation LP, upon the sale of the Choctaw Assets to the extent so released in respect of the Exit Credit Agreement pursuant to the Collateral Agreement.

(b) The Subsidiary Guarantee of a Guarantor shall be released with respect to the Notes automatically upon Legal Defeasance, Covenant Defeasance or satisfaction and discharge of this Indenture pursuant to Articles 8 and 12 hereof.

(c) Upon delivery by the Company to the Trustee of an Officers' Certificate and an Opinion of Counsel to the effect that the action or event giving rise to the applicable release has occurred or was made by the Company in accordance with the provisions of this Indenture, the Trustee shall execute any documents reasonably required in order to evidence the release of any Guarantor from its obligations under its Guarantee.

(d) Any Guarantor not released from its obligations under its Subsidiary Guarantee as provided in this Section 10.05 will remain liable for the full amount of principal of, premium, if any, and interest on, the Notes and for the other obligations of any Guarantor under this Indenture as provided in this Article 10.

## ARTICLE 11
## COLLATERAL AND SECURITY

Section 11.01 *Note Security Documents.*

The due and punctual payment of the principal of, premium on, if any, and interest on, the Notes when and as the same shall be due and payable, whether on an interest payment date, at maturity, by acceleration, repurchase, redemption or otherwise, and interest on the overdue principal of, premium on, if any, and interest, if any (to the extent permitted by law), on the Notes and performance of all other obligations of the Issuers to the Holders of Notes or the Trustee under this Indenture and the Notes (including, without limitation, the Subsidiary Guarantees), according to the terms hereunder or thereunder, are secured as provided in the Note Security Documents. Each Holder of Notes, by its acceptance thereof, consents and agrees to the terms of the Note Security Documents (including, without limitation, the provisions providing for foreclosure, subordination of Liens and release of Collateral) as

the same may be in effect or may be amended from time to time in accordance with its terms and authorizes and directs the Trustee to direct the Collateral Trustee to enter into the Note Security Documents and to perform its obligations and exercise its rights thereunder in accordance therewith. The Issuers will deliver to the Trustee copies of all documents delivered to the Collateral Trustee pursuant to the Note Security Documents, and will do or cause to be done all such acts and things as may be necessary or proper, or as may be required by the provisions of the Note Security Documents, to assure and confirm to the Trustee and the Collateral Trustee the security interest in the Collateral contemplated hereby, by the Note Security Documents or any part thereof, as from time to time constituted, so as to render the same available for the security and benefit of this Indenture and of the Notes secured hereby, according to the intent and purposes herein expressed. The Trustee, the Collateral Trustee and each Holder of the Notes, by accepting the Notes and the Subsidiary Guarantees of the Guarantors (with respect to the Holders) and the benefits of the Note Documents, acknowledges that, as more fully set forth in the Note Security Documents, the Collateral as now or hereafter constituted shall be held for the benefit of the Holders and Trustee, subject to the Collateral Trust Agreement, the Tenaska Intercreditor Agreement and any other intercreditor agreement entered into from time to time after the date hereof as contemplated by this Indenture, and the Lien of this Indenture and the Note Security Documents is subject to and qualified and limited in all respects by the Collateral Trust Agreement, the Tenaska Intercreditor Agreement and any other intercreditor agreement entered into from time to time after the date hereof as contemplated by this Indenture, the Note Security Documents and actions that may be taken thereunder. The Issuers will take, and will cause their Subsidiaries to take, any and all actions reasonably required to cause the Note Security Documents to create and maintain, as security for the Obligations of the Issuers hereunder, a valid and enforceable perfected second priority Lien (or, to the extent contemplated by the Tenaska Intercreditor Agreement, third or more junior priority Lien) in and on all the Collateral, in favor of the Collateral Trustee for the benefit of the Holders of Notes, superior to and prior to the rights of all third Persons and subject to no other Liens other than Liens permitted under Section 4.12; *provided* that, to the extent that any Note Security Document expressly states that any actions necessary to perfect such security interests are not required to be taken, no such actions will be necessary and to the extent that the Priority Lien Agent (acting in good faith) provides an extension of any delivery, filing, recording or other action in respect of the Collateral or the perfection thereof, such extension shall apply equally to this Agreement and the Note Security Documents. Neither the Trustee nor the Collateral Trustee shall have any obligation to file financing statements, termination statements or continuation statements, or be responsible for maintaining the security interests or perfection thereof purported to be created as described herein. Notwithstanding anything to the contrary contained herein or in any other Note Security Document, neither the Issuers nor the Guarantors shall be required to take any of the actions described in Section 5.13 and Schedule 5.13 of the Exit Credit Agreement with respect to the Collateral until the time periods set forth in Section 5.13 and Schedule 5.13 of the Exit Credit Agreement have expired.

Section 11.02 *Recording and Opinions.*

(a) To the extent applicable, the Company shall cause Section 314(d) of the Trust Indenture Act, relating to the release of property or securities subject to the Liens of the Note Security Documents, and 314(b) Trust Indenture Act, requiring an annual opinion of counsel relating to the maintenance of the Liens under this Indenture, to be complied with.

(b) Any release of Collateral permitted by Section 4 of the Collateral Trust Agreement will be deemed not to impair the Liens under this Indenture and the Note Security Documents in contravention thereof. Any certificate or opinion required by Section 314(d) of the Trust Indenture Act shall be made by an Officer or legal counsel, as applicable, of the Company except in cases where Section 314(d) of the Trust Indenture Act requires that such certificate or opinion be made by an independent Person, which Person will be an independent engineer, appraiser or other expert selected by the Company.

(c) Notwithstanding anything to the contrary in this Section 11.02, the Company shall not be required to comply with all or any portion of 314(d) of the Trust Indenture Act if it reasonably determines that under the terms of 314(d) of the Trust Indenture Act or any interpretation or guidance as to the meaning thereof of the SEC and its staff, including "no action" letters or exemptive orders, all or any portion of 314(d) of the Trust Indenture Act is inapplicable to any release or series of releases of the Collateral. Without limiting the generality of the foregoing, the Issuers and the Guarantors may, subject to the other provisions of this Indenture, among other things, without any release or consent by the Holders, conduct ordinary course activities with respect to the Collateral, including, without limitation, (i) selling or otherwise disposing of, in any transaction or series of related transactions, any property subject to the Lien of the Note Security Documents that has become worn out, defective, obsolete or not used or useful in the business; (ii) abandoning, terminating, canceling, releasing or making alterations in or substitutions of any leases or contracts subject to the Lien of this Indenture or any of the Note Security Documents; (iii) surrendering or modifying any franchise, license or permit subject to the Lien of the Note Security Documents that it may own or under which it may be operating; (iv) altering, repairing, replacing, changing the location or position of and adding to its structures, machinery, systems, equipment, fixtures and appurtenances; (v) granting a license of any intellectual property; (vi) selling, transferring or otherwise disposing of inventory in the ordinary course of business; (vii) collecting accounts receivable in the ordinary course of business as permitted by Section 4.10 hereof; (viii) making cash payments (including for the repayment of Indebtedness or interest) from cash that is at any time part of the Collateral in the ordinary course of business that are not otherwise prohibited by this Indenture and the Note Security Documents; and (ix) abandoning any intellectual property that is no longer used or useful in the Issuers' or a Guarantor's businesses.

Section 11.03 *Release of Collateral; Subordination of Liens.*

The Collateral Trustee may, to the extent permitted by Sections 7.01 and 7.02 hereof, accept as conclusive evidence of compliance with the foregoing provisions an Officer's Certificate and Opinion of Counsel stating that all conditions precedent to the release pursuant to Section 4 of the Collateral Trust Agreement of the applicable Lien have been complied with.

Section 11.04 *Collateral Trust Agreement and Tenaska Intercreditor Agreement.*

This Article 11 and the provisions of each other Note Security Document are subject to the terms, conditions and benefits set forth in the Collateral Trust Agreement, the Tenaska Intercreditor Agreement and any other intercreditor agreement entered into from time to time after the date hereof as contemplated by this Indenture. The Issuers and each Guarantor consents to, and agrees to be bound by, the terms of the Collateral Trust Agreement, the Tenaska Intercreditor Agreement and any other intercreditor agreement entered into from time to time after the date hereof as contemplated by this Indenture, as the same may be in effect from time to time, and to perform its obligations thereunder in accordance with the terms thereof. Each Holder of Notes, by its acceptance of the Notes, (a) consents to the subordination of Liens and subordination of payments provided for in the Collateral Trust Agreement and Tenaska Intercreditor Agreement, (b) agrees that it will be bound by, and will take no actions contrary to, the provisions of the Collateral Trust Agreement, the Tenaska Intercreditor Agreement and any other intercreditor agreement entered into from time to time after the date hereof as contemplated by this Indenture and (c) authorizes the Trustee and the Collateral Trustee (and the Trustee to direct the Collateral Trustee) on behalf of each Holder of Notes to enter into the Collateral Trust Agreement, the Tenaska Intercreditor Agreement and any other intercreditor agreement entered into from time to time after the date hereof as contemplated by this Indenture Trustee or any applicable capacity under any other intercreditor agreement entered into from time to time after the date hereof as contemplated by this Indenture, in the case of the Trustee, and as Collateral Trustee (as defined in the Collateral Trust Agreement) and Junior Lien Collateral Trustee (as defined in the Tenaska Intercreditor Agreement) and any applicable capacity under any other intercreditor

agreement entered into from time to time after the date hereof as contemplated by this Indenture, in the case of the Collateral Trustee. In addition, each Holder of Notes authorizes and instructs the Trustee and Collateral Trustee to enter into any amendments, amendments and restatements, supplements, replacements or joinders to the Collateral Trust Agreement, Tenaska Intercreditor Agreement and any other intercreditor agreement entered into from time to time after the date hereof as contemplated by this Indenture, without the consent of any Holder or the Trustee, to add additional Indebtedness as Priority Lien Debt, Parity Lien Debt or Junior Priority Obligations (as defined in the Tenaska Intercreditor Agreement) or junior lien indebtedness and to add other parties (or any authorized agent or trustee therefor) holding such Indebtedness thereto and to establish that the Lien on any Collateral securing such Indebtedness ranks prior to or equally with or junior to the Liens on such Collateral, as applicable, then outstanding. For purposes of this Section 11.04 only, in the case of any conflicts between this Indenture and the Collateral Trust Agreement, the provisions of the Collateral Trust Agreement shall govern and control.

Notwithstanding anything herein to the contrary, solely with respect to any Shared Collateral (as defined in the Tenaska Intercreditor Agreement) (i) the liens and security interests granted to the Collateral Trustee pursuant to this Indenture and the Secured Notes Documents are expressly subject and subordinate to the liens and security interests granted in favor of the Tenaska (as defined in the Tenaska Intercreditor Agreement) and (ii) the exercise of any right or remedy by the Collateral Trustee hereunder or thereunder is subject to the limitations and provisions of the Tenaska Intercreditor Agreement. In the event of any conflict between the Indenture and the Tenaska Intercreditor Agreement with respect to the relative rights in the Collateral of the Secured Parties on the one hand, and Tenaska on the other hand, the terms of the Tenaska Intercreditor Agreement shall govern.

THIS INSTRUMENT AND THE RIGHTS AND OBLIGATIONS EVIDENCED HEREBY ARE SUBORDINATED TO THE PRIORITY LIEN DEBT (AS DEFINED IN THE COLLATERAL TRUST AGREEMENT REFERRED TO BELOW) IN THE MANNER AND TO THE EXTENT SET FORTH IN THE COLLATERAL TRUST AGREEMENT, DATED AS OF DECEMBER 14, 2018 (AS THE SAME MAY BE AMENDED, RESTATED, AMENDED AND RESTATED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME PURSUANT TO THE TERMS THEREOF, THE "COLLATERAL TRUST AGREEMENT"), BY AND AMONG GENON HOLDINGS, LLC, BARCLAYS BANK PLC, AS THE PRIORITY LIEN REPRESENTATIVE (AS DEFINED THEREIN), WELLS FARGO BANK, N.A., AS TRUSTEE AND U.S. BANK NATIONAL ASSOCIATION, AS COLLATERAL TRUSTEE (AS DEFINED THEREIN); AND EACH OTHER LOAN PARTY FROM TIME TO TIME PARTY HERETO AND EACH HOLDER OF THIS INSTRUMENT, BY ITS ACCEPTANCE HEREOF, IRREVOCABLY AGREES TO BE AND SHALL BE BOUND BY THE PROVISIONS OF THE COLLATERAL TRUST AGREEMENT.

Section 11.05 *Authorization of Actions to Be Taken by the Trustee Under the Note Security Documents.*

Subject to the provisions of Sections 7.01 and 7.02 hereof, the Collateral Trust Agreement, the Tenaska Intercreditor Agreement and any other intercreditor agreement entered into from time to time after the date hereof as contemplated by this Indenture, the Trustee may, in its sole discretion and without the consent of the Holders of Notes, direct, on behalf of the Holders of Notes, the Collateral Trustee to take all actions it deems necessary or appropriate in order to:

(1) enforce any of the terms of the Note Security Documents; and

(2) collect and receive any and all amounts payable in respect of the Obligations of the Issuers hereunder.

The Trustee will have power to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Collateral by any acts that may be unlawful or in violation of the Note Security Documents or this Indenture, and such suits and proceedings as the Trustee may deem expedient to preserve or protect its interests and the interests of the Holders of Notes in the Collateral (including power to institute and maintain suits or proceedings to restrain the enforcement of, or compliance with, any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the security interest hereunder or be prejudicial to the interests of the Holders of Notes or of the Trustee).

Section 11.06 *Authorization of Receipt of Funds by the Trustee Under the Note Security Documents.*

The Trustee is authorized to receive any funds for the benefit of the Holders of Notes distributed under the Note Security Documents, and to make further distributions of such funds to the Holders of Notes according to the provisions of this Indenture.

Section 11.07 *Termination of Security Interest.*

Upon the full and final payment and performance of all Obligations of the Issuers under this Indenture and the Notes or upon Legal Defeasance, Covenant Defeasance or satisfaction and discharge of this Indenture in accordance with Article 12 hereof, the Trustee will, at the request of the Issuers, deliver a certificate to the Collateral Trustee stating that such Obligations have been paid in full, and instruct the Collateral Trustee to release the Liens securing the Notes pursuant to this Indenture and the Note Security Documents (subject to the satisfaction of any release of Liens provisions set forth in the Note Security Documents).

## ARTICLE 12
## SATISFACTION AND DISCHARGE

For purposes of the Notes, Article 12 hereof provides the terms upon which satisfaction and discharge can occur.

Section 12.01 *Satisfaction and Discharge.*

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

(1) either:

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

(b) all Notes that have not been delivered to the Trustee for cancellation have become due and payable by reason of the distribution of a notice of redemption or otherwise or will become due and payable within one year and the Issuers or any Guarantor has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities, or a combination of cash in United States dollars and non-callable Government Securities, in such amounts as will be sufficient, without consideration of any reinvestment of interest, to pay and discharge the entire

Indebtedness on the Notes not delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption;

(2) in respect of subclause (b) of clause (1) of this Section 12.01, no Default or Event of Default has occurred and is continuing on the date of the deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit) and the deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which the Issuers or any Guarantor is a party or by which the Issuers or any Guarantor is bound;

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

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

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

Notwithstanding the satisfaction and discharge of this Indenture, if money has been deposited with the Trustee pursuant to subclause (b) of clause (1) of this Section 12.01, the provisions of Sections 12.02 and 8.06 hereof will survive. In addition, nothing in this Section 12.01 will be deemed to discharge those provisions of Section 7.07 hereof, that, by their terms, survive the satisfaction and discharge of this Indenture.

Section 12.02 *Application of Trust Money.*

Subject to the provisions of Section 8.06 hereof, all money deposited with the Trustee pursuant to Section 12.01 hereof shall be held in trust and applied by it, in accordance with the provisions of the Securities and this Indenture, to the payment, either directly or through any Paying Agent (including one of the Issuers acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal, premium, if any, and interest for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

If the Trustee or Paying Agent is unable to apply any money or Government Securities in accordance with Section 12.01 hereof by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Issuers' and any Guarantor's obligations under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to Section 12.01 hereof; *provided* that if the Issuers have made any payment of principal of, premium, if any, or interest on, any Securities because of the reinstatement of its obligations, the Issuers shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money or Government Securities held by the Trustee or Paying Agent.

ARTICLE 13
MISCELLANEOUS

Section 13.01 *Trust Indenture Act.*

This Indenture is hereby made subject to, and shall be governed by, the provisions of the Trust Indenture Act required to be part of, and to govern indentures qualified under, the Trust Indenture Act. If any provision hereof or in the Note limits, qualifies or conflicts with the duties imposed by Section 318(c) of the Trust Indenture Act in relation to indentures qualified under the Trust Indenture Act, the imposed duties shall control.

Section 13.02 *Notices.*

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

If to the Issuers and/or any Guarantor:

GenOn Energy, Inc.
1601 Bryan Street, Suite 2200,
Dallas, Texas 75201
Attention: Corporate Secretary

With a copy to (which copy shall be delivered as an accommodation and shall not be required to be delivered in satisfaction of any requirement hereof):

Kirkland & Ellis LLP
300 North LaSalle
Chicago, Illinois 60654
Attention: Paul D. Zier

If to the Trustee:

Wells Fargo Bank, National Association
1445 Ross Avenue, Suite 4300
MAC T9216-430
Dallas, Texas 75202-2812
Attention: Corporate Trust Services—Administrator for GenOn Inc.

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

All notices and communications (other than those sent to Holders) will be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if delivered; when receipt acknowledged, if telecopied; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery, except in the case of notices or communications given to the Trustee, which shall be effective only upon actual receipt by the Trustee at its Corporate Trust Office.

Any notice or communication to a Holder will be delivered by first-class mail, certified or registered, return receipt requested, electronically or by overnight air courier guaranteeing next day delivery to its address shown on the register kept by the Registrar. Failure to deliver a notice or communication to a Holder or any defect in it will not affect its sufficiency with respect to other Holders.

Except in the case of notices or communications given to the Trustee, if a notice or communication is delivered in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

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

The Trustee shall have the right, but shall not be required, to rely upon and comply with notices, instructions, directions or other communications sent by e-mail, facsimile and other similar unsecured electronic methods by persons believed by the Trustee to be authorized to give instructions and directions on behalf of the Issuers. The Trustee shall have no duty or obligation to verify or confirm that the person who sent such instructions or directions is, in fact, a person authorized to give instructions or directions on behalf of the Issuers; and the Trustee shall have no liability for any losses, liabilities, costs or expenses incurred or sustained by the Issuers as a result of such reliance upon or compliance with such notices, instructions, directions or other communications. The Issuers agree to assume all risks arising out of the use of such electronic methods to submit notices, instructions, directions or other communications to the Trustee, including, without limitation, the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties. The Issuers shall use all reasonable endeavors to ensure that any such notices, instructions, directions or other communications transmitted to the Trustee pursuant to this Indenture are complete and correct. Any such notices, instructions, directions or other communications shall be conclusively deemed to be valid instructions from the Issuers to the Trustee for the purposes of this Indenture.

Section 13.03 *Communication by Holders of Securities with Other Holders of Securities.*

Holders may communicate with other Holders with respect to their rights under this Indenture or the Securities. The Trustee shall comply with Section 312(b) of the Trust Indenture Act with respect to communications by and among Holders.

Section 13.04 *Certificate and Opinion as to Conditions Precedent.*

Upon any request or application by the Issuers to the Trustee to take any action under this Indenture, the Issuers shall furnish to the Trustee:

(1) an Officer's Certificate satisfactory to the Trustee (which must include the statements set forth in Section 13.05 hereof) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and

(2) an Opinion of Counsel satisfactory to the Trustee (which must include the statements set forth in Section 13.05 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied; *provided* that no such Opinion of Counsel shall be required to be delivered in connection with the issuance of the Notes that are issued on the Issue Date.

Section 13.05 *Statements Required in Certificate or Opinion.*

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture must include:

(1) a statement that the Person making such certificate or opinion has read such covenant or condition;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been satisfied; and

(4) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been satisfied.

Section 13.06 *Rules by Trustee and Agents.*

The Trustee may make reasonable rules for action by, or at a meeting of, Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

Section 13.07 *No Personal Liability of Directors, Officers, Employees and Stockholders.*

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

Section 13.08 *Governing Law: Waiver of Jury Trial; Submission to Jurisdiction.*

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

EACH OF THE ISSUERS, THE GUARANTORS AND THE TRUSTEE, AND EACH HOLDER OF A SECURITY BY ITS ACCEPTANCE THEREOF, HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT IT MAY HAVE TO TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

EACH OF THE ISSUERS AND THE GUARANTORS IRREVOCABLY CONSENT AND SUBMIT, FOR ITSELF AND IN RESPECT OF ANY OF ITS ASSETS OR PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF ANY COURT OF THE STATE OF NEW YORK OR ANY UNITED STATES FEDERAL COURT SITTING, IN EACH CASE, IN THE BOROUGH OF

MANHATTAN, THE CITY OF NEW YORK, NEW YORK, UNITED STATES OF AMERICA, AND ANY APPELLATE COURT FROM ANY THEREOF IN ANY SUIT, ACTION OR PROCEEDING THAT MAY BE BROUGHT IN CONNECTION WITH THIS INDENTURE OR THE SECURITIES, AND WAIVES ANY IMMUNITY FROM THE JURISDICTION OF SUCH COURTS. EACH OF THE ISSUERS AND THE GUARANTORS IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION TO ANY SUCH SUIT, ACTION OR PROCEEDING THAT MAY BE BROUGHT IN SUCH COURTS WHETHER ON THE GROUNDS OF VENUE, RESIDENCE OR DOMICILE OR ON THE GROUND THAT ANY SUCH SUIT, ACTION OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. EACH OF THE ISSUERS AND THE GUARANTORS AGREE, TO THE FULLEST EXTENT THAT IT LAWFULLY MAY DO SO, THAT FINAL JUDGMENT IN ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT SHALL BE CONCLUSIVE AND BINDING UPON THE ISSUERS, AND WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION TO THE ENFORCEMENT BY ANY COMPETENT COURT IN THE ISSUERS' JURISDICTION OF ORGANIZATION OF JUDGMENTS VALIDLY OBTAINED IN ANY SUCH COURT IN NEW YORK ON THE BASIS OF SUCH SUIT, ACTION OR PROCEEDING.

Section 13.09 *No Adverse Interpretation of Other Agreements.*

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Issuers or their respective Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 13.10 *Successors.*

All agreements of the Issuers in this Indenture and any Securities will bind its successors. All agreements of the Trustee in this Indenture will bind its successors. All agreements of each Guarantor in this Indenture will bind its successors, except as otherwise provided in Section 10.05 hereof.

Section 13.11 *Severability.*

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

Section 13.12 *Counterpart Originals.*

The parties may sign any number of copies of this Indenture. Each signed copy will be an original, but all of them together represent the same agreement. The exchange of copies of this Indenture and of signature pages by facsimile or electronic (i.e., "pdf" or "tif") transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or electronic (i.e., "pdf" or "tif") transmission shall be deemed to be their original signatures for all purposes.

Section 13.13 *Table of Contents, Headings, Etc.*

The Table of Contents, Cross-Reference Table and Headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and will in no way modify or restrict any of the terms or provisions hereof.

Section 13.14 *Trust Indenture Act Reporting.*

To the extent required by the Trust Indenture Act, the Company will file such information, documents and reports as may be required to be filed by and in accordance with the applicable requirements of Section 314(a) of the Trust Indenture Act. The Company shall comply with the other provisions of Section 314(a) of the Trust Indenture Act. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates). The Trustee shall have no liability or responsibility for the timing, filing or content of any such reports.

Section 13.15 *Compliance with Applicable Anti-Terrorism and Anti-Money Laundering Regulations*.

In order to comply with laws, rules, regulations and executive orders in effect from time to time applicable to banking institutions, including those relating to the funding of terrorist activities and money laundering ("*Relevant Law*"), the Trustee is required to obtain, verify and record certain information relating to individuals and entities which maintain a business relationship with the Trustee. Accordingly, each of the parties agrees to provide to the Trustee upon its request from time to time such identifying information and documentation as may be available for such party in order to enable the Trustee to comply with Relevant Law.

Section 13.16 *U.S.A. PATRIOT Act.*

To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust or other legal entity the Trustee will ask for documentation to verify its formation and existence as a legal entity. The Trustee may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. The parties each agree to provide all such information and documentation as to themselves as requested by the Trustee to ensure compliance with federal law.

[Signatures on following page]

Face of Note

CUSIP _____ _____

Floating Rate Senior Secured Second Lien Notes due 2023

No. ___ $_____

GenOn Energy, Inc., a Delaware limited liability company (the "*Company*") and NRG Americas, Inc., a Delaware corporation (the "*Co-Issuer*", and together with the Company, the "*Issuers*")

promise to pay to _____ or registered assigns,

the principal sum of _____ DOLLARS on December 1, 2023.

Interest Payment Dates: June 1 and December 1

Record Dates: May 15 and November 15

Dated: December 14, 2023

GenOn Energy, Inc., as the Company

By: _____
Name:
Title:

NRG Americas, Inc., as the Co-Issuer

By: _____
Name:
Title:

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

Wells Fargo Bank, National Association,
as Trustee

By: _____
Authorized Signatory

Back of Note
Floating Rate Senior Secured Second Lien Notes due 2023

*[Insert the Global Legend, if applicable pursuant to the provisions of the Indenture]*

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

THE FOLLOWING INFORMATION IS SUPPLIED SOLELY FOR U.S. FEDERAL INCOME TAX PURPOSES. THIS NOTE MAY BE ISSUED WITH "ORIGINAL ISSUE DISCOUNT" (WITHIN THE MEANING OF SECTION 1273 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED) OR "OID", AND THIS LEGEND IS REQUIRED BY SECTION 1275(C) OF THE CODE. HOLDERS MAY OBTAIN INFORMATION REGARDING THE AMOUNT OF OID, THE ISSUE PRICE, THE ISSUE DATE AND THE YIELD TO MATURITY RELATING TO THE NOTES BY CONTACTING THE ISSUERS AT GENON ENERGY, INC., 1601 BRYAN STREET, SUITE 2200, DALLAS, TEXAS 75201, ATTENTION: CHIEF FINANCIAL OFFICER.

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

(1) *INTEREST*. GenOn Energy, Inc. (the "*Company*") and NRG Americas, Inc., a Delaware corporation (the "*Co-Issuer*," and together with the Company, the "*Issuers*"), promise to pay interest on the principal amount of this Note from the Issue Date until maturity. The rate at which the Notes shall bear interest shall be determined by the Calculation Agent in accordance with the terms of the Indenture and, for a particular Interest Period, will be a per annum rate, reset semi-annually, equal to six-month LIBOR, as determined on the relevant Interest Determination Date, plus 6.50%. The amount of Accrued Interest to be paid on the Notes for any Interest Period will be calculated by multiplying the face amount of the Notes then outstanding by the Accrued Interest Factor. The interest rate on the Notes shall in no event be higher than the maximum rate permitted by New York law as the same may be modified by United States law of general application. All percentages resulting from any calculation of the interest rate on the Notes shall be rounded to the nearest one hundred-thousandth of a percentage point, with five one-millionths of a percentage point rounded upwards (e.g., 9.876545% (or .09876545) would be rounded to 9.87655% (or .09876555)), and all dollar amounts used in or resulting from such calculation on the Notes shall be rounded to the nearest cent (with one-half cent being rounded upwards). The Interest Determination Date for an Interest Period will be the second London Business Day immediately preceding the first day of such Interest Period. Promptly upon determination, the Calculation Agent will inform the Trustee and the Issuers of the interest rate for the next Interest Period. Upon request from any Holder of the Notes, the Calculation Agent shall provide the interest rate in effect for the Floating Rate Notes for the then current Interest Period and if it has been determined, the interest rate to be in effect for the next Interest Period. The Issuers shall pay interest semi-annually in arrears on June 1 and December 1 of each year, or if any such day is not a Business Day, on the next succeeding Business Day (each, an "*Interest Payment Date*"). Interest on the Notes will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of issuance; *provided* that if there is no existing Default in the payment of interest, and if this Note is authenticated between a record date referred to on the face hereof and the next succeeding Interest Payment Date, interest shall accrue from such next succeeding Interest Payment Date; *provided, further*, that the first Interest Payment Date shall be June 1, 2019.

(2) *METHOD OF PAYMENT*. The Issuers shall pay interest on the Notes (except defaulted interest) to the Persons who are registered Holders of Notes at the close of business on the May 15 and November 15 next preceding the Interest Payment Date, even if such Notes are canceled after such record date and on or before such Interest Payment Date, except as provided in Section 2.13 of the Indenture with respect to defaulted interest. The Notes will be payable as to principal, premium, if any, interest at the office or agency of the Paying Agent and Registrar within the City and State of New York, or, at the option of the Issuers, payment of interest may be made by check delivered to the Holders at their addresses set forth in the register of Holders; *provided* that payment by wire transfer of immediately available funds will be required with respect to principal of, premium, if any, and interest on, all Global Notes and all other Notes the Holders of which will have provided wire transfer instructions to the Issuers or the Paying Agent. Such payment shall be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

(3) *PAYING AGENT AND REGISTRAR*. Initially, Wells Fargo Bank, National Association, the Trustee under the Indenture, will act as Paying Agent and Registrar. The Issuers may change the Paying Agent or Registrar without prior notice to the Holders of the Notes. The Issuers or any of their respective Subsidiaries may act as Paying Agent or Registrar.

(4) *INDENTURE*. The Issuers issued the Notes under an Indenture dated as of December 14, 2018 (the "*Indenture*") between the Issuers and the Trustee. The terms of the Notes include those stated in the Indenture. The Notes are subject to all such terms, and Holders are referred to the Indenture for a statement of such terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling. The Notes are senior obligations of the Issuers and are secured on a second priority basis (subject to certain Liens permitted under the Indenture), subject to the terms of the Collateral Trust Agreement and the Tenaska Intercreditor Agreement. The Indenture does not limit the aggregate principal amount of Notes that may be issued thereunder.

(5) *OPTIONAL REDEMPTION.*

(a) The Issuers may on any one or more occasions redeem all or a part of the Notes, upon not less than 10 nor more than 60 days' prior notice, at the redemption prices (expressed as percentages of principal amount) set forth in the Indenture, plus accrued and unpaid interest, if any, on the Notes redeemed, to, but excluding, the applicable date of redemption.

Any redemption pursuant to this Section 5 shall be made pursuant to the provisions of Sections 3.01 through 3.06 of the Indenture.

(6) *MANDATORY REDEMPTION.* The Issuers will not be required to make mandatory redemption or sinking fund payments with respect to the Notes.

(7) *REPURCHASE AT THE OPTION OF HOLDER.*

(a) Upon the occurrence of a Change of Control Triggering Event, the Issuers will make an offer (a "*Change of Control Offer*") to each Holder to repurchase all or any part (equal to $1.00 or an integral multiple of $1.00 in excess of $1.00) of that Holder's Notes at a purchase price in cash equal to 101% of the aggregate principal amount of Notes repurchased, plus accrued and unpaid interest, if any, on the Notes repurchased to, but excluding, the date of repurchase, subject to the rights of Holders of Notes on the relevant record date to receive interest due on the relevant interest payment date (the "*Change of Control Payment*"). Within 30 days

following any Change of Control, the Issuers will deliver a notice to each Holder setting forth the procedures governing the Change of Control Offer as required by the Indenture.

(8) *NOTICE OF REDEMPTION*. At least 10 days but not more than 60 days before a redemption date, the Issuers shall mail or cause to be delivered, by first-class mail or electronically, a notice of redemption to each Holder whose Notes are to be redeemed at its registered address, except that redemption notices may be delivered more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of the Indenture pursuant to Article 8 or 11 thereof. Notes and portions of Notes selected will be in amounts of $1.00 or whole multiples of $1.00 in excess thereof; except that if all of the Notes of a Holder are to be redeemed or purchased, the entire outstanding amount of Notes held by such Holder shall be redeemed or purchased.

(9) *DENOMINATIONS, TRANSFER, EXCHANGE*. The Notes are in registered form without coupons in denominations of $1.00 and integral multiples of $1.00 in excess thereof. The transfer of Notes may be registered and Notes may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Issuers may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Issuers need not exchange or register the transfer of any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part. Also, the Issuers need not exchange or register the transfer of any Notes for a period of 15 days before a selection of Notes to be redeemed or during the period between a record date and the next succeeding Interest Payment Date.

(10) *PERSONS DEEMED OWNERS*. The registered Holder of a Note may be treated as the owner of it for all purposes. Only registered Holders have rights under the Indenture.

(11) *AMENDMENT, SUPPLEMENT AND WAIVER*. Subject to certain exceptions, the Indenture, the Notes, the Subsidiary Guarantees, any Note Security Document or the Collateral Trust Agreement or the Tenaska Intercreditor Agreement may be amended or supplemented with the consent of the Holders of at least a majority in aggregate principal amount of the then outstanding Notes voting as a single class, and any existing Default or Event of Default or compliance with any provision of the Indenture, the Notes or the Subsidiary Guarantees may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes voting as a single class. Without the consent of any Holder of Notes, the Indenture or the Notes may be amended or supplemented on the terms set forth in the Indenture.

(12) *DEFAULTS AND REMEDIES*. Events of Default shall be those listed in Section 6.01 of the Indenture.

(13) *TRUSTEE DEALINGS WITH ISSUERS*. The Trustee, in its individual or any other capacity, may make loans to, accept deposits from, and perform services for the Issuers or their respective Affiliates, and may otherwise deal with the Issuers any or their respective Affiliates, as if it were not the Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days, apply to the SEC for permission to continue as trustee or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to and entitled to the benefits of Article 7 of the Indenture.

(14) *NO RECOURSE AGAINST OTHERS*. No director, officer, employee, incorporator or stockholder of the Issuers or any Guarantor, as such, will have any liability for any obligations of the Issuers or the Guarantors under the Notes, the Indenture, the Subsidiary Guarantees or for any

claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under the federal securities laws.

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

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

(17) *[RESERVED]*.

(18) *CUSIP NUMBERS*. Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Issuers have caused CUSIP numbers to be printed on the Notes, and the Trustee may use CUSIP numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption, and reliance may be placed only on the other identification numbers placed thereon.

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

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

GenOn Energy
1360 Post Oak Boulevard, Suite 2000
Houston, Texas 77056
Attention: Corporate Secretary

ASSIGNMENT FORM

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this Note to: _____
(Insert assignee's legal name)

_____
(Insert assignee's soc. sec. or tax I.D. no.)

_____

_____

_____

_____
(Print or type assignee's name, address and zip code)

and irrevocably appoint _____
to transfer this Note on the books of the Issuers. The agent may substitute another to act for him or her.

Date: _____

Your Signature: _____
(Sign exactly as your name appears on the face of this Note)

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

Option of Holder to Elect Purchase

If you want to elect to have this Note purchased by the Issuers pursuant to Section 4.14 of the Indenture, check here: ☐

If you want to elect to have only part of the Note purchased by the Issuers pursuant to Section 4.14 of the Indenture, state the amount you elect to have purchased:

$_____

Date: _____

Your Signature: _____
(Sign exactly as your name appears on the face of this Note)

Tax Identification No.: _____

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE *

The following exchanges of a part of this Global Note for an interest in another Global Note or for a Definitive Note, or exchanges of a part of another Global Note or Definitive Note for an interest in this Global Note, have been made:

| Date of Exchange | Amount of decrease in Principal Amount of this Global Note | Amount of increase in Principal Amount of this Global Note | Principal Amount of this Global Note following such decrease (or increase) | Signature of authorized signatory of Trustee or Custodian |
|---|---|---|---|---|

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

FORM OF CERTIFICATE OF TRANSFER

GenOn Energy, Inc.
1601 Bryan Street, Suite 2200,
Dallas, Texas 75201
Attention: Corporate Secretary

Wells Fargo Bank, National Association
1445 Ross Avenue, Suite 4300
MAC T9216-430
Dallas, Texas 75202-2812
Attention: Corporate Trust Services—Administrator for GenOn Inc.

Re: Floating Rate Senior Secured Second Lien Notes due 2023

Reference is hereby made to the Indenture, dated as of December 14, 2018 (the "*Indenture*"), between GenOn Energy, Inc. as issuer (the "*Company*"), NRG Americas, Inc. as co-issuer (the "*Co-Issuer*" and, together with the Company, the "*Issuers*") and Wells Fargo Bank, National Association, as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

_____, (the "*Transferor*") owns and proposes to transfer the Note[s] or interest in such Note[s] specified in Annex A hereto, in the principal amount of $_____ in such Note[s] or interests (the "*Transfer*"), to _____ (the "*Transferee*"), as further specified in Annex A hereto. In connection with the Transfer, the Transferor hereby certifies that:

[CHECK ALL THAT APPLY]

1. ☐ **Check if Transferee will take delivery of a beneficial interest in the 144A Global Note or a Restricted Definitive Note pursuant to Rule 144A**. The Transfer is being effected pursuant to and in accordance with Rule 144A under the Securities Act of 1933, as amended (the "*Securities Act*"), and, accordingly, the Transferor hereby further certifies that the beneficial interest or Definitive Note is being transferred to a Person that the Transferor reasonably believes is purchasing the beneficial interest or Definitive Note for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "qualified institutional buyer" within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A, and such Transfer is in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the 144A Global Note and/or the Restricted Definitive Note and in the Indenture and the Securities Act.

2. ☐ **Check if Transferee will take delivery of a beneficial interest in the Regulation S Global Security or a Restricted Definitive Note pursuant to Regulation S**. The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and, accordingly, the Transferor hereby further certifies that (i) the Transfer is not being made to a Person in the United States and (x) at the time the buy order was originated, the Transferee was outside the United States or such Transferor and any Person acting on its behalf reasonably believed and believes that the Transferee was outside the United States or (y) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither such Transferor nor any Person acting on its behalf knows that the transaction was prearranged with a buyer in the United States, (ii) no directed

selling efforts have been made in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S under the Securities Act, (iii) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act and (iv) if the proposed transfer is being made prior to the expiration of the Restricted Period, the transfer is not being made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on Transfer enumerated in the Private Placement Legend printed on the Regulation S Global Security and/or the Restricted Definitive Note and in the Indenture and the Securities Act.

3. ☐ **Check and complete if Transferee will take delivery of a beneficial interest in the AI Global Security or a Restricted Definitive Note pursuant to any provision of the Securities Act other than Rule 144A or Regulation S**. The Transfer is being effected in compliance with the transfer restrictions applicable to beneficial interests in Restricted Global Notes and Restricted Definitive Notes and pursuant to and in accordance with the Securities Act and any applicable blue sky securities laws of any state of the United States, and accordingly the Transferor hereby further certifies that (check one):

(a) ☐ such Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act;

or

(b) ☐ such Transfer is being effected to the Company or a subsidiary thereof;

or

(c) ☐ such Transfer is being effected pursuant to an effective registration statement under the Securities Act and in compliance with the prospectus delivery requirements of the Securities Act;

or

(d) ☐ such Transfer is being effected to an Accredited Investor and pursuant to an exemption from the registration requirements of the Securities Act other than Rule 144A, Rule 144, Rule 903 or Rule 904, and the Transferor hereby further certifies that it has not engaged in any general solicitation within the meaning of Regulation D under the Securities Act and the Transfer complies with the transfer restrictions applicable to beneficial interests in a Restricted Global Note or Restricted Definitive Notes and the requirements of the exemption claimed, which certification is supported by (1) a certificate executed by the Transferee in the form of Exhibit D to the Indenture and (2) if such Transfer is in respect of a principal amount of Notes at the time of transfer of less than $250,000, an Opinion of Counsel provided by the Transferor or the Transferee (a copy of which the Transferor has attached to this certification), to the effect that such Transfer is in compliance with the Securities Act. Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the AI Global Security and/or the Restricted Definitive Notes and in the Indenture and the Securities Act.

4. ☐ **Check if Transferee will take delivery of a beneficial interest in an Unrestricted Global Note or of an Unrestricted Definitive Note**.

(a) ☐ **Check if Transfer is pursuant to Rule 144**. (i) The Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(b) ☐ **Check if Transfer is Pursuant to Regulation S**. (i) The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(c) ☐ **Check if Transfer is Pursuant to Other Exemption**. (i) The Transfer is being effected pursuant to and in compliance with an exemption from the registration requirements of the Securities Act other than Rule 144, Rule 903 or Rule 904 and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any State of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will not be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes or Restricted Definitive Notes and in the Indenture.

This certificate and the statements contained herein are made for your benefit and the benefit of the Company.

_____

[Insert Name of Transferor]

By:_____

Name:

Title:

Dated: _____

ANNEX A TO CERTIFICATE OF TRANSFER

1. The Transferor owns and proposes to transfer the following:

[CHECK ONE OF (a) OR (b)]

(a) ☐ a beneficial interest in the:

(i) ☐ 144A Global Note (CUSIP 37244X AA3), or

(ii) ☐ Regulation S Global Security (CUSIP U3720R AA8), or

(iii) ☐ AI Global Security (CUSIP 37244X AB1); or

(iii) ☐ Unrestricted Global Note (CUSIP 37244E AB3); or

(b) ☐ a Restricted Definitive Note.

2. After the Transfer the Transferee will hold:

[CHECK ONE]

(a) ☐ a beneficial interest in the:

(i) ☐ 144A Global Note (CUSIP 37244X AA3), or

(ii) ☐ Regulation S Global Security (CUSIP U3720R AA8), or

(iii) ☐ AI Global Security (CUSIP 37244X AB1); or

(iv) ☐ Unrestricted Global Note (CUSIP 37244E AB3); or

(b) ☐ a Restricted Definitive Note; or

(c) ☐ an Unrestricted Definitive Note,

in accordance with the terms of the Indenture.

FORM OF CERTIFICATE OF EXCHANGE

GenOn Energy, Inc.
1601 Bryan Street, Suite 2200,
Dallas, Texas 75201
Attention: Corporate Secretary

Wells Fargo Bank, National Association
1445 Ross Avenue, Suite 4300
MAC T9216-430
Dallas, Texas 75202-2812
Attention: Corporate Trust Services—Administrator for GenOn Inc.

Re: Floating Rate Senior Secured Second Lien Notes due 2023

(CUSIP [ ])

Reference is hereby made to the Indenture, dated as of December 14, 2018 (the "*Indenture*"), between GenOn Energy, Inc. as issuer (the "*Company*"), NRG Americas, Inc. as co-issuer (the "*Co-Issuer*" and, together with the Company, the "*Issuers*") and Wells Fargo Bank, National Association, as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

_____, (the "*Owner*") owns and proposes to exchange the Note[s] or interest in such Note[s] specified herein, in the principal amount of $_____ in such Note[s] or interests (the "*Exchange*"). In connection with the Exchange, the Owner hereby certifies that:

1. **Exchange of Restricted Definitive Notes or Beneficial Interests in a Restricted Global Note for Unrestricted Definitive Notes or Beneficial Interests in an Unrestricted Global Note**

(a) ☐ **Check if Exchange is from beneficial interest in a Restricted Global Note to beneficial interest in an Unrestricted Global Note**. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for a beneficial interest in an Unrestricted Global Note in an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Global Notes and pursuant to and in accordance with the Securities Act of 1933, as amended (the "*Securities Act*"), (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest in an Unrestricted Global Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(b) ☐ **Check if Exchange is from beneficial interest in a Restricted Global Note to Unrestricted Definitive Note**. In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Definitive Note is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(c) ☐ **Check if Exchange is from Restricted Definitive Note to beneficial interest in an Unrestricted Global Note**. In connection with the Owner's Exchange of a Restricted Definitive Note for a beneficial interest in an Unrestricted Global Note, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(d) ☐ **Check if Exchange is from Restricted Definitive Note to Unrestricted Definitive Note**. In connection with the Owner's Exchange of a Restricted Definitive Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Unrestricted Definitive Note is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Unrestricted Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

2. **Exchange of Restricted Definitive Notes or Beneficial Interests in Restricted Global Notes for Restricted Definitive Notes or Beneficial Interests in Restricted Global Notes**

(a) ☐ **Check if Exchange is from beneficial interest in a Restricted Global Note to Restricted Definitive Note.** In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for a Restricted Definitive Note with an equal principal amount, the Owner hereby certifies that the Restricted Definitive Note is being acquired for the Owner's own account without transfer. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the Restricted Definitive Note issued will continue to be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Definitive Note and in the Indenture and the Securities Act.

(b) ☐ **Check if Exchange is from Restricted Definitive Note to beneficial interest in a Restricted Global Note**. In connection with the Exchange of the Owner's Restricted Definitive Note for a beneficial interest in the [CHECK ONE] ☐ 144A Global Note, ☐ Regulation S Global Note, ☐ AI Global Security with an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer and (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, and in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the beneficial interest issued will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the relevant Restricted Global Note and in the Indenture and the Securities Act.

This certificate and the statements contained herein are made for your benefit and the benefit of the Company.

_____

[Insert Name of Transferor]

By:_____
Name:
Title:

Dated: _____

FORM OF CERTIFICATE FROM
ACQUIRING ACCREDITED INVESTOR

GenOn Energy, Inc.
1601 Bryan Street, Suite 2200,
Dallas, Texas 75201
Attention: Corporate Secretary

Wells Fargo Bank, National Association
1445 Ross Avenue, Suite 4300
MAC T9216-430
Dallas, Texas 75202-2812
Attention: Corporate Trust Services—Administrator for GenOn Inc.

Re: Floating Rate Senior Secured Second Lien Notes due 2023

Reference is hereby made to the Indenture, dated as of December 14, 2018 (the "*Indenture*"), between GenOn Energy, Inc. as issuer (the "*Company*"), NRG Americas, Inc. as co-issuer (the "*Co-Issuer*" and, together with the Company, the "*Issuers*") and Wells Fargo Bank, National Association, as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

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

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

(b) ☐ a Definitive Note,

we confirm that:

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

2. We understand that the offer and sale of the Notes have not been registered under the Securities Act, and that the Notes and any interest therein may not be offered or sold except as permitted in the following sentence. We agree, on our own behalf and on behalf of any accounts for which we are acting as hereinafter stated, that if we should sell the Notes or any interest therein, we will do so only (A) to the Company or any subsidiary thereof, (B) in accordance with Rule 144A under the Securities Act to a "qualified institutional buyer" (as defined therein), (C) to an "accredited investor" (as defined below) that, prior to such transfer, furnishes (or has furnished on its behalf by a U.S. broker-dealer) to you and to the Company a signed letter substantially in the form of this letter and, if such transfer is in respect of a principal amount of Notes, at the time of transfer of less than $250,000, an Opinion of Counsel in form reasonably acceptable to the Company to the effect that such transfer is in compliance with the Securities Act, (D) outside the United States in accordance with Rule 904 of Regulation S under the Securities Act, (E) pursuant to the provisions of Rule 144 under the Securities Act or (F) pursuant to an effective registration statement under the Securities Act, and we further agree to provide to any Person purchasing the Definitive Note or beneficial interest in a Global Note from us in a transaction meeting the requirements of clauses (A) through (E) of this paragraph a notice advising such purchaser that resales thereof are restricted as stated herein.

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

4. We are an "accredited investor" (as defined in Rule 501(a)(1), (2), (3), (5), (6) or (7) of Regulation D under the Securities Act) and have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Notes, and we and any accounts for which we are acting are each able to bear the economic risk of our or its investment.

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

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

_____

[Insert Name of Accredited Investor]

By:_____

Name:

Title:

Dated: _____

FORM OF SUPPLEMENTAL INDENTURE
TO BE DELIVERED BY SUBSEQUENT GUARANTORS

SUPPLEMENTAL INDENTURE (this "*Supplemental Indenture*"), dated as of _____, among _____ (the "*Guaranteeing Subsidiary*"), a subsidiary of GenOn Energy, Inc. (or its permitted successor), a Delaware corporation (the "*Company*"), the Company, the other Guarantors (as defined in the Indenture referred to herein) and Wells Fargo Bank, National Association, as trustee under the Indenture referred to below (the "*Trustee*").

W I T N E S E T H

WHEREAS, the Issuers have heretofore executed and delivered to the Trustee an indenture (the "*Indenture*"), dated as of December 14, 2018 providing for the issuance of Floating Rate Senior Secured Second Lien Notes due 2023 (the "*Notes*");

WHEREAS, the Indenture provides that under certain circumstances the Guaranteeing Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which the Guaranteeing Subsidiary shall unconditionally guarantee all of the Issuers' Obligations under the Notes and the Indenture on the terms and conditions set forth herein (the "*Subsidiary Guarantee*"); and

WHEREAS, pursuant to Sections 4.18 and 9.01 of the Indenture, the Trustee, the Issuers and the other Guarantors are authorized to execute and deliver this Supplemental Indenture.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Guaranteeing Subsidiary and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

1. CAPITALIZED TERMS. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

2. GUARANTEE. The Guaranteeing Subsidiary hereby becomes a party to the Indenture as a Guarantor and as such will have all the rights and be subject to all the Obligations and agreements of a Guarantor under the Indenture. The Guaranteeing Subsidiary hereby provides an unconditional Guarantee on the terms and subject to the conditions set forth in the Subsidiary Guarantee and in the Indenture including but not limited to Article 10 thereof.

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

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

5. COUNTERPARTS. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile or electronic (i.e., "pdf" or "tif") transmission shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or electronic (i.e., "pdf" or "tif") transmission shall be deemed to be their original signatures for all purposes.

6. EFFECT OF HEADINGS. The Section headings herein are for convenience only and shall not affect the construction hereof.

7. THE TRUSTEE. The Trustee shall not be responsible in any manner whatsoever for, or in respect of, the validity, sufficiency or adequacy of this Supplemental Indenture or for, or in respect of, the recitals or statements contained herein, all of which recitals and statements are made solely by the Guaranteeing Subsidiary and the Issuers, and the Trustee assumes no responsibility for their correctness.

8. RATIFICATION OF INDENTURE; SUPPLEMENTAL INDENTURE PART OF INDENTURE. Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture for all purposes, and every Holder of Notes heretofore or hereafter authenticated and delivered shall be bound hereby.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed and attested, all as of the date first above written.

Dated: _____,

[GUARANTEEING SUBSIDIARY]

By: _____
Name:
Title:

GenOn Energy, Inc., as the Company

By: _____
Name:
Title:

NRG Americas, Inc., as Co-Issuer

By: _____
Name:
Title:

[●],
as Trustee

By: _____
Name:
Title:

**Exhibit 99.1**

CONFIDENTIAL

# STOCKHOLDERS AGREEMENT

dated as of

December 14, 2018

by and among

**GENON HOLDINGS, INC.,**

**INTERMEDIATE GENON HOLDCO, LLC,**

**DIRECT GENON HOLDCO, LLC,**

**GENON HOLDINGS, LLC**

and

**EACH OF THE STOCKHOLDERS PARTY HERETO**

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STOCKHOLDERS AGREEMENT, dated as of December 14, 2018 (this "**Agreement**"), by and among (i) GenOn Holdings, Inc., a Delaware corporation (the "**Corporation**"), (ii) Intermediate GenOn Holdco, LLC, a Delaware limited liability company ("**Intermediate**"), (iii) Direct GenOn Holdco, LLC, a Delaware limited liability company ("**Holdco**"), (iv) GenOn Holdings, LLC, a Delaware limited liability company (the "**Partnership**"), (v) each Person (as defined below) identified on Schedule A hereto, who is deemed a party to this Agreement pursuant to the Plan of Reorganization (as defined below) and (vi) any other Person who shall hereafter become a Party hereto as set forth herein (each Person in clauses (v) and (vi), a "**Stockholder**" and collectively, the "**Stockholders**").

W I T N E S S E T H:

WHEREAS, each of the Stockholders party hereto as of the date hereof received Common Stock of the Corporation pursuant to the Plan of Reorganization of GenOn Energy, Inc. ("**GEI**") and certain of its Subsidiaries and Affiliates under Chapter 11 of Title 11 of the United States Code approved by the United States Bankruptcy Court for the Southern District of Texas (as the same may have been or may be subsequently modified, supplemented and amended, the "**Plan of Reorganization**");

WHEREAS, pursuant to the Plan of Reorganization, any Person that is to receive shares of Common Stock pursuant to the Plan of Reorganization shall be a party to this Agreement and deemed to be bound to the terms of this Agreement from and after the date hereof, even if not a signatory hereto;

WHEREAS, all Persons who after the date hereof are issued Common Stock or receive Common Stock pursuant to a Transfer from an existing holder of Common Stock must become a party to this Agreement by signing a joinder agreement in the form of Exhibit A hereto; and

WHEREAS, the Corporation and the Stockholders desire to establish in this Agreement certain rights and obligations of the Parties relating to the governance of the Corporation.

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

## ARTICLE 1
## DEFINITIONS

Section 1.01. *Definitions*. As used in this Agreement, the following terms shall have the meanings indicated below:

"**Accelerated Buyer**" has the meaning set forth in Section 4.01(g).

*Denotes Observer right.

"**Accelerated Sale Notice**" has the meaning set forth in Section 4.01(g).

"**Affiliate**" means, with respect to a specified Person, each other Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Person specified. As used in this definition, "**control**" (including with correlative meanings, "**controlled by**" and "**under common control with**") means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of voting securities or by contract or other agreement).

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

"**Board of Directors**" means, as of any date, the Board of Directors of the Corporation in office on that date.

"**Business Day**" means any day other than a Saturday, Sunday or day on which commercial banks in the State of New York are authorized or required by Law to close for business.

"**Cash Election Approval**" has the meaning set forth in Section 8.01(b).

"**Cash Election Approval Deadline Date**" has the meaning set forth in Section 8.01(b).

"**Cash Election Approval Decision Notice**" has the meaning set forth in Section 8.01(b).

"**Cash Settlement**" means immediately available funds in U.S. dollars in an amount equal to the Redeemed Class A Equivalent.

"**Cause**" means, with respect to any Director, (i) the commission of an act of fraud, embezzlement, misappropriation, willful misconduct or breach of fiduciary duty against the Corporation, (ii) conviction, plea of guilty or nolo contendere to (x) a felony or (y) any crime involving fraud, dishonesty or moral turpitude, (iii) causing material harm, financial or otherwise, to the Corporation, (iv) material breach of any Corporation policy, or (v) gross negligence or willful misconduct in the performance of such Director's duties to the Corporation.

"**Charter**" means the Amended and Restated Certificate of Incorporation of the Corporation (as amended).

"**Class A Common Stock**" means the Class A common stock, par value $0.000001 per share, of the Corporation.

"**Class A Redemption**" has the meaning set forth in Section 8.01(a).

"**Class A Redemption Price**" means the fair market value of a share of Class A Common Stock as of the Redemption Date as determined pursuant to Section 8.06.

"**Class B Common Stock**" means the Class B common stock, par value $0.000001 per share, of the Corporation.

"**Common Stock**" means the Class A Common Stock and the Class B Common Stock.

"**Competitor**" means (i) any Person that owns or operates assets involved in the generation, distribution or the transmission of power in North America, other than the Corporation and its Subsidiaries (collectively, "**Power Companies**"), (ii) any Person (together with its Related Persons) that directly or indirectly holds equity interests in Power Companies where such interests collectively represent greater than 50% of the asset value, or account for greater than 50% of the revenue of, such Person, or (iii) any other Person as determined from time to time that the Board of Directors determines in good faith poses a material competitive risk to the Corporation or any of its Subsidiaries; *provided* that in the case of clauses (i) or (ii), the Board of Directors (excluding the vote of any Director appointed by, or otherwise affiliated with, a Competitor (as defined without giving effect to this proviso) may determine in good faith that a Person that would be a Competitor pursuant to the foregoing clauses (i) or (ii) shall be deemed to not be a Competitor, notwithstanding clauses (i) or (ii) of this definition.

"**Confidential Information**" means, with respect to the Corporation, Intermediate, Holdco and the Partnership, all information concerning the Corporation, Intermediate, Holdco and the Partnership and their respective Subsidiaries, including, but not limited to, ideas, business strategies, innovations and materials, all aspects of the business plan of the Corporation, Intermediate, Holdco and the Partnership and their respective Subsidiaries, proposed operation and products, corporate structure, financial and organizational information, analyses, proposed partners, software code and system and product designs, employees and their identities, equity ownership, the methods and means by which the Corporation, Intermediate, Holdco and the Partnership or their respective Subsidiaries plan to conduct their respective businesses, all trade secrets, trademarks, tradenames and all intellectual property associated with the business of the Corporation, Intermediate, Holdco and the Partnership and their respective Subsidiaries; *provided* that the term "Confidential Information" does not include information or material that:

(i) is in the possession of a Stockholder at the time of disclosure by the Corporation, Intermediate, Holdco or the Partnership or any of their respective Subsidiaries so long as, to the knowledge of such Stockholder, such information or material is not subject to any prior obligation of confidentiality owed to the Corporation, Intermediate, Holdco or the Partnership or GEI or any of their respective Subsidiaries with respect to such information;

(ii) before or after it has been disclosed to a Stockholder by the Corporation, Intermediate, Holdco or the Partnership or any of their respective Subsidiaries, becomes publicly available, not as a result of any action or inaction of such Stockholder or any of its Representatives in violation of this Agreement;

(iii) is disclosed to a Stockholder or its Representatives by a third party not, to the knowledge of such Stockholder, in violation of any obligation of confidentiality owed to the Corporation, Intermediate, Holdco or the Partnership or GEI or any of their respective Subsidiaries with respect to such information; or

(iv) is independently developed (without the use of any Confidential Information) by a Stockholder or any of its Representatives without violating any confidentiality agreement with, or other obligation of secrecy to, Corporation, Intermediate, Holdco or the Partnership or GEI or any of their respective Subsidiaries.

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

"**Corporation Election Deadline**" has the meaning set forth in Section 8.01(a).

"**DGCL**" has the meaning set forth in Section 7.01(a).

"**Director**" means any member of the Board of Directors.

"**Director Recipient**" has the meaning set forth in Section 2.01(c).

"**Drag-Along Buyer**" has the meaning set forth in Section 4.03(a)(i).

"**Drag-Along Rights**" has the meaning set forth in Section 4.03(a).

"**Drag-Along Sale**" has the meaning set forth in Section 4.03(a).

"**Drag-Along Sale Notice**" has the meaning set forth in Section 4.03(d).

"**Drag-Along Sellers**" has the meaning set forth in Section 4.03(a).

"**Equity Purchase Right**" has the meaning set forth in Section 4.01(a).

"**Excess Shares**" has the meaning set forth in Section 4.01(d).

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

"**First Year Majority Director Removal**" has the meaning set forth in Section 2.02(a).

"**GEI**" has the meaning set forth in the Recitals.

"**Governmental Entity**" means (a) the United States of America, (b) any other sovereign nation, (c) any state, province, district, territory or other political subdivision of (a) or (b) of this definition, including any county, municipal or other local subdivision of the foregoing, or (d) any entity exercising executive, legislative, judicial, regulatory or administrative functions of government on behalf of (a), (b) or (c) of this definition.

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

"**Independent Valuation**" means the fair market value of a share of Class A Common Stock as determined by an independent third-party accounting, valuation, appraisal or investment banking firm of national standing mutually selected by the Redeeming Stockholder and Board of Directors (excluding the vote of any member(s) of the Board of Directors appointed by the Redeeming Stockholder or any of its Related Persons or otherwise Affiliated with the Redeeming Stockholder or any of its Related Persons).

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

"**IPO**" has the meaning set forth in Section 4.01(f).

"**Issuance Notice**" has the meaning set forth in Section 4.01(b).

"**Joinder**" means a Joinder to this Agreement in substantially the form attached hereto as **Exhibit A**.

"**Law**" means all laws, statutes, ordinances, rules, regulations and orders of any Governmental Entity.

"**Listing**" has the meaning set forth in Section 4.01(f).

"**LLC Conversion**" has the meaning set forth in Section 7.01(a).

"**Majority Directors**" has the meaning set forth in Section 2.01(a)(iv).

"**Majority Significant Stockholder**" has the meaning set forth in Section 2.09.

"**Manager**" has the meaning assigned thereto in the Partnership Agreement.

"**National Securities Exchange**" means any U.S. national securities exchange, including, without limitation, the New York Stock Exchange, the NYSE MKT, the Nasdaq Global Select Market, the Nasdaq Global Market and the Nasdaq Capital Market. For the avoidance of doubt, National Securities Exchange does not include an "over-the-counter" system or network.

"**New Equity Securities**" means any and all (A) shares of Common Stock or other equity securities of the Corporation, (B) equity securities of any Subsidiary of the Corporation, (C) securities exchangeable into, or convertible or exercisable for, shares of securities of the type specified in clause (A) or (B), and (D) options, warrants or other rights to acquire securities of the type specified in clause (A) or (B), in each case other than (1) securities issued to employees, officers, directors or consultants pursuant to any equity-based compensation or incentive plans approved by the Board of Directors or included in the Plan of Reorganization, (2) securities issued in connection with a stock split, payment of dividends or any similar recapitalization, reclassification, distribution, exchange or readjustment of shares approved by the Board of Directors, (3) shares of Common Stock issued pursuant to the Plan of Reorganization, (4) securities issued as consideration in any business combination, consolidation, merger or acquisition

transaction or joint venture involving the Corporation or any of its Subsidiaries, (5) securities issued upon the conversion or exercise of any securities convertible or exercisable for shares of securities (i) of the type specified in clause (1) or (4) or (ii) that were subject to the Equity Purchase Right or specifically excluded from the Equity Purchase Right, (6) shares of Common Stock or Units required to be issued pursuant to the Partnership Agreement (including pursuant to Article 11 thereunder) or interests issued pursuant to Section 4.01(b)(iii)(C) of the Partnership Agreement, (7) securities issued in an IPO or (8) shares of Class B Common Stock or Units required to be issued pursuant to Article 8.

"**Observer**" has the meaning set forth in Section 3.01.

"**Organizational Documents**" means the certificates or articles of incorporation or formation, bylaws, or such other applicable formation documents of each of the Corporation, Intermediate, Holdco and the Partnership, including, for the avoidance of doubt, the Partnership Agreement.

"**Other Stockholders**" has the meaning set forth in Section 4.03(a).

"**Ownership Percentage**" means, with respect to any Stockholder or group of Stockholders, the number of shares of Common Stock owned by such Stockholder or group of Stockholders as of any date of calculation divided by the total number of shares of Common Stock issued and outstanding (expressed as a percentage) as of such date of calculation.

"**Paired Interest**" means one Unit together with one share of Class B Common Stock.

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

"**Partnership Agreement**" means the Second Amended and Restated Limited Liability Company Agreement of the Partnership, dated as of December 14, 2018, as such agreement may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"**Party**" means each Person who is a party to this Agreement by virtue of signing this Agreement or a Joinder.

"**Person**" means any individual, firm partnership, company or other entity, and shall include any successor (by merger or otherwise) of such entity.

"**Physical Settlement**" means a number of Paired Interests equal to the number of Redeemed Class A Shares, of which the Class B Common Stock and Units constituting such Paired Interests shall be free and clear of all liens and encumbrances (other than those imposed by the Organizational Documents and applicable securities Law).

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

"**Plan of Liquidation**" has the meaning set forth in Section 7.01(a).

"**Preemptive Rightsholder**" has the meaning set forth in Section 4.01(a).

"**Preemptive Share**" has the meaning set forth in Section 4.01(a).

"**Prohibited Distribution**" has the meaning set forth in Section 8.01(d).

"**Redeemed Class A Equivalent**" means the product of (a) the applicable number of Redeemed Class A Shares *multiplied by* (b) the Class A Redemption Price.

"**Redeemed Class A Shares**" has the meaning set forth in Section 8.01(a).

"**Redeeming Stockholder**" has the meaning set forth in Section 8.01(a).

"**Redemption Date**" has the meaning set forth in Section 8.01(a).

"**Redemption Expenses**" means, with respect to any Class A Redemption, all liabilities, claims, losses, penalties, damages, costs, fees and expenses (including reasonable attorneys' and accountants' fees and expenses) incurred by the Corporation, Intermediate, Holdco or the Partnership, in connection with, or arising as a result of, such Class A Redemption, including (without limitation) any taxes (including withholding taxes) incurred in connection with, or arising as a result of, such Class A Redemption (determined on a cumulative, "with and without" basis and including any taxes incurred as a result of payments under Section 2.11) and any independent valuation or external tax advice that the Board of Directors (excluding the vote of any Directors appointed by the Redeeming Stockholder or any of its Related Persons or otherwise Affiliated with the Redeeming Stockholder or any of its Related Persons) reasonably determines to be necessary or advisable in determining the tax consequences of such Class A Redemption.

"**Redemption Notice**" has the meaning set forth in Section 8.01(a).

"**Redemption Right**" has the meaning set forth in Section 8.01(a).

"**Redemption Withdrawal Notice**" has the meaning set forth in Section 8.01(b).

"**Related Persons**" means, with respect to a Person, and without duplication, (i) such Person's Affiliates, (ii) any fund, account, investment vehicle or co-investment vehicle that is controlled, managed, advised or sub-advised by such Person or any of its Affiliates or the same investment manager, advisor or sub-advisor as such Person or any Affiliate of such investment manager, advisor or sub-advisor and (iii) any other Stockholder to the extent that such Person or any of its Affiliates controls the voting of such Stockholder's Common Stock.

"**Replacement Nominee**" has the meaning set forth in Section 2.03(a).

"**Representatives**" means, with respect to a Person, such Person's Related Persons and its and their respective partners, members, shareholders, managers, directors,

officers, employees, advisors, legal counsel, accountants, tax advisors, investment advisers, agents and other representatives.

"**Resulting LLC**" has the meaning set forth in Section 7.01(a).

"**SEC**" means the U.S. Securities and Exchange Commission, including any governmental body or agency succeeding to the functions thereof.

"**Secured Site**" has the meaning set forth in Section 6.02.

"**Securities Act**" means the U.S. Securities Act of 1933, as amended, and applicable rules and regulations thereunder, and any successor to such statute, rules or regulations. Any reference herein to a specific section, rule or regulation of the Securities Act shall be deemed to include any corresponding provisions of future Law.

"**Settlement Election Notice**" has the meaning set forth in Section 8.01(a).

"**Significant Stockholders**" means (i) the Stockholders listed on Schedule B and (ii) any other Person who (together with such Person's Related Persons) owns 5% or more of the outstanding shares of Common Stock after the date of this Agreement and (A) presents to the Corporation reasonably satisfactory evidence of such Person's (and any applicable Related Person's) share ownership, (B) provides the Corporation with an executed Joinder pursuant to Section 4.01, (C) has received the prior approval of the then-existing Significant Stockholders in accordance with Section 2.09 and (D) is not an SVP Stockholder. For the avoidance of doubt, a Person referred to in clause (ii) of the preceding sentence together with such Person's Related Persons shall be deemed to collectively constitute a single "Significant Stockholder". Any Significant Stockholder who ceases to hold at least 4% of the outstanding shares of Common Stock shall automatically cease to be a Significant Stockholder.

"**Significant Stockholder Directors**" has the meaning set forth in Section 2.01(a)(ii)(B).

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

"**SVP Directors**" has the meaning set forth in Section 2.01(a)(i)(B).

"**SVP Stockholders**" shall mean (i) Strategic Value Special Situations Fund III, L.P., Threadneedle LLC, Ropemaker LLC, Strategic Value Special Situations Fund IV, L.P., Lothbury LLC and Carnaby LLC and (ii) without duplication, any Related Person of Strategic Value Partners, LLC.

"**Subsidiary**" means, with respect to any Person, any corporation, limited liability company, partnership, association or business entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (b) if a limited

liability company, partnership, association or other business entity (other than a corporation), a majority of the voting interests thereof are at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof; *provided* that in the case of this clause (b), if a Person has the right to serve as the "manager" (or comparable role) of a limited liability company, partnership, association or other business entity (other than a corporation), such limited liability company, partnership, association or other business entity (other than a corporation) and each of its Subsidiaries shall be deemed to be a Subsidiary of such Person.

"**Tag-Along Notice**" has the meaning set forth in Section 4.02(b).

"**Tag-Along Offerees**" has the meaning set forth in Section 4.02(a).

"**Tag-Along Per Share Consideration**" has the meaning set forth in Section 4.02(b).

"**Tag-Along Pro Rata Portion**" has the meaning set forth in Section 4.02(b).

"**Tag-Along Right**" has the meaning set forth in Section 4.02(a).

"**Tag-Along Seller**" has the meaning set forth in Section 4.02(a).

"**Tag-Along Transfer**" has the meaning set forth in Section 4.02(a).

"**Tag-Along Transferee**" has the meaning set forth in Section 4.02(b).

"**Tagging Stockholder**" has the meaning set forth in Section 4.02(a).

"**Third Party Purchase Election Notice**" has the meaning set forth in Section 8.01(g).

"**Third Party Purchaser**" has the meaning set forth in Section 8.01(g).

"**Third Party Purchase Price**" has the meaning set forth in Section 8.01(g).

"**Total Significant Stockholder Holdings**" has the meaning set forth in Section 2.09.

"**Trading Day**" means a day on which the applicable National Securities Exchange is open for the transaction of business (unless such trading shall have been suspended for the entire day).

"**Transfer**" (and, with correlative meanings, "**Transferee**", "**Transferor**", "**Transferred**" and "**Transferring**") means, with respect to any Common Stock, Units or any other equity securities, (a) when used as a verb, to sell, assign, dispose of, exchange, pledge, encumber, hypothecate or otherwise transfer such Common Stock, Units, or other equity securities or any participation or interest therein, whether directly or indirectly

(including pursuant to a derivative transaction), and (b) when used as a noun, a sale, assignment, disposition, exchange, pledge, encumbrance, hypothecation, or other transfer of such Common Stock, Units, or other equity securities or any participation or interest therein, whether directly or indirectly (including pursuant to a derivative transaction).

"**Transferred Director Right**" has the meaning set forth in Section 2.01(c).

"**Unit**" means a membership interest in the Partnership, authorized and issued under the Partnership Agreement, and constituting a "Unit" as defined in the Partnership Agreement.

"**Withdrawal Deadline**" has the meaning set forth in Section 8.01(b).

"**10% Significant Stockholder Director**" has the meaning set forth in Section 2.01(a)(ii)(B).

"**10% SVP Director**" has the meaning set forth in Section 2.01(a)(i)(B).

"**25% Significant Stockholder Director**" has the meaning set forth in Section 2.01(a)(ii)(A).

"**25% SVP Director**" has the meaning set forth in Section 2.01(a)(i)(A).

## ARTICLE 2
## CORPORATE GOVERNANCE; CERTAIN COVENANTS

Section 2.01. *Composition of the Board of Directors.*

(a) The Board of Directors shall consist of seven Directors, of whom:

(i) (A) one shall be designated by the SVP Stockholders for so long as the Ownership Percentage of the SVP Stockholders is at least 25% (the "**25% SVP Director**") and (B) one shall be designated by the SVP Stockholders for so long as the Ownership Percentage of the SVP Stockholders is at least 10% (the "**10% SVP Director**" and, together with the 25% SVP Director, the "**SVP Directors**");

(ii) (A) one shall be designated by the Significant Stockholders for so long as the Ownership Percentage of the Significant Stockholders is at least 25% (the "**25% Significant Stockholder Director**") and (B) one shall be designated by the Significant Stockholders for so long as the Ownership Percentage of the Significant Stockholders is at least 10% (the "**10% Significant Stockholder Director**" and, together with the 25% Significant Stockholder Director, the "**Significant Stockholder Directors**");

(iii) one shall be the individual that is the Chief Executive Officer of the Corporation at the relevant time; and

(iv) subject to Section 2.03(a)(ii), two shall be elected by the vote of the holders of a majority of the outstanding shares of Common Stock (the "**Majority Directors**").

(v) Should the Ownership Percentage of the SVP Stockholders cease to be at least 25%, the SVP Stockholder shall take all actions necessary or appropriate to cause the 25% SVP Director to immediately resign. Should the Ownership Percentage of the SVP Stockholders cease to be at least 10%, the SVP Stockholder shall take all actions necessary or appropriate to cause the 10% SVP Director to immediately resign. Should the Ownership Percentage of the Significant Stockholders cease to be at least 25%, the Significant Stockholders shall take all actions necessary or appropriate to cause the 25% Significant Stockholder Director to immediately resign. Should the Ownership Percentage of the Significant Stockholders cease to be at least 10%, the Significant Stockholders shall take all actions necessary or appropriate to cause the 10% Significant Stockholder Director to immediately resign. For the avoidance of doubt, once the SVP Stockholders or the Significant Stockholders cease to meet any Ownership Percentage specified above, the SVP Stockholders or the Significant Stockholders shall permanently lose any rights pursuant to this Article 2 associated with the applicable Ownership Percentage and shall not be entitled to regain such rights if such Stockholder later meets or exceeds such Ownership Percentage.

(vi) Should any Director be required to resign pursuant to the preceding clause (v), the number of Majority Directors at such time shall automatically be increased by one, and the vacancy shall be filled in accordance with the procedures for filling a Majority Director vacancy.

(vii) As of the effective date of this Agreement, the 25% SVP Director shall be Ari Barzideh, the 10% SVP Director shall be David Geenberg, the 25% Significant Stockholder Director shall be Alex Mazier, the 10% Significant Stockholder Director shall be Phil Brown, the Majority Directors shall be Mark A. McFarland and Stephen Schaeffer and the Chief Executive Officer of the Corporation is David Freysinger. The SVP Stockholder may, upon written notice to the Corporation, change the designation of the individual designated as the 10% SVP Director to the 25% SVP Director, and vice versa. The Significant Stockholders may, upon written notice to the Corporation, change the designation of the individual designated as the 10% Significant Stockholder Director to the 25% Significant Stockholder Director, and vice versa.

(b) Each Stockholder agrees that, if at any time it is then entitled to vote for the election of directors to the Board of Directors, it shall vote all of its shares of Common Stock or execute proxies or written consents, as the case may be, and take all other necessary action (including causing the Corporation to call a special meeting of Stockholders) in order to ensure that the composition of the Board of Directors is as set forth in this Section 2.01.

(c) The SVP Stockholders may: (i) transfer the right to appoint the 25% SVP Director and the 10% SVP Director (to the extent the SVP Stockholders are then entitled to appoint the 25% SVP Director and the 10% SVP Director) to any Person (together with its Related Persons) acquiring shares of Common Stock from the SVP Stockholders constituting an Ownership Percentage of 25% or more, (ii) transfer the right to appoint the 25% SVP Director (to the extent the SVP Stockholders are then entitled to appoint the 25% SVP Director) to any Person (together with its Related Persons) acquiring shares of Common Stock from the SVP Stockholders constituting an Ownership Percentage of 25% or more (for the avoidance of doubt, without also transferring the right to appoint the 10% SVP Director (to the extent the SVP Stockholders are then entitled to appoint the 10% SVP Director)) and (iii) transfer the right to appoint the 10% SVP Director (to the extent the SVP Stockholders are then entitled to appoint the 10% SVP Director) to any Person (together with its Related Persons) acquiring shares of Common Stock from the SVP Stockholders constituting an Ownership Percentage of 10% or more (in each case, a "**Transferred Director Right**"); *provided* that, upon the effectiveness of any Transferred Director Right, all rights, limitations and obligations of the SVP Stockholders in this Agreement relating to the 25% SVP Director and/or 10% SVP Director, as applicable (including the right of the SVP Stockholders to appoint or remove such Director(s)), shall be deemed to apply to the Person acquiring the Transferred Director Right (each a "**Director Recipient**"); *provided further* that (x) no Transferred Director Right will be effective until (i) SVP has provided the Corporation with written notice of the transfer, (ii) the Director Recipient has provided the Corporation with reasonably satisfactory evidence of such Person's (and its Related Persons') share ownership and (iii) the Director Recipient has delivered a properly executed Joinder to the Corporation pursuant to Section 4.01 and (y) if the Director Recipient is a Significant Stockholder, the Director Recipient (and its Related Persons) shall automatically cease to be a Significant Stockholder. Any Director Recipient shall have the right to further transfer its Transferred Director Right, subject to the conditions set forth in the preceding sentence.

(d) Notwithstanding the foregoing provisions of this Section 2.01, if the Corporation holds its annual meeting of Stockholders less than twelve (12) months after the date of this Agreement, each Stockholder shall vote or execute proxies or written consents, as applicable, to re-elect the then-current Majority Directors.

Section 2.02. *Removal.*

(a) Each Stockholder agrees that, except as otherwise required pursuant to Section 2.02(b), if at any time it is then entitled to vote for the removal of Directors from the Board of Directors, it shall not vote any of its Common Stock or execute proxies or written consents, as the case may be, in favor of the removal of any Director who shall have been designated pursuant to Section 2.01 or Section 2.03, unless the Person or Persons entitled to designate or nominate such Director pursuant to Section 2.01 shall have consented to such removal in writing; *provided* that, if the Person or Persons entitled to designate any Director pursuant to Section 2.01 shall request in writing the removal of such Director, each Stockholder shall vote all of its Common Stock or execute proxies or written consents, as the case may be, in favor of such removal. Notwithstanding the foregoing, (i) until the 12-month anniversary of the date of this

Agreement, removal of a Majority Director shall require the consent (either written or at a duly called meeting of the Stockholders) of holders of at least two-thirds of the outstanding shares of Common Stock (a "**First Year Majority Director Removal**"), and (ii) after the 12-month anniversary of the date of this Agreement, removal of a Majority Director shall require the consent (either written or at a duly called meeting of the Stockholders) of holders of a majority of the outstanding shares of Common Stock; *provided* that in the case any such removal is effected by written consent, such removal shall not be effective until the date that is one (1) Business Day after the date of such written consent.

(b) Each Stockholder shall vote all of its Common Stock or execute proxies or written consents, as the case may be, in favor of the removal of a given Director if the Board of Directors (i) determines (by vote of a majority of the Directors other than the Director to be removed) that such Director should be removed for Cause and (ii) requests that the Stockholders remove such Director.

Section 2.03. *Vacancies*. If, as a result of death, disability, retirement, resignation, removal or otherwise, there shall exist or occur any vacancy on the Board of Directors:

(a) (i) if the vacancy is a vacancy of a SVP Director or a Significant Stockholder Director (including, for the avoidance of doubt, a vacancy pursuant to Section 2.02(b)), the Person or Persons entitled under Section 2.01(a)(i) or Section 2.01(a)(ii) to designate such Director whose death, disability, retirement, resignation or removal resulted in such vacancy shall have the exclusive right to designate another individual to fill such vacancy and serve as a Director on the Board of Directors, (ii) if the vacancy is a vacancy of a Majority Director, the vacancy shall be filled by a person designated by the vote or consent of the holders of (A) in the case of a First Year Majority Director Removal, at least two-thirds of the outstanding shares of Common Stock and (B) in any other case, a majority of the outstanding shares of Common Stock, and (iii) in the case of a vacancy resulting from the termination of employment of the Chief Executive Officer of the Corporation, the new Chief Executive Officer of the Corporation shall be selected (and the position shall remain vacant until such time as there is a Chief Executive Officer of the Corporation) to fill such vacancy and serve as a director on the Board of Directors (such person, in the case of either clause (i), (ii) or (iii), (the "**Replacement Nominee**");

(b) subject to Section 2.01, each Stockholder agrees that if it is then entitled to vote for the election of Directors to the Board of Directors, it shall vote all of its Common Stock, or execute proxies or written consents, as the case may be, in order to ensure that the Replacement Nominee be elected to the Board of Directors; and

(c) in furtherance of Section 2.03(b), the Corporation shall promptly hold a meeting of the Stockholders; *provided* that, the foregoing shall not apply if the replacement Majority Director is (i) elected by written consent or (ii) selected in connection with the removal of such Majority Director.

Section 2.04. *Meetings.* The Board of Directors shall hold a regularly scheduled meeting at least once every calendar quarter. The Corporation shall pay all reasonable out-of-pocket expenses incurred by each Director in connection with attending regular and special meetings of the Board of Directors and any committee thereof on which the Director is a member, and any such meetings of the board of directors of any Subsidiary of the Corporation and any committee thereof, in each case, on which the Director is a member.

Section 2.05. *Compensation*. The Directors may receive such reasonable compensation for serving in such capacity as may be approved by the Board of Directors.

Section 2.06. *Action by the Board of Directors.*

(a) A quorum of the Board of Directors shall consist of four Directors.

(b) Except as set forth in the Charter, all actions of the Board of Directors shall require (i) the affirmative vote of at least a majority of all the Directors on the Board of Directors or (ii) the unanimous written consent of the Board of Directors; *provided* that, (A) if there is a vacancy on the Board of Directors and an individual has been nominated to fill such vacancy, the first order of business shall be to fill such vacancy in accordance with the terms of this Agreement, (B) matters relating to the Chairman of the Board of Directors or Chief Executive Officer of the Corporation shall require the affirmative vote of at least a majority of the Directors on the Board of Directors (excluding the vote of the Chairman of the Board of Directors or the Chief Executive Officer as applicable) and (C) any Affiliate Transaction (as defined in the Charter) must be approved as set forth in Article 6(G) of the Charter.

(c) The Board of Directors shall elect a member of the Board of Directors to serve as Chairman, as selected from time to time by a majority of the Board of Directors excluding the proposed Chairman. The Chairman of the Board of Directors as of the date hereof shall be Mark A. McFarland.

(d) The Board of Directors may create executive, compensation, audit and such other committees as it may determine.

Section 2.07. *Charter or Bylaw Provisions.* Each Stockholder agrees to vote all of its Common Stock or execute proxies or written consents, as the case may be, and to take all other actions necessary, to ensure that the Charter and bylaws of the Corporation (i) facilitate, and do not at any time conflict with, any provision of this Agreement and (ii) permit each Stockholder to receive the benefits to which each such Stockholder is entitled under this Agreement. The Charter and bylaws of the Corporation shall provide for (A) the elimination of the liability of each Director to the maximum extent permitted by applicable Law and (B) indemnification of, and advancement of expenses for, each Director for acts on behalf of the Corporation to the maximum extent permitted by applicable Law.

Section 2.08. *Notice of Meeting*. The Corporation agrees to give each Director (by email or otherwise) notice and the agenda for each meeting of the Board of Directors or any committee thereof at least 24 hours prior to such meeting.

Section 2.09. *Significant Stockholder Decisions*. Any decision, appointment, approval or other action by the Significant Stockholders pursuant to this Agreement (including the exercise of any applicable rights of the Significant Stockholders pursuant to Section 2.01, Section 2.02 or Section 2.03) shall require the approval of Significant Stockholders, either via written consent or in a meeting, holding a majority of the total shares of Common Stock then-held by all Significant Stockholders (such total amount the "**Total Significant Stockholder Holdings**"); *provided* that with respect to the selection or removal of any Significant Stockholder Director (including any applicable Replacement Nominee) any Significant Stockholder (together with its Related Persons) holding greater than 50% of the Total Significant Stockholder Holdings (together, the "**Majority Significant Stockholder**") may elect, by irrevocable written notice to the Corporation, not to vote greater than 50% of the Total Significant Stockholder Holdings, in which event any shares of Common Stock held by the Majority Significant Stockholder in excess of 50% of the Total Significant Stockholder Holdings shall be deemed to be voted *pro rata* by the Significant Stockholders other than the Majority Significant Stockholder in proportion with the voting of shares by such other Significant Stockholders.

Section 2.10. *Certain Obligations of the Corporation, Intermediate and Holdco*. The Corporation shall comply with Section 6.08(a), Section 6.08(b) and Section 11.07 of the Partnership Agreement applicable to the Corporation in its capacity as Manager. Intermediate agrees to comply with Section 6.08(c) of the Partnership Agreement. Holdco agrees to comply with Section 6.08(d) of the Partnership Agreement. The Corporation shall not resign as Manager without the prior approval (either via written consent or at a meeting, pursuant to Article 7 or Article 8 of the Charter, respectively) of the holders of a majority of the then-outstanding shares of Class A Common Stock and Class B Common Stock, with each class voting separately.

Section 2.11. *Certain Obligations of the Partnership and Certain Redeemed Stockholder.*

(a) The Partnership and the Corporation hereby agree that, in the event that the Corporation redeems shares of Class A Common Stock in accordance with Article 8, the Partnership shall bear or be responsible for all Redemption Expenses incurred by the Corporation, Intermediate, Holdco or the Partnership in connection with, or as a result of, such redemption. In furtherance of the foregoing, the Partnership shall promptly reimburse the Corporation, Intermediate or Holdco, as applicable, for any such Redemption Expenses paid by the Corporation, Intermediate or Holdco, as applicable, or, if the Corporation so directs reasonably in advance of the due date for any such Redemption Expense, pay such Redemption Expense directly on the Corporation's, Intermediate's or Holdco's, as applicable, behalf.

(b) The Stockholders and the Partnership hereby agree that, in the event that the Corporation redeems shares of Class A Common Stock from a Stockholder in accordance with Article 8, the Redeeming Stockholder shall promptly indemnify the Partnership for, and hold the Partnership harmless against, without duplication, (i) any amounts required to be paid by the Partnership to, or on behalf of, the Corporation, Intermediate or Holdco, as applicable, pursuant to Section 2.11(a) in respect of such Class A Redemption and (ii) any Redemption Expenses incurred directly by the Partnership in connection with, or as a result of, such Class A Redemption. Without limiting the foregoing, and notwithstanding anything to the contrary in Article 8, it shall be a condition to the consummation of any Class A Redemption that the Redeeming Stockholder shall have delivered to the Partnership, in immediately available funds at or prior to the time at which such Class A Redemption is consummated, an amount of cash equal to the sum of (i) all documented Redemption Expenses actually incurred by the Corporation, Intermediate, Holdco or the Partnership in connection with, or as a result of, such Class A Redemption at or prior to the consummation of such Class A Redemption and (ii) all other Redemption Expenses that the Board of Directors (excluding the vote of any Directors appointed by the Redeeming Stockholder or any of its Related Persons, or otherwise Affiliated with the Redeeming Stockholder or any of its Related Persons) reasonably determines, in its good faith business judgment, are expected to be incurred by the Corporation, Intermediate, Holdco or the Partnership in connection with, or as a result of, such Class A Redemption. If (x) the cumulative amount previously paid by the relevant Redeeming Stockholder to the Partnership with respect to a Class A Redemption pursuant to this Section 2.11(b) exceeds (y) the amount of Redemption Expenses actually incurred by the Corporation, Intermediate, Holdco and the Partnership in connection with, or as a result of, such Class A Redemption through the date on which the Corporation files its original U.S. federal income tax return for the taxable year of the Corporation that includes such Class A Redemption, then the Partnership shall pay over the amount of such excess to such Redeeming Stockholder within ten (10) Business Days after the date such tax return is filed (without, for the avoidance of doubt, limiting the obligations of the Redeeming Stockholder under this Section 2.11(b) for any Redemption Expenses incurred by the Corporation, Intermediate, Holdco or the Partnership in connection with, or as a result of, such Class A Redemption).

## ARTICLE 3
## OBSERVER RIGHTS

Section 3.01. *Board Observer Rights*. (i) Each Significant Stockholder marked with an asterisk (*) next to its name on Schedule B hereto and (ii) any other Stockholder(s) selected by the Board of Directors from time to time, shall, in each case, be entitled to designate one (1) representative of such Significant Stockholder or other Stockholder (each such representative, an "**Observer**") to attend all meetings of the Board of Directors in a nonvoting observer capacity, in each case for so long as such Significant Stockholder or other Stockholder (in each case together with its Related Persons) owns at least 5% of the issued and outstanding Common Stock of the Corporation. In this respect, the Corporation shall deliver to each Observer copies of all notices, minutes, consents and other materials that it provides to its Directors; *provided*,

however, that such Observer will agree to hold in confidence and trust and not to use for any purpose other than to monitor its investment, all information so provided; and *provided further*, that the Corporation reserves the right to withhold any information and to exclude such Observer from any meeting or portion thereof to the extent access to such information or attendance at such meeting could adversely affect the attorney-client privilege between the Corporation and its counsel or could result in a conflict of interest. Each applicable Significant Stockholder or other Stockholder (in each case together with its Related Persons) will be required to present to the Corporation reasonably satisfactory evidence of its share ownership from time to time as requested by the Corporation. The right to an Observer set forth in this Section 3.01 shall not be Transferrable by any Significant Stockholder or other Stockholder entitled to such right. Notwithstanding anything to the contrary contained herein, no Stockholder (including any Significant Stockholder) shall be entitled to an Observer if such Stockholder (including any Significant Stockholder) becomes a Competitor, for so long as such Stockholder (including any Significant Stockholder) remains a Competitor.

## ARTICLE 4
## PREEMPTIVE RIGHTS; TAG-ALONG RIGHTS; DRAG-ALONG RIGHTS

Section 4.01. *Preemptive Rights.*

(a) Subject to Section 4.01(g) and Section 4.01(i) (and for the avoidance of doubt, Article 4(I) of the Charter), the Corporation hereby grants to each Stockholder that owns (including all shares owned by such Stockholder's Related Persons) at least 5% of the total shares of Common Stock outstanding as of the close of business on the record date determined by the Board of Directors (each such Stockholder, together with each such Related Person of such Stockholder, a "**Preemptive Rightsholder**"), which record date shall not be more than ten (10) Business Days prior to, nor later than, the Corporation's delivery of the Issuance Notice, the right to purchase up to its *pro rata* portion (based on the number of shares of Common Stock owned by such Stockholder as of the close of business on the record date, as a percentage of the total number of shares of Common Stock owned by all Preemptive Rightsholders) of any New Equity Securities that the Corporation or any of its Subsidiaries proposes to sell or issue at any time and from time to time after the date hereof (with respect to a Preemptive Rightsholder, such Preemptive Rightsholder's "**Preemptive Share**"). The rights of Preemptive Rightsholders to purchase New Equity Securities pursuant to this Section 4.01 (the "**Equity Purchase Right**") shall apply at the time of issuance of any right, warrant, or option or convertible or exchangeable security that constitutes a New Equity Security, and not to the subsequent conversion, exchange or exercise of such New Equity Security in accordance with its terms.

(b) The Corporation shall give each Preemptive Rightsholder written notice of any proposed issuance or sale of New Equity Securities that is subject to the Equity Purchase Right, at least ten (10) Business Days prior to the proposed issuance or sale. Such notice (an "**Issuance Notice**") shall set forth the material terms and conditions of the proposed transaction, including the proposed manner of issuance or sale, a description of the New Equity Securities, the total number of New Equity Securities proposed to be

issued or sold, the proposed issuance or sale date, the proposed purchase price per share, and (if known) the name and address of the proposed purchaser of the New Equity Securities.

(c) At any time during the ten (10) Business Days following receipt of an Issuance Notice, each Preemptive Rightsholder shall have the right, but not the obligation, to irrevocably elect, by written notice to the Corporation, to purchase up to its Preemptive Share of the New Equity Securities at the purchase price set forth in the Issuance Notice and upon the other terms and conditions specified in the Issuance Notice; *provided, however*, that no Preemptive Rightsholder shall be obligated (or permitted without the Corporation's consent) to purchase any New Equity Securities pursuant to this Section 4.01 unless all required regulatory approvals, if any, applicable to such purchase have been obtained. Except as provided in the next sentence, the purchase of New Equity Securities by the electing Preemptive Rightsholders shall be consummated concurrently with the consummation of the issuance or sale described in the Issuance Notice. The closing of the purchase of New Equity Securities by any electing Preemptive Rightsholder may be extended beyond the closing of the transaction described in the Issuance Notice, to the extent necessary to (i) obtain required approvals of any Governmental Entity and other required regulatory approvals which such Preemptive Rightsholder shall be diligently pursuing in good faith (and the Corporation shall use its commercially reasonable efforts to obtain any approvals required to be obtained by it provided that the Corporation shall not be required to incur any out-of-pocket unreimbursed expenses in connection therewith other than those expenses that are not related to any specific Preemptive Rightsholder or specific group of Preemptive Rightsholders) and (ii) permit the Preemptive Rightsholder to complete its internal capital call process following receipt of the Issuance Notice; *provided, however*, in each case such Preemptive Rightsholder shall have no more than 180 days (in the case of obtaining approvals) or 30 days (in the case of completing an internal capital call) after delivery of the applicable Issuance Notice to obtain such approvals or complete such internal capital call process. If a Preemptive Rightsholder does not obtain the required approvals or complete its internal capital calls within the time set forth in the preceding sentence, such Preemptive Rightsholder shall be deemed to have not exercised its Equity Purchase Right and the Corporation shall have the right to issue such New Equity Securities in accordance with the Issuance Notice, and references to the date the applicable Issuance Notice was given in Section 4.01(e) shall be deemed to refer to the date that the period set forth in the preceding sentence ended. Notwithstanding anything to the contrary contained herein, in the event that the closing of any purchase of New Equity Securities by any Preemptive Rightsholder is extended pursuant to this paragraph, such extension shall not preclude the consummation of the issuance or sale of the remaining New Equity Securities described in the Issuance Notice from occurring prior to such closing.

(d) To the extent that one or more Preemptive Rightsholders do not fully and timely exercise their Equity Purchase Rights, in accordance with the terms and conditions set forth in this Section 4.01, or elects to exercise such rights with respect to less than such Preemptive Rightsholder's Preemptive Share of the New Equity Securities (the difference between such Preemptive Rightsholder's Preemptive Share of the New Equity Securities and the number of New Equity Securities for which such Preemptive

Rightsholder Holder exercised its preemptive rights under this Section 4.01, the "**Excess Shares**"), then the Corporation (or the applicable Subsidiary) shall offer to sell to the Preemptive Rightsholders that have elected to purchase all of their Preemptive Share of the New Equity Securities, the Excess Shares *pro rata* (based on the number of shares of Common Stock owned by such Preemptive Rightsholder (without giving effect to the issuance pursuant to the Issuance Notice) divided by the number of shares of Common Stock owned by all Preemptive Rightsholders exercising in full their Equity Purchase Rights) and at the same price and on the same terms as those specified in the Issuance Notice, and such Preemptive Rightsholders shall have the right to acquire all or any portion of such Excess Shares within two (2) Business Days following the expiration of the period specified in Section 4.01 by delivering written notice thereof to the Corporation. The Corporation shall continue to offer additional portions to Preemptive Rightsholders choosing to purchase their full *pro rata* portion of such Excess Shares pursuant to this Section 4.01(d) until the earlier of (i) all New Equity Securities proposed to be issued by the Corporation or its Subsidiaries and with respect to which Preemptive Rightsholders were entitled to exercise their rights under this Section 4.01 have been allocated to the Preemptive Rightsholders or (ii) no Preemptive Rights Holders remain who wish to purchase Excess Shares pursuant to the foregoing provision.

(e) Following compliance with the terms and conditions set forth in this Section 4.01, the Corporation (or its applicable Subsidiary) shall be free to consummate the proposed issuance or sale of all or any portion of the remaining New Equity Securities that the Preemptive Rightsholders have elected not to purchase, on terms no less favorable to the Corporation or any of its Subsidiaries than those set forth in the Issuance Notice; *provided*, that (i) such issuance or sale is closed within ninety (90) days after the date the related Issuance Notice was given, except that, if such issuance or sale is subject to regulatory approval, such ninety (90)-day period shall be extended until the expiration of five (5) Business Days after all such approvals have been received, but in no event later than one hundred and ninety (190) days after the related Issuance Notice was given, and (ii) the price at which the New Equity Securities are transferred must be equal to or higher than the purchase price described in the Issuance Notice. In the event that the Corporation (or its applicable Subsidiary) has not sold such New Equity Securities within such ninety (90)-day period (as may be extended as set forth in the preceding sentence), the Corporation (or its applicable Subsidiary) shall not thereafter issue or sell any New Equity Securities without first again offering such securities to the Stockholders entitled to preemptive rights in the manner provided in this Section 4.01.

(f) The rights and obligations set forth in this Section 4.01 shall automatically terminate upon, and shall cease to have any force or effect following, the earlier of (i) the date the Common Stock is listed on a National Securities Exchange in the United States (a "**Listing**"), or (ii) the consummation of the first public offering and sale of Common Stock by the Corporation (other than on Forms S-4 or S-8 or their equivalent), pursuant to an effective registration statement under the Securities Act (such public offering and sale, an "**IPO**").

(g) Notwithstanding anything to the contrary contained herein, the Corporation and/or any of its Subsidiaries may issue or sell New Equity Securities to any purchaser

(an "**Accelerated Buyer**") without first complying with the provisions of this Section 4.01 if the Board of Directors determines in good faith that it is in the best interests of the Corporation to consummate such issuance or sale without having first complied with such provisions; *provided*, that in connection with any such issuance or sale, the Corporation shall give the Preemptive Rightsholders written notice of such issuance or sale as promptly as practicable, which notice (an "**Accelerated Sale Notice**") shall describe in reasonable detail (a) the material terms and conditions of the issuance or sale of the New Equity Securities to the Accelerated Buyer, including the number or amount and description of the New Equity Securities issued, the issuance or sale date, the purchase price per share, and the name and address of the Accelerated Buyer and (b) the rights of the Preemptive Rightsholders to purchase New Equity Securities, pursuant to this paragraph, in connection with such issuance or sale. In the event of any such issuance or sale of New Equity Securities to an Accelerated Buyer, each Preemptive Rightsholder shall have the right, at any time during the ten (10) Business Days following receipt of the Accelerated Sale Notice, to elect to purchase New Equity Securities in an amount equal to the amount of such New Equity Securities it would have been entitled to purchase if the issuance or sale to the Accelerated Buyer had instead been completed without regard to this Section 4.01(g), including pursuant to Section 4.01(d). If one or more Preemptive Rightsholders exercise the election to make a purchase, the Corporation shall give effect to each such exercise by either (i) requiring that the Accelerated Buyer sell down a portion of its New Equity Securities, or (ii) issuing additional New Equity Securities to such Preemptive Rightsholder, or a combination of (i) and (ii), so long as such action effectively provides such Preemptive Rightsholder with the same number of New Equity Securities it would have received had this paragraph not been utilized.

(h) A Preemptive Rightsholder may assign its Equity Purchase Right to any Person or Persons (whether or not a Stockholder) that agree to be bound by the provisions of this Agreement applicable to the Preemptive Rightsholder by executing a Joinder.

(i) In the case of any issuance of New Equity Securities consisting of Common Stock the Corporation shall ensure that any Stockholder shall be entitled pursuant to the exercise of the Equity Purchase Right hereunder to purchase shares of Class A Common Stock or Class B Common Stock; *provided* that, in the case of purchases of Class B Common Stock, (A) such Stockholders shall purchase the additional shares of Class B Common Stock at a purchase price for each share so purchased equal to the par value of each such share and (B) such Stockholders shall be required to purchase, and the Corporation and the Partnership shall take all actions necessary to issue to such Stockholders, a number of additional Units equal to the number of shares of Class B Common Stock purchased pursuant to the Equity Purchase Right at a purchase price per Unit equal to the purchase price per share set forth in the Issuance Notice *minus* the par value of the share paid to the Corporation pursuant to the preceding clause (A). The Corporation shall cause the net proceeds (including, for the avoidance of doubt, the aggregate par value of such shares of Class B Common Stock) of any issuance of New Securities pursuant to this Section 4.01 to be promptly contributed to Intermediate. Immediately following the contribution described in the preceding sentence, Intermediate shall promptly contribute such proceeds to Holdco. Immediately following the

contribution described in the preceding sentence, Holdco shall promptly contribute such proceeds to Partnership.

Section 4.02. *Tag-Along Rights.*

(a) If at any time prior to the earlier of a Listing or the consummation of an IPO, any one or more Stockholders (collectively, the "**Tag-Along Seller**") propose to Transfer shares of Common Stock that constitute more than thirty percent (30%) of the total shares of Common Stock then outstanding to one or more purchasers that are not Related Persons of the Tag-Along Seller in any transaction or series of related transactions (a "**Tag-Along Transfer**"), then, subject to Article 4(F) of the Charter in the case of Stockholders holding Class B Common Stock, each other Stockholder that owns (together with such Stockholder's Related Persons) at least 5% of the total shares of Common Stock outstanding (each such Stockholder, together with each such Affiliate of such Stockholder, collectively the "**Tag-Along Offerees**") shall have the right (a "**Tag-Along Right**") to exercise tag-along rights in accordance with the terms and conditions set forth in this Section 4.02 (any such Stockholder exercising such rights, a "**Tagging Stockholder**"). The rights and obligations set forth in this Section 4.02 shall automatically terminate upon, and shall cease to have any force or effect following, the earlier of (i) a Listing or (ii) the consummation of an IPO.

(b) The Tag-Along Seller shall promptly give notice (a "**Tag-Along Notice**") to the Corporation setting forth the number of shares of Common Stock proposed to be Transferred by the Tag-Along Seller, the name and address of the proposed transferee (the "**Tag-Along Transferee**"), the proposed purchase price for each such share of Common Stock (it being understood that the purchase price payable in respect of a share of Class A Common Stock shall be equal to the purchase price payable in respect of the combination of a share of Class B Common Stock and a Unit, and vice versa, and references to the price per share include, in the case of shares of Class B Common Stock, the corresponding Units) (the "**Tag-Along Per Share Consideration**"), and any other material terms and conditions of the Tag-Along Transfer. Upon receipt of any such Tag-Along Notice, the Corporation shall promptly (but in no event later than three (3) Business Days following receipt thereof) provide such Tag-Along Notice to each Tag-Along Offeree. Each Tag-Along Offeree, shall subject to Article 4(F) of the Charter in the case of Stockholders holding Class B Common Stock, have a period of ten (10) Business Days from the mailing date of the Tag-Along Notice by the Corporation to elect to sell in the Tag-Along Transfer a number of shares of Common Stock up to its Tag-Along Pro Rata Portion at a price per share equal to the Tag-Along Per Share Consideration. Any Tag-Along Offeree may exercise such right by delivery of an irrevocable written notice to the Tag-Along Seller specifying the number of shares of Common Stock such Tag-Along Offeree desires to include in the Tag-Along Transfer. Unless the Tag-Along Transferee agrees to purchase all the shares of Common Stock proposed to be Transferred by the Tag-Along Seller and the Tagging Stockholders, (i) each Tagging Stockholder shall be entitled to include in the Tag-Along Transfer a number of shares of Common Stock determined by multiplying (A) the total number of shares of Common Stock that the Tag-Along Transferee has agreed to purchase in the Tag-Along Transfer by (B) a fraction, the numerator of which is the number of shares of

Common Stock proposed to be Transferred by such Tagging Stockholder in the Tag-Along Transfer and the denominator of which is the total number of shares of Common Stock proposed to be Transferred by the Tag-Along Seller and all Tagging Stockholders and (ii) the Tag-Along Seller shall be entitled to include the number of shares of Common Stock that the Tag-Along Transferee has agreed to purchase in the Tag-Along Transfer minus the total number of shares of Common Stock that the Tagging Stockholders are entitled to sell pursuant to the foregoing clause (i). The Tag-Along Seller shall have a period of one hundred and twenty (120) calendar days following the expiration of the ten (10) day period referred to above to consummate the Tag-Along Transfer, on the payment terms specified in the Tag-Along Notice. If the Tag-Along Seller and the Tag-Along Transferee (i) have not consummated the Tag-Along Transfer in the time period set forth in the preceding sentence or (ii) propose to consummate the Tag-Along Transfer at a different price or on different terms than those set forth in the Tag-Along Notice, then the Tag-Along Seller shall not be permitted to consummate the Tag-Along Transfer without again giving the Tag-Along Offerees the opportunity to Transfer shares of Common Stock in accordance with this Section 4.02. As used herein, "**Tag-Along Pro Rata Portion**" means a number of shares of Common Stock determined by multiplying (i) the number of shares of Common Stock owned by the applicable Tag-Along Offeree by (ii) a fraction, the numerator of which is the number of shares of Common Stock proposed to be Transferred by the Tag-Along Seller in the Tag-Along Transfer and the denominator of which is the aggregate number of shares of Common Stock held by the Tag-Along Seller immediately prior to such Tag-Along Transfer.

(c) Notwithstanding anything contained in this Section 4.02, there shall be no liability or obligation on the part of the Tag-Along Seller to the Tag-Along Offerees or any other Person if the Tag-Along Transfer pursuant to this Section 4.02 is not consummated for whatever reason. Whether to effect a Tag-Along Transfer pursuant to this Section 4.02 by the Tag-Along Seller is in the sole and absolute discretion of the Tag-Along Seller.

(d) Each Tagging Stockholder (i) shall be required to give representations and warranties (in a form customary for transactions of the nature of the Tag-Along Transfer) only in relation to its due organization, authority, noncontravention of laws and agreements and title to its shares of Common Stock (and Units, in the case of Stockholders holding Class B Common Stock) being transferred in the Tag-Along Transfer, (ii) shall not be required to agree to any restrictive covenant (such as a non-compete or non-solicit or similar restriction) other than a customary confidentiality covenant, (iii) shall not be required to provide any indemnification (A) with respect to any representations, warranties, covenants or agreements made by any Tag-Along Seller, the Corporation or any other Person or (B) in an amount exceeding the net proceeds received by such Tagging Stockholder in connection with the Tag-Along Transfer, and (iv) shall not be subject, in excess of its ratable share of the shares of Common Stock being transferred in the Tag-Along Transfer, to any holdback(s) or escrow(s) in respect of potential indemnification obligations or purchase price adjustment(s) pursuant to the applicable definitive purchase agreement.

Section 4.03. *Drag-Along Rights*.

(a) Subject to Article 4(F) of the Charter (in the case of Stockholders holding Class B Common Stock), if holders of Common Stock (the "**Drag-Along Sellers**") owning 40% or more of the outstanding shares of Common Stock propose to Transfer all (but not less than all) of the shares of Common Stock held by them (a "**Drag-Along Sale**"), the Drag-Along Sellers may at their option (the "**Drag-Along Rights**") require each other holder of Common Stock ("**Other Stockholders**") to:

(i) sell all (but not less than all) of the Common Stock owned by such Other Stockholder (including all Units held by each Other Stockholder holding Class B Common Stock) to the Person to whom the Drag-Along Sellers propose to sell their shares of Common Stock (the "**Drag-Along Buyer**") and on the same terms and conditions as the Drag-Along Sellers (it being understood that the purchase price payable in respect of a share of Class A Common Stock shall be equal to the purchase price payable in respect of the combination of a share of Class B Common Stock and a Unit, and vice versa, and references to the price per share include, in the case of shares of Class B Common Stock, the corresponding Units);

(ii) if such Drag-Along Sale requires Stockholder approval, with respect to all shares of Common Stock (and, if applicable with respect to Units, all Units held by each Other Stockholder holding Class B Common Stock) that such Other Stockholder owns or over which such Other Stockholder otherwise exercises voting power, vote (in person, by proxy or by action by written consent, as applicable) all shares of Common Stock (and, if applicable with respect to Units, all Units held by each Other Stockholder holding Class B Common Stock) in favor of, and adopt, such Drag-Along Sale and to vote in opposition to any and all other proposals that could reasonably be expected to delay or impair the ability of the Drag-Along Sellers to consummate such Drag-Along Sale;

(iii) subject to Section 4.03(e)(ii), execute and deliver all related documentation and take such other action in support of the Drag-Along Sale as shall reasonably be requested by the Corporation or the Drag-Along Sellers in order to carry out the terms and provision of this Section 4.03, including, without limitation, executing and delivering instruments of conveyance and transfer, and any purchase agreement, merger agreement, indemnity agreement, escrow agreement, consent, waiver, governmental filing, share certificates duly endorsed for transfer (free and clear of impermissible liens, claims and encumbrances), and any similar or related documents;

(iv) not deposit, and to cause their Related Persons not to deposit, except as provided in this Agreement, any shares of Common Stock owned by such Other Stockholder in a voting trust or subject any shares of Common Stock to any arrangement or agreement with respect to the voting of such Shares, unless specifically requested to do so by the acquirer in connection with the Drag-Along Sale; and

(v) refrain from exercising any dissenters' rights or rights of appraisal under applicable Law at any time with respect to such Drag-Along Sale.

(b) For the avoidance of doubt, Holdco shall vote (if applicable) all Units held by it as and to the same extent required by the Other Stockholders pursuant to Section 4.03(a)(ii).

(c) If the consideration to be paid in exchange for the shares of Common Stock pursuant to this Section 4.03 includes any securities and due receipt thereof by any holder of Common Stock would require (x) the registration or qualification of such securities or of any Person as a broker or dealer or agent with respect to such securities or (y) the provision to any Stockholder of any information other than such information as a prudent issuer would generally furnish in an offering made solely to "accredited investors" as defined in Regulation D promulgated under the Securities Act, the Corporation may cause to be paid to any such Other Stockholder in lieu thereof, against surrender of the shares of Common Stock which would have otherwise been sold by such Stockholder, an amount in cash equal to the fair value of the securities which such Other Stockholder would otherwise receive as of the date of the issuance of such securities in exchange for the shares of Common Stock (based on the market price of such other securities if such securities are listed on a National Securities Exchange, or as determined in good faith by the Corporation if not so listed), provided that such Other Stockholder shall have the right to object to the determination and require the Corporation retain an independent third-party accounting, valuation, appraisal or investment banking firm of national standing mutually acceptable to the Corporation and the Other Stockholder to determine the then current fair market value of the shares of Common Stock. The Corporation and the Other Stockholder (or if more than one Other Stockholder is objecting, all objecting Other Stockholders) shall each bear one-half of the fees and expenses of the independent third-party accounting, valuation, appraisal or investment banking firm selected as set forth in the preceding sentence.

(d) If the Drag-Along Sellers elect to exercise their Drag-Along Rights, the Drag-Along Sellers shall provide notice of such proposed Drag-Along Sale to the Corporation (a "**Drag-Along Sale Notice**"). Upon receipt of any such Drag-Along Sale Notice, the Corporation shall promptly (but in no event later than five (5) Business Days following receipt thereof) give written notice of such Drag-Along Sale Notice to each Other Stockholder.

(e) Notwithstanding anything contained in this Section 4.03, the obligations of the Other Stockholders to participate in a Drag-Along Sale are subject to the following conditions:

(i) the Drag-Along Sale must include all Other Stockholders and all shares of Common Stock owned by the Other Stockholders (and in the case of Class B Common Stock, all corresponding Units);

(ii) each Other Stockholder (i) shall be required to give representations and warranties (in a form customary for transactions of the nature of the Drag-

Along Sale) only in relation to its due organization, authority, noncontravention of laws and agreements and title to its shares of Common Stock (and Units, in the case of Stockholders holding Class B Common Stock) being transferred in the Drag-Along Sale, (ii) shall not be required to agree to any restrictive covenant (such as a non-compete or non-solicit or similar restriction) other than a customary confidentiality covenant, (iii) shall not be required to provide any indemnification (A) with respect to any representations, warranties, covenants or agreements made by any Drag-Along Seller, the Corporation or any other Person or (B) in an amount exceeding the net proceeds received by such Other Stockholder in connection with the Drag-Along Sale, and (iv) shall not be subject, in excess of its ratable share of the shares of Common Stock being transferred in the Drag-Along Sale, to any holdback(s) or escrow(s) in respect of potential indemnification obligations or purchase price adjustment(s) pursuant to the applicable definitive purchase agreement;

(iii) subject to Section 4.03(b), upon the consummation of the Drag-Along Sale, each Other Stockholder will receive the same form of consideration for its shares of Common Stock as is received by the Drag-Along Sellers (it being understood that the purchase price payable in respect of a share of Class A Common Stock shall be equal to the purchase price payable in respect of the combination of a share of Class B Common Stock and a Unit, and vice versa, and references to the price per share include, in the case of shares of Class B Common Stock, the corresponding Units); and

(iv) if any Drag-Along Sellers are given an option as to the form and amount of consideration to be received as a result of the Drag-Along Sale, all Other Stockholders will be given the same option; *provided, however*, no Other Stockholder shall be entitled to receive any form of consideration that such holder would be ineligible to receive as a result of such holder's failure to satisfy any condition, requirement or limitation that is established in good faith and generally applicable to the Corporation's Stockholders.

(f) This Section 4.03 and the rights and obligations contained herein shall terminate upon the earlier of (i) a Listing or (ii) the consummation of an IPO and shall thereafter have no force or effect.

## ARTICLE 5
## MATTERS REQUIRING STOCKHOLDER APPROVAL

Section 5.01. *Actions Requiring Stockholder Approval*. Until the earlier to occur of (x) an IPO or (y) a Listing, the Corporation (including for the avoidance of doubt, in its capacity as Manager) shall not, and, as applicable, shall not permit any Subsidiary of the Corporation to, take any of the following actions (except to the extent solely between the Corporation and any of its wholly owned Subsidiaries or solely between wholly owned Subsidiaries of the Corporation) unless the action has been approved (either via written consent or at a meeting, pursuant to Article 7 or Article 8 of the Charter, respectively) by holders of at least a majority (or (x) in the case of clauses (e) and (f), at

least $66^{2/3}$%, and (y) in the case of clause (b), at least 75%) of the voting power of all outstanding securities of the Corporation generally entitled to vote in the election of directors, voting together as a single class (except as set forth below):

(a) issue any New Equity Securities, excluding (i) securities issued to employees, officers, directors or consultants pursuant to any equity-based compensation or incentive plans approved by the Board of Directors or included in the Plan of Reorganization, (ii) securities issued in connection with a stock split, payment of dividends or any similar recapitalization, reclassification, distribution, exchange or readjustment of shares approved by the Board of Directors, (iii) shares of Common Stock issued pursuant to the Plan, (iv) without limiting the applicability of clause (b) or clause (c) below, securities issued as consideration in any business combination, consolidation, merger or acquisition transaction or joint venture involving the Corporation or any of its Subsidiaries, (v) securities issued upon the conversion or exercise of any securities of the type specified in clause (i) or (iv), (vi) shares of Common Stock required to be issued pursuant to the Partnership Agreement or interests issued pursuant to Section 4.01(b)(iii)(C) of the Partnership Agreement or (vii) securities issued in an IPO; *provided* that the issuance by the Corporation of any New Equity Securities other than Common Stock (or in the case of clause (i) any option, restricted stock units or other equity-based arrangements that, in any such case, are convertible into, exercisable for or determined by reference to Common Stock) shall also require the approval of the holders of at least a majority of the then-outstanding shares of Class A Common Stock and the holders of at least a majority of the then-outstanding shares of the Class B Common Stock, with each class voting separately;

(b) (x) any acquisition (whether by direct or indirect merger, consolidation, acquisition of stock or assets or otherwise), or any investment, in one transaction or a series of related transactions, in which the aggregate consideration paid by the Corporation and its Subsidiaries is in excess of $50,000,000, with any non-cash consideration valued at fair market value as determined by the Board of Directors in good faith, or (y) any sale or other disposition (whether by direct or indirect merger, consolidation, sale of stock or assets or otherwise), in one transaction or series of related transactions, in which the consideration to be received by the Corporation and/or its Subsidiaries and/or the Stockholders includes $50,000,000 or more of non-cash consideration (other than securities that are listed on a National Securities Exchange), with such non-cash consideration valued at fair market value as determined by the Board of Directors in good faith;

(c) without limiting clause (b)(y) above, any sale or other disposition (whether by direct or indirect merger, consolidation, sale of stock or assets or otherwise), in one transaction or series of related transactions, in which the aggregate consideration received by the Corporation and/or Subsidiaries and/or the Stockholders is in excess of $100,000,000, with any non-cash consideration valued at fair market value as determined by the Board of Directors in good faith; *provided* that this clause (c) shall not apply in the case of any transaction conducted in accordance with Section 4.03 of this Agreement;

(d) liquidate, dissolve or wind up the Corporation, the Partnership or any of their respective material Subsidiaries;

(e) consummate a Listing or IPO; or

(f) amend, modify or waive any provision of (i) the Charter, *provided* that any such amendment, modification or waiver that would (A) change the obligations, powers, preferences or rights of the Class A Common Stock relative to the obligations, powers, preferences or rights of Class B Common Stock or vice versa, shall require the approval of the holders of a majority of the then-outstanding shares of Class A Common Stock and the holders of a majority of the then-outstanding shares of Class B Common Stock, with each class voting separately or (B) materially and adversely affect the obligations, powers, preferences or rights of a holder of one class of Common Stock in a manner that is disproportionate to the affect on the obligations, powers, preferences or rights of a holder of the other class of Common Stock, shall require the approval of the holders of a majority of the then-outstanding shares of the Common Stock of the disproportionately affected class; or (ii) the Partnership Agreement, *provided* that (A) any such amendment, modification or waiver that would materially and adversely affect the obligations, powers, preferences or rights of Holdco as a member of the Partnership (or of the holders of shares of Class A Common Stock) in a manner that is disproportionate from the manner in which it affects the members of the Partnership who hold Paired Interests shall require the approval of the holders of a majority of the then-outstanding shares of Class A Common Stock or (B) any amendment, modification or waiver of Section 6.07 of the Partnership Agreement shall also require the approval of the holders of a majority of the then-outstanding shares of Class A Common Stock.

For the purposes of Section 5.01(b) and Section 5.01(c), (iii) a merger, consolidation or combination of the Corporation or a sale of all or substantially all of the assets of the Corporation and its Subsidiaries, in either case where the holders of the Common Stock immediately prior to such transaction hold, directly or indirectly, in the aggregate, a majority or more of the outstanding voting securities of the surviving or acquiring entity shall be deemed an "acquisition" and (iv) a merger, consolidation or combination of the Corporation or a sale of all or substantially all of the assets of the Corporation and its Subsidiaries, in either case where the holders of the Common Stock immediately prior to such transaction hold, directly or indirectly, in the aggregate, less than a majority of the outstanding voting securities of the surviving or acquiring entity shall be deemed a "disposition".

Section 5.02. *Compliance with Stockholder Approval Items.* The Corporation shall not, and shall not permit any Subsidiary of the Corporation to, enter into any agreement or binding obligation to do any of the matters set forth in Section 5.01 that require approval by the Stockholders in accordance therewith, unless the Corporation's and its Subsidiaries' agreements and obligations in respect thereof are expressly conditioned upon the Corporation's compliance with Section 5.01.

## ARTICLE 6
## INFORMATION

Section 6.01. *Information Requirements*.

(a) Subject to Section 6.01(c), the Corporation will (i) provide to each Stockholder (a) audited consolidated annual financial statements no later than 90 days after the end of each calendar year and (b) unaudited consolidated quarterly financial statements no later than 45 days after the end of each quarterly period other than the last quarterly period of the calendar year (and for such last quarterly period the Corporation will provide a customary "earnings release" within such 45 day period), (ii) hold a quarterly "earnings call" as promptly as reasonably practicable after the distribution of the financial statements (or earnings release, as applicable) for the applicable quarter, which shall include a reasonable opportunity for questions from Stockholders and (iii) in accordance with the applicable timing requirements under Form 8-K, all information that would be required to be contained in filings with the Commission on Form 8-K under one or more of Items 1.01, 1.02, 1.03, 2.01, 2.03, 2.04 and 5.02(a)-(d) and (c)(1) (other than with respect to information otherwise required or contemplated by Item 402 of Regulation S-K under the Securities Act) (but excluding, for the avoidance of doubt, financial statements and exhibits that would be required pursuant to Item 9.01 of Form 8-K, other than financial statements and pro forma financial information required pursuant to clauses (a) and (b) of Item 9.01 of Form 8-K (in each case relating to transactions required to be reported pursuant to Item 2.01 of Form 8-K) to the extent available (as determined by the Corporation in good faith)) if the Corporation were a reporting company under the Exchange Act and required to make such filings; *provided* that (i) no such current report will be required to be furnished if the Corporation determines in its good faith judgment that such event is not material to Stockholders or the business, assets, operations, financial position or prospects of the Corporation and its Subsidiaries, taken as a whole, and the Corporation may omit from such disclosure any terms of such event if the Corporation determines in its good faith judgment that disclosure of such terms would otherwise cause material competitive harm to the business, assets, operations, financial position or prospects of the Corporation and its Subsidiaries, taken as a whole (except that such non-disclosure shall be limited only to those specific provisions that would cause material competitive harm and not the occurrence of the event itself), and (ii) that no such current report will be required to include a summary of the terms of, any employment or compensatory arrangement agreement, plan or understanding between the Corporation (or any of the Corporation's Subsidiaries) and any director, manager or executive officer, of the Corporation (or any of the Corporation's Subsidiaries). The annual and quarterly financial statements referred to in the immediately preceding sentence shall be accompanied by a customary "management's discussion and analysis" of the results of operations of the Corporation for the periods presented substantially in accordance with the requirements of Item 303 of Regulation S-K under the Securities Act.

(b) In the event that the Partnership and its Subsidiaries are not included in the consolidated financial statements of the Corporation, the Corporation and the Partnership shall provide each Stockholder with all of the information described in Section 6.01(a)

(subject to the limitations set forth therein) for the Partnership and its Subsidiaries on a consolidated basis.

(c) No Competitor shall be entitled to receive the information described in Section 6.01(a).

Section 6.02. *Access to Information*. The Corporation may satisfy its obligations under Section 6.01 by providing each Stockholder access to a confidential website such as Intralinks or Epiq and timely posting such information on such website (which website shall have a system of email notification of new postings, the "**Secured Site**").

Section 6.03. *Confidentiality*. (a) Each Stockholder agrees that Confidential Information furnished and to be furnished to it has been and may in the future be made available in connection with such Stockholder's investment in the Corporation. Each Stockholder agrees that it shall use, and that it shall direct any Person to whom Confidential Information is disclosed pursuant to clauses (i) through (v) below to use, the Confidential Information only in connection with its investment in the Corporation and not for any other purpose (including to disadvantage competitively the Corporation, the Partnership or any of their respective Subsidiaries). Each Stockholder further acknowledges and agrees that it shall not disclose any Confidential Information to any Person, except that Confidential Information may be disclosed:

(i) to such Stockholder's Representatives (other than a Competitor) in the normal course of the performance of their duties or to any financial institution providing credit to such Stockholder;

(ii) for purposes of reporting to its, or its Related Persons', stockholders and direct and indirect equity holders and limited partners, in each case other than a Competitor, the performance of the Corporation, the Partnership and their respective Subsidiaries (or otherwise in connection with customary fundraising, marketing, information or reporting activities of such Persons) and for purposes of including applicable information in financial statements to the extent required by applicable Law or applicable accounting standards; *provided* with respect to the immediately preceding clauses (i) and (ii), any such Persons receiving Confidential Information shall be informed by the Stockholder of the Confidential Information, such Person shall agree or otherwise be obligated to keep such information confidential in accordance with the provisions of this Section 6.03 and any Stockholder disclosing such Confidential Information will be liable for any unauthorized disclosures of such Confidential Information in violation of this Section 6.03 by any such Persons;

(iii) to any Person to whom such Stockholder is contemplating a *bona fide* Transfer of its Common Stock, other than a Competitor; *provided* that such Transfer would not be in violation of the provisions of this Agreement, the Charter or the Partnership Agreement and such potential Transferee is advised of the confidential nature of such information and agrees to be bound by a confidentiality agreement consistent with this Section 6.03 and any Stockholder

disclosing such Confidential Information will be liable for any breaches of this Section 6.03 by any such Persons;

(iv) to any regulatory authority or rating agency to which the Stockholder or any of its Related Persons is subject or with which it has regular dealings; *provided* that such authority or agency is advised of the confidential nature of such information;

(v) to the extent related to the tax treatment and tax structure of the transactions contemplated by this Agreement (including all materials of any kind, such as opinions or other tax analyses that the Corporation, its Affiliates or its Representatives have provided to such Stockholder relating to such tax treatment and tax structure); *provided* that the foregoing does not constitute an authorization to disclose the identity of any existing or future party to the transactions contemplated by this Agreement or their Affiliates or Representatives, or, except to the extent relating to such tax structure or tax treatment, any specific pricing terms or commercial or financial information;

(vi) if the prior written consent of the Chief Executive Officer, Chief Financial Officer or General Counsel of the Corporation or the Board of Directors shall have been obtained; or

(vii) to the extent required by applicable Law, rule or regulation (including complying with any oral or written questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process to which a Stockholder is subject); *provided* that such Stockholder agrees to give the Corporation and the Partnership prompt notice of such request(s), to the extent practicable and permitted by Law, so that the Corporation and/or the Partnership may seek an appropriate protective order or similar relief (and the Stockholder shall cooperate with such efforts by the Corporation and/or the Partnership (at the expense of the Corporation or the Partnership, as applicable), and shall in any event make only the minimum disclosure required by such law, rule or regulation).

(b) Notwithstanding Section 6.03(a)(iii), in connection with a potential Drag-Along Sale, the Drag-Along Seller may provide Confidential Information to a *bona fide* potential Drag-Along Buyer, and can require the Corporation and the Partnership to provide reasonable access to information of the Corporation and its Subsidiaries to such *bona fide* potential Drag-Along Buyer, so long as (i) the potential Drag-Along Buyer enters into a customary non-disclosure agreement with the Corporation and the Partnership on terms reasonably acceptable to the Corporation and the Partnership and (ii) the Drag-Along Seller is fully liable for any breach of such non-disclosure agreement by the potential Drag-Along Buyer. For the avoidance of doubt, such Drag-Along Buyer may be a Competitor.

(c) Nothing contained herein shall prevent the use (subject, to the extent possible, to a protective order) of Confidential Information in connection with the

assertion or defense of any claim by or against the Corporation, the Partnership, their respective Subsidiaries or any Stockholder or will restrict in any manner the ability of the Corporation, the Partnership or their respective Subsidiaries to comply with its disclosure obligations under applicable Law. Furthermore, nothing contained herein shall in any way limit or otherwise modify any confidentiality obligations owed by any Stockholder to the Corporation, the Partnership or their respective Subsidiaries pursuant to any other agreement entered into by such Stockholder, the Partnership, the Corporation or any of their respective Subsidiaries, and this Section 6.03 shall be in addition to such other agreement.

## ARTICLE 7
## CERTAIN TAX-RELATED MATTERS

Section 7.01. *Adoption of A Plan of Liquidation.*

(a) Notwithstanding anything to the contrary in this Agreement, if the holders of a majority of the shares of Class A Common Stock elect, by written notice to the Corporation and the Board of Directors, to require the Corporation to adopt a plan of liquidation pursuant to which amounts will be distributed (or deemed distributed, for U.S. federal and applicable state income tax purposes) to the Stockholders in complete liquidation of the Corporation (a "**Plan of Liquidation**"), the Corporation shall take all actions necessary to adopt and implement the Plan of Liquidation as promptly as reasonably practicable; *provided*, *however*, that no Plan of Liquidation may require the Corporation to (i) dissolve in accordance with the General Corporation Law of the State of Delaware ("**DGCL**") or, except as set forth in the next sentence, convert into a Delaware limited liability company treated as a partnership for U.S. federal and applicable state income tax purposes, prior to the time at which the Corporation has disposed of all of its direct or indirect interests in the Partnership, (ii) dispose of its direct or indirect interest in the Partnership prior to the time at which the Partnership has disposed of all of its direct and indirect interests in assets and property or (iii) cause the Partnership to dispose of any of its direct or indirect interests in any assets or property at a time when the Board of Directors determines in its good faith business judgment that such disposition would be materially imprudent. If a Plan of Liquidation is adopted, such Plan of Liquidation shall provide that, if the Corporation has not dissolved in accordance with the DGCL before the last day of the third taxable year of the Corporation beginning after the taxable year of the Corporation in which a Plan of Liquidation is adopted, then, effective as of such day, the Corporation shall convert into a Delaware limited liability company treated as a partnership for U.S. federal and applicable state income tax purposes (the "**LLC Conversion**" and such resulting limited liability company, the "**Resulting LLC**") unless, prior to the consummation of the LLC Conversion, the holders of a majority of the shares of Class A Common Stock elect, by written notice to the Corporation and the Board of Directors, to delay the LLC Conversion; *provided*, that any such delay may be for a fixed period or until such time as the holders of the majority of the shares of Class A Common Stock further elect, by written notice to the Corporation and the Board of Directors, to consummate the LLC Conversion; *provided*, *further*, that the organizational documents of the Resulting LLC shall, as nearly as possible, replicate the economic, governance and other rights and obligations of the Stockholders provided

for in the other provisions of this Agreement and in the Organizational Documents, in each case, as in effect immediately prior to the LLC Conversion.

(b) If a Plan of Liquidation is adopted pursuant to Section 7.01(a), each of the Corporation, the Partnership and the Stockholders hereby agrees to take all actions necessary to consummate an LLC Conversion at the time and in the manner contemplated by Section 7.01(a), including (without limitation) by executing and delivering all required agreements, documents, and consents, and by providing all required information and by negotiating in good faith in connection with the preparation of the Post-Conversion Organizational Documents.

## ARTICLE 8
## REDEMPTION AND EXCHANGE RIGHTS

Section 8.01. *Redemption Right of a Stockholder*.

(a) Subject to Section 8.01(g), the other provisions of this Section 8.01 and Section 10.01(d) of the Partnership Agreement, each Stockholder shall be entitled to cause the Corporation to redeem (a "**Class A Redemption**") its shares of Class A Common Stock in whole or in part (the "**Redemption Right**") at any time and from time to time after the date hereof. A Stockholder desiring to exercise its Redemption Right (each, a "**Redeeming Stockholder**") shall exercise such right by giving written notice (the "**Redemption Notice**") to the Partnership and the Corporation. The Redemption Notice shall specify the number of shares of Class A Common Stock (the "**Redeemed Class A Shares**") that the Redeeming Stockholder intends to have the Corporation redeem. Within five (5) Business Days of the Corporation's receipt of the Redemption Notice (the "**Corporation Election Deadline**"), the Corporation shall notify the Partnership and the Redeeming Stockholder in writing (the "**Settlement Election Notice**") whether the Corporation has elected to have the Class A Redemption consummated pursuant to a Physical Settlement or (subject to Section 8.01(b)) a Cash Settlement. If the Settlement Election Notice specifies that the Corporation has elected a Physical Settlement, the Class A Redemption shall be consummated in accordance with the provisions of Sections 8.01(c)-8.01(e) on a date no later than five (5) Business Days following the date on which the Settlement Election Notice is delivered (such date, or such other date as is mutually agreed by the Corporation and the Redeeming Stockholder, the "**Redemption Date**"). If the Corporation fails to deliver a Settlement Election Notice by the Corporation Election Deadline, the Corporation shall be deemed to have elected a Physical Settlement and the Class A Redemption shall be consummated as a Physical Settlement in accordance with the provisions of Sections 8.01(c)-8.01(e) on a date no later than five (5) Business Days following the Corporation Election Deadline or such other date as is mutually agreed by the Corporation and the Redeeming Stockholder (and such date shall be deemed to be the "Redemption Date" for purposes of this Agreement).

(b) A Class A Redemption shall not be consummated pursuant to a Cash Settlement unless such Cash Settlement has been approved by (i) the Board of Directors prior to issuing the Settlement Election Notice and (ii) the holders of at least a majority of the shares of Common Stock held by Stockholders other than the Redeeming Stockholder

or any of its Related Persons, in each case in accordance with this Agreement, the Charter and the Bylaws and the Partnership Agreement (the approval pursuant to the foregoing clause (ii), the "**Cash Election Approval**"). If the Settlement Election Notice specifies that the Corporation has elected a Cash Settlement, the Corporation shall (i) cause the Class A Redemption Price to be determined pursuant to Section 8.06 (provided that if the fair market value for purposes of the Class A Redemption Price is to be determined pursuant to an Independent Valuation, the Corporation shall use its commercially reasonably efforts to cause such Independent Valuation to be completed (and the resulting Fair Market Value to be determined) no later than forty-five (45) Business Days after the date of the Settlement Election Notice) and (ii) seek to obtain the Cash Election Approval by no later than fifteen (15) Business Days following the date that the Class A Redemption Price has been determined (the "**Cash Election Approval Deadline Date**"). No later than two (2) Business Days after the Cash Election Approval Deadline Date, the Corporation shall notify (the "**Cash Election Approval Decision Notice**") the Partnership, the Manager and the Redeeming Stockholder in writing as to whether or not the Cash Election Approval has been obtained by the Cash Election Approval Deadline Date (and such notice shall include, if the Cash Election Approval has been obtained, the applicable Class A Redemption Price). If the Cash Election Approval has been obtained by the Cash Election Approval Deadline Date, the Redeeming Stockholder shall be entitled to withdraw its Redemption request and its Redemption Notice by written notice (the "**Redemption Withdrawal Notice**") to the Partnership, the Manager and the Corporation within five (5) Business Days of its receipt of the Cash Election Approval Decision Notice (the "**Withdrawal Deadline**"). If the Redeeming Stockholder fails to deliver a Redemption Withdrawal Notice by the Withdrawal Deadline, the Redeeming Stockholder shall be deemed to have accepted Cash Settlement of the Class A Redemption (at the Class A Redemption Price determined above) and the Class A Redemption shall be consummated as a Cash Settlement in accordance with the provisions of Sections 8.01(c)-8.01(e) on a date no later than five (5) Business Days following the date of the Withdrawal Deadline or such other date as is mutually agreed by the Corporation and the Redeeming Stockholder (and such date shall be deemed to be the "Redemption Date" for purposes of this Agreement). For the avoidance of doubt, any Cash Election Approval obtained after the Cash Election Approval Deadline Date shall be invalid and the Cash Election Approval shall be deemed not to have been received. If the Redeeming Stockholder delivers a Redemption Withdrawal Notice, the Redemption Notice shall be deemed to be withdrawn and the Redemption shall not occur (for the avoidance of doubt, without limiting the Redeeming Stockholder from submitting a Redemption Notice in the future with respect to any of its shares of Class A Common Stock, in which case the provisions of this Article 8 shall again apply). If the Cash Election Approval has not been obtained by the Cash Election Approval Deadline Date, the Class A Redemption shall be consummated as a Physical Settlement in accordance with the provisions of Sections 8.01(c)-8.01(e) on a date no later than five (5) Business Days following the date of the Cash Election Approval Decision Notice or such other date as is mutually agreed by the Corporation and the Redeeming Stockholder (and such date shall be deemed to be the "Redemption Date" for purposes of this Agreement).

(c) On the Redemption Date:

(i) the Redeeming Stockholder shall transfer and surrender, free and clear of all liens and encumbrances (other than those imposed under this Agreement, the Organizational Documents or applicable securities law), the Redeemed Class A Shares to the Corporation;

(ii) the Corporation shall:

(A) cancel the Redeemed Class A Shares; and

(B) in the case of a Cash Settlement, transfer to the Redeeming Stockholder the cash consideration to which the Redeeming Stockholder is entitled under Section 8.01(b);

(C) in the case of a Physical Settlement, issue to the Redeeming Stockholder the shares of Class B Common Stock to which the Redeeming Stockholder is entitled pursuant to Section 8.01(a) or Section 8.01(b), as applicable; and

(D) if the Class A Common Stock included as part of such Redeemed Class A Shares are certificated, issue to the Redeeming Stockholder a certificate for a number of shares of Class A Common Stock equal to the difference (if any) between the number of shares of Class A Common Stock evidenced by the certificate surrendered by the Redeeming Stockholder pursuant to clause (i) of this Section 8.01(c) and the Redeemed Class A Shares.

(iii) in the case of a Physical Settlement, Holdco shall transfer to the Redeeming Stockholder a number of Units held by Holdco equal to the number of shares of Class B Common Stock issued to the Redeeming Stockholder by the Corporation pursuant to Section 8.01(c)(ii)(C);

(iv) in the case of a Cash Settlement, (A) the Manager shall cause the Partnership, immediately prior to such Cash Settlement, to redeem a corresponding number of Units held by Holdco at an aggregate redemption price equal to the amount of the Cash Settlement, (B) immediately following the redemption by the Partnership described in the preceding clause (A), Holdco shall distribute the aggregate amount received pursuant to the preceding clause (A) to Intermediate and (C) immediately following the distribution by the Partnership described in the preceding clause (B), Intermediate shall distribute the aggregate amount received pursuant to the preceding clause (B) to the Corporation (for the avoidance of doubt, the distributions by Holdco and Intermediate shall occur prior to the redemption by the Corporation of the Redeemed Class A Shares); and

(v) the Class A Redemption shall be deemed to be effective as of immediately prior to the close of business on such Redemption Date.

(d) The number of Paired Interests or the Redeemed Class A Equivalent that a Redeeming Stockholder is entitled to receive pursuant to Section 8.01(a) or Section

8.01(b) (as applicable) shall not be adjusted on account of any dividends previously made with respect to the Redeemed Class A Shares or Distributions (as defined in the Partnership Agreement) previously paid with respect to Units. For the avoidance of doubt, the Redeeming Stockholder shall remain the record holder of the Redeemed Class A Shares until the effectiveness of the Class A Redemption in accordance with Section 8.01(c)(v) and shall be entitled to receive all dividends for which the record date occurred prior to the Class A Redemption. In the event a Redeeming Stockholder received (or is entitled to receive because the record date occurred prior to the Class A Redemption) a dividend from the Corporation in respect of its Redeemed Class A Shares, such Redeeming Stockholder shall not be entitled (in respect of the Paired Interests received by such Redeeming Stockholder in the Class A Redemption, if applicable) to receive any Distribution paid by the Partnership on the Paired Interests to the extent that such Distribution is part of the Distribution pursuant to which Holdco received (or will receive) the amounts that the Corporation paid (or will pay) in respect of the dividend on the applicable Redeemed Class A Shares of the Redeeming Stockholder (such distribution that the Redeeming Stockholder is not entitled to receive, a "**Prohibited Distribution**").

(e) In the case of a Physical Settlement, in the event of a reclassification or other similar transaction as a result of which either of the Paired Interests are converted into another security, then in exercising its Redemption Right a Redeeming Stockholder shall be entitled to receive the amount of such security that the Redeeming Stockholder would have received if such Redemption Right had been exercised and the Redemption Date had occurred immediately prior to the record date of such reclassification or other similar transaction.

(f) A Redemption Right may not be exercised at any time that the Corporation (or Intermediate or Holdco) holds more than a *de minimis* amount of cash or other assets (other than (i) equity interests in Intermediate, Holdco or the Partnership, (ii) cash received in a Corporation Tax Distribution (as defined in the Partnership Agreement) which will be utilized to fulfill the Corporation's tax obligations, (iii) cash which will be utilized to pay Partnership-Related Expenses (as defined in the Partnership Agreement) or (iv) cash advances of Redemption Expenses). If a Stockholder delivers a Redemption Notice at any such time, such Redemption Notice shall be deemed to have been delivered only as of immediately after each of Holdco, Intermediate and the Corporation (as applicable) has taken the following actions: Holdco shall promptly distribute any applicable cash or other assets to Intermediate, Intermediate shall promptly distribute any applicable cash or assets to the Corporation, and the Corporation shall promptly distribute all such cash or assets to holders of shares of Class A Common Stock (in each case, other than (i) cash received in a Corporation Tax Distribution which will be utilized to fulfill the Corporation's tax obligations, (ii) cash which will be utilized to pay Partnership-Related Expenses or (iii) cash advances of Redemption Expenses).

(g) Notwithstanding anything to the contrary in this Section 8.01, in the event a Redeeming Stockholder represents and warrants to the Partnership and the Corporation in its Redemption Notice (i) that such Redeeming Stockholder is exercising its Redemption Right in connection with the sale of the Paired Interests it would receive in respect of its

Redeemed Class A Shares to a *bona fide* third party that is not a Related Person of such Redeeming Stockholder (a "**Third Party Purchaser**") and desires to effectuate a Physical Settlement so that it may deliver to the Third Party Purchaser such Paired Interests upon the consummation of such sale, and (ii) as to the purchase price to be paid by the Third Party Purchaser with respect to such Paired Interests in such sale (the "**Third Party Purchase Price**"), then the Corporation shall within five (5) Business Days of the Corporation's receipt of the Redemption Notice notify the Partnership and the Redeeming Stockholder in writing (the "**Third Party Purchase Election Notice**") whether the Corporation has elected to have the Redemption consummated pursuant to a Physical Settlement or for a cash payment equal to the Third Party Purchase Price (which election shall be made by the Board of Directors, excluding the vote of any director appointed by, or otherwise affiliated with, the Redeeming Stockholder or any of its Related Persons, and for the avoidance of doubt, shall not require any vote of the Stockholders), and in the case that the Corporation has elected to pay the Third Party Purchase Price, the procedures in Section 8.01(b) shall not apply (provided that if the Corporation elects a Physical Settlement or fails to deliver a Third Party Purchase Election Notice within such five (5) Business Day period (in which case the Corporation shall be deemed to have elected a Physical Settlement), the Physical Settlement shall be consummated as set forth in Section 8.01(a) and the other applicable provisions of this Section 8.01). If the Corporation elects to pay the Third Party Purchase Price, the Class A Redemption shall be consummated in accordance with the provisions of Sections 8.01(c)-8.01(e) (with any references to the consideration payable to the Redeeming Stockholder in such Sections to be deemed to refer to the Third Party Purchase Price) on a date no later than five (5) Business Days following the last day of such five (5) Business Day period or such other date as is mutually agreed by the Corporation and the Redeeming Stockholder (and such date shall be deemed to be the "Redemption Date" for purposes of this Agreement). The Redeeming Stockholder shall consummate the sale of the Paired Interests received pursuant to the Physical Settlement no later than 30 days (or if such sale is subject to the receipt of regulatory approvals, such 30 day period will be extended until five Business Days after such regulatory approvals are received, but such extension shall not exceed 150 days) after the consummation of such Physical Settlement; *provided* that in no event shall the price per Paired Interest obtained by the Redeeming Stockholder in such sale be less than the price set forth in the Redemption Notice.

(h) Notwithstanding anything to the contrary in this Section 8.01, (i) for the avoidance of doubt, a Class A Redemption may not be consummated, except in compliance with Section 10.01(d) of the Partnership Agreement; (ii) the Board of Directors may delay the consummation of any Class A Redemption for a reasonable period if necessary or advisable (as determined by the Board of Directors in its reasonable discretion, *provided* that such delay shall not be in excess of fifteen (15) Business Days from the date such Class A Redemption would otherwise have been consummated pursuant to the applicable provision of this Section 8.01) to permit the Board of Directors to (x) determine, in consultation with outside counsel, whether a Class A Redemption may be consummated in compliance with Section 10.01(d) of the Partnership Agreement or (y) determine the amount required to be deposited with the Partnership by the Redeeming Stockholder at or prior to the time at which such Class A

Redemption is consummated in accordance with Section 2.11(b); *provided*, that any delay pursuant to the preceding clause (ii)(y) shall not extend beyond the date that is twenty (20) Business Days after the Corporation's receipt of the relevant Redemption Notice; and (iii) notwithstanding the foregoing, if a Stockholder delivers a Redemption Notice and the Corporation and its Subsidiaries would be prohibited, under Section 10.01(d) of the Partnership Agreement, from electing Physical Settlement in respect of such Redemption Notice, (x) such Redemption Notice shall be null and void and (y) the Corporation shall not be obligated to consummate the Class A Redemption to which such Redemption Notice relates (for the avoidance of doubt, without limiting such Stockholder from submitting a Redemption Notice in the future with respect to any of its shares of Class A Common Stock, in which case the provisions of this Article 8 shall again apply).

Section 8.02. *Reservation of Shares of Class B Common Stock; Listing; Certificate of the Corporation*. At all times the Corporation shall reserve and keep available out of its authorized but unissued Class B Common Stock, solely for the purpose of issuance upon a Class A Redemption, such number of shares of Class B Common Stock as shall be issuable upon any such Class A Redemption pursuant to Physical Settlements; *provided* that nothing contained herein shall be construed to preclude the Corporation from satisfying its obligations in respect of any Class B Common Stock to be delivered in such Class A Redemption by delivery of purchased Class B Common Stock (which may or may not be held in the treasury of the Corporation). The Corporation covenants that all Class B Common Stock issued upon a Class A Redemption will, upon issuance, be validly issued, fully paid and non-assessable. The provisions of this Article 8 shall be interpreted and applied in a manner consistent with the corresponding provisions of the Charter.

Section 8.03. *Effect of Exercise of Redemption*. This Agreement shall continue notwithstanding the consummation of a Class A Redemption and all governance or other rights set forth herein shall be exercised by the remaining Stockholders. No Class A Redemption shall relieve a Redeeming Stockholder of any prior breach of this Agreement.

Section 8.04. *Tax Treatment*. Unless otherwise required by applicable Law, the parties hereto acknowledge and agree that, for U.S. federal and applicable state and local income tax purposes, (i) a Class A Redemption shall be treated as a direct exchange between the Corporation and the Redeeming Stockholder and (ii) in the case of a Physical Settlement, (x) Holdco shall be treated as having distributed Units to Intermediate and (y) Intermediate shall be treated as having distributed such Units to the Corporation, in each case, to permit the Corporation to deliver such Units to the Redeeming Stockholder pursuant to Section 8.01(c)(iii).

Section 8.05. *Certain Required Adjustments*. There shall be no subdivision (by any stock or unit split, stock or unit dividend or distribution, reclassification, reorganization, recapitalization or otherwise) or combination (by reverse stock or unit split, reclassification, reorganization, recapitalization or otherwise) of the shares of Class B Common Stock or Units unless a substantively identical subdivision or combination of the Class A Common Stock is concurrently effectuated. There shall be no subdivision

(by any stock or unit split, stock or unit dividend or distribution, reclassification, reorganization, recapitalization or otherwise) or combination (by reverse stock or unit split, reclassification, reorganization, recapitalization or otherwise) of the shares of Class A Common Stock unless a substantively identical subdivision or combination of the Class A Common Stock and Units is concurrently effectuated. For the avoidance of doubt, it is the intent of this Section 8.05 to ensure that (a) the aggregate number of outstanding shares of Class A Common Stock equals the number of Units held by Holdco and (b) the aggregate number of outstanding shares of Class B Common Stock equals the number of Units held by Persons other than Holdco.

Section 8.06. *Fair Market Value of Class A Common Stock*. With respect to a share of Class A Common Stock, fair market value with respect to a particular date shall mean:

(i) if the Class A Common Stock (or any class of stock into which it has been converted) is listed on a National Securities Exchange, the arithmetic average of the volume-weighted average prices for a share of Class A Common Stock on the National Securities Exchange on which the Class A Common Stock trades or is quoted, as reported by Bloomberg, L.P., or its successor, for each of the five (5) consecutive full Trading Days ending on and including the second Trading Day immediately prior to such valuation date, subject to appropriate and equitable adjustment for any stock splits, reverse splits, stock dividends or similar events affecting the Class A Common Stock or any ex-dividend adjustments during the relevant period; or

(ii) if the Class A Common Stock (or any class of stock into which it has been converted) is not listed on a National Securities Exchange, such fair market value as is determined by Independent Valuation; *provided* in the case of this clause (ii), the Board of Directors may authorize the Corporation to determine the fair market value based on the most recent Independent Valuation provided to the Corporation or the Partnership if such valuation is not more than six months old.

In connection with any Independent Valuation, (i) the Corporation and the Partnership shall, and shall cause their Subsidiaries to, provide to the Person conducting such Independent Valuation all information relating to the business, operations, financial condition and prospects of the Corporation and the Partnership and their respective Subsidiaries as such Person may reasonably request and (ii) the Corporation and the Redeeming Stockholder shall each bear one-half of the fees and expenses of the independent third-party accounting, valuation, appraisal or investment banking firm selected as set forth above.

Section 8.07. *Physical Settlement Legends*. If in the good faith judgment of the Corporation or the Partnership any of the Paired Interests issued as a Physical Settlement are restricted securities or otherwise require a legend to be provided, such legend shall be included on any certificates of such shares of Class B Common Stock or Units, as applicable or any book-entry entitlement of such securities. Such legend may be in

substance similar to the legend set forth in Section 9.02 in the case of such issued shares of Class B Common Stock and to the legend set forth in Section 10.03 of the Partnership Agreement in the case of such issued Units.

Section 8.08. *Acknowledgment of Prohibited Dividends*. In the event of a Redemption (as defined in the Partnership Agreement) pursuant to the Partnership Agreement, each applicable Stockholder acknowledges that it is not entitled to receive any Prohibited Dividends (as defined in the Partnership Agreement).

## ARTICLE 9
## MISCELLANEOUS

Section 9.01. *General Transfer Restrictions; Joinder*. Without limiting the provisions of this Agreement, each Stockholder agrees that it shall not Transfer any Common Stock at any time if such Transfer would not comply with (i) the Certificate of Incorporation (including Article 4 thereof) or (ii) the Partnership Agreement. As a condition precedent to any Transfer, the Corporation may require an opinion of legal counsel reasonably satisfactory to it that registration under the Securities Act is not required. Each Person who hereafter acquires Common Stock in a Transfer from a Stockholder and is not already a Stockholder shall, as a condition to the effectiveness of such Transfer, execute and deliver a Joinder to the Corporation, and any Transfer in which the acquirer of Common Stock does not so deliver a Joinder (if applicable) shall be void *ab initio*.

Section 9.02. Legends.

(a) All shares of Common Stock issued to any Person shall bear a legend, or be evidenced by notations in a book entry system including a legend, in substantially the following form in addition to any legends provided for in the Partnership Agreement:

> "THE SECURITIES EVIDENCED HEREBY ARE SUBJECT TO VARIOUS CONDITIONS INCLUDING CERTAIN RESTRICTIONS ON ANY OFFER, SALE, DISPOSITION, TRANSFER AND VOTING AS SET FORTH IN THE AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT, DATED AS OF DECEMBER 14, 2018 (THE "**PARTNERSHIP AGREEMENT**") OF GENON HOLDINGS, LLC (THE "**PARTNERSHIP**"), THE STOCKHOLDERS AGREEMENT, DATED AS OF DECEMBER 14, 2018 (THE "**STOCKHOLDERS AGREEMENT**"), BY AND AMONG GENON HOLDINGS, INC. (THE "**CORPORATION**"), AND THE STOCKHOLDERS PARTY THERETO FROM TIME TO TIME, AND THE CERTIFICATE OF INCORPORATION AND BYLAWS OF THE CORPORATION, EACH AS MAY BE AMENDED AND MODIFIED FROM TIME TO TIME. NO REGISTRATION OR TRANSFER OF SUCH SECURITIES WILL BE MADE ON THE BOOKS AND RECORDS OF THE CORPORATION OR ITS TRANSFER AGENT UNLESS AND UNTIL SUCH RESTRICTIONS SHALL HAVE BEEN COMPLIED WITH. THE CORPORATION WILL FURNISH WITHOUT CHARGE TO EACH

HOLDER OF RECORD OF SUCH SECURITIES A COPY OF THE PARTNERSHIP AGREEMENT, STOCKHOLDERS AGREEMENT, CERTIFICATE OF INCORPORATION AND BYLAWS, CONTAINING THE ABOVE REFERENCED RESTRICTIONS ON TRANSFERS AND VOTING OF SECURITIES, UPON WRITTEN REQUEST TO THE CORPORATION AT ITS PRINCIPAL PLACE OF BUSINESS."

(b) All shares of Common Stock issued to any Person, unless the Corporation determines in good faith such shares were issued in reliance on the exemption from registration under the Securities Act provided by Section 1145 of the Bankruptcy Code or another exemption such that the Transfer of such shares are not restricted under the U.S. federal securities laws shall be evidenced by notations in a book entry system including a legend in substantially the following form:

"THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OF 1933, AS AMENDED, OR AN EXEMPTION THEREFROM AND, IN EACH CASE, IN COMPLIANCE WITH APPLICABLE STATE SECURITIES LAWS. AS A CONDITION TO ANY TRANSFER, THE CORPORATION RESERVES THE RIGHT TO REQUIRE AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE CORPORATION, THAT SUCH REGISTRATION IS NOT REQUIRED."

(c) The Corporation acting in good faith may make any necessary modifications to the legends set forth in this Section 9.02 for such legends to comply with applicable Law and to achieve the purpose and intent of the transfer restrictions set forth herein. If any shares of Common Stock cease to be subject to any and all restrictions on Transfer set forth in this Agreement, the Certificate of Incorporation, the Bylaws and the Partnership Agreement, the Corporation, upon the written request of the holder thereof, shall amend the notations in the book entry system (or, if certificated, issue to such holder a new certificate) evidencing such shares accordingly.

Section 9.03. *Specific Enforcement*. Each Party acknowledges that the remedies at Law of the other Parties for a breach or threatened breach of this Agreement would be inadequate and, in recognition of this fact, any Party, without posting any bond, and in addition to all other remedies that may be available, shall be entitled to obtain equitable relief in the form of specific performance, a temporary restraining order, a temporary or permanent injunction or any other equitable remedy that may then be available.

Section 9.04. *Assignment*. Neither this Agreement nor any right, remedy, obligation or liability arising hereunder or by reason hereof shall be assignable by any Party pursuant to any Transfer or otherwise, except as expressly set forth herein.

Section 9.05. *Amendments*. No amendment or modification of this Agreement shall be valid unless executed in writing by the Corporation and Stockholders holding at least two-thirds of the Common Stock held by all Stockholders; *provided* that (i) so long as the SVP Stockholders are entitled to any SVP Director, any amendment or modification of Article 2 (other than Section 2.11) shall also require approval of SVP Stockholders holding a majority of the shares of Common Stock held by the SVP Stockholders, (ii) so long as the Significant Stockholders are entitled to any Significant Stockholder Directors, any amendment or modification of Article 2 (other than Section 2.11) shall also require approval of Significant Stockholders holding a majority of the shares of Common Stock held by the Significant Stockholders, (iii) any amendment or modification that materially and adversely affects a Stockholder in a manner disproportionate to the manner in which it affects Stockholders in the same class of Common Stock as such affected Stockholder shall also require the prior written consent of such Stockholder, (iv) any amendment or modification that materially and adversely affects the holders of Class A Common Stock in a manner disproportionate to the manner in which it affects the holders of Class B Common Stock, or vice versa, shall also require the prior written consent of holders of at least a majority of the shares of the adversely affected class of Common Stock, (v) the provisions of Article 3 cannot be amended or modified with respect to a Stockholder then-entitled to an Observer without the prior written consent of such Stockholder, (vi) Section 5.01(e) and Section 5.01(f) cannot be amended or modified without the prior written consent of holders of at least 66 $^{2/3}$% of the Common Stock, (vii) Section 5.01(b) cannot be amended or modified without the prior written consent of holders of at least 75% of the Common Stock, (viii) Section 2.11, Article 7 and Article 8 cannot be amended or modified without the prior written consent of holders of at least majority of the shares of Class A Common Stock, (ix) any amendment or modification of this Section 9.05 shall also require the approval of holders of at least a majority of the shares of Class A Common Stock and at least a majority of the shares of Class B Common Stock and (x) any amendment or modification of any clause of this Section 9.05, or any other provision of this Agreement, that provides for the approval of a given Stockholder or group of Stockholders shall also require approval of that Stockholder or group of Stockholders.

Section 9.06. *Termination*. Other than Section 6.03 and Section 2.11(b), this Agreement shall terminate with respect to a Stockholder as of the time at which such Stockholder ceases to own shares of Common Stock.

Section 9.07. *Addresses and Notices*. Any notice, request, demand or instruction specified or permitted by this Agreement will be in writing and will be either personally delivered, or received by certified mail, return receipt requested, or sent by reputable overnight courier service (charges prepaid) to the applicable recipient or by facsimile, email or other electronic transaction at the address set forth below. Notices will be deemed to have been given hereunder when delivered personally or upon transmission in the case of email, facsimile or other electronic transmission; three (3) days after deposit in the U.S. mail; and one (1) day after deposit with a reputable overnight courier service. Whenever any notice is required to be given by Law or this Agreement, a written waiver thereof signed by the Person entitled to such notice, whether before or after the time

stated at which such notice is required to be given, shall be deemed equivalent to the giving of such notice.

Notices to the Corporation, Intermediate, Holdco or Partnership shall be sent to:

GenOn Holdings, Inc.
1360 Post Oak Blvd., Ste 2000
Houston, TX 77056
Attention: Monica Nguyenduc
Telephone: (949) 463-2407
Email: monica.nguyenduc@genon.com

Notices to any Stockholder shall be sent to the address set forth on Schedule A for such Stockholder, as may be updated from time to time. The Corporation, Partnership, Intermediate or Holdco and each Stockholder may update their notice information from time to time by providing written notice in compliance with this Section 9.07.

Section 9.08. *Governing Law; Jurisdiction; Forum; Waiver of Trial by Jury*.

(a) *Governing Law*. This Agreement and any claim, controversy or dispute arising under or related to this Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to the conflicts of laws rules of such state.

(b) *Jurisdiction*. The Parties agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in the Court of Chancery of the State of Delaware, or to the extent such court does not have subject matter jurisdiction, the United States District Court for the District of Delaware, or to the extent such court also does not have subject matter jurisdiction, another court of the State of Delaware, County of New Castle, so long as one of such courts shall have subject matter jurisdiction over such suit, action or proceeding, and that any case of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of Delaware, and each of the Parties hereby irrevocably consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any Party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each Party agrees that service of process on such Party at the address provided pursuant to Section 9.07 shall be deemed effective service of process on such Party.

(c) *WAIVER OF JURY TRIAL*. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY

LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 9.09. *Representations and Warranties.* Unless it is receiving its Common Stock pursuant to the Plan of Reorganization, each Stockholder represents and warrants to the Corporation and each other Stockholder, and each Transferee or recipient of Common Stock represents and warrants to the Corporation and each other Stockholder, upon the Transfer of Common Stock to, or receipt of Common Stock by, such Person, that:

(a) such Stockholder is acquiring the Common Stock being acquired by it for investment and not with a view to distributing all or any part thereof in any transactions which would constitute a "distribution" within the meaning of the Securities Act;

(b) such Stockholder acknowledges that the Common Stock has not been registered under the Securities Act or any state securities Law, and the Corporation is under no obligation to file a registration statement with the SEC or any state securities commission with respect to Common Stock;

(c) such Stockholder is able to bear the complete loss of his, her or its investment in the Common Stock;

(d) such Stockholder or entity is an "accredited investor" (as defined in Rule 501(a) of Regulation D promulgated under the Securities Act) or a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act);

(e) such Stockholder understands that the exemption from registration afforded by Rule 144 (the provisions of which are known to such person or entity) promulgated by the SEC under the Securities Act depends upon the satisfaction of various conditions, that such exemption is currently not available and that, if applicable, Rule 144 may in many instances afford the basis for sales only in limited amounts;

(f) such Stockholder, in making his, her or its decision to invest in the Common Stock, (i) has relied upon an independent investigation made by such Stockholder and his, her or its representatives (including financial, tax and legal advisors) to the extent believed to be appropriate by such Stockholder and (ii) has been given the opportunity to examine all documents and to ask questions of, and receive answers from, the Corporation and its representatives concerning the business of the Corporation and the terms and conditions of such Stockholder's purchase of his, her or its Common Stock;

(g) such Stockholder is duly authorized to join in this Agreement and the Person executing a Joinder on its behalf is duly authorized to do so;

(h) the execution, delivery and performance of a Joinder have been duly authorized by such Stockholder and do not require such Stockholder to obtain any consent or approval that has not been obtained and do not contravene or result in a default under any provision of any Law or regulation applicable to such Stockholder or other

governing documents or any agreement or instrument to which such Stockholder is a party or by which such Stockholder is bound; and

(i) this Agreement is valid, binding and enforceable against such Stockholder (including, in the case of a Stockholder that is a trust, the trust property) in accordance with its terms as limited by (A) applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, or other laws of general application relating to or affecting the enforcement of creditors' rights generally or (B) laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

Section 9.10. *No Inconsistent Agreements*. The Corporation shall not hereafter enter into any agreement with respect to its Common Stock which is inconsistent with or violates the rights granted to the Stockholders in this Agreement.

Section 9.11. *Entire Agreement*. This Agreement, the other Organizational Documents, the Plan of Reorganization and any other documents expressly referred to herein or in the Plan of Reorganization embody the complete agreement and understanding among the Parties and supersede and preempt any prior understandings, agreements or representations by or among the Parties, written or oral, which may have related to the subject matter hereof in any way.

Section 9.12. *Incorporation by Reference*. Every exhibit, schedule and other appendix attached to this Agreement and referred to herein is hereby incorporated in this Agreement by reference.

Section 9.13. *Descriptive Headings; Interpretation*. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a substantive part of this Agreement. Whenever required by the context, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa. References to any Person shall be deemed to mean and include the successors and permitted assigns of such Person (or, in the case of any governmental authority, Persons succeeding to the relevant functions of such Person). Reference to any agreement, document or instrument means such agreement, document or instrument as amended or otherwise modified from time to time in accordance with the terms thereof, and if applicable hereof. Without limiting the generality of the immediately preceding sentence, no amendment or other modification to any agreement, document or instrument that requires the consent of any Person pursuant to the terms of this Agreement or any other agreement will be given effect hereunder unless such Person has consented in writing to such amendment or modification. All references to statutes shall include all amendments of the same and any successor or replacement statutes and regulations promulgated thereunder, and all references to regulations shall include all amendments and any successor or replacement regulations. Wherever required by the context, references to a fiscal year shall refer to a portion thereof. The use of the word "include", "includes" or "including" in this Agreement shall be by way of example rather than by limitation. References to "hereof," "herein," "hereby" and similar terms shall refer to this entire Agreement (including the schedules and exhibits hereto). The use of the words

"or," "either" and "any" shall not be exclusive. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

Section 9.14. *Aggregation of Affiliates and Related Persons*. To the extent any action, consent or right under this Agreement requires a threshold level of ownership of Common Stock by a given Stockholder, the ownership of Common Stock by such Stockholder and its Related Persons shall be aggregated for the purposes of satisfying such threshold.

Section 9.15. *Independent Agreement by the Stockholders*. The Parties acknowledge that this Agreement does not constitute an agreement, arrangement, or understanding with respect to acting together for the purpose of acquiring, holding, voting, or disposing of any Common Stock and the Stockholders do not constitute a "group" within the meaning of Rule 13d-5 under the Exchange Act, as amended. Nothing contained in this Agreement, any of the other Organizational Documents or the Plan of Reorganization and no action taken by any Stockholder pursuant to this Agreement shall be deemed to constitute or to create a presumption by any parties that the Stockholders are in any way acting in concert or as a "group" (or a joint venture, partnership or association), and each of the Corporation, the Partnership and the Stockholders agree to not assert any such claim with respect to such obligations or the transactions contemplated by this Agreement, the other Organizational Documents or the Plan of Reorganization.

Section 9.16. *Binding Effect; Intended Beneficiaries*. This Agreement shall be binding upon and inure to the benefit of the Parties and their heirs, executors, administrators, successors, legal representatives and permitted assigns. Unless expressly provided in this Agreement, no provision is intended to confer on any Person other than the Parties, and their respective heirs, successors, legal representatives and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

Section 9.17. *Creditors*. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Corporation or any of its Affiliates, and no creditor who makes a loan to the Corporation or any of its Affiliates may have or acquire (except pursuant to the terms of a separate agreement executed by the Corporation in favor of such creditor) at any time as a result of making the loan any direct or indirect interest in Corporation's profits, losses, distributions, capital or property other than as a secured creditor.

Section 9.18. *Waiver*. Unless expressly set forth herein, the Parties may not waive any provision of this Agreement, except pursuant to a written instrument signed by the Party or Parties hereto against whom enforcement of such waiver is sought. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, constitutes a waiver by the Party taking such action of compliance with any

provision of this Agreement. The waiver by any Party of any provision of this Agreement is effective only in the instance and only for the purpose that it is given and does not operate and is not to be construed as a further or continuing waiver of such provision or as a waiver of any other provision. No failure by any Party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, duty, agreement or condition.

Section 9.19. *Severability*. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or the effectiveness or validity of any provision in any other jurisdiction, and this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

Section 9.20. *Further Action*. The Parties shall execute and deliver all documents, provide all information and take or refrain from taking such actions as may be necessary or appropriate to achieve the purposes of this Agreement.

Section 9.21. *Delivery by Electronic Transmission*. This Agreement and any signed agreement or instrument entered into in connection with this Agreement or contemplated hereby, and any amendments hereto or thereto, to the extent signed and delivered by means of an electronic transmission, including by a facsimile machine or via email, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No Party or to any such agreement or instrument shall raise the use of electronic transmission by a facsimile machine or via email to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through such electronic transmission as a defense to the formation of a contract and each such Party forever waives any such defense.

Section 9.22. *Counterparts; Effectiveness*. This Agreement may be executed in separate counterparts (including PDFs), each of which will be an original and all of which together shall constitute one and the same agreement binding on all the Parties. This Agreement shall become effective on the date first set forth above.

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**Exhibit 99.2**

# Delaware

The First State



*I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "GENON HOLDINGS, INC.", FILED IN THIS OFFICE ON THE FOURTEENTH DAY OF DECEMBER, A.D. 2018, AT 8:07 O`CLOCK A.M.*

*A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.*



7119918 8100
SR# 20188150442

Authentication: 204099239
Date: 12-14-18

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State of Delaware
Secretary of State
Division of Corporations
Delivered 08:07 AM 12/14/2018
FILED 08:07 AM 12/14/2018
SR 20188150442 - File Number 7119918

EXECUTION VERSION

# AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

# OF

# GENON HOLDINGS, INC.

Pursuant to the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware ("**Delaware Law**"), GenOn Holdings, Inc., a corporation organized under the laws of the State of Delaware, does hereby certify that:

FIRST: The present name of the corporation is GenOn Holdings, Inc. (the "**Corporation**"). The Corporation was incorporated on October 25, 2018 under the name New Green Energy, Inc., pursuant to Delaware Law.

SECOND: The Certificate of Incorporation of the Corporation is hereby amended and restated in its entirety as hereinafter provided for (the "**Amended and Restated Certificate of Incorporation**"). The Amended and Restated Certificate of Incorporation herein certified has been duly adopted by the Corporation's board of directors (the "**Board of Directors**") and stockholders in accordance with the provisions of Sections 228, 242 and 245 of Delaware Law. The Amended and Restated Certificate of Incorporation shall become effective upon filing with the Secretary of State of the State of Delaware.

THIRD: The Amended and Restated Certificate of Incorporation of the Corporation shall, at the effective time, read as follows:

## ARTICLE 1.
## NAME

The name of the corporation is GenOn Holdings, Inc. (the "**Corporation**").

## ARTICLE 2.
## REGISTERED OFFICE AND AGENT

The address of its registered office in the State of Delaware is 251 Little Falls Drive, City of Wilmington, County of New Castle, Delaware 19808. The name of its registered agent at such address is Corporation Service Company.

## ARTICLE 3.
## PURPOSE AND POWERS

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under Delaware Law.

## ARTICLE 4.
## CAPITAL STOCK

(A) Authorized Shares

(1) **Classes of Stock.** The total number of shares of all classes of stock that the Corporation is authorized to issue is 12,100,000, consisting of:

(i) six million shares of Class A common stock, with a par value of $0.000001 per share (the "**Class A Common Stock**");

(ii) six million shares of Class B common stock, with a par value of $0.000001 per share (the "**Class B Common Stock**", and together with the Class A Common Stock, the "**Common Stock**"); and

(iii) 100,000 shares of Preferred Stock, par value $0.000001 per share (the "**Preferred Stock**").

(2) **Preferred Stock.** The Board of Directors is hereby empowered, without any action or vote by the Corporation's stockholders (except as (i) set forth in Section 5.01(a) of the Stockholders Agreement, dated as of December 14, 2018, by and among the Corporation and the other persons party thereto (as may be amended from time to time in accordance therewith, the "**Stockholders Agreement**") or (ii) may otherwise be provided by the terms of any class or series of Preferred Stock then outstanding), to authorize by resolution or resolutions from time to time the issuance of one or more classes or series of Preferred Stock and to fix the designations, powers, preferences and relative, participating, optional or other rights, if any, and the qualifications, limitations or restrictions thereof, if any, with respect to each such class or series of Preferred Stock and the number of shares constituting each such class or series, and to increase or decrease the number of shares of any such class or series to the extent permitted by Delaware Law.

(3) **Non-Voting Equity Securities.** To the extent prohibited by Section 1123(a)(6) of Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**"), the Corporation shall not issue non-voting equity securities; *provided*, that the foregoing (i) shall have no further force and effect beyond that required under Section 1123(a)(6) of the Bankruptcy Code, (ii) shall have such force and effect, if any, only for so long as such Section 1123(a)(6) is in effect and applicable to the Corporation, (iii) shall not be deemed to restrict any voluntary suspension of voting rights pursuant to

this Amended and Restated Certificate of Incorporation and (iv) may be amended or eliminated in accordance with applicable law as from time to time in effect.

(B) Voting Rights

(1) Each share of Class A Common Stock shall entitle the record holder thereof to one vote on all matters on which stockholders generally are entitled to vote.

(2) Each share of Class B Common Stock shall entitle the record holder thereof to one vote on all matters on which stockholders generally are entitled to vote.

(3) Except as otherwise required in this Amended and Restated Certificate of Incorporation, the Stockholders Agreement, the Partnership Agreement (as defined below) or by applicable law, the holders of Common Stock shall vote together as a single class on all matters (or, if any holders of Preferred Stock are entitled to vote together with the holders of Common Stock, as a single class with such holders of Preferred Stock).

(4) Except as otherwise required by law or the Stockholders Agreement, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Amended and Restated Certificate of Incorporation (including any certificate of designations relating to any class or series of Preferred Stock) that relates solely to the terms of one or more outstanding classes or series of Preferred Stock if the holders of such affected class or series are entitled, either separately or together with the holders of one or more other series of Preferred Stock, to vote thereon as a separate class or series pursuant to this Amended and Restated Certificate of Incorporation (including any certificate of designations relating to any class or series of Preferred Stock) or pursuant to Delaware Law as currently in effect or as the same may hereafter be amended.

(C) Partnership and Partnership Agreement

As used in this Amended and Restated Certificate of Incorporation (i) "**Partnership**" means GenOn Holdings, LLC, a Delaware limited liability company, or any successor entities thereto, (ii) "**Partnership Agreement**" means the Second Amended and Restated Limited Liability Company Agreement of the Partnership, dated as of December 14, 2018, as may be amended from time to time in accordance therewith, and (iii) "**Unit**" shall have the meaning assigned to such term in the Partnership Agreement.

(D) Dividends

Subject to applicable law and the rights, if any, of the holders of any outstanding class or series of Preferred Stock having a preference over or the right to participate with the Class A Common Stock with respect to the payment of dividends, dividends may be declared and paid on the Class A Common Stock out of the assets of the Corporation that are by law available therefor, at such times and in such amounts as the Board of Directors in its discretion shall determine. Any dividends declared by the Board of Directors to the holders of the then-outstanding Class A Common Stock shall be paid to the holders thereof *pro rata* in accordance with the number of shares of Class A Common Stock held by each such holder as of the record date of such dividend. Dividends shall not be declared or paid on the Class B Common Stock.

(E) Distributions Upon Liquidation or Winding Up

Subject to applicable law, in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation and of the preferential and other amounts, if any, to which the holders of Preferred Stock shall be entitled, the holders of all outstanding shares of Class A Common Stock shall be entitled to receive the remaining assets of the Corporation available for distribution ratably in proportion to the number of shares held by each such stockholder. The holders of shares of Class B Common Stock, as such, shall not be entitled to receive any assets of the Corporation in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation. A consolidation, reorganization or merger of the Corporation with any other person or persons, or a sale of all or substantially all of the assets of the Corporation, shall not be considered to be a dissolution, liquidation or winding up of the Corporation within the meaning of this Article 4(E).

(F) Transfers of Class B Common Stock; Certain Restrictions

(1) A holder of Class B Common Stock may surrender shares of Class B Common Stock to the Corporation for no consideration at any time, if and only if, such holder simultaneously surrenders to the Partnership an equal number of such holder's Units for no consideration. Following the surrender of any shares of Class B Common Stock to the Corporation, the Corporation will take all actions necessary to retire such shares.

(2) A holder of Class B Common Stock may transfer (i) shares of Class B Common Stock to any transferee only if, and only to the extent otherwise permitted by this Amended and Restated Certificate of Incorporation, the Partnership Agreement and the Stockholders Agreement, such holder also simultaneously transfers an equal number of such holder's Units to such transferee in compliance with the Partnership Agreement and (ii) such holder's Units to any transferee only if, and only to the extent otherwise permitted by this Amended and Restated Certificate of Incorporation, the Partnership Agreement and the Stockholders

Agreement, such holder simultaneously transfers an equal number of such holder's shares of Class B Common Stock to such transferee. The transfer restrictions described in this Article 4(F)(2) are referred to as the "**Restrictions**".

(3) Any purported transfer of shares of Class B Common Stock in violation of the Restrictions shall be null and void, *ab initio*. If, notwithstanding the Restrictions, a person shall, voluntarily or involuntarily, purportedly become or attempt to become, the purported owner ("**Purported Owner**") of shares of Class B Common Stock in violation of the Restrictions, then the Purported Owner shall not obtain any rights in and to such shares of Class B Common Stock (the "**Restricted Shares**"), and the purported transfer of the Restricted Shares to the Purported Owner shall not be recognized by the Corporation's transfer agent (the "**Transfer Agent**").

(4) Upon a determination by the Board of Directors that a person has attempted or may attempt to transfer or to acquire Restricted Shares in violation of the Restrictions, the Board of Directors may take such action as it deems advisable to refuse to give effect to such transfer or acquisition on the books and records of the Corporation, including without limitation to cause the Transfer Agent to record the Purported Owner's transferor as the record owner of the Restricted Shares, and to institute proceedings to enjoin or rescind any such transfer or acquisition.

(5) The Board of Directors shall have all powers necessary to implement the Restrictions, including without limitation the power to prohibit the transfer of any shares of Class B Common Stock in violation thereof.

(G) Provisions Relating to Class B Common Stock

(1) Upon the consummation of any Redemption (as defined in the Partnership Agreement) in accordance with the Partnership Agreement, the Corporation shall cancel a number of shares of Class B Common Stock registered in the name of the redeeming or exchanging holder of Class B Common Stock equal to the number of Units held by such holder that are redeemed or exchanged in the Redemption.

(2) All certificates or book entries representing shares of Class B Common Stock, as the case may be, shall bear a legend substantially in the following form (or in such other form as the Board of Directors may determine):

THE SECURITIES REPRESENTED BY THIS [CERTIFICATE][BOOK ENTRY] ARE SUBJECT TO THE RESTRICTIONS (INCLUDING RESTRICTIONS ON TRANSFER) SET FORTH IN (I) THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF THE CORPORATION (AS MAY BE AMENDED FROM TIME TO TIME), (II) THAT CERTAIN STOCKHOLDERS AGREEMENT DATED AS OF DECEMBER 14, 2018 BY AND AMONG THE CORPORATION AND THE OTHER PARTIES THERETO (AS MAY BE AMENDED FROM TIME TO TIME IN ACCORDANCE THEREWITH), AND (III) THAT CERTAIN SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF GENON HOLDINGS, LLC, DATED AS OF DECEMBER 14, 2018, BY AND AMONG GENON HOLDINGS, LLC AND THE OTHER PARTIES THERETO (AS MAY BE AMENDED FROM TIME TO TIME IN ACCORDANCE THEREWITH) (COPIES OF EACH OF WHICH ARE ON FILE WITH THE SECRETARY OF THE CORPORATION AND SHALL BE PROVIDED FREE OF CHARGE TO ANY STOCKHOLDER MAKING A REQUEST THEREFOR). NO REGISTRATION OR TRANSFER OF SUCH SECURITIES WILL BE MADE ON THE BOOKS OF THE CORPORATION OR ITS TRANSFER AGENT UNLESS AND UNTIL SUCH RESTRICTIONS SHALL HAVE BEEN COMPLIED WITH.

(H) Reserved Common Stock

The Corporation shall at all times reserve and keep available out of its authorized but unissued shares or other securities the number of shares or securities required pursuant to the Partnership Agreement and the Stockholders Agreement; *provided* that nothing contained herein shall be construed to preclude the Corporation from satisfying its obligations in respect of any required delivery of shares of Class A Common Stock by delivery of shares of Class A Common Stock which are held in the treasury of the Corporation. The Corporation covenants that all shares of Class A Common Stock and Class B Common Stock issued (or delivered) pursuant to the Partnership Agreement or the Stockholders Agreement, as applicable, will, upon issuance (or delivery), be validly issued, fully paid and non-assessable.

(I) Actions With Respect to Class A Common Stock and Class B Common Stock

(1) The Corporation shall undertake all actions, including, without limitation, a reclassification, dividend, division or recapitalization, with respect to the shares of Class A Common Stock necessary to maintain at all times a one-to-one ratio between the number of Units owned (directly or indirectly) by the Corporation and the number of outstanding shares of Class A Common Stock.

(2) The Corporation shall undertake all actions, including, without limitation, a reclassification, dividend, division or recapitalization, with respect to the shares of Class B Common Stock necessary to

maintain at all times a one-to-one ratio between the number of Units owned by all holders of Class B Common Stock and the number of outstanding shares of Class B Common Stock.

(3) The Corporation shall undertake all actions necessary to provide at all times that (i) the aggregate number of outstanding shares of Class A Common Stock and Class B Common Stock equals (ii) the aggregate number of outstanding Units.

(4) The Corporation shall not undertake or authorize (i) any subdivision (by stock split, stock dividend, reclassification, recapitalization or similar event) or combination (by reverse stock split, reclassification, recapitalization or similar event) of the Class A Common Stock that is not accompanied by an identical subdivision or combination of the Units to maintain at all times a one-to-one ratio between the number of Units owned (directly or indirectly) by the Corporation and the number of outstanding shares of Class A Common Stock; or (ii) any subdivision (by stock split, stock dividend, reclassification, recapitalization or similar event) or combination (by reverse stock split, reclassification, recapitalization or similar event) of the Class B Common Stock that is not accompanied by an identical subdivision or combination of the Units to maintain at all times a one-to-one ratio between the number of Units owned by all holders of Class B Common Stock and the number of outstanding shares of Class B Common Stock.

(5) The Corporation shall not consolidate, merge, combine or consummate any other transaction (other than an action or transaction for which an adjustment is provided in one of the preceding paragraphs of this Article 4) in which shares of Class A Common Stock are exchanged for or converted into other stock or securities, or the right to receive cash and/or any other property, unless in connection with any such consolidation, merger, combination or other transaction each Unit shall be entitled to be exchanged for or converted into, or into the right to receive, (without duplication of any corresponding share of Class A common stock which the Corporation may elect to issue upon a redemption of such Unit by the holder thereof) the same kind and amount of stock or securities, or the same right to receive cash and/or any other property, as the case may be, into which or for which each share of Class A Common Stock is exchanged or converted, in each case to maintain at all times a one-to-one ratio between (x) the stock or securities, or rights to receive cash and/or any other property issuable in such transaction in exchange for or conversion of one share of Class A common stock and (y) the stock or securities, or rights to receive cash and/or any other property issuable in such transaction in exchange for or conversion

of one Unit (it being understood that no consideration shall be payable in respect of any shares of Class B Common Stock, and all shares of Class B Common Stock shall be canceled in connection with the consummation of the applicable transaction). The foregoing provisions of this Article 4(I)(5) shall not apply to any action or transaction (including any consolidation, merger or combination) approved by the holders of a majority of the voting power of the Class A Common Stock and Class B Common Stock, each voting as a separate class.

(J) Provisions Relating to Class A Common Stock

(1) Upon the consummation of any Class A Redemption (as defined in the Stockholders Agreement), the Corporation shall cancel a number of shares of Class A Common Stock registered in the name of the redeeming or exchanging holder of Class A Common Stock equal to the number of shares of Class A Common Stock held by such holder that are redeemed or exchanged in the Class A Redemption.

## ARTICLE 5.
## BYLAWS

The Board of Directors may adopt, amend or repeal the bylaws of the Corporation (the "**Bylaws**") only with the affirmative vote of the holders of not less than 66 $^{2/3}$% of the voting power of all outstanding Common Stock; *provided* that (i) any amendment of the Bylaws that adversely and disproportionately affects the powers, preferences or rights of the outstanding shares of the Class A Common Stock shall also require the affirmative vote of the holders of at least a majority of the then-outstanding shares of the Class A Common Stock and (ii) any amendment of the Bylaws that adversely and disproportionately affects the powers, preferences or rights of the outstanding shares of the Class B Common Stock shall also require the affirmative vote of the holders of at least a majority of the then-outstanding shares of the Class B Common Stock.

The stockholders may, without the approval of the Board of Directors, adopt, amend or repeal the Bylaws with the affirmative vote of the holders of not less than 66 $^{2/3}$% of the voting power of all outstanding Common Stock; *provided* that (i) any amendment of the Bylaws that adversely and disproportionately affects the powers, preferences or rights of the outstanding shares of the Class A Common Stock shall also require the affirmative vote of the holders of at least a majority of the then-outstanding shares of the Class A Common Stock and (ii) any amendment of the Bylaws that adversely and disproportionately affects the powers, preferences or rights of the outstanding shares of the Class B Common Stock shall also require the affirmative vote of the holders of at least a majority of the then-outstanding shares of the Class B Common Stock.

## ARTICLE 6.
## BOARD OF DIRECTORS

(A) **Power of the Board of Directors.** The business and affairs of the Corporation shall be managed by or under the direction of a Board of Directors.

(B) **Number of Directors.** Subject to the terms of the Stockholders Agreement, the number of directors which shall constitute the Board of Directors shall, as of the date this Amended and Restated Certificate of Incorporation becomes effective, be seven and, thereafter, shall be fixed exclusively by one or more resolutions adopted from time to time solely by the affirmative vote of a majority of the Board of Directors.

(C) **Election of Directors.**

(1) Each director shall serve for a term ending on the date of the next annual meeting of stockholders. Notwithstanding the foregoing, each director shall hold office until such director's successor shall have been duly elected and qualified or until such director's earlier death, resignation or removal. In no event will a decrease in the number of directors shorten the term of any incumbent director.

(2) There shall be no cumulative voting in the election of directors. Election of directors need not be by written ballot unless the Bylaws so provide.

(D) **Vacancies.** Subject to the terms of the Stockholders Agreement, vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. If there are no directors in office, then an election of directors may be held in accordance with Delaware Law. Subject to the terms of the Stockholders Agreement, when one or more directors shall resign from the Board of Directors effective as of a future date, a majority of the directors then in office shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in the filling of other vacancies. Notwithstanding the foregoing, but subject to the terms of the Stockholders Agreement, vacancies on the Board of Directors resulting from removal of any director by the stockholders shall be filled by the stockholders, acting at the same special meeting at which such director is removed (or, in the event the removal occurs by written consent, acting by written consent at the same time such director is removed).

(E) **Preferred Stock Directors.** Notwithstanding anything else contained herein, whenever the holders of one or more classes or series of Preferred Stock shall have the right, voting separately as a class or series, to elect directors, the election, term of office, filling of vacancies, removal and other features of such directorships shall be governed by the terms of such class or series of Preferred Stock adopted by resolution or resolutions adopted by the Board of Directors pursuant to Article 4(A) hereto, and such directors so elected shall not be subject to the provisions of this Article 6 unless otherwise provided therein.

(F) **Chairman of the Board of Directors.** Subject to the terms of the Stockholders Agreement, the Board of Directors (acting by majority vote of all directors, excluding the director under consideration for Chairman of the Board) shall elect one of its members as chairman (the "**Chairman of the Board**").

(G) **Related Party Transactions.** The Corporation shall not, and shall not cause or permit any of its Subsidiaries (as defined below) to, enter into, consummate, amend, modify (including by waiver) or terminate any Affiliate Transaction (as defined below) or any agreement with respect thereto, unless it is approved by a majority of the Board of Directors (excluding the vote of any director appointed by, or otherwise affiliated with, any applicable Related Party (as defined below), or otherwise having a material interest in the Affiliate Transaction that is unique as compared to the interests of stockholders in general).

"**Affiliate**" means, with respect to a specified person, each other person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified. As used in this definition, "**control**" (including with correlative meanings, "**controlled by**" and "**under common control with**") means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of voting securities or by contract or other agreement). For purposes of this Amended and Restated Certificate of Incorporation, any Related Person (as defined in the Stockholders Agreement) of a stockholder shall be deemed to be an Affiliate of such stockholder.

"**Affiliate Transaction**" shall mean any contract, agreement, transaction or other arrangement (whether written or unwritten) between the Corporation or any of its Subsidiaries, on the one hand, and (i) any person (together with its Related Persons (as defined in the Stockholders Agreement)) directly or indirectly owning, controlling or holding with power to vote (including pursuant to a contract, agreement, arrangement or other understanding), 5% or more of the outstanding shares of Common Stock, or any officer, director or Affiliate of any such person or such person's Related Persons (as defined in the Stockholders Agreement), (ii) any officer or director of the Corporation or any of its Subsidiaries or any Affiliate of any of the foregoing persons (excluding any compensation arrangements approved by the Board of Directors or a committee of the Board of Directors), or (iii) any members of the "immediate family" (as such terms are respectively defined in Rule 16a-1 of the Securities Exchange Act of 1934) of any of the persons referenced in clause (i) or clause (ii), on the other hand (the persons in clauses (i)-(iii), "**Related Parties**"); *provided*, that it shall not include any contract, agreement, transaction or other arrangement that is solely between the Corporation and/or any one or more of its wholly-owned Subsidiaries. For purposes of the term "Affiliate Transaction", the Partnership and its wholly-owned Subsidiaries shall be deemed to be wholly-owned Subsidiaries of the Corporation.

"**Subsidiary**" means, with respect to any person, any corporation, limited liability company, partnership, association or business entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees

thereof is at the time owned or controlled, directly or indirectly, by that person or one or more of the other Subsidiaries of that person or a combination thereof, or (b) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of the voting interests thereof are at the time owned or controlled, directly or indirectly, by any person or one or more Subsidiaries of that person or a combination thereof; *provided* that in the case of this clause (b), if a person has the right to serve as the "manager" (or comparable role) of a limited liability company, partnership, association or other business entity (other than a corporation), such limited liability company, partnership, association or other business entity (other than a corporation) and each of its Subsidiaries shall be deemed to be a Subsidiary of such person.

## ARTICLE 7.
## MEETINGS OF STOCKHOLDERS

(A) **Annual Meetings.** Unless directors are elected by written consent in lieu of an annual meeting as permitted by Delaware Law, an annual meeting of stockholders, commencing with the year 2019, shall be held for the election of directors and to transact such other business as may properly be brought before the meeting. Stockholders may act by written consent to elect directors; *provided*, that if such consent is less than unanimous, such action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action.

(B) **Special Meetings.** Special meetings of stockholders may be called by the Board of Directors or the Chairman of the Board and shall be called by the Secretary at the request in writing of holders of record of 20% of the outstanding Common Stock entitled to vote. Such request shall state the purpose or purposes of the proposed meeting.

## ARTICLE 8.
## STOCKHOLDER ACTION BY WRITTEN CONSENT

Subject to the proviso to Article 7(A), any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation in accordance with Section 228 of Delaware Law.

Every written consent shall bear the date of signature of each stockholder who signs the consent, and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated consent delivered in the manner required by this section and Delaware Law to the Corporation, written consents signed by a sufficient number of holders to take action are delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of

meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of stockholders to take the action were delivered to the Corporation.

## ARTICLE 9.
## LIMITATION OF LIABILITY; INDEMNIFICATION

(A) **Limited Liability.** A director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director to the fullest extent permitted by Delaware Law. Any repeal or amendment or modification of this Article 9(A), or the adoption of any provision of this Amended and Restated Certificate of Incorporation inconsistent with this Article 9(A), will, to the extent permitted by applicable law, be prospective only (except to the extent such amendment or change in applicable law permits the Corporation to provide a broader limitation on a retroactive basis than permitted prior thereto), and will not adversely affect any limitation on the personal liability of any director of the Corporation at the time of such repeal or amendment or modification or adoption of such inconsistent provision to the extent relating to prior acts or omissions.

(B) **Right to Indemnification.**

(1) Each person (and the heirs, executors or administrators of such person) who was or is a party or is threatened to be made a party to, or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, investigative or otherwise, by reason of the fact that such person is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director or officer of another corporation, limited liability company, partnership, joint venture, trust or other enterprise (an "**Indemnitee**"), shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Delaware Law. The right to indemnification conferred in this Article 9 shall also include the right to be paid by the Corporation the expenses and costs (including attorneys' fees) actually and reasonably incurred by any Indemnitee in defending or otherwise participating in any such proceeding and any appeal therefrom to the fullest extent authorized by Delaware Law; *provided, however*, if required by Delaware Law, such payment of expenses and costs in advance of the final disposition of the proceeding shall be made only upon receipt by the Corporation of an undertaking by or on behalf of such Indemnitee to repay all amounts advanced if it should be ultimately determined by final judicial decision from which there is no further right to appeal that such Indemnitee is not entitled to be indemnified for such expenses under this Article 9 or otherwise.

(2) The right to indemnification conferred in this Article 9 shall be a contract right between the Corporation and each Indemnitee and such rights shall continue as to an Indemnitee who has ceased to be a director, officer, employee or agent, or if the relevant provisions of Delaware Law or other applicable law cease to be in effect. Such contract right shall vest for each Indemnitee who is a director, officer, employee or agent at the time such person is elected or appointed to such position, and no repeal or modification of this Article 9 or any such law shall affect any such vested rights or obligations then existing with respect to any state of facts or proceeding arising after such election or appointment and prior to such repeal or modification.

(3) The Corporation may, by action of its Board of Directors, provide indemnification to such of the employees and agents of the Corporation to such extent and to such effect as the Board of Directors shall determine to be appropriate and authorized by Delaware Law.

(C) **Insurance.** The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise against any expense, liability or loss incurred by such person in any such capacity or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under Delaware Law or this Article 9.

(D) **Nonexclusivity of Rights.** The rights and authority conferred in this Article 9 shall not be exclusive of any other right that any person may otherwise have or hereafter acquire. The Corporation is specifically authorized to enter into individual contracts with any or all of its directors or officers respecting indemnification and advances, to the fullest extent not prohibited by Delaware Law or by any other applicable law.

(E) **Preservation of Rights.** Neither the amendment nor repeal of this Article 9, nor the adoption of any provision of this Amended and Restated Certificate of Incorporation or the Bylaws, nor, to the fullest extent permitted by Delaware Law, any modification of law, shall adversely affect any right or protection of any person granted pursuant hereto existing at, or arising out of or related to any event, act or omission that occurred prior to, the time of such amendment, repeal, adoption or modification (regardless of when any proceeding (or part thereof) relating to such event, act or omission arises or is first threatened, commenced or completed).

(F) **Jointly Indemnifiable Claims.** Given that certain Jointly Indemnifiable Claims (as defined below) may arise due to the service of an Indemnitee as a director and/or officer of the Corporation at the request of an Indemnitee-Related Entity (as defined below), the Corporation shall be fully and primarily responsible for the payment to the Indemnitee in respect of indemnification or advancement of expenses in connection with any such Jointly Indemnifiable Claims, pursuant to and in accordance with the terms of this Article 9, irrespective of any right of recovery an Indemnitee may have from any

Indemnitee-Related Entity. Under no circumstance shall the Corporation be entitled to any right of subrogation against or contribution by an Indemnitee-Related Entity and no right of advancement, indemnification or recovery an Indemnitee may have from any Indemnitee-Related Entity shall reduce or otherwise alter the rights of an Indemnitee or the obligations of the Corporation under this Article 9. In the event that an Indemnitee-Related Entity shall make any payment to the Indemnitee in respect of indemnification or advancement of expenses with respect to any Jointly Indemnifiable Claim, such Indemnitee-Related Entity making such payment shall be subrogated to the extent of such payment to all of the rights of recovery of the Indemnitee against the Corporation, and the Indemnitee shall execute all documents and instruments reasonably required and shall do all things that may be reasonably necessary to secure such rights, including the execution of such documents and instruments as may be necessary to enable such Indemnitee-Related Entity effectively to bring suit to enforce such rights. Each of the Indemnitee-Related Entities shall be third-party beneficiaries with respect to this Article 9(F) and entitled to enforce this Article 9(F).

The term "**Indemnitee-Related Entity**" means any corporation, limited liability company, partnership, joint venture, trust or other enterprise (other than the Corporation or any other corporation, partnership, joint venture, trust or other enterprise for which the Indemnitee has agreed, on behalf of the Corporation or at the Corporation's request, to serve as a director, officer, employee or agent and which service is covered by the indemnity described herein) from whom an Indemnitee may be entitled to indemnification or advancement of expenses in respect of a matter with respect to which, in whole or in part, the Corporation may also have an indemnification or advancement obligation.

The term "**Jointly Indemnifiable Claims**" shall be broadly construed and shall include, without limitation, any action, suit or proceeding for which an Indemnitee shall be entitled to indemnification or advancement of expenses from both an Indemnitee-Related Entity and the Corporation pursuant to applicable law or any agreement, certificate of incorporation, bylaws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership or comparable organizational documents of the Corporation or an Indemnitee-Related Entity, as applicable.

## ARTICLE 10.
## CORPORATE OPPORTUNITIES

(A) **General.** To the fullest extent permitted by law and except as expressly agreed to by a Dual Role Person (as defined below) in a separate instrument signed by a Dual Role Person with the Corporation or any of its Subsidiaries or any of their respective predecessors:

(1) To the extent provided in this Article 10, the Corporation and its Subsidiaries renounce any interest or expectancy of the Corporation or any of its Subsidiaries (as defined above) or the Corporation's stockholders or holders of Units in, or in being offered an opportunity to participate in, any Corporate Opportunity (as defined below) about which a Dual Role Person acquires knowledge. Subject to Article

10(A)(3), no Dual Role Person or any of such Person's respective Representatives (as defined below) shall owe any fiduciary duty to, nor shall any Dual Role Person or any of such Person's respective Representatives be liable for breach of fiduciary duty to, the Corporation or any of its Subsidiaries or any of the Corporation's stockholders or any holder of Units in connection with a Corporate Opportunity (as defined below), and no Dual Role Person or any of such Person's respective Representatives shall violate a duty or obligation to the Corporation or any of its Subsidiaries merely because such person's conduct furthers such person's own interest, except as specifically set forth in Article 10(A)(3). Subject to Article 6(G), any Dual Role Person or any of such Dual Role Person's respective Representatives may lend money to, and transact other business with, the Corporation and its Subsidiaries. Subject to Article 6(G), the rights and obligations of any such person who lends money to, contracts with, borrows from or transacts business with the Corporation or any of its Subsidiaries are the same as those of a person who is not involved with the Corporation or any of its Subsidiaries. Subject to Article 6(G), no transaction between any Dual Role Person or any of such Person's respective Representatives, on the one hand, and the Corporation or any of its Subsidiaries, on the other hand, shall be voidable solely because any Dual Role Person or any of such Person's respective Representatives has a direct or indirect interest in the transaction. Nothing herein contained shall prevent any Dual Role Person or any of such Person's respective Representatives from conducting or investing in, independently or with others, any other business, including serving as an officer, director, employee, stockholder, partner or equityholder of any corporation, partnership or limited liability company, a trustee of any trust, an executor or administrator of any estate, or an administrative official of any other business or not-for-profit entity, or from receiving any compensation in connection therewith.

(2) None of any Dual Role Person or any of such Person's respective Representatives shall owe any duty to refrain from (i) directly or indirectly engaging or investing in, independently or with others, any business activity of any type or description, including those that might be the same or similar activities or lines of business as the Corporation or any of its Subsidiaries or that may compete with the Corporation or any of its Subsidiaries or (ii) doing business with any of the Corporation's or any of its Subsidiaries' clients, customers, suppliers or others doing business with it or them. In the event that any Dual Role Person or any of such Person's respective Representatives acquires knowledge of a potential transaction or matter that may be a Corporate Opportunity for any Dual Role Person or any of such Person's respective Representatives, on the one hand, and the Corporation or any of its Subsidiaries, on the other hand, such Dual Role Person or Representatives, as the case may be, shall have no duty to communicate or offer such Corporate Opportunity to the Corporation or any of its Subsidiaries, subject to Article 10(A)(3). Dual Role Persons shall have the right to hold any transaction or matter for their own account or to recommend such transaction or matter to persons or entities other than the Corporation or any of its Subsidiaries, subject to Article 10(A)(3). No Dual Role Person or any of such Person's respective Representatives shall be liable to the Corporation or any of its Subsidiaries or any of the Corporation's stockholders or any holders of Units for breach of any fiduciary duty by reason of the fact that any Dual Role Person or any of such Person's respective Representatives pursues or acquires such Corporate Opportunity for itself, directs such

Corporate Opportunity to another person or does not present such Corporate Opportunity to the Corporation or any of its Subsidiaries, subject to Article 10(A)(3).

(3) If a third party presents an Included Corporate Opportunity (as defined below) to a person who is both a director of the Corporation and a Dual Role Person, expressly and solely in such person's capacity as a director of the Corporation, and such person acts in good faith in a manner consistent with the policy that such Included Corporate Opportunity belongs to the Corporation and its Subsidiaries, then such person (i) shall be deemed to have fully satisfied and fulfilled any fiduciary duty that such person has to the Corporation as a director of the Corporation with respect to such Included Corporate Opportunity, (ii) shall not be liable to the Corporation or any of its Subsidiaries or any of the Corporation's stockholders or any holder of Units for breach of fiduciary duty by reason of such person's action or inaction with respect to such Included Corporate Opportunity, (iii) shall be deemed to have acted in good faith and in a manner that such person reasonably believed to be in, and not opposed to, the Corporation's or any of its Subsidiaries' best interests, and (iv) shall be deemed not to have breached such person's duty of loyalty to the Corporation or any of its Subsidiaries and the Corporation's stockholders and the holders of Units and not to have derived an improper personal benefit therefrom; *provided* that, in all events, a Dual Role Person may pursue such Included Corporate Opportunity to the extent the Corporation shall decide not to pursue or to cause a Subsidiary to pursue, such Included Corporate Opportunity.

(4) For purposes of this Article 10:

(i) "**Corporate Opportunity**" means any business opportunities related to the business of the Corporation or its Subsidiaries or any business opportunities in which the Corporation or its Subsidiaries may otherwise have an interest.

(ii) "**Dual Role Person**" means any of the following, individually or collectively, other than any person who is an employee of the Corporation or any of its Subsidiaries or any person that is an Affiliate of such employee: (A) any stockholder of the Corporation or any holder of Units or (B) any person elected, appointed or otherwise serving as a director of the Corporation, and, in each case of clauses (A) and (B), any of such entity's or person's Affiliates (other than, if applicable, the Corporation and its Subsidiaries).

(iii) "**Included Corporate Opportunity**" means any business opportunity that the Corporation or any of its Subsidiaries is financially and legally able to undertake that is, from its nature, in the Corporation's or any of its Subsidiaries' lines of business, is of practical advantage to the Corporation or any of its Subsidiaries and is one in which the Corporation or any of its Subsidiaries has an interest or a reasonable expectancy, and in which, by embracing such opportunity, the self-interest of any Dual Role Person or their respective Representatives will be brought into conflict with the Corporation's or any of its Subsidiaries' self-interest.

(iv) "Representatives" means, with respect to any entity or person, the directors, officers, employees, Affiliates, general partners and managing member of such person.

(B) Preservation of Rights. Neither the amendment nor repeal of this Article 10, nor the adoption of any provision of this Amended and Restated Certificate of Incorporation or the Bylaws, nor, to the fullest extent permitted by Delaware Law, any modification of law, shall adversely affect any right or protection of any person granted pursuant hereto existing at, or arising out of or related to any event, act or omission that occurred prior to, the time of such amendment, repeal, adoption or modification (regardless of when any proceeding (or part thereof) relating to such event, act or omission arises or is first threatened, commenced or completed).

(C) Notice of Article. To the fullest extent permitted by law, any entity or person purchasing or otherwise acquiring or holding any interest in shares of capital stock of the Corporation or any Units shall be deemed to have notice of and consented to the provisions of this Article 10.

## ARTICLE 11.
## STOCKHOLDERS AGREEMENT

For so long as the Stockholders Agreement is in effect, any person who hereafter acquires (whether pursuant to an issuance by the Corporation, a Transfer by a stockholder or otherwise) shares of Common Stock or other equity securities of the Corporation (including New Equity Securities) who is not already a party to the Stockholders Agreement shall be required to deliver a properly executed Joinder (as defined in the Stockholders Agreement) to the Corporation as a condition to the effectiveness of such acquisition, and any acquisition in which the acquirer of Common Stock or other equity securities of the Corporation does not deliver such a joinder (if applicable) shall be void *ab initio*. For so long as the Stockholders Agreement is in effect, the provisions of the Stockholders Agreement shall be incorporated by reference into the relevant provisions hereof, and such provisions shall be interpreted and applied in a manner consistent with the terms of the Stockholders Agreement.

## ARTICLE 12.
## AMENDMENTS

Subject to Section 5.01(f)(i) of the Stockholders Agreement, the Corporation reserves the right to amend this Amended and Restated Certificate of Incorporation in any manner permitted by the Delaware Law and all rights and powers conferred upon stockholders, directors and officers herein are granted subject to this reservation; *provided*, that (i) any amendment of this Amended and Restated Certificate of Incorporation that adversely and disproportionately affects the powers, preferences or rights of the outstanding shares of the Class A Common Stock shall also require the affirmative vote of the holders of at least a majority of the then-outstanding shares of the Class A Common Stock and (ii) any amendment of this Amended and Restated

Certificate of Incorporation that adversely and disproportionately affects the powers, preferences or rights of the outstanding shares of the Class B Common Stock shall also require the affirmative vote of the holders of at least a majority of the then-outstanding shares of the Class B Common Stock.

IN WITNESS WHEREOF, said Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by its duly authorized officer on this 14th day of December, 2018.

**GENON HOLDINGS, INC.**

By: _____

Name: David Freysinger

Title: Chief Executive Officer

*[Signature Page to Amended and Restated Certificate of Incorporation of GenOn Holdings, Inc.]*

**Exhibit 99.3**

**AMENDED AND RESTATED BYLAWS**
**(the "Bylaws")**

**OF**

**GENON HOLDINGS, INC.**
**(the "Corporation")**

* * * * *

ARTICLE 1
OFFICES

Section 1.01. *Registered Office.* The registered office of the Corporation, and the registered agent of the Corporation at such address, shall be as fixed in the Corporation's Amended and Restated Certificate of Incorporation (as it may be amended and/or restated from time to time, the "**Certificate of Incorporation**"). The registered office or registered agent of the Corporation may thereafter be changed from time to time by action of the board of directors of the Corporation (the "**Board of Directors**").

Section 1.02. *Other Offices.* The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

Section 1.03. *Books and Records.* The books and records of the Corporation may be kept within or without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE 2
MEETINGS OF STOCKHOLDERS

Section 2.01. *Time and Place of Meetings.* All meetings of stockholders shall be held at such place, either within or without the State of Delaware, on such date and at such time as may be determined from time to time by the Board of Directors (or the Chairman of the Board of Directors in the absence of a designation by the Board of Directors). The Board of Directors may, in its sole discretion, determine that a meeting of stockholders of the Corporation shall not be held at any place, but may instead be held solely by means of remote communication in the manner authorized by the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended ("**Delaware Law**").

Section 2.02. *Annual Meetings.* Unless directors are elected by written consent in lieu of an annual meeting as permitted by Delaware Law, an annual meeting of stockholders, commencing with the year 2019, shall be held for the election of directors and to transact such other business as may properly be brought before the meeting. Stockholders may, unless the Certificate of Incorporation otherwise provides, act by written consent to elect directors; *provided, however*, that if such consent is less than unanimous, such action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action.

Section 2.03. *Special Meetings.* Special meetings of stockholders may be called by the Board of Directors or the Chairman of the Board of Directors and shall be called by the Secretary at the request in writing of holders of record of 20% of the outstanding Common Stock (as defined in the Certificate of Incorporation). Such request shall state the purpose or purposes of the proposed meeting. At a special meeting of stockholders, only such business shall be conducted as shall be specified in the notice of meeting (or any supplement thereto). Notwithstanding the foregoing, whenever holders of one or more classes or series of preferred stock shall have the right, voting separately as a class or series, to elect directors, such holders may call, pursuant to the terms of such class or series of preferred stock adopted by resolution or resolutions of the Board of Directors as provided in the Certificate of Incorporation, special meetings of holders of such preferred stock.

Section 2.04. *Notice of Meetings and Adjourned Meetings; Waivers of Notice.* (a) Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by Delaware Law, such notice shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder of record entitled to vote at such meeting. Unless these Bylaws otherwise require, when a meeting is adjourned to another time or place (whether or not a quorum is present), notice need not be given of the adjourned meeting if the time, place, if any, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, or after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

(b) A written waiver of any such notice signed by the person entitled thereto, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section 2.05. *Quorum.* Unless otherwise provided under the Certificate of Incorporation, the Stockholders Agreement dated December 14, 2018, by and among the Corporation and the other persons party thereto (as may be amended from time to time in accordance therewith, the "**Stockholders Agreement**") or these Bylaws and subject to Delaware Law, the presence, in person or by proxy, of the holders of a majority of the total voting power of all outstanding capital stock of the Corporation generally entitled to vote at a meeting of stockholders shall constitute a quorum for the transaction of business. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the chairman of the meeting or a majority in voting interest of the stockholders present in person or represented by proxy may adjourn the meeting, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented any business may be transacted that might have been transacted at the meeting as originally notified.

Section 2.06. *Voting.* (a) Unless otherwise provided in the Certificate of Incorporation or the Stockholders Agreement and subject to Delaware Law, each stockholder shall be entitled to one vote for each outstanding share of capital stock of the Corporation held by such stockholder. Any share of capital stock of the Corporation held by the Corporation shall have no voting rights. Except as otherwise provided by law, the Certificate of Incorporation, the Stockholders Agreement or these Bylaws, in all matters other than the election of directors, the affirmative vote of the holders of a majority of the votes cast at the meeting on the subject matter shall be the act of the stockholders. Abstentions and broker non-votes shall not be counted as votes cast. Subject to the rights of the holders of any class or series of preferred stock to elect additional directors under specific circumstances, as may be set forth in the certificate of designations for such class or series of preferred stock, directors shall be elected by a plurality of the votes of the shares of capital stock of the Corporation present in person or represented by proxy at the meeting and entitled to vote on the election of directors.

(b) Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to a corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, appointed by an instrument in writing, subscribed by such stockholder or by his attorney thereunto authorized, or by proxy sent by cable, telegram or by any means of electronic communication permitted by law, which results in a writing from such stockholder or by his attorney, and delivered to the secretary of the

meeting. No proxy shall be voted after three (3) years from its date, unless said proxy expressly provides for a longer period.

Section 2.07. *Action by Consent.* (a) Subject to the rights of the holders of any class or series of preferred stock then outstanding as may be set forth in the certificate of designations for such class or series of preferred stock, and unless otherwise provided in the Certificate of Incorporation or the Stockholders Agreement and subject to the proviso in Section 2.02, any action required to be taken at any annual or special meeting of stockholders, or any action which may be taken at any annual or special meeting of stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding capital stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of stockholders to take the action were delivered to the Corporation as provided in Section 2.07(b).

(b) Every written consent shall bear the date of signature of each stockholder who signs the consent, and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated consent delivered in the manner required by this section and Delaware Law to the Corporation, written consents signed by a sufficient number of holders to take action are delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

Section 2.08. *Organization.* At each meeting of stockholders, the Chairman of the Board of Directors or, in the Chairman's absence, the director designated by the vote of the majority of the directors present at such meeting, shall act as chairman of the meeting. The Secretary (or in the Secretary's absence or inability to act, the person whom the chairman of the meeting shall appoint secretary of the meeting) shall act as secretary of the meeting and keep the minutes thereof.

Section 2.09. *Order of Business.* The order of business at all meetings of stockholders shall be as determined by the chairman of the meeting.

Section 2.10. *Nomination of Directors and Proposal of Other Business.*

(a) *Annual Meetings of Stockholders*. (i) Nominations of persons for election to the Board of Directors at an annual meeting of stockholders, or the proposal of other business to be transacted by the stockholders at an annual meeting of stockholders, may be made only (A) pursuant to the Corporation's notice of meeting (or any supplement thereto), (B) by or at the direction of the Board of Directors or any committee thereof, (C) as may be provided in the certificate of designations for any class or series of preferred stock, (D) as may be provided in the Certificate of Incorporation or in the Stockholders Agreement or (E) by any stockholder of the Corporation who is a stockholder of record at the time of giving of notice provided for in paragraph (ii) of this Section 2.10(a) and at the time of the annual meeting, who shall be entitled to vote at the meeting and who complies with the procedures set forth in this Section 2.10(a), and, except as otherwise required by law, any failure to comply with these procedures shall result in the nullification of such nomination or proposal.

(ii) For nominations or other business to be properly brought before an annual meeting of stockholders by a stockholder pursuant to clause (E) of paragraph (i) of this Section 2.10(a), the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and any such proposed business (other than the nominations of persons for election to the Board of Directors) must constitute a proper matter for stockholder action. To be timely, except for SVP Directors and Majority Directors (each as defined in the Stockholders Agreement) (the SVP Directors and the Majority Directors together, the "**Stockholders Agreement Directors**"), a stockholder's notice shall be delivered to, or mailed and received by, the Secretary of the Corporation at the principal executive offices of the Corporation not less than 30 days nor more than 60 days prior to the first anniversary of the preceding year's annual meeting of stockholders; *provided, however*, that in the event that the date of the annual meeting is advanced more than 30 days prior to such anniversary date or delayed more than 30 days after such anniversary date then to be timely such notice must be received by the Corporation no earlier than 60 days prior to such annual meeting and no later than the later of 30 days prior to the date of the meeting or the 10th day following the day on which public announcement of the date of the meeting was first made by the Corporation; *provided further*, that, solely for the purposes of the notice requirements under this Section 2.10(a) with respect to the annual meeting of stockholders of the Corporation for 2019, the anniversary of the preceding year's annual meeting of stockholders shall be deemed to be December 14, 2018. In no event shall the adjournment or postponement of any meeting, or any announcement thereof, commence a

new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(iii) Except with respect to Stockholders Agreement Directors, a stockholder's notice to the Secretary shall set forth (A) as to each person whom the stockholder proposes to nominate for election or reelection as a director: (1) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934 (as amended (together with the rules and regulations promulgated thereunder), the "**Exchange Act**") (whether or not the Corporation is then subject to Regulation 14A under the Exchange Act) including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected; and (2) a reasonably detailed description of any compensatory, payment or other financial agreement, arrangement or understanding that such person has with any other person or entity other than the Corporation including the amount of any payment or payments received or receivable thereunder, in each case in connection with candidacy or service as a director of the Corporation (a "**Third-Party Compensation Arrangement**"), (B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend these Bylaws, the text of the proposed amendment), the reasons for conducting such business and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made and (C) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the proposal is made:

(1) the name and address of such stockholder (as they appear on the Corporation's books) and any such beneficial owner;

(2) for each class or series, the number of shares of capital stock of the Corporation that are held of record or are beneficially owned by such stockholder and by any such beneficial owner;

(3) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to bring such nomination or other business before the meeting;

(4) a description of any agreement, arrangement or understanding between or among such stockholder and any such beneficial owner, any of their respective affiliates or associates,

and any other person or persons (including their names) in connection with the proposal of such nomination or other business;

(5) a description of any agreement, arrangement or understanding (including, regardless of the form of settlement, any derivative, long or short positions, profit interests, forwards, futures, swaps, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions and borrowed or loaned shares) that has been entered into by or on behalf of, or any other agreement, arrangement or understanding that has been made, the effect or intent of which is to create or mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or any such beneficial owner or any such nominee with respect to the Corporation's securities;

(6) a representation as to whether such stockholder or any such beneficial owner intends or is part of a group that intends to (i) deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of the Corporation's outstanding capital stock required to approve or adopt the proposal or to elect each such nominee and/or (ii) otherwise to solicit proxies from stockholders in support of such proposal or nomination;

(7) any other information relating to such stockholder, beneficial owner, if any, or director nominee or proposed business that would be required to be disclosed in a proxy statement or other filing required to be made in connection with the solicitation of proxies in support of such nominee or proposal pursuant to Section 14 of the Exchange Act (in each case, whether or not the Corporation is then subject to Regulation 14A under the Exchange Act);

(8) any material interest of such stockholder and any such beneficial owner in the business that the stockholder proposes to bring before the meeting; and

(9) such other information relating to any proposed item of business as the Corporation may reasonably require to determine whether such proposed item of business is a proper matter for stockholder action.

If requested by the Corporation, the information required under clause 2.10(a)(iii)(C)(2), (4) and (5) of the preceding sentence of this Section 2.10 shall be supplemented by such stockholder and any such beneficial owner not later than

10 days after the record date for the meeting to disclose such information as of the record date.

(b) *Special Meetings of Stockholders*. The proposal of business to be transacted by the stockholders at a special meeting of stockholders may be made only pursuant to the Corporation's notice of meeting (or any supplement thereto) (which notice of meeting shall, in the case of a meeting called at the request of stockholders in accordance with Section 2.03, include the proposal or proposals of the requesting stockholders). Unless otherwise provided under the Certificate of Incorporation or the Stockholders Agreement, if the election of directors is included as business to be brought before a special meeting in the Corporation's notice of meeting, then nominations of persons for election to the Board of Directors at a special meeting of stockholders may be made by any stockholder who is a stockholder of record at the time of giving of notice provided for in this Section 2.10(b) and at the time of the special meeting, who shall be entitled to vote at the meeting and who complies with the procedures set forth in this Section 2.10(b). For nominations to be properly brought by a stockholder before a special meeting of stockholders pursuant to this Section 2.10(b), the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to or mailed and received at the principal executive offices of the Corporation (A) not earlier than 60 days prior to the date of the special meeting nor (B) later than the later of 30 days prior to the date of the special meeting or the 10$^{th}$ day following the day on which public announcement of the date of the special meeting was first made. A stockholder's notice to the Secretary shall comply with the notice requirements of Section 2.10(a)(iii).

(c) *General*. (i) To be eligible to be a nominee for election as a director (including with respect to Stockholders Agreement Directors), the proposed nominee must provide to the Secretary of the Corporation in accordance with the applicable time periods prescribed for delivery of notice under Section 2.10(a)(ii) or Section 2.10(b), unless and to the extent waived by the Board of Directors: (1) a completed D&O questionnaire (in the form provided by the secretary of the Corporation at the request of the nominating stockholder) containing information regarding the nominee's background and qualifications and such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as a director of the Corporation or to serve as an independent director of the Corporation, (2) a written representation that, unless previously disclosed to the Corporation, the nominee is not and will not become a party to any voting agreement, arrangement or understanding with any person or entity as to how such nominee, if elected as a director, will vote on any issue or that could interfere with such person's ability to comply, if elected as a director, with his/her fiduciary duties under applicable law, (3) a written representation and agreement that, unless previously disclosed to the Corporation pursuant to Section 2.10(a)(iii)(A)(2), the nominee is not and will not become a party to any Third-Party Compensation Arrangement and (4) a written

representation that, if elected as a director, such nominee would be in compliance and will continue to comply with the Corporation's corporate governance guidelines as made available to the nominee, as amended from time to time. At the request of the Board of Directors, any person nominated by the Board of Directors for election as a director shall furnish to the Secretary of the Corporation the information that is required to be set forth in a stockholder's notice of nomination that pertains to the nominee.

(ii) No person, except any Stockholder Agreement Director, shall be eligible to be nominated by a stockholder to serve as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 2.10 or as otherwise provided in the Stockholders Agreement. No business proposed by a stockholder shall be conducted at a stockholder meeting except in accordance with this Section 2.10.

(iii) The chairman of the meeting shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the procedures prescribed by these Bylaws or that business was not properly brought before the meeting, and if he/she should so determine, he/she shall so declare to the meeting and the defective nomination shall be disregarded or such business shall not be transacted, as the case may be. Notwithstanding the foregoing provisions of this Section 2.10, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or other proposed business, such nomination shall be disregarded or such proposed business shall not be transacted, as the case may be, notwithstanding that proxies in respect of such vote may have been received by the Corporation and counted for purposes of determining a quorum. For purposes of this Section 2.10, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(iv) Without limiting the foregoing provisions of this Section 2.10, a stockholder shall also comply with all applicable requirements of the Exchange Act with respect to the matters set forth in this Section 2.10; *provided*, *however*, that any references in these Bylaws to the Exchange Act are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 2.10, and compliance with paragraphs (a)(i)(C) and (b) of this Section 2.10 shall be the exclusive means for a stockholder to make nominations or submit other business.

ARTICLE 3
DIRECTORS

Section 3.01. *General Powers.* Except as otherwise provided in Delaware Law, the Certificate of Incorporation or the Stockholders Agreement, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

Section 3.02. *Number, Election and Term of Office.* The number of directors which shall constitute the Board of Directors shall, as of the date hereof, be seven (7), and thereafter, but subject to the Stockholders Agreement, be fixed by one or more resolutions adopted from time to time solely by the affirmative vote of a majority of the Board of Directors. Each director shall be elected annually at each annual meeting of stockholders (except as provided in Section 2.02 and Section 3.12 herein) to hold office for a term expiring on the date of the annual meeting of stockholders next following the annual meeting at which such director was most recently elected, with each director to hold office until such director's successor shall have been duly elected and qualified or until such director's earlier death, resignation or removal. In no event will a decrease in the number of directors shorten the term of any incumbent director. There shall be no cumulative voting in the election of directors.

Section 3.03. *Quorum and Manner of Acting.* Unless the Certificate of Incorporation, the Stockholders Agreement or these Bylaws require a greater number, a majority of the directors constituting the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors and, except as otherwise expressly required by law, by the Certificate of Incorporation or by the Stockholders Agreement, the act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. When a meeting is adjourned to another time or place (whether or not a quorum is present), notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Board of Directors may transact any business which might have been transacted at the original meeting. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat shall adjourn the meeting, from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 3.04. *Time and Place of Meetings.* The Board of Directors shall hold its meetings at such place, either within or without the State of Delaware, and at such time as may be determined from time to time by the Board of Directors (or the Chairman of the Board of Directors in the absence of a determination by the Board of Directors).

Section 3.05. *Annual Meeting.* The Board of Directors shall meet for the purpose of organization, the election of officers and the transaction of other business, as soon as practicable after each annual meeting of stockholders, on the

same day and at the same place where such annual meeting shall be held. Notice of such meeting need not be given. In the event such annual meeting is not so held, the annual meeting of the Board of Directors may be held at such place either within or without the State of Delaware, on such date and at such time as shall be specified in a notice thereof given as hereinafter provided in Section 3.07 herein or in a waiver of notice thereof signed by any director who chooses to waive the requirement of notice, subject to the written consent provision in Section 3.09 herein.

Section 3.06. *Regular Meetings.* After the place and time of regular meetings of the Board of Directors shall have been determined and notice thereof shall have been once given to each member of the Board of Directors, regular meetings may be held without further notice being given.

Section 3.07. *Special Meetings.* Special meetings of the Board of Directors may be called by the Chairman of the Board of Directors or the President and shall be called by the Chairman of the Board of Directors, President or Secretary of the Corporation on the written request of two directors. Notice of special meetings of the Board of Directors shall be given to each director at least three days before the date of the meeting in such manner as is determined by the Board of Directors.

Section 3.08. *Committees.* The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to any of the following matters: (a) approving or adopting, or recommending to the stockholders, any action or matter expressly required by Delaware Law to be submitted to the stockholders for approval or (b) adopting, amending or repealing any bylaw of the Corporation. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

Section 3.09. *Action by Consent.* Unless otherwise restricted by the Certificate of Incorporation, the Stockholders Agreement or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in

writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions, are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 3.10. *Telephonic Meetings.* Unless otherwise restricted by the Certificate of Incorporation, the Stockholders Agreement or these Bylaws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or such committee, as the case may be, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

Section 3.11. *Resignation.* Any director may resign at any time by giving notice in writing or by electronic transmission to the Board of Directors or to the Secretary of the Corporation. The resignation of any director shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 3.12. *Vacancies.* Unless otherwise provided in the Certificate of Incorporation or the Stockholders Agreement, vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. Subject to the Stockholders Agreement, if there are no directors in office, then an election of directors may be held in accordance with Delaware Law. Unless otherwise provided in the Certificate of Incorporation or the Stockholders Agreement, when one or more directors shall resign from the Board of Directors effective as of a future date, a majority of the directors then in office shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in the filling of other vacancies. Notwithstanding the foregoing, subject to the terms of the Certificate of Incorporation and the Stockholders Agreement, vacancies on the Board of Directors resulting from removal of any director by the stockholders shall be filled by the stockholders, acting at the same special meeting at which such director is removed (or, in the event the removal occurs by written consent, acting by written consent at the same time such director is removed).

Section 3.13. *Removal.* Unless otherwise provided under the Certificate of Incorporation, the Stockholders Agreement or these Bylaws, any director or the entire Board of Directors may be removed, with or without cause, at any time by the affirmative vote of the holders of a majority of the outstanding capital stock of the Corporation then entitled to vote at any election of directors and the vacancies thus created may be filled in accordance with Section 3.12 herein.

Section 3.14. *Compensation.* Unless otherwise restricted by the Certificate of Incorporation, the Stockholders Agreement or these Bylaws, the Board of Directors shall have authority to fix the compensation of directors, including fees and reimbursement of expenses.

Section 3.15. *Preferred Stock Directors.* Notwithstanding anything else contained herein, whenever the holders of one or more classes or series of preferred stock shall have the right, voting separately as a class or series, to elect directors, the election, term of office, filling of vacancies, removal and other features of such directorships shall be governed by the terms of such class or series of preferred stock adopted by resolution or resolutions adopted by the Board of Directors pursuant to the Certificate of Incorporation, and such directors so elected shall not be subject to the provisions of this Article 3 unless otherwise provided therein.

## ARTICLE 4
## OFFICERS

Section 4.01. *Principal Officers.* The principal officers of the Corporation shall be a Chief Executive Officer, a President, a Chief Financial Officer, one or more Vice Presidents, a Treasurer and a Secretary who shall have the duty, among other things, to record the proceedings of the meetings of stockholders and directors in a book kept for that purpose. The Corporation may also have such other principal officers, including one or more Controllers, as the Board of Directors may in its discretion appoint. One person may hold the offices and perform the duties of any two or more of said offices, except that no one person shall hold the offices and perform the duties of President and Secretary.

Section 4.02. *Appointment, Term of Office and Remuneration.* The principal officers of the Corporation shall be appointed by the Board of Directors in the manner determined by the Board of Directors. Each such officer shall hold office until his or her successor is appointed, or until his or her earlier death, resignation or removal. The remuneration of all officers of the Corporation shall be fixed by the Board of Directors. Any vacancy in any office shall be filled in such manner as the Board of Directors shall determine.

Section 4.03. *Subordinate Officers.* In addition to the principal officers enumerated in Section 4.01 herein, the Corporation may have one or more Assistant Treasurers, Assistant Secretaries and Assistant Controllers and such other subordinate officers, agents and employees as the Board of Directors may deem necessary, each of whom shall hold office for such period as the Board of Directors may from time to time determine. The Board of Directors may delegate to any principal officer the power to appoint and to remove any such subordinate officers, agents or employees.

Section 4.04. *Removal.* Except as otherwise permitted with respect to subordinate officers, any officer may be removed, with or without cause, at any time, by resolution adopted by the Board of Directors.

Section 4.05. *Resignations.* Any officer may resign at any time by giving written notice to the Board of Directors (or to a principal officer if the Board of Directors has delegated to such principal officer the power to appoint and to remove such officer). The resignation of any officer shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4.06. *Powers and Duties.* The officers of the Corporation shall have such powers and perform such duties incident to each of their respective offices and such other duties as may from time to time be conferred upon or assigned to them by the Board of Directors.

## ARTICLE 5
## CAPITAL STOCK

Section 5.01. *Uncertificated Shares.* The shares of the Corporation shall be uncertificated and shall be represented by book entries on the Company's securities transfer books and records, *provided* that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be represented by certificates. Except as otherwise required by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of shares represented by certificates of the same class and series shall be identical. Every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of the Corporation by the Chairman or Vice Chairman of the Board of Directors, or the Chief Executive Officer, President or Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of such Corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. The Corporation shall not have power to issue a certificate in bearer form.

Section 5.02. *Transfer of Shares.* Subject to the transfer restrictions in the Certificate of Incorporation and the Stockholders Agreement, shares of the stock of the Corporation may be transferred on the record of stockholders of the Corporation by the holder thereof or by such holder's duly authorized attorney upon surrender of a certificate therefor properly endorsed or upon receipt of

proper transfer instructions from the registered holder of uncertificated shares or by such holder's duly authorized attorney and upon compliance with appropriate procedures for transferring shares in uncertificated form, unless waived by the Corporation.

Section 5.03. *Authority for Additional Rules Regarding Transfer.* Subject to the Certificate of Incorporation and the Stockholders Agreement, the Board of Directors shall have the power and authority to make all such rules and regulations as they may deem expedient concerning the issue, transfer and registration of certificated or uncertificated shares of the stock of the Corporation, as well as for the issuance of new certificates in lieu of those which may be lost or destroyed, and may require of any stockholder requesting replacement of lost or destroyed certificates, to provide a bond in such amount and in such form as they may deem expedient to indemnify the Corporation, and/or the transfer agents, and/or the registrars of its stock against any claims arising in connection therewith.

## ARTICLE 6
## GENERAL PROVISIONS

Section 6.01. *Fixing the Record Date.* In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing such record date is adopted by the Board of Directors, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day preceding the day on which notice is given, or, if notice is waived, at the close of business on the day preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided* that the Board of Directors may in its discretion or as required by law fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall fix the same date or an earlier date as the record date for stockholders entitled to notice of such adjourned meeting.

In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the

Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 6.02. *Dividends.* Subject to limitations contained in Delaware Law, the Certificate of Incorporation and the Stockholders Agreement, the Board of Directors may declare and pay dividends upon the shares of capital stock of the Corporation, which dividends may be paid either in cash, in property or in shares of the capital stock of the Corporation.

Section 6.03. *Year*. The fiscal year of the Corporation shall commence on January 1 and end on December 31 of each year.

Section 6.04. *Corporate Seal.* The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware". The seal may be used by causing it or a facsimile thereof to be impressed, affixed or otherwise reproduced.

Section 6.05. *Voting of Stock Owned by the Corporation.* The Board of Directors may authorize any person, on behalf of the Corporation, to attend, vote at and grant proxies to be used at any meeting of stockholders of any corporation (except this Corporation) in which the Corporation may hold stock.

Section 6.06. *Forum.* Unless the Corporation consents in writing to the selection of an alternative forum (an "**Alternative Forum Consent**"), the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of Delaware Law, the Certificate of Incorporation (including any certificate of designations for any class or series of preferred stock) or these Bylaws, in each case, as amended from time to time, or (iv) any action asserting a claim governed by the internal affairs doctrine, shall be the Court of Chancery in the State of Delaware; *provided*, that, in the event that the Court of Chancery in the State of Delaware lacks subject matter jurisdiction over any such action or proceeding, the sole and exclusive forum for such action or proceeding shall be another state or federal court located within the State of Delaware, in all cases subject to the court's having personal jurisdiction over the indispensable parties named as defendants. Any person or entity owning, purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Section 6.06. If any action the subject matter of which is within the scope of this Section 6.06 is filed in a court other than the Court of Chancery in the State of Delaware (or any other state or federal court located within the State of Delaware,

as applicable) (a "**Foreign Action**") by or in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the Court of Chancery in the State of Delaware (or such other state or federal court located within the State of Delaware, as applicable) in connection with any action brought in any such court to enforce this Section 6.06 and (ii) having service of process made upon such stockholder in any such action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder. The existence of any prior Alternative Forum Consent shall not act as a waiver of the Corporation's ongoing consent right as set forth above in this Section 6.06 with respect to any current or future actions or claims.

Section 6.07. *Amendments.* These Bylaws or any of them, may be altered, amended or repealed, or new Bylaws may be made, only as set forth in Article 5 of the Certificate of Incorporation.

**Exhibit 99.4**

**EXECUTION VERSION**

# GENON HOLDINGS, LLC

## SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT

Dated as of December 14, 2018

THE MEMBERSHIP INTERESTS REPRESENTED BY THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY OTHER APPLICABLE SECURITIES LAWS. SUCH MEMBERSHIP INTERESTS MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE DISPOSED OF AT ANY TIME WITHOUT EFFECTIVE REGISTRATION UNDER SUCH ACT AND LAWS OR EXEMPTION THEREFROM, AND COMPLIANCE WITH THE OTHER SUBSTANTIAL RESTRICTIONS ON TRANSFERABILITY SET FORTH HEREIN.

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# GENON HOLDINGS, LLC

## SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT

This SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, this "**Agreement**"), dated as of December 14, 2018 (the "**Effective Date**"), by and among GenOn Holdings, LLC, a Delaware limited liability company (the "**Partnership**"), GenOn Holdings, Inc., a Delaware corporation (the "**Corporation**"), Intermediate GenOn Holdco, LLC, a Delaware limited liability company ("**Intermediate**"), Direct GenOn Holdco, LLC, a Delaware limited liability company ("**Holdco**"), and the Members (as defined herein), including, as of the date hereof, those Persons listed on Schedule 1 is effective as of the Effective Date. Unless the context otherwise requires, capitalized terms have the respective meanings ascribed to them in Section 1.01.

## RECITALS

WHEREAS, the Plan of Reorganization of GenOn Energy, Inc. ("**GEI**") and certain of its Subsidiaries and Affiliates under Chapter 11 of Title 11 of the United States Code approved by the United States Bankruptcy Court for the Southern District of Texas (as the same may have been subsequently modified, supplemented and amended, the "**Plan of Reorganization**"), has become effective as of the Effective Date;

WHEREAS, pursuant to the Plan of Reorganization, certain Persons have elected to receive Membership Interests in the form of Units and any Person that is to receive Units pursuant to the Plan of Reorganization is required to be a party to this Agreement, and all such parties are listed on Schedule 1 hereto;

WHEREAS, (i) the Corporation is the sole member of Intermediate, (ii) Intermediate is the sole member of Holdco, and (iii) Holdco is a Member of the Partnership as set forth on Schedule 1 hereto;

WHEREAS, all Persons who are issued Units after the date hereof or receive Units pursuant to a Transfer from a Member after the effectiveness of the Plan of Reorganization must become a party to this Agreement by signing a joinder agreement in the form of Exhibit A hereto (a "**Joinder Agreement**"); and

WHEREAS, this Agreement shall govern certain rights, duties and obligations of the parties hereto from and after the Effective Date.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Partnership and the Members, intending to be legally bound, hereby agree as follows:

## ARTICLE 1
## DEFINITIONS

Section 1.01. *Definitions*.

(a) As used in this Agreement, the following terms have the following meanings:

"**Adjusted Capital Account Deficit**" means with respect to the Capital Account of any Member as of the end of any Taxable Year, the amount by which the balance in such Capital Account is less than zero. For this purpose, such Member's Capital Account balance shall be:

(a) reduced for any items described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5), and (6); and

(b) increased for any amount such Member is obligated to contribute or is treated as being obligated to contribute to the Partnership pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(c) (relating to partner liabilities to a partnership) or 1.704-2(g)(1) and 1.704-2(i) (relating to minimum gain).

"**Affiliate**" means, with respect to a specified Person, each other Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Person specified. As used in this definition, "**control**" (including with correlative meanings, "**controlled by**" and "**under common control with**") means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of voting securities or by contract or other agreement).

"**Bankruptcy Code**" means Title 11 of the United States Code, as now in effect or hereafter amended.

"**Base Rate**" means, on any date, a variable rate per annum equal to the rate of interest most recently published by The Wall Street Journal as the "prime rate" at large U.S. money center banks.

"**Book Value**" means, with respect to any Partnership property, the Partnership's adjusted basis for U.S. federal income tax purposes, adjusted from time to time to reflect the adjustments required or permitted by Treasury Regulation Section 1.704-1(b)(2)(iv)(d)-(g) and (s).

"**Business Day**" means any day other than a Saturday or a Sunday or a day on which banks located in New York City, New York generally are authorized or required by Law to close.

"**Bylaws**" means the bylaws of the Corporation, as the same may be amended or amended and restated from time to time.

"**Capital Account**" means the capital account maintained for a Member in accordance with Section 5.01.

"**Capital Contribution**" means, with respect to any Member, the amount of any cash and the Fair Market Value of other property that such Member contributes (or is deemed to contribute) to the Partnership pursuant to Article 3 hereof.

"**Cash Settlement**" means immediately available funds in U.S. dollars in an amount equal to the Redeemed Interests Equivalent.

"**Certificate**" means the Partnership's Certificate of Formation as filed with the Secretary of State of Delaware, as amended or amended and restated from time to time.

"**Certificate of Incorporation**" means the Certificate of Incorporation of the Corporation, as the same may be amended or amended and restated from time to time.

"**Class A Common Stock**" means the shares of Class A Common Stock, par value $0.000001 per share, of the Corporation.

"**Class B Common Stock**" means the shares of Class B Common Stock, par value $0.000001 per share, of the Corporation.

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

"**Common Stock**" means the Class A Common Stock and the Class B Common Stock.

"**Competitor**" shall have the meaning assigned thereto in the Stockholders Agreement.

"**Confidential Information**" means, with respect to the Corporation, Intermediate, Holdco and the Partnership, all information concerning the Corporation, Intermediate, Holdco and the Partnership and their respective Subsidiaries, including, but not limited to, ideas, business strategies, innovations and materials, all aspects of the business plan of the Corporation, Intermediate, Holdco and the Partnership and their respective Subsidiaries, proposed operation and products, corporate structure, financial and organizational information, analyses, proposed partners, software code and system and product designs, employees and their identities, equity ownership, the methods and means by which the Corporation, Intermediate, Holdco and the Partnership or their respective Subsidiaries plan to conduct their respective businesses, all trade secrets, trademarks, tradenames and all intellectual property associated with the business of the Corporation, Intermediate, Holdco and the Partnership and their respective Subsidiaries; *provided* that the term "Confidential Information" does not include information or material that:

(i) is in the possession of a Member at the time of disclosure by the Corporation, Intermediate, Holdco or the Partnership or any of their respective Subsidiaries so long as, to the knowledge of such Member, such information or material is not subject to any prior obligation of confidentiality owed to the Corporation, Intermediate, Holdco, the Partnership, GEI or any of their respective Subsidiaries with respect to such information;

(ii) before or after it has been disclosed to a Member by the Corporation, Intermediate, Holdco, the Partnership or any of their respective Subsidiaries, becomes publicly available, not as a result of any action or inaction of such Member or any of its Representatives in violation of this Agreement;

(iii) is disclosed to a Member or its Representatives by a third party not, to the knowledge of such Member, in violation of any obligation of confidentiality owed to the Corporation, Intermediate, Holdco, the Partnership, GEI or any of their respective Subsidiaries with respect to such information; or

(iv) is independently developed (without the use of any Confidential Information) by a Member or any of its Representatives without violating any confidentiality agreement with, or other obligation of secrecy to, Corporation, Intermediate, Holdco, the Partnership, GEI or any of their respective Subsidiaries.

"**Corporation**" has the meaning set forth in the recitals to this Agreement, together with its successors and assigns.

"**Corporation Board**" means the Board of Directors of the Corporation.

"**Contributed GenOn Claim**" means any GenOn Notes Claims (as defined in the Plan of Reorganization) (or portion thereof) contributed (or deemed contributed) to the Partnership in exchange for Units pursuant to the Plan of Reorganization.

"**DGCL**" means the General Corporation Law of the State of Delaware.

"**Distribution**" means each distribution made by the Partnership to a Member with respect to such Member's Units, whether in cash, property or securities of the Partnership and whether by liquidating distribution or otherwise; *provided, however*, that none of the following shall be a Distribution: (a) any recapitalization that does not result in the distribution of cash or property to Members or any exchange of securities of the Partnership, and any subdivision (by Unit split or otherwise) or any combination (by reverse Unit split or otherwise) of any outstanding Units, (b) any other payment made by the Partnership to a Member that is not properly treated as a "distribution" for purposes of Sections 731, 732, or 733 or other applicable provisions of the Code or (c) payments made pursuant to Section 4.01(c).

"**Drag-Along Sale**" has the meaning assigned thereto in the Stockholders Agreement.

"**Event of Withdrawal**" means the expulsion, bankruptcy or dissolution of a Member or the occurrence of any other event that terminates the continued membership of a Member in the Partnership.

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

"**Exempted Transfer**" means any Transfer:

(i) to Holdco or the Partnership; or

(ii) pursuant to a Drag-Along Sale.

"**Fiscal Period**" means any interim accounting period within a Taxable Year established by the Manager and which is permitted or required by Section 706 of the Code.

"**Fiscal Year**" means the Partnership's annual accounting period established pursuant to Section 8.02.

"**Governmental Entity**" means (a) the United States of America, (b) any other sovereign nation, (c) any state, province, district, territory or other political subdivision of (a) or (b) of this definition, including any county, municipal or other local subdivision of the foregoing, or (d) any entity exercising executive, legislative, judicial, regulatory or administrative functions of government on behalf of (a), (b) or (c) of this definition.

"**Indebtedness**" of any Person means, without duplication, (a) all outstanding obligations for senior debt and subordinated debt and any other outstanding obligation for borrowed money, including that evidenced by notes, bonds, debentures or other instruments (and including all outstanding principal, prepayment premiums, if any, and accrued interest, fees and expenses related thereto), (b) any outstanding obligations under capital leases and purchase money obligations, (c) any amounts owed with respect to drawn letters of credit, (d) all obligations under interest rate or currency swap transactions, and (e) any outstanding guarantees of obligations of the type described in clauses (a) through (d) above.

"**Law**" means all laws, statutes, ordinances, rules, regulations and orders of any Governmental Entity.

"**LLC Act**" means the Delaware Limited Liability Company Act.

"**Losses**" means items of Partnership loss or deduction determined according to Section 5.01(b) (excluding any such items specially allocated pursuant to Section 5.03).

"**Member**" means, as of any date of determination, (a) each of the members named on the Schedule of Members (which shall include those Members listed on Schedule 1 as of the Effective Date) and (b) any Person admitted to the Partnership as a Substituted Member or Additional Member in accordance with Article 12 and the LLC Act, but in each case only so long as such Person is shown on the Partnership's books and records as the owner of one or more Units. The Members shall constitute a single class or group of members for purposes of the LLC Act.

"**Membership Interest**" means a limited liability company interest in the Partnership and includes any and all benefits to which the holder of such a limited liability company interest may be entitled as provided in this Agreement, including the interest of a Member in Profits, Losses and Distributions, together with all obligations of such Person to comply with the terms and provisions of this Agreement. The *pro rata* Membership Interest of each Member at any particular time shall be expressed as a number of Units owned by such Member at such time *divided* by the total number of Units owned by all Members at such time.

"**Minimum Gain**" means "partnership minimum gain" determined pursuant to Treasury Regulation Section 1.704-2(d).

"**National Securities Exchange**" means any U.S. national securities exchange, including, without limitation, the New York Stock Exchange, the NYSE MKT, the Nasdaq Global Select

Market, the Nasdaq Global Market and the Nasdaq Capital Market. For the avoidance of doubt, National Securities Exchange does not include an "over-the-counter" system or network.

"**Organizational Documents**" means the certificates or articles of incorporation or formation, bylaws, or such other applicable formation documents of each of the Corporation, Intermediate, Holdco and the Partnership, including the Certificate, the Certificate of Incorporation, the Bylaws, the Stockholders Agreement and this Agreement.

"**Paired Interest**" means one Unit together with one share of Class B Common Stock.

"**Percentage Interest**" means, with respect to a Member at a particular time, such Member's percentage interest in the Partnership determined by dividing such Member's Units by the total Units of all Members at such time. The Percentage Interest of each Member shall be calculated to the 4$^{th}$ decimal place.

"**Person**" means an individual or any corporation, partnership, limited liability company, trust, unincorporated organization, association, joint venture or any other organization or entity, whether or not a legal entity.

"**Pro rata**," "**pro rata portion**," "**according to their interests**," "**ratably**," "**proportionately**," "**proportional**," "**in proportion to**," "**based on the number of Units held**," "**based upon the percentage of Units held**," "**based upon the number of Units outstanding**," and other terms with similar meanings, when used in the context of a number of Units of the Partnership, and except as the context otherwise requires, means such number of Units relative to the total number of outstanding Units.

"**Profits**" means items of Partnership income and gain determined according to Section 5.01(b) (excluding any such items specially allocated pursuant to Section 5.03).

"**Redeemed Interests Equivalent**" means the product of (a) the applicable number of Redeemed Interests *multiplied by* (b) the Unit Redemption Price.

"**Related Persons**" means, with respect to a Person, and without duplication, (i) such Person's Affiliates, (ii) any fund, account, investment vehicle or co-investment vehicle that is controlled, managed, advised or sub-advised by such Person or any of its Affiliates or the same investment manager, advisor or sub-advisor as such Person or any Affiliate of such investment manager, advisor or sub-advisor and (iii) any other Stockholder to the extent that such Person or any of its Affiliates controls the voting of such Stockholder's Common Stock.

"**Representatives**" means, with respect to a Person, such Person's Related Persons and its and their respective partners, members, shareholders, managers, directors, officers, employees, advisors, legal counsel, accountants, tax advisors, investment advisers, agents and other representatives.

"**SEC**" means the U.S. Securities and Exchange Commission, including any governmental body or agency succeeding to the functions thereof.

"**Secured Site**" shall have the meaning assigned to such term in the Stockholders Agreement.

"**Securities Act**" means the U.S. Securities Act of 1933, as amended, and applicable rules and regulations thereunder, and any successor to such statute, rules or regulations. Any reference herein to a specific section, rule or regulation of the Securities Act shall be deemed to include any corresponding provisions of future Law.

"**Share Settlement**" means a number of shares of Class A Common Stock equal to the number of Redeemed Interests, which shares shall be free and clear of all liens and encumbrances (other than those imposed by the Organizational Documents and applicable securities Law).

"**Stockholders Agreement**" means that certain Stockholders Agreement, dated as of the date hereof, by and among the Corporation, the Partnership, Intermediate, Holdco and the stockholders named therein (together with any joinder thereto from time to time by any successor or assign to any party to such agreement).

"**Subsidiary**" means, with respect to any Person, any corporation, limited liability company, partnership, association or business entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (b) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of the voting interests thereof are at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof; *provided* that in the case of this clause (b), if a Person has the right to serve as the "manager" (or comparable role) of a limited liability company, partnership, association or other business entity (other than a corporation), such limited liability company, partnership, association or other business entity (other than a corporation) shall be deemed to be a Subsidiary of such Person.

"**Substituted Member**" means a Person that is admitted as a Member to the Partnership pursuant to Section 12.01.

"**Taxable Year**" means the Partnership's accounting period for U.S. federal income tax purposes determined pursuant to Section 9.02.

"**Trading Day**" means a day on which the applicable National Securities Exchange is open for the transaction of business (unless such trading shall have been suspended for the entire day).

"**Transfer**" (and, with correlative meanings, "**Transferee**", "**Transferor**", "**Transferred**" and "**Transferring**") means, with respect to any Units (a) when used as a verb, to sell, assign, dispose of, exchange, pledge, encumber, hypothecate or otherwise transfer such Units or any participation or interest therein, whether directly or indirectly (including pursuant to a derivative transaction), and (b) when used as a noun, a sale, assignment, disposition, exchange,

pledge, encumbrance, hypothecation, or other transfer of such Units or any participation or interest therein, whether directly or indirectly (including pursuant to a derivative transaction).

"**Treasury Regulations**" means the tax regulations promulgated under the Code and any corresponding provisions of succeeding regulations.

"**Unit**" means a Membership Interest of a Member in the Partnership representing a fractional part of the Membership Interests of all Members and having the rights and obligations specified with respect to the Units in this Agreement.

"**Unit Redemption Price**" means the Fair Market Value of a Unit as of the Redemption Date as determined pursuant to Article 15.

Each of the following terms is defined in the Section set forth opposite such term:

| **Term** | **Section** |
|---|---|
| Agreement | Preamble |
| Additional Member | 12.02 |
| Cash Election Approval | 11.01(b) |
| Cash Election Approval Deadline Date | 11.01(b) |
| Cash Election Approval Decision Notice | 11.01(b) |
| Confidential Information | 16.03 |
| Corporation | Preamble |
| Corporation Election Deadline | 11.01(a) |
| Corporation Tax Distribution | 4.01(b)(i) |
| Designated Individual | 9.03 |
| Direct Exchange | 11.03 |
| Drag-Along Per Share Consideration | 10.06 |
| Drag-Along Redemption | 10.06 |
| Effective Date | Preamble |
| Estimated Tax Distribution | 4.01(b)(ii) |
| Fair Market Value | 15.01 |
| GEI | Recitals |
| Holdco | Preamble |
| Indemnitee | 7.04(a) |
| Indemnitee-Related Entity | 7.04(h)(i) |
| Independent Valuation | 15.01(c) |
| Intermediate | Preamble |
| IRS | 5.03(f) |
| Joinder Agreement | Recitals |
| Jointly Indemnifiable Claims | 7.04(h)(ii) |
| liquidator | 14.02 |
| Manager | 6.01(a) |
| Member Tax Distribution | 4.01(b)(i) |
| Officer | 6.01(b) |
| Other Agreements | 10.01(b) |
| Partnership | Preamble |

| Term | Section |
|---|---|
| Partnership-Related Expenses | 4.01(c)(ii) |
| Partnership Representative | 9.03 |
| Plan of Reorganization | Recitals |
| Prohibited Dividend | 11.01(d) |
| Redeemed Interests | 11.01(a) |
| Redeeming Member | 11.01(a) |
| Redemption | 11.01(a) |
| Redemption Date | 11.01(a) |
| Redemption Notice | 11.01(a) |
| Redemption Right | 11.01(a) |
| Redemption Withdrawal Notice | 11.01(b) |
| Regulatory Allocations | 5.03(f) |
| Schedule of Members | 3.01(b) |
| Settlement Election Notice | 11.01(a) |
| Tax Distributions | 4.01(b)(i) |
| Third Party Purchase Election Notice | 11.01(g)(ii) |
| Third Party Purchase Price | 11.01(g)(ii) |
| Third Party Purchaser | 11.01(g)(i) |
| Withdrawal Deadline | 11.01(b) |

## ARTICLE 2
## ORGANIZATIONAL MATTERS

Section 2.01. *Formation of Company*. The Partnership was organized as a Delaware limited liability company under and pursuant to the LLC Act by the filing of the Certificate.

Section 2.02. *Amended and Restated Limited Liability Company Agreement*. This Agreement is established pursuant to the Plan of Reorganization for the purpose of establishing the affairs of the Partnership and the conduct of its business in accordance with the provisions of the LLC Act. The Members hereby agree that during the term of the Partnership set forth in Section 2.08 the rights and obligations of the Members with respect to the Partnership will be determined in accordance with the terms and conditions of this Agreement and the LLC Act. No provision of this Agreement shall be in violation of the LLC Act and to the extent any provision of this Agreement is in violation of the LLC Act, such provision shall be void *ab initio* and of no effect to the extent of such violation without affecting the validity of the other provisions of this Agreement. None of any Member, the Manager or any other Person shall have appraisal rights with respect to any Units pursuant to Section 18-210 of the LLC Act..

Section 2.03. *Name*. The name of the Partnership shall be "GenOn Holdings, LLC". The Manager in its sole discretion may change the name of the Partnership at any time and from time to time. Notification of any such change shall be given to all of the Members. The Partnership's business may be conducted under its name and/or any other name or names deemed advisable by the Manager. The Partnership shall hold all of its property in the name of the Partnership and not in the name of any Member.

Section 2.04. *Purpose*. The primary business and purpose of the Partnership shall be to engage in such activities as are permitted under the LLC Act and determined from time to time by the Manager in accordance with the terms and conditions of this Agreement. Subject to Article 6, the Partnership may engage in any and all activities necessary, desirable or incidental to the accomplishment of the foregoing. Subject to the terms and conditions of this Agreement, the Partnership is specifically authorized to enter into, make, and perform all contracts and other undertakings, and engage in all other activities and transactions as, subject to Article 6, the Officers may deem necessary, advisable, or convenient for carrying out the purposes of the Partnership.

Section 2.05. *Powers*. The Partnership shall possess and may exercise all the powers and privileges granted by the LLC Act, all other applicable Laws or by this Agreement, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion and attainment of the business, purposes or activities of the Partnership approved by the Manager.

Section 2.06. *Principal Office; Registered Office*. The principal office of the Partnership shall be at such place as the Manager may from time to time designate. The address of the registered office of the Partnership in the State of Delaware is 251 Little Falls Drive, in the City of Wilmington, in the County of New Castle, in the State of Delaware 19808, and the registered agent for service of process on the Partnership in the State of Delaware at such registered office shall be Corporation Service Company. The Manager may from time to time change the Partnership's registered agent and registered office in the State of Delaware.

Section 2.07. *Filings*.

(a) *Certificate*. The Certificate has been filed in the office of the Secretary of State of the State of Delaware in accordance with the provisions of the LLC Act. The Officers shall take any and all other actions reasonably necessary to maintain the status of the Partnership under the Laws of the State of Delaware or any other state in which the Partnership shall do business. The Officers shall cause amendments to the Certificate to be filed whenever required by the LLC Act. Such amendments shall be executed by the Officers or any Person authorized by them.

(b) *Maintenance.* The Officers (or any of them) shall execute and cause to be filed an original or amended Certificate and shall take any and all other actions as may be determined by the Manager to be reasonably necessary to perfect and maintain the status of the Partnership under the Laws of any other states or jurisdictions in which the Partnership engages in business.

(c) *Dissolution*. Upon the dissolution of the Partnership, the Manager (or the Person responsible for winding up and dissolution of the Partnership pursuant to Article 14), shall promptly execute and cause to be filed a certificate of dissolution in accordance with the LLC Act and the Laws of any other states or jurisdictions in which the Partnership has registered to transact business or otherwise filed a certificate or articles.

Section 2.08. *Term*. The term of the Partnership commenced upon the filing of the Certificate in accordance with the LLC Act and shall continue in existence until dissolution of the Partnership in accordance with the provisions of Article 14. The existence of the Partnership

as a separate legal entity shall continue until cancellation of the Certificate in the manner required by the LLC Act.

Section 2.09. *No State-Law Partnership*. The Members intend that the Partnership not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member by virtue of this Agreement, for any purposes other than as set forth in the last sentence of this Section 2.09, and neither this Agreement nor any other document entered into by the Partnership or any Member relating to the subject matter hereof shall be construed to suggest otherwise. The Members intend that the Partnership shall be treated as a partnership for U.S. federal and, if applicable, state or local income tax purposes, and that each Member and the Partnership shall file all tax returns and shall otherwise take all tax and financial reporting positions in a manner consistent with such treatment, unless otherwise required by applicable Law.

## ARTICLE 3
## MEMBERS; UNITS; CAPITALIZATION

Section 3.01. *Members*.

(a) At the Effective Date pursuant to the Plan of Reorganization, Holdco and each other Person listed on Schedule 1 shall be automatically admitted to the Partnership as a Member.

(b) The Partnership or its transfer agent shall maintain books and records including (i) the name, address and notice information of each Member; (ii) the aggregate number of outstanding Units and the number of Units held by each Member and (iii) other information that the Manager deems reasonably necessary in connection with this Agreement; (such books and records, the "**Schedule of Members**"). The names of the Members as of the Effective Date are set forth as Schedule 1 to this Agreement. The Schedule of Members shall be the definitive record of ownership of each Unit of the Partnership and all relevant information with respect to each Member. The Partnership shall be entitled to recognize the exclusive right of a Person registered on its records as the owner of Units for all purposes and shall not be bound to recognize any equitable or other claim to or interest in Units on the part of any other Person, whether or not it shall have express or other notice thereof, except as otherwise provided by the LLC Act.

(c) No Member shall be required or, except as approved by the Manager pursuant to Section 6.01 and in accordance with the other provisions of this Agreement, permitted to (i) loan any money or property to the Partnership, (ii) borrow any money or property from the Partnership or (iii) make any additional Capital Contributions.

Section 3.02. *Units*. Membership Interests shall be represented by a single class of Units. No additional classes or series of Units or other Membership Interests may be created. Each Unit owned by a Member (other than Holdco) shall at all times be owned as part of a Paired Interest.

Section 3.03. *Authorization and Issuance of Additional Units*. The Manager may cause the Partnership to issue additional Units at such times and upon such terms as the Manager shall determine (including, for the avoidance of doubt, in accordance with Section 4.01(i) of the Stockholders Agreement, or as necessary to comply with Article 4 of the Certificate of Incorporation) and, except as provided in Section 16.04, the Manager shall amend this Agreement as necessary in connection with the issuance of additional Units and admission of Additional Members under this Section 3.03 without the requirement of any consent or acknowledgement of any other Member (in each case, subject to the terms of the Stockholders Agreement); *provided, however*, that the Partnership shall not issue additional Units to Holdco except in compliance with Section 3.09.

Section 3.04. *Repurchase or Redemption of Shares of Class A Common Stock*. Subject to the provisions of Article 8 of the Stockholders Agreement in the case of a Cash Settlement (as defined in the Stockholders Agreement) thereunder, if, at any time, any shares of Class A Common Stock are repurchased or redeemed by the Corporation for cash, then the Manager shall cause the Partnership, immediately prior to such repurchase or redemption of Class A Common Stock, to redeem a corresponding number of Units held by the Holdco at an aggregate redemption price equal to the aggregate purchase or redemption price of the shares of Class A Common Stock being repurchased or redeemed by the Corporation *plus* any expenses related thereto, and upon such other terms as are the same for the shares of Class A Common Stock being repurchased or redeemed by the Corporation. In connection with any such repurchase or redemption, immediately following the redemption by the Partnership described in the preceding sentence, Holdco shall distribute the amount of the aggregate redemption price to Intermediate and Intermediate shall distribute such amount to the Corporation (for the avoidance of doubt, the distributions by Holdco and Intermediate shall occur prior to the repurchase or redemption by the Corporation of the applicable Class A Common Stock). Notwithstanding any provision to the contrary contained in this Agreement, (i) the Partnership shall not make any repurchase or redemption if such repurchase or redemption would violate any applicable Law and (ii) the Corporation shall not repurchase or redeem any shares of Class A Common Stock other than for cash or in accordance with Article 8 of the Stockholders Agreement.

Section 3.05. *Certificates Representing Units; Lost, Stolen or Destroyed Certificates; Registration and Transfer of Units*.

(a) Units shall not be certificated unless otherwise determined by the Manager. If the Manager determines that one or more Units shall be certificated, each such certificate shall be signed by or in the name of the Partnership, by the Chief Executive Officer and any other Officer designated by the Manager, and shall represent the number of Units held by such holder. Such certificate shall be in such form (and shall contain such legends) as the Manager may determine. Any or all of such signatures on any certificate representing one or more Units may be a facsimile, engraved or printed, to the extent permitted by applicable Law. The Manager agrees that it shall not elect to treat any Unit as a "security" within the meaning of Article 8 of the Uniform Commercial Code unless thereafter all Units then outstanding are represented by one or more certificates.

(b) If Units are certificated, the Manager may direct that a new certificate representing one or more Units be issued in place of any certificate theretofore issued by the Partnership

alleged to have been lost, stolen or destroyed, upon delivery to the Manager of an affidavit of the owner or owners of such certificate, setting forth such allegation. The Manager may require the owner of such lost, stolen or destroyed certificate, or such owner's legal representative, to give the Partnership a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificate.

(c) Upon surrender to the Partnership or the transfer agent of the Partnership, if any, of a certificate for one or more Units, duly endorsed or accompanied by appropriate evidence of succession, assignment or authority to Transfer, in compliance with the provisions hereof, together with the payment of any transfer taxes payable in connection with such Transfer, the Partnership shall issue a new certificate representing one or more Units to the Person entitled thereto, cancel the old certificate and record the transaction upon its books. Subject to the provisions of this Agreement, the Manager may prescribe such additional rules and regulations as it may deem appropriate relating to the issue, Transfer and registration of Units.

Section 3.06. *Negative Capital Accounts*. No Member shall be required to pay to any other Member or the Partnership any deficit or negative balance which may exist from time to time in such Member's Capital Account (including upon and after dissolution of the Partnership).

Section 3.07. *No Withdrawal*. No Person shall be entitled to withdraw any part of such Person's Capital Contribution or Capital Account or to receive any Distribution from the Partnership, except as expressly provided in this Agreement.

Section 3.08. *Loans From Members*. Loans by Members to the Partnership shall not be considered Capital Contributions. If any Member shall advance funds to the Partnership in excess of the amounts required hereunder to be contributed by such Member to the capital of the Partnership, the advance of such funds shall not result in any increase in the amount of the Capital Account of such Member. Subject to the provisions of Section 3.01(c), the amount of any such advances shall be a debt of the Partnership to such Member and shall be payable or collectible in accordance with the terms and conditions upon which such advances are made.

Section 3.09. *Holdco Ownership*.

(a) If at any time the Corporation issues a share of Class A Common Stock:

(i) the Partnership shall issue to Holdco one Unit; and

(ii) (A) the net proceeds received by the Corporation with respect to the corresponding share of Class A Common Stock, if any, shall be contributed by the Corporation to Intermediate, (B) immediately following the contribution described in the preceding clause (A), Intermediate shall contribute such proceeds to Holdco, and (C) immediately following the contribution described in the preceding cause (B), Holdco shall contribute such proceeds to the Partnership;

*provided*, that if the Corporation issues any shares of Class A Common Stock some or all of the net proceeds of which are to be used to fund expenses or other obligations of the Corporation, Intermediate or Holdco (as applicable) for which the Corporation, Intermediate or Holdco (as

applicable) would be permitted a reimbursement of expenses pursuant to Section 4.01(c), then the Corporation, Intermediate and Holdco shall not be required to make the contributions pursuant to the foregoing clause (ii) with respect to such of the net proceeds which are used or will be used to fund such expenses or obligations (and any such net proceeds not so transferred shall be in satisfaction of the Partnership's reimbursement obligations pursuant to Section 4.01(c)); *provided, further*, that if the Corporation issues any shares of Class A Common Stock in order to permit Holdco to purchase from another Member a number of Units held by such Member (and the same number of shares of Class B Common Stock), then the Partnership shall not issue any new Units in connection therewith and the Corporation shall not be required to transfer such net proceeds to the Partnership (it being understood that such net proceeds shall instead be contributed by the Corporation to Intermediate and by Intermediate to Holdco in order to be paid by Holdco to such other Member as consideration for such purchase).

Section 3.10. *Reserves*. Reserves in an amount determined by the Manager, in its reasonable discretion, may be retained out of Capital Contributions, net proceeds from sales or refinancing or net proceeds from operations. Any reserves remaining on dissolution of the Partnership shall be held until the final liquidation and then distributed to the Members in accordance with the provisions of Sections 14.02 and 14.03.

## ARTICLE 4
## DISTRIBUTIONS

Section 4.01. *Distributions*.

(a) *Distributable Cash; Other Distributions*. To the extent permitted by applicable Law and hereunder and subject to Section 4.01(c), Distributions to Members may be declared by the Manager out of the Partnership's cash or other funds or property legally available therefor in such amounts and on such terms (including the payment dates of such Distributions) as the Manager shall determine using such record date as the Manager may designate, and such Distributions shall be made to the Members as of the close of business on such record date on a *pro rata* basis in accordance with each Member's Percentage Interest as of the close of business on such record date; *provided*, that the Manager shall have the obligation to make Distributions as set forth in Section 4.01(b) and 14.02; and *provided further* that, notwithstanding any other provision herein to the contrary, no Distributions shall be made to any Member to the extent such Distribution would render the Partnership insolvent. For purposes of the foregoing sentence, insolvency means the inability of the Partnership to meet its payment obligations when due. Promptly following the designation of a record date and the declaration of a Distribution pursuant to this Section 4.01(a), the Manager shall give notice to each Member of the record date, the amount and the terms of the Distribution and the payment date thereof.

(b) *Tax Distributions*. (i) With respect to each Fiscal Year, and prior to making distributions pursuant to Section 4.01(a), the Partnership shall, to the extent permitted by applicable Law, make cash distributions (1) to Holdco (which shall distribute such amounts to Intermediate, and Intermediate shall distribute such amounts to the Corporation) such that the Corporation receives the amount required to enable the Corporation to meet its tax obligations with respect to items of Partnership income, gain, loss, deduction and credit for such Fiscal Year (taking into account all previous Corporation Tax Distributions with respect to such Fiscal Year)

(the "**Corporation Tax Distribution**") and (2) to each other Member other than the Corporation so that the Tax Distributions made under clause (1) and this clause (2) are *pro rata* in accordance with the Members' Percentage Interest (a "**Member Tax Distribution**" and together with the Corporation Tax Distribution, the "**Tax Distributions**"). Except as provided in Section 4.01(b)(ii), Tax Distributions shall be paid to the Members on the first Business Day of each April, June, September and December.

(ii) In the event of a Physical Settlement with respect to a Class A Redemption (as such terms are defined in the Stockholders Agreement), the Partnership shall, on the day immediately preceding the Redemption Date (as such term is used in the Stockholders Agreement), make (1) a Corporation Tax Distribution to the Corporation equal to (x) the Manager's best estimate of the amount of the Corporation's tax obligations with respect to items of Partnership income, gain, loss, deduction and credit for the Fiscal Year that includes such Redemption Date (determined as though such Fiscal Year ended on the Redemption Date), less (y) the amount of Corporation Tax Distributions previously made with respect to such Fiscal Year, and (2) a Member Tax Distribution in an amount determined by reference to the Corporation Tax Distribution described in the preceding clause (1) (the "**Estimated Tax Distribution**"). For the avoidance of doubt, the portion of any Estimated Tax Distribution that constitutes a Corporation Tax Distribution shall be taken into account in determining the amount of subsequent Corporation Tax Distributions required to be made with respect to the Fiscal Year that includes the Redemption Date (as such term is used in the Stockholders Agreement) to which such Estimated Tax Distribution relates.

(iii) If on the date of a Tax Distribution there are insufficient funds on hand to distribute to the Members the full amount of the Tax Distributions to which such Members are otherwise entitled, (A) the Corporation Tax Distribution shall be made in full (to the extent of available funds), (B) Member Tax Distributions shall be made to the Members to the extent of available funds remaining after such Corporation Tax Distribution in accordance with the Members' Percentage Interests and (C) notwithstanding anything in this Agreement limiting the types of interests that may be issued and without regard to any stockholder approval requirement or preemptive rights in the Stockholders Agreement, the Partnership shall issue interests in the Partnership to the Members (other than Holdco) pursuant to which such Members will be entitled to receive from the Partnership the amounts of their respective unpaid Member Tax Distributions prior to any other payment on the Units other than Corporation Tax Distributions in accordance with this Section 4.01(b)(iii) (which interests shall not be entitled to any additional return or coupon and shall contain commercially reasonable terms as reasonably determined by the Manager, provided that (i) such interests shall be Transferrable only if Transferred with the Units to which such interests relate (but are not required to be Transferred in a Transfer of Units) and (ii) if the Units to which such interests relate are redeemed in accordance with Article 11, such interests shall thereafter no longer be Transferrable). The Manager shall be entitled to amend this Agreement solely to the extent necessary to permit the issuance of the interests described in the preceding sentence.

(c) Without limiting the provisions of Section 6.08, the Manager shall cause the Partnership:

(i) to pay cash to Holdco (which payment shall be made without *pro rata* Distributions to the other Members) in exchange for the redemption, repurchase or other acquisition of a number of Units held by Holdco to the extent that such cash payment is used (after distribution by Holdco to Intermediate and by Intermediate to the Corporation) by the Corporation to redeem, repurchase or otherwise acquire an equal number of shares of Class A Common Stock (including pursuant to a Cash Settlement (as defined in the Stockholders Agreement));

(ii) to the extent that expenses or other monetary obligations of the Corporation, Intermediate or Holdco (as applicable) have been incurred by the Corporation, Intermediate or Holdco (as applicable) as a result of the Corporation's role as the Manager, the Corporation's existence or role as the sole member of Intermediate, Intermediate's existence or role as the sole member of Holdco or Holdco's existence or role as a member of the Partnership, or in furtherance of the business and affairs of the Corporation, Intermediate or Holdco ("**Partnership-Related Expenses**"), to make cash distributions to Holdco (which distributions shall be made without *pro rata* Distributions to the other Members), which distributions shall then be further distributed (as and to the extent applicable) by Holdco to Intermediate and (as and to the extent applicable) by Intermediate to the Corporation, in amounts required for the Corporation, Intermediate or Holdco, as applicable, to pay its Partnership-Related Expenses. Without limitation of the foregoing, Partnership-Related Expenses shall include:

(A) operating, administrative and other similar costs, including payments in respect of Indebtedness, to the extent the proceeds are used or will be used to pay expenses or other obligations described in this clause Section 4.01(c)(ii);

(B) any legal, tax, accounting and other professional fees and expenses;

(C) any judgments, settlements, penalties, fines or other costs and expenses in respect of any claims against, or any litigation or proceedings involving, the Corporation, Intermediate, Holdco or any of their respective Subsidiaries;

(D) fees and expenses related to any securities offering, investment or acquisition transaction (whether or not successful) authorized by the Corporation Board;

(E) any costs and expenses related to indemnification of officers, directors, employees and service providers, including, without limitation, any related expense reimbursement;

(F) any other fees and expenses on behalf of or for the benefit of the Partnership or in connection with the maintenance of the existence of the

Corporation, Intermediate, Holdco, the Partnership or any of their respective Subsidiaries; and

(G) any amounts payable by the Partnership pursuant to Section 2.11 of the Stockholders Agreement.

To the extent feasible, any Partnership-Related Expenses incurred by the Manager pursuant to this Section 4.01(c) shall be billed directly to and paid by the Partnership (in which case no amounts shall be payable to Holdco in respect thereof) and, if and to the extent any reimbursements to the Manager or any of its Affiliates by the Partnership pursuant to this Section 4.01(c) constitute gross income to such Person (as opposed to the repayment of advances made by such Person on behalf of the Partnership), such amounts shall be treated as "guaranteed payments" within the meaning of Section 707(c) of the Code and shall not be treated as distributions for purposes of computing the Members' Capital Accounts.

## ARTICLE 5
## CAPITAL ACCOUNTS; ALLOCATIONS; TAX MATTERS

Section 5.01. *Capital Accounts*.

(a) The Partnership shall maintain a separate Capital Account for each Member according to the rules of Treasury Regulation Section 1.704-1(b)(2)(iv). For this purpose, the Partnership may (in the discretion of the Manager), upon the occurrence of the events specified in Treasury Regulation Section 1.704-1(b)(2)(iv)(f) or (s), increase or decrease the Capital Accounts in accordance with the rules of such Treasury Regulations and Treasury Regulation Sections 1.704-1(b)(2)(iv)(g) and (h) to reflect a revaluation of Partnership property.

(b) For purposes of computing the amount of any item of Partnership income, gain, loss or deduction to be allocated pursuant to this Article 5 and to be reflected in the Capital Accounts of the Members, the determination, recognition and classification of any such item shall be the same as its determination, recognition and classification for U.S. federal income tax purposes (including any method of depreciation, cost recovery or amortization used for this purpose); *provided*, *however*, that:

(i) The computation of all items of income, gain, loss and deduction shall include those items described in Code Sections 705(a)(l)(B) or 705(a)(2)(B) and Treasury Regulation Section 1.704-1(b)(2)(iv)(i), without regard to the fact that such items are not includable in gross income or are not deductible for U.S. federal income tax purposes.

(ii) If the Book Value of any Partnership property is adjusted pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(e), (f) or (s), the amount of such adjustment shall be taken into account as gain or loss from the disposition of such property.

(iii) Items of income, gain, loss or deduction attributable to the disposition of Partnership property having a Book Value that differs from its adjusted basis for tax purposes shall be computed by reference to the Book Value of such property.

(iv) Items of depreciation, amortization and other cost recovery deductions with respect to Partnership property having a Book Value that differs from its adjusted basis for tax purposes shall be computed by reference to the property's Book Value in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(g).

(v) To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Sections 732(d), 734(b) or 743(b) is required, pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis).

Section 5.02. *Allocations*. Except as otherwise provided in this Agreement or the Code or Treasury Regulations and after giving effect to the special allocations set forth in Section 5.03, Profits and Losses (and, to the extent necessary, individual items thereof) shall be allocated among the Members in a manner such that the Capital Account of each Member, immediately after making such allocation, is, as nearly as possible, equal to (i) the amount that such Member would receive pursuant to Section 14.02 if all assets of the Partnership on hand were sold for cash equal to their Book Value, all liabilities of the Partnership were satisfied in cash according to their terms (limited with respect to each nonrecourse liability to the Book Value of the assets securing such liability), and all remaining or resulting cash was distributed, in accordance with Section 14.02, to the Members immediately after making such allocation, minus (ii) such Member's share of Partnership Minimum Gain and "partner nonrecourse debt minimum gain", computed immediately prior to the hypothetical sale of assets and the amount any such Member is treated as obligated to contribute to the Partnership, computed immediately after the hypothetical sale of assets.

Section 5.03. *Regulatory Allocations*.

(a) Items of loss or deduction attributable to partner nonrecourse debt (as defined in Treasury Regulation Section 1.704-2(b)(4)) shall be allocated in the manner required by Treasury Regulation Section 1.704-2(i). If there is a net decrease during a Taxable Year in partner nonrecourse debt minimum gain (as defined in Treasury Regulation Section 1.704-2(i)(3)), items of income and gain for such Taxable Year (and, if necessary, for subsequent Taxable Years) shall be allocated to the Members in the amounts and of such character as determined according to Treasury Regulation Section 1.704-2(i)(4).

(b) Nonrecourse deductions (as determined according to Treasury Regulation Section 1.704-2(b)(1)) for any Taxable Year shall be allocated *pro rata* among the Members in accordance with their Percentage Interests. Except as otherwise provided in Section 5.03(a), if there is a net decrease in the Minimum Gain during any Taxable Year, each Member shall be allocated items of income and gain for such Taxable Year (and, if necessary, for subsequent Taxable Years) in the amounts and of such character as determined according to Treasury

Regulation Section 1.704-2(f). This Section 5.03(b) is intended to be a minimum gain chargeback provision that complies with the requirements of Treasury Regulation Section 1.704-2(f), and shall be interpreted in a manner consistent therewith.

(c) If any Member that unexpectedly receives an adjustment, allocation or Distribution described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6) has an Adjusted Capital Account Deficit as of the end of any Taxable Year, computed after the application of Section 5.03(a) and 5.03(b) but before the application of any other provision of this Article 5, then items of income for such Taxable Year shall be allocated to such Member in proportion to, and to the extent of, such Adjusted Capital Account Deficit. This Section 5.03(c) is intended to be a qualified income offset provision as described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted in a manner consistent therewith.

(d) If the allocation of items of loss or deduction to a Member as provided in Section 5.02 would create or increase an Adjusted Capital Account Deficit, there shall be allocated to such Member only that amount of such items as will not create or increase an Adjusted Capital Account Deficit. The items of loss or deduction that would, absent the application of the preceding sentence, otherwise be allocated to such Member shall be allocated to the other Members in accordance with their relative Percentage Interests, subject to this Section 5.03(d).

(e) Items of income, gain, loss and deduction described in Section 5.01(b)(v) shall be allocated in a manner consistent with the manner that the adjustments to the Capital Accounts are required to be made pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(j), (k) and (m).

(f) The allocations set forth in this Section 5.03 through and including Section 5.03(e) (the "**Regulatory Allocations**") are intended to comply with certain requirements of Sections 1.704-1(b) and 1.704-2 of the Treasury Regulations. The Regulatory Allocations may not be consistent with the manner in which the Members intend to allocate Profit and Loss of the Partnership or make Distributions. Accordingly, notwithstanding the other provisions of this Article 5, but subject to the Regulatory Allocations, income, gain, deduction and loss shall be reallocated among the Members so as to eliminate the effect of the Regulatory Allocations and thereby cause the respective Capital Accounts of the Members to be in the amounts (or as close thereto as possible) they would have been if Profit and Loss (and such other items of income, gain, deduction and loss) had been allocated without reference to the Regulatory Allocations. In general, the Members anticipate that this will be accomplished by specially allocating other items of income, gain, deduction and loss among the Members so that the net amount of the Regulatory Allocations and such special allocations to each such Member is zero. In addition, if in any Fiscal Year or Fiscal Period there is a decrease in partnership minimum gain, or in partner nonrecourse debt minimum gain, and application of the minimum gain chargeback requirements set forth in Section 5.03(a) or Section 5.03(b) would cause a distortion in the economic arrangement among the Members, the Members may, if they do not expect that the Partnership will have sufficient other income to correct such distortion, request the Internal Revenue Service (the "**IRS**") to waive either or both of such minimum gain chargeback requirements. If such request is granted, this Agreement shall be applied in such instance as if it did not contain such minimum gain chargeback requirement.

Section 5.04. *Tax Allocations*.

(a) The income, gains, losses, deductions and credits of the Partnership will be allocated, for federal, state and local income tax purposes, among the Members in accordance with the allocation of such income, gains, losses, deductions and credits among the Members for computing their Capital Accounts; *provided* that if any such allocation is not permitted by the Code or other applicable Law, the Partnership's subsequent income, gains, losses, deductions and credits will be allocated among the Members so as to reflect as nearly as possible the allocation set forth herein in computing their Capital Accounts.

(b) Items of Partnership taxable income, gain, loss and deduction with respect to any property contributed to the capital of the Partnership shall be allocated among the Members using the "traditional method" in accordance with Section 704(c) of the Code so as to take account of any variation between the adjusted basis of such property to the Partnership for federal income tax purposes and its Book Value. For the avoidance of doubt, items of income (i.e., interest) and gain or loss recognized by the Partnership with respect to any Contributed GenOn Claim shall be allocated pursuant to this Section 5.04(b) solely to the Member that contributed, or was deemed to contribute, such Contributed GenOn Claim to the Partnership pursuant to the Plan of Reorganization. Each Member hereby agrees to furnish to the Partnership such information and forms as required or reasonably requested in order to permit the Partnership to comply with Section 704(c) of the Code and this Section 5.04(b).

(c) If the Book Value of any Partnership asset is adjusted pursuant to Section 5.01(b), subsequent allocations of items of taxable income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Book Value using the "traditional method" in accordance with Section 704(c) of the Code.

(d) Allocations of tax credits, tax credit recapture, and any items related thereto shall be allocated to the Members as determined by the Manager taking into account the principles of Treasury Regulation Section 1.704-1(b)(4)(ii).

(e) For purposes of determining a Member's *pro rata* share of the Partnership's "excess nonrecourse liabilities" within the meaning of Treasury Regulation Section 1.752-3(a)(3), each Member's interest in income and gain shall be in proportion to the Units held by such Member.

(f) Allocations pursuant to this Section 5.04 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, Distributions or other Partnership items pursuant to any provision of this Agreement.

Section 5.05. *Indemnification and Reimbursement for Payments on Behalf of a Member*. If the Partnership is obligated to pay any amount to a Governmental Entity (or otherwise makes a payment to a Governmental Entity) that is specifically attributable to a Member or a Member's status as such (including federal income taxes as a result of Partnership obligations pursuant to Section 6225 of the Code, federal withholding taxes (including pursuant to Section 1445 or 1446 of the Code), state personal property taxes and state unincorporated business taxes, but excluding payments such as payroll taxes, withholding taxes, benefits or professional association fees and

the like required to be made or made voluntarily by the Partnership on behalf of any Member based upon such Member's status as an employee of the Partnership), then such Person shall indemnify the Partnership in full for the entire amount paid (including interest, penalties and related expenses). The Manager may offset Distributions to which a Person (or such Person's successor in interest) is otherwise entitled under this Agreement against such Person's obligation to indemnify the Partnership under this Section 5.05. In addition, notwithstanding anything to the contrary, each Member agrees that any Cash Settlement such Member is entitled to receive pursuant to Article 11 may be offset by an amount equal to such Member's obligation to indemnify the Partnership under this Section 5.05 and that such Member shall be treated as receiving the full amount of such Cash Settlement and paying to the Partnership an amount equal to such obligation. A Member's obligation to make payments to the Partnership under this Section 5.05 shall survive the termination, dissolution, liquidation and winding up of the Partnership. In the event that the Partnership has been terminated prior to the date such payment is due, such Member shall make such payment to the Manager (or its designee), which shall distribute such funds in accordance with this Agreement. The Partnership may pursue and enforce all rights and remedies it may have against each Member under this Section 5.05, including instituting a lawsuit to collect such contribution with interest calculated at a rate per annum equal to the sum of the Base Rate plus 300 basis points (but not in excess of the highest rate per annum permitted by Law). Each Member hereby agrees to furnish to the Partnership such information and forms as required or reasonably requested in order to comply with any Laws and regulations governing withholding of tax or in order to claim any reduced rate of, or exemption from, withholding to which the Member is legally entitled.

## ARTICLE 6
## MANAGEMENT; CERTAIN COVENANTS

Section 6.01. *Authority of Manager*.

(a) All management powers over the business and affairs of the Partnership shall be exclusively and absolutely vested in the Corporation, as the sole manager of the Partnership (the Corporation, in such capacity, the "**Manager**") and the Manager shall conduct, direct and exercise full control over all activities of the Partnership. The Manager shall be the "manager" of the Partnership for the purposes of the LLC Act and within the meaning of Section 18-101(10) of the LLC Act. Except as otherwise expressly provided for herein and subject to the other provisions of this Agreement, the Members hereby consent to the exercise by the Manager of all such powers and rights conferred on the Members by the LLC Act with respect to the management and control of the Partnership. Any vacancies in the position of Manager shall be filled in accordance with Section 6.04.

(b) The day-to-day business and operations of the Partnership shall be overseen and implemented by officers of the Partnership (each, an "**Officer**" and collectively, the "**Officers**"), subject to the limitations imposed by the Manager. An Officer may, but need not, be a Member. Each Officer shall be appointed by the Manager and shall hold office until his or her successor shall be duly designated and shall qualify until his or her death or until he or she shall resign or shall have been removed in the manner hereinafter provided. Any one Person may hold more than one office. Subject to the other provisions in this Agreement (including in Section 6.06 below), the salaries or other compensation, if any, of the Officers of the Partnership shall be

fixed from time to time by the Manager. The authority and responsibility of the Officers shall include, but not be limited to, such duties as the Manager may, from time to time, delegate to them and the carrying out of the Partnership's business and affairs on a day-to-day basis. The existing Officers of the Partnership as of the Effective Date shall remain in their respective positions and shall be deemed to have been appointed by the Manager. All Officers shall be, and shall be deemed to be, officers and employees of the Partnership. An Officer may also perform one or more roles as an officer of the Manager or of any Subsidiary of the Manager. Any Officer may be removed at any time, with or without cause, by the Manager.

(c) Subject to the Stockholders Agreement, the Manager shall have the power and authority to effectuate the sale, lease, transfer, exchange or other disposition of any, all or substantially all of the assets of the Partnership (including the exercise or grant of any conversion, option, privilege or subscription right or any other right available in connection with any assets at any time held by the Partnership) or the merger, consolidation, reorganization or other combination of the Partnership with or into another entity, for the avoidance of doubt, without the prior consent of any Member or any other Person being required.

(d) Notwithstanding anything in this Agreement to the contrary, the Manager shall not (and shall not have the authority to) take (or omit to take) any action in its capacity as Manager hereunder in contravention of any provision of the Stockholders Agreement or that would be limited by the Stockholders Agreement with regard to an action by the Corporation (regardless of (i) whether any provision of this Agreement otherwise purports to grant the Manager the authority to take (or omit to take) any such action and (ii) the existence or absence of any reference to the Stockholders Agreement in any provision of this Agreement).

Section 6.02. *Actions of the Manager*. The Manager may act through any Officer or through any other Person or Persons to whom authority and duties have been delegated pursuant to Section 6.06.

Section 6.03. *Resignation; No Removal*. Subject to the Stockholders Agreement, the Manager may resign at any time by giving written notice to the Members. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof by the Members, and the acceptance of the resignation shall not be necessary to make it effective. For the avoidance of doubt, the Members have no right under this Agreement to remove or replace the Manager.

Section 6.04. *Vacancies*. Vacancies in the position of Manager occurring for any reason shall be filled by Holdco (or, if Holdco has ceased to exist without any successor or assign, then by the holders of a majority in interest of the voting capital stock of Holdco immediately prior to such cessation). For the avoidance of doubt, the Members have no right under this Agreement to fill any vacancy in the position of Manager.

Section 6.05. *Transactions Between Partnership and Manager*. Subject to the Stockholders Agreement and the Certificate of Incorporation, the Manager may cause the Partnership to contract and deal with the Manager, or any Affiliate of the Manager. The Members hereby approve each of the contracts or agreements between or among the Manager, the Partnership and their respective Affiliates subject to any restrictions in the Stockholders Agreement and the Certificate of Incorporation.

Section 6.06. *Delegation of Authority*. The Manager (a) may, from time to time, delegate to one or more Persons such authority and duties as the Manager may deem advisable, and (b) may assign titles (including, without limitation, chief executive officer, president, chief executive officer, chief financial officers, chief operating officer, vice president, secretary, assistant secretary, treasurer or assistant treasurer) and delegate certain authority and duties to such Persons as the same may be amended, restated or otherwise modified from time to time. Any number of titles may be held by the same individual. The salaries or other compensation, if any, of such agents of the Partnership shall be fixed from time to time by the Manager, subject to the other provisions in this Agreement.

Section 6.07. *Fiduciary Duties; Limitation of Liability of Manager*.

(a) The Manager, in the performance of its duties as such and in no other capacity, shall owe to the Members fiduciary duties (subject to Section 7.06 (*Corporate Opportunities*)) of the type owed by the directors of a Delaware corporation to the stockholders of such corporation under the laws of the State of Delaware (assuming such corporation had in its certificate of incorporation provisions eliminating or limiting the personal liabilities of directors to the maximum extent permitted by Section 102(b)(7) of the DGCL as of the date hereof). The Officers, in the performance of their duties as such, shall owe to the Members fiduciary duties (subject to Section 7.06 (*Corporate Opportunities*)) of the type owed by the officers of a Delaware corporation to the stockholders of such corporation under the laws of the State of Delaware.

(b) Except as otherwise provided herein or in an agreement entered into by such Person and the Partnership, neither the Manager nor any of the Manager's Affiliates or Manager's officers, employees or other agents shall be liable to the Partnership, to any Member or to any other Person bound by this Agreement for any act or omission performed or omitted by the Manager in its capacity as the sole manager of the Partnership pursuant to authority granted to the Manager by this Agreement; *provided*, *however*, that such limitation of liability shall not apply to the extent the act or omission was attributable to the Manager's willful misconduct or knowing violation of Law, a violation of its fiduciary duties to the Members as provided in Section 7.01(a) (or any violation by a member of the Corporation Board of any fiduciary duty owed to the Corporation assuming the Corporation's certificate of incorporation includes provisions eliminating or limiting the personal liabilities of directors to the maximum extent permitted by Section 102(b)(7) of the DGCL as of the date hereof) or for any present or future breaches of any representations, warranties or covenants by the Manager or its Affiliates contained herein or in the other agreements with the Partnership. The Manager may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its agents, and shall not be responsible for any misconduct or negligence on the part of any such agent (so long as such agent was selected in good faith and with reasonable care), subject to the terms herein. The Manager shall be entitled to rely upon the advice of legal counsel, independent public accountants and other experts, including financial advisors, and any act of or failure to act by the Manager in good faith reliance on such advice shall in no event subject the Manager to liability to the Partnership or any Member.

Section 6.08. *Activities of the Corporation, Intermediate and Holdco*.

(a) The Corporation shall not, directly or indirectly, enter into or conduct any business or operations, other than (and in any case subject to the Stockholders Agreement) in connection with:

(i) the issuance, repurchase or redemption of Common Stock and other capital stock of the Corporation and securities convertible into or exchangeable or exercisable for such capital stock, including Common Stock;

(ii) the management of the business and affairs of the Partnership and its Subsidiaries, including the performance of the Manager's duties and obligations under this Agreement;

(iii) the ownership of the equity interests of Intermediate;

(iv) performance of the Manager's obligations under, and otherwise complying with the terms of, the Stockholders Agreement, its Organizational Documents and any agreements to which it is party;

(v) indemnification of directors, officers, employees and other service providers to the Corporation, Intermediate, Holdco or their respective Subsidiaries or the Manager; and

(vi) such activities as are incidental to the foregoing.

For the avoidance of doubt, the foregoing provisions of this Section 6.08(a) shall not restrict the activities of the Partnership and its Subsidiaries.

(b) The Corporation shall at all times be the sole member of Intermediate.

(c) Intermediate shall not, directly or indirectly, enter into or conduct any business or operations, or own any assets other than (i) as expressly contemplated or required by this Agreement or (ii) the ownership of equity interests of Holdco. Intermediate shall at all times be the sole member of Holdco.

(d) Holdco shall not, directly or indirectly, enter into or conduct any business or operations, or own any assets other than (i) as expressly contemplated or required by this Agreement or (ii) the ownership of Units.

## ARTICLE 7
## RIGHTS AND OBLIGATIONS OF MEMBERS AND MANAGER

Section 7.01. *Limitation of Liability and Duties of Members*.

(a) Except as provided in this Agreement, in the LLC Act or in another written agreement, the debts, obligations and liabilities of the Partnership, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Partnership and no Member or Manager shall be obligated personally for any such debts, obligations, contracts or liabilities of the Partnership solely by reason of being a Member or the Manager (except to the

extent and under the circumstances set forth in any non-waivable provision of the LLC Act). Notwithstanding anything contained herein to the contrary, the failure of the Partnership to observe any formalities or requirements relating to the exercise of its powers or management of its business and affairs under this Agreement or the LLC Act shall not be grounds for imposing personal liability on the Members or the Manager for liabilities of the Partnership.

(b) In accordance with the LLC Act and the Laws of the State of Delaware, a Member may, under certain circumstances, be required to return amounts previously distributed to such Member. It is the intent of the Members that no Distribution to any Member pursuant to Article 4 or 14 shall be deemed a return of money or other property paid or distributed in violation of the LLC Act. The payment of any such money or Distribution of any such property to a Member shall be deemed to be a compromise within the meaning of Section 18-502(b) of the LLC Act, and, to the fullest extent permitted by Law, any Member receiving any such money or property shall not be required to return any such money or property to the Partnership or any other Person, unless such distribution was made by the Partnership to its Members in clerical error. However, if any court of competent jurisdiction holds that, notwithstanding the provisions of this Agreement, any Member is obligated to make any such payment, such obligation shall be the obligation of such Member and not of any other Member.

Section 7.02. *Lack of Authority*. No Member has the authority or power to act for or on behalf of the Partnership, to do any act that would be binding on the Partnership or to make any expenditure on behalf of the Partnership. The Members hereby consent to the exercise by the Manager of the powers conferred on them by Law and this Agreement. A Member shall not be deemed to be participating in the control of the business of the Partnership by virtue of its possessing or exercising any rights set forth in this Agreement or the LLC Act or any other agreement relating to Partnership.

Section 7.03. *No Right of Partition*. No Member, other than the Manager in its capacity as such, shall have the right to seek or obtain partition by court decree or operation of Law of any Partnership property, or the right to own or use particular or individual assets of the Partnership.

Section 7.04. *Indemnification*.

(a) Each Person (and the heirs, executors or administrators of such Person) who was or is a party or is threatened to be made a party to, or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, investigative or otherwise, by reason of the fact that such Person is or was a manager or officer of the Partnership or is or was serving at the request of the Partnership as a manager, director or officer of another corporation, limited liability company, partnership, joint venture, trust or other enterprise (an "**Indemnitee**"), shall be indemnified and held harmless by the Partnership to the fullest extent permitted under the DGCL if the Partnership were a Delaware corporation. The right to indemnification conferred in this Section 7.04 shall also include the right to be paid by the Partnership the expenses and costs (including attorneys' fees) actually and reasonably incurred by any Indemnitee in defending or otherwise participating in any such proceeding and any appeal therefrom to the fullest extent authorized under the DGCL if the Partnership were a Delaware corporation; *provided, however*, if required by LLC Act, such payment of expenses and costs in advance of the final disposition of the proceeding shall be made only upon receipt by the

Partnership of an undertaking by or on behalf of such Indemnitee to repay all amounts advanced if it should be ultimately determined by final judicial decision from which there is no further right to appeal that such Indemnitee is not entitled to be indemnified for such expenses under this Section 7.04 or otherwise.

(b) The right to indemnification conferred in this Section 7.04 shall be a contract right between the Partnership and each Indemnitee and such rights shall continue as to an Indemnitee who has ceased to be a manager, officer, employee or agent, or if the relevant provisions of LLC Act or other applicable Law cease to be in effect. Such contract right shall vest for each Indemnitee who is a manager, officer, employee or agent at the time such Person is elected or appointed to such position, and no repeal or modification of this Section 7.04 or any such Law shall affect any such vested rights or obligations then existing with respect to any state of facts or proceeding arising after such election or appointment and prior to such repeal or modification.

(c) The Partnership may, by action of the Manager, provide indemnification to such of the employees and agents of the Partnership to such extent and to such effect as the Manager shall determine to be appropriate and authorized by LLC Act.

(d) The Partnership may purchase and maintain insurance on behalf of any Person who is or was a manager, officer, employee or agent of the Partnership, or is or was serving at the request of the Partnership as a manager, director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise against any expense, liability or loss incurred by such Person in any such capacity or arising out of such Person's status as such, whether or not the Partnership would have the power to indemnify such Person against such liability under the DGCL or this Section 7.04.

(e) The rights and authority conferred in this Section 7.04 shall not be exclusive of any other right that any Person may otherwise have or hereafter acquire. The Partnership is specifically authorized to enter into individual contracts with any or all of its managers or officers respecting indemnification and advances, to the fullest extent not prohibited by the DGCL or by any other applicable Law.

(f) Neither the amendment nor repeal of this Section 7.04, nor any amendment of this Agreement, nor, to the fullest extent permitted by LLC Act, any modification of law, shall adversely affect any right or protection of any Person granted pursuant hereto existing at, or arising out of or related to any event, act or omission that occurred prior to, the time of such amendment, repeal, adoption or modification (regardless of when any proceeding (or part thereof) relating to such event, act or omission arises or is first threatened, commenced or completed).

(g) Given that certain Jointly Indemnifiable Claims (as defined below) may arise due to the service of an Indemnitee as a manager and/or officer of the Partnership at the request of an Indemnitee-Related Entity (as defined below), the Partnership shall be fully and primarily responsible for the payment to the Indemnitee in respect of indemnification or advancement of expenses in connection with any such Jointly Indemnifiable Claims, pursuant to and in accordance with the terms of this Section 7.04, irrespective of any right of recovery an Indemnitee may have from any Indemnitee-Related Entity. Under no circumstance shall the

Partnership be entitled to any right of subrogation against or contribution by an Indemnitee-Related Entity and no right of advancement, indemnification or recovery an Indemnitee may have from any Indemnitee-Related Entity shall reduce or otherwise alter the rights of an Indemnitee or the obligations of the Partnership under this Section 7.04. In the event that an Indemnitee-Related Entity shall make any payment to the Indemnitee in respect of indemnification or advancement of expenses with respect to any Jointly Indemnifiable Claim, such Indemnitee- Related Entity making such payment shall be subrogated to the extent of such payment to all of the rights of recovery of the Indemnitee against the Partnership, and the Indemnitee shall execute all documents and instruments reasonably required and shall do all things that may be reasonably necessary to secure such rights, including the execution of such documents and instruments as may be necessary to enable such Indemnitee-Related Entity effectively to bring suit to enforce such rights. Each of the Indemnitee-Related Entities shall be third-party beneficiaries with respect to this Section 7.04(g) and entitled to enforce this Section 7.04(g).

(h) As used herein:

(i) The term "**Indemnitee-Related Entity**" means any corporation, limited liability company, partnership, joint venture, trust or other enterprise (other than the Partnership or any other corporation, partnership, joint venture, trust or other enterprise for which the Indemnitee has agreed, on behalf of the Partnership or at the Partnership's request, to serve as a manager, director, officer, employee or agent and which service is covered by the indemnity described herein) from whom an Indemnitee may be entitled to indemnification or advancement of expenses in respect of a matter with respect to which, in whole or in part, the Partnership may also have an indemnification or advancement obligation.

(ii) The term "**Jointly Indemnifiable Claims**" shall be broadly construed and shall include, without limitation, any action, suit or proceeding for which an Indemnitee shall be entitled to indemnification or advancement of expenses from both an Indemnitee-Related Entity and the Partnership pursuant to applicable Law or any agreement, certificate of incorporation, bylaws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership or comparable organizational documents of the Partnership or an Indemnitee- Related Entity, as applicable.

Section 7.05. *Members Right to Act*. For matters that require the approval of the Members, the Members shall act through meetings and written consents as described in paragraphs (a) and (b) below:

(a) Except as otherwise expressly provided by this Agreement, acts by the Manager shall be the acts of the Members, except for any matter expressly required by Law or this Agreement to be voted upon by the Members in which case Members, holding a majority of the Units (which may include, for the avoidance of doubt, the Manager if the Manager is then a Member), voting together as a single class, shall be the acts of the Members. Any Member entitled to vote at a meeting of Members or to express consent or dissent to Partnership action in writing without a meeting may authorize another person or persons to act for it by proxy. An email, facsimile or similar electronic transmission by the Member, or a photographic,

photostatic, facsimile or similar reproduction of a writing executed by the Member shall (if stated thereon) be treated as a proxy executed in writing for purposes of this Section 7.05(a). Should a proxy designate two or more Persons to act as proxies, unless that instrument shall provide to the contrary, a majority of such Persons present at any meeting at which their powers thereunder are to be exercised shall have and may exercise all the powers of voting or giving consents thereby conferred, or, if only one be present, then such powers may be exercised by that one; or, if an even number attend and a majority do not agree on any particular issue, the Partnership shall not be required to recognize such proxy with respect to such issue if such proxy does not specify how the votes that are the subject of such proxy are to be voted with respect to such issue.

(b) The actions by the Members permitted hereunder may be taken at a meeting called by the Manager, the Corporation Board or Members holding at least 20% of the outstanding Units entitled to vote on such matter on at least five (5) Business Days' prior written notice to the other Members entitled to vote, which notice shall state the purpose or purposes for which such meeting is being called. The actions taken by the Members entitled to vote or consent at any meeting (as opposed to by written consent), however called and noticed, shall be as valid as though taken at a meeting duly held after regular call and notice if (but not until), either before, at or after the meeting, the Members entitled to vote or consent as to whom it was improperly held sign a written waiver of notice or a consent to the holding of such meeting or an approval of the minutes thereof. The actions by the Members entitled to vote or consent may be taken by vote of the Members entitled to vote or consent at a meeting or by written consent, so long as such consent is signed by Members having not less than the minimum number of Units that would be necessary to authorize or take such action at a meeting at which all Members entitled to vote thereon were present and voted. Prompt notice of the action so taken, which shall state the purpose or purposes for which such consent is required and may be delivered via email, without a meeting shall be given to those Members entitled to vote or consent who have not consented in writing; *provided, however*, that the failure to give any such notice shall not affect the validity of the action taken by such written consent. Any action taken pursuant to such written consent of the Members shall have the same force and effect as if taken by the Members at a meeting thereof.

Section 7.06. *Corporate Opportunities*. The Partnership and the Members acknowledge and agree that the provisions of Article 10 (*Corporate Opportunities*) of the Certificate of Incorporation shall apply to the Members and their Affiliates and the Partnership and its Subsidiaries, as if set forth herein.

## ARTICLE 8
## BOOKS, RECORDS, ACCOUNTING AND REPORTS, AFFIRMATIVE COVENANTS

Section 8.01. *Records and Accounting*. The Partnership shall keep, or cause to be kept, appropriate books and records with respect to the Partnership's business, including all books and records necessary to provide any information, lists and copies of documents required to be provided pursuant to applicable Laws. All matters concerning (a) the determination of the relative amount of allocations and Distributions among the Members pursuant to Articles 3 and 4 and (b) accounting procedures and determinations, and other determinations not specifically and expressly provided for by the terms of this Agreement, shall be determined by the Manager,

whose determination shall be final and conclusive as to all of the Members absent manifest clerical error.

Section 8.02. *Fiscal Year*. The Fiscal Year of the Partnership shall end on December 31 of each year or such other date as may be established by the Manager or required by the Code.

## ARTICLE 9
## TAX MATTERS

Section 9.01. *Preparation of Tax Returns*.

(a) The Manager shall arrange for the preparation and timely filing of all tax returns required to be filed by the Partnership. On or before March 1, June 1, September 1, and December 1 of each Fiscal Year, the Partnership shall send to each Person who was a Member at any time during the prior quarter, an estimate of such Member's state tax apportionment information and allocations to the Members of taxable income, gains, losses, deductions and credits for the prior quarter, which estimate shall have been reviewed by the Partnership's outside tax accountants. In addition, no later than (i) April 5 following the end of the prior Fiscal Year, the Partnership shall provide to each Person that was a Member at any time during such Fiscal Year a statement showing an estimate of such Member's state tax apportionment information and such Member's estimated allocations of taxable income, gains, losses, deductions and credits for such Fiscal Year and (ii) July 31 following the end of the prior Fiscal Year, the Partnership shall send to each Person who was a Member at any time during such Fiscal Year, a statement showing such Member's final state tax apportionment information and allocations to the Members of taxable income, gains, losses, deductions and credits for such Fiscal Year and a completed IRS Schedule K-1. Each Member or the Manager, as applicable, shall notify the other Members upon receipt of any notice of tax examination of the Partnership by federal, state or local authorities. Subject to the terms and conditions of this Agreement, the Manager shall have the authority to prepare the tax returns of the Partnership using such permissible methods and elections as it determines in its reasonable discretion, including without limitation the use of any permissible method under Section 706 of the Code for purposes of determining the varying interests of its Members.

(b) Notwithstanding any other provision of this Agreement to the contrary, the Members, the Manager and the Company hereby agree that: (i) information specific to any Member and included in (x) any tax return, tax report or other tax filing of the Company or (y) any work papers related any return, report or other filing described in the preceding clause (x) is, in each case, confidential and may be commercially sensitive; (ii) no Member (and no direct or indirect owner of any Member), other than the Member to which such information specifically relates, shall be permitted to access any such information; and (iii) the Manager and the Company shall implement commercially reasonable procedures to ensure that officers, directors, employees and other agents of the Company and the Manager may access such information only to the extent necessary or advisable to permit such Persons to perform their tax-related functions on behalf of the Company and the Manager.

Section 9.02. *Tax Elections*. The Taxable Year shall be the Fiscal Year set forth in Section 8.02. The Partnership and any eligible Subsidiary shall make an election pursuant to

Section 754 of the Code and shall not thereafter revoke such election. Each Member will upon request supply any information reasonably necessary to give proper effect to any such elections.

Section 9.03. *Tax Controversies*. The Corporation shall be designated and may, on behalf of the Partnership, at any time, and without further notice to or consent from any Member, act as the "partnership representative" of the Partnership (within the meaning given to such term in Section 6223 of the Code) (the "**Partnership Representative**") for purposes of the Code. The Partnership Representative shall have the authority to designate from time to time a "**Designated Individual**" to act on behalf of the Partnership Representative, and such Designated Individual shall be subject to replacement by the Partnership Representative in accordance with Proposed Treasury Regulation section 301.6223-1. The Partnership Representative or the Designated Individual, as applicable, shall have the right and obligation to take all actions authorized and required, respectively, by the Code for the Partnership Representative and is authorized and required to represent the Partnership (at the Partnership's expense) in connection with all examinations of the Partnership's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Partnership funds for professional services reasonably incurred in connection therewith Each Member agrees to cooperate with the Partnership Representative or the Designated Individual, as applicable, and to do or refrain from doing any or all things reasonably requested by the Partnership Representative or the Designated Individual, as applicable, with respect to the conduct of such proceedings. The Partnership Representative or the Designated Individual, as applicable, shall keep all Members reasonably advised on a current basis of any contacts by or discussions with the tax authorities, the Members shall have the right to observe and participate through representatives of their own choosing (at their sole expense) in any tax proceedings, and the Partnership Representative or the Designated Individual, as applicable, shall consider in good faith any comments with respect to such tax proceedings from the Members. The Partnership Representative or Designated Individual, as applicable, may duly and timely elect under Code Section 6226 of the Code and the Treasury Regulations promulgated thereunder to require each Person who was a Member during the Taxable Year of the Partnership that was audited to personally bear any tax, interest and penalty resulting from adjustments based on such audit and, if such an election is made, shall notify each such Person (and the IRS) of their share of such audit adjustments, *provided* that the Partnership Representative or Designated Individual shall make such election under Section 6226 for the short Taxable Year ending December 31, 2018. If for any reason the Partnership is liable for a tax (including imputed underpayments), interest, addition to tax or penalty as a result of any audit (including state and local audits), each Person who was a Member during the Taxable Year of the Partnership that was audited, even if such Person is no longer a Member, shall pay to the Partnership an amount equal to such Person's proportionate share of such liability (and any expenses incurred by the Partnership in adjudicating or otherwise resolving such liability), as reasonably determined by the Partnership, based on the amount each such Person should have borne (computed at the tax rate used to compute the Partnership's liability) had the Partnership's tax return for such taxable year reflected the audit adjustment, and the expense for the Partnership's payment, adjudication or other resolution of such tax, interest, addition to tax and penalty shall be specially allocated to such Persons (or their successors) in such proportions. A Member's obligation to make payments to the Partnership under this Section 9.03 shall survive the termination, dissolution, liquidation and winding up of the Partnership. In the event that the Partnership has been terminated prior to the date such payment is due, such Member shall make

such payment to the Manager (or its designee), which shall distribute such funds in accordance with this Agreement.

## ARTICLE 10
## RESTRICTIONS ON TRANSFER OF UNITS

Section 10.01. *Transfers by Members*.

(a) Except for Exempted Transfers, no Transfer of any Units by any Member shall be permitted if such Transfer:

(i) does not also include a Transfer to the same Transferee of a number of shares of Class B Common Stock equal to the number of Units being Transferred (with such Transfer being further subject to any transfer restrictions in the Stockholders Agreement, the Certificate of Incorporation and the Bylaws); *provided* that this clause (i) shall not apply to a Transfer by Holdco of any Units;

(ii) is to a Person who is not a party to this Agreement as a Member at the time of the Transfer and does not concurrently with such Transfer become a party to this Agreement as a Member by executing a Joinder Agreement;

(iii) would not comply with U.S. federal or state securities laws or other applicable securities law;

(iv) would cause the Partnership to have, including as a result of passage of time and giving effect to the exercise, conversion or exchange of all securities convertible into, or exercisable or exchangeable for, Units or other Membership Interests, the lesser of (i) 1,950 or more holders of record of the Units or other Membership Interests or (ii) 450 holders of record of the Units or other Membership Interests who were not accredited investors (as defined in Rule 12g-1 under the Exchange Act) (or for each of (i) and (ii), 50 holders of record less than such other number of stockholders as may subsequently be set forth in Section 12(g) of the Exchange Act, Rule 12g-1 under the Exchange Act, or any successor provision or related rule promulgated under the Exchange Act as the maximum number of holders of record for a class of securities before the issuer of such securities is required to file a registration statement under the Exchange Act); *provided*, *however*, the foregoing shall not apply to any Transfer if the Corporation has otherwise become obligated to file reports under Section 13 or Section 15(d) of the Exchange Act; or

(v) would not (or the related Transfer of Class B Common Stock would not) comply with (A) the Certificate of Incorporation (including Article 4 thereof), (B) the Stockholders Agreement (including Article 4 (*Preemptive Rights; Tag-Along Rights; Drag-Along Rights*) thereof), or (C) any other transfer restrictions applicable to such Member.

(b) Except for Exempted Transfers, each Member agrees to provide reasonable prior written notice to the Partnership of any proposed Transfer of Units and to cause the proposed

Transferee(s), as a condition to such Transfer and prior to consummating the Transfer, to expressly and in writing agree to be bound by the terms of this Agreement as a "Member" by signing a Joinder Agreement, the terms of the Stockholder Agreement as a "Stockholder" by signing a joinder to the Stockholder Agreement in accordance therewith and to be bound to any other agreements executed by the holders of Units and relating to such Units in the aggregate (collectively, the "**Other Agreements**"), and shall cause the prospective Transferee to execute and deliver to the Partnership and the Corporation counterparts of, or joinders to, this Agreement, the Stockholders Agreement and any applicable Other Agreements, in each case to the extent a proposed Transferee is not then a party to this Agreement, the Stockholders Agreement or such Other Agreements, as applicable. Such notice shall include the name and address of the proposed Transferee(s) and the Units and number of shares of Common Stock proposed to be included in such Transfer and such additional information as the Partnership may reasonably request. As a further precondition to the effectiveness of any Transfer, the Transferee shall also comply with any requirements to be admitted as a Member pursuant to Article 12 (*Admission of Members*).

(c) Notwithstanding the foregoing, "Transfer" shall not include an event that terminates the existence of a Member for income tax purposes (including, without limitation, a change in entity classification of a Member under Treasury Regulations Section 301.7701-3, a sale of assets by, or liquidation of, a Member pursuant to an election under Code Sections 336 or 338, or merger, severance, or allocation within a trust or among sub-trusts of a trust that is a Member), but that does not terminate the existence of such Member under applicable state Law (or, in the case of a trust that is a Member, does not terminate the trusteeship of the fiduciaries under such trust with respect to all of the Units of such trust that is a Member).

(d) Notwithstanding anything herein to the contrary, each Member agrees that it shall not Transfer any of its Units or other Membership Interests at any time if such Transfer would cause, or would reasonably be expected to cause, the Partnership (A) to be treated as a "publicly traded partnership" or to be taxed as a corporation pursuant to Section 7704 of the Code or successor provision of the Code or (B) if the Partnership had 100 or fewer partners before giving effect to such Transfer, to have more than 100 partners after giving effect to such Transfer, in each case within the meaning of Treasury Regulations Section 1.7704-1(h)(1)(ii) (taking into account Treasury Regulations Section 1.7704-1(h)(3)); *provided, however*, that a Transfer described in the preceding clause (B) shall be permitted if the Member proposing to make such Transfer provides an opinion of counsel reasonably acceptable to the Corporation to the effect that such Transfer will not cause the Partnership to be treated as a "publicly traded partnership" or to be taxed as a corporation pursuant to Section 7704 of the Code or any successor provision thereto.

(e) Any Transfer or attempted Transfer of any Units in violation of any provision of this Agreement (including any prohibited indirect Transfers) (i) shall be void *ab initio* and (ii) the Partnership shall not record such Transfer on its books or treat any purported Transferee of such Units as the owner of such securities for any purpose.

Section 10.02. *Restrictions on Issuances; Joinder Required.*

(a) The Partnership shall not issue any Units to any Person unless such recipient executes a Joinder Agreement, a joinder to the Stockholders Agreement in accordance therewith and such other joinders to any applicable Other Agreement, in each case to the extent a proposed Transferee is not then a party to this Agreement, the Stockholders Agreement or such Other Agreements, as applicable and otherwise complies with the conditions set forth in Section 10.01(b).

(b) In the event that any Units are issued to any Person, the Corporation shall ensure that (i) if such Units are issued to a Person other than Holdco, that, in connection therewith, such Person is also issued a number of shares of Class B Common Stock equal to the number of Units issued to such Person for a purchase price equal to the par value of such shares and (ii) if such Units are issued to Holdco, that, in connection therewith, a number of shares of Class A Common Stock equal to the number of Units issued to Holdco have been issued by the Corporation to a Person or Persons.

Section 10.03. *Restricted Units Legends*.

(a) All Units issued to any Person shall bear a legend, or be evidenced by notations in a book entry system including a legend, in substantially the following form in addition to any legends provided for in the Stockholders Agreement:

> "THE SECURITIES EVIDENCED HEREBY ARE SUBJECT TO VARIOUS CONDITIONS INCLUDING CERTAIN RESTRICTIONS ON ANY OFFER, SALE, DISPOSITION, TRANSFER AND VOTING AS SET FORTH IN THE AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT, DATED AS OF DECEMBER 14, 2018 (THE "**LLC AGREEMENT**") OF GENON HOLDINGS, LLC (THE "**PARTNERSHIP**"), THE STOCKHOLDERS AGREEMENT, DATED AS OF DECEMBER 14, 2018 (THE "**STOCKHOLDERS AGREEMENT**"), BY AND AMONG GENON HOLDINGS, INC. (THE "**CORPORATION**"), INTERMEDIATE GENON HOLDCO, LLC, DIRECT GENON HOLDCO, LLC AND THE STOCKHOLDERS PARTY THERETO FROM TIME TO TIME, AND THE CERTIFICATE OF INCORPORATION AND BYLAWS OF THE CORPORATION, EACH AS MAY BE AMENDED AND MODIFIED FROM TIME TO TIME. NO REGISTRATION OR TRANSFER OF SUCH SECURITIES WILL BE MADE ON THE BOOKS AND RECORDS OF THE PARTNERSHIP OR ITS TRANSFER AGENT UNLESS AND UNTIL SUCH RESTRICTIONS SHALL HAVE BEEN COMPLIED WITH. THE PARTNERSHIP WILL FURNISH WITHOUT CHARGE TO EACH HOLDER OF RECORD OF SUCH SECURITIES A COPY OF THE LLC AGREEMENT, STOCKHOLDERS AGREEMENT, CERTIFICATE OF INCORPORATION AND BYLAWS, CONTAINING THE ABOVE REFERENCED RESTRICTIONS ON TRANSFERS AND VOTING OF SECURITIES UPON WRITTEN REQUEST TO THE PARTNERSHIP AT ITS PRINCIPAL PLACE OF BUSINESS."

(b) All Units issued to any Person, unless the Manager determines in good faith that such Units were issued in reliance on the exemption from registration under the Securities Act provided by Section 1145 of the Bankruptcy Code or another exemption such that the Transfer of

such Units are not restricted under the U.S. federal securities laws, shall bear a legend or be evidenced by notations in a book entry system including a legend, in substantially the following form:

> "THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OF 1933, AS AMENDED, OR AN EXEMPTION THEREFROM AND, IN EACH CASE, IN COMPLIANCE WITH APPLICABLE STATE SECURITIES LAWS. AS A CONDITION TO ANY TRANSFER, THE PARTNERSHIP RESERVES THE RIGHT TO REQUIRE AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE PARTNERSHIP, THAT SUCH REGISTRATION IS NOT REQUIRED."

(c) The Manager acting in good faith may make any necessary modifications to the legends set forth in this Section 10.03 for such legends to comply with applicable Law and to achieve the purpose and intent of the transfer restrictions set forth herein. If any Units cease to be subject to any and all restrictions on Transfer set forth in this Agreement, the Certificate of Incorporation, the Bylaws and the Stockholders Agreement, the Partnership, upon the written request of the holder thereof, shall amend the notations in the book entry system (or, if certificated, issue to such holder a new certificate) evidencing such Units accordingly. As a condition precedent to any Transfer, the Manager may require an opinion of legal counsel reasonably satisfactory to it that registration under the Securities Act and qualification under the "blue sky" Laws of the U.S. states is not required.

Section 10.04. *Rights and Obligations*. Any Member who shall Transfer any Units in a manner in accordance with this Agreement shall cease to be a Member with respect to such Units and shall no longer have any rights or privileges, or, except as set forth in Section 5.05 and this Section 10.04, duties, liabilities or obligations, of a Member with respect to such Units (it being understood, however, that the applicable provisions of Section 6.07 and 7.04 shall continue to inure to such Person's benefit and such Member shall continue to be bound by the provisions of Section 16.03). Nothing contained herein shall relieve any Member who Transfers any Units in the Partnership from any liability of such Member to the Partnership with respect to such Units that may exist on the date the transferee of Units is admitted as a Substituted Member in accordance with the provisions of Article 12 or that is otherwise specified in the LLC Act and incorporated into this Agreement or for any liability to the Partnership or any other Person for any materially false statement made by such Member (in its capacity as such) or for any breaches of any representations, warranties or covenants by such Member (in its capacity as such) contained herein or in the other agreements with the Partnership. For the avoidance of doubt, so long as a Person who was a Member before a Transfer continues to hold Units after such Transfer shall continue to be a Member with respect to the Units held by such Member after giving effect to such Transfer.

Section 10.05. *Spousal Consent*. In connection with the execution and delivery of this Agreement, any Member who is a natural person will deliver to the Partnership an executed

consent from such Member's spouse (if any) in the form of Exhibit B attached hereto. If, at any time subsequent to the date of this Agreement such Member becomes legally married (whether in the first instance or to a different spouse), such Member shall cause his or her spouse to execute and deliver to the Partnership a consent in the form of Exhibit B attached hereto. Such Member's non-delivery to the Partnership of an executed consent in the form of Exhibit B at any time shall constitute such Member's continuing representation and warranty that such Member is not legally married as of such date.

Section 10.06. *Drag-Along Sales*. In the event of a Drag-Along Sale, each Member agrees to comply with its obligations pursuant to Article 4 (*Preemptive Rights; Tag-Along Rights; Drag-Along Rights*) of the Stockholders Agreement. In connection with a Drag-Along Sale that complies with Article 4 of the Stockholders Agreement, if requested by the purchaser(s) in the Drag-Along Sale, the Partnership may redeem all of the Units held by a Member (and in such case the Corporation shall redeem all of the shares of Class B Common Stock forming such Member's Paired Interests) for a redemption price per Unit equal to the purchase price payable in respect of a Paired Interest pursuant to the Drag-Along Sale (giving effect to the terms and conditions of the Stockholders Agreement) (the "**Drag-Along Per Share Consideration**"), it being understood and agreed that the shares of Class B Common Stock forming part of the Paired Interests shall be redeemed by the Corporation for no consideration (a "**Drag-Along Redemption**"). In the event of any Drag-Along Redemption, the Partnership shall give written notice of such Drag-Along Redemption not later than five (5) Business Days prior to the consummation of such Drag-Along Redemption, and such notice shall identify the Drag-Along Per Share Consideration for such Drag-Along Redemption. If requested by the Partnership, any Member whose Units are subject to a Drag-Along Redemption shall deliver to a representative of the Partnership or the Corporation the certificates and other applicable instruments representing the Units and Class B Common Stock that are subject to such Drag-Along Redemption, together with any other documents reasonably necessary to give effect to such Drag-Along Redemption and wire transfer or other instructions for payment of the Drag-Along Per Share Consideration for the Units and shares of Class B Common Stock being redeemed in such Drag-Along Redemption. If a Member should fail to deliver such certificates or other applicable documents to the Corporation or the Partnership, the Corporation and the Partnership shall nonetheless cause the books and records of the Corporation and the Partnership to show that such Units and shares of Class B Common Stock have been redeemed and shall nonetheless pay to such Member the Drag-Along Per Share Consideration for such Units and shares of Class B Common Stock.

## ARTICLE 11
## REDEMPTION AND EXCHANGE RIGHTS

Section 11.01. *Redemption Right of a Member*.

(a) Subject to Section 10.01(d), Section 11.01(g) and the other provisions of this Section 11.01, each Member (other than Holdco) shall be entitled to cause the Partnership to redeem (a "**Redemption**") its Paired Interests in whole or in part (the "**Redemption Right**") at any time and from time to time following the Effective Date. A Member desiring to exercise its Redemption Right (each, a "**Redeeming Member**") shall exercise such right by giving written notice (the "**Redemption Notice**") to the Partnership and the Corporation. The Redemption Notice shall specify the number of Paired Interests (including the number of Units and

corresponding shares of Class B Common Stock, the "**Redeemed Interests**") that the Redeeming Member intends to have the Partnership redeem. Within five (5) Business Days of the Corporation's receipt of the Redemption Notice (the "**Corporation Election Deadline**"), the Corporation shall notify the Partnership and the Redeeming Member in writing (the "**Settlement Election Notice**") whether the Corporation has elected to have the Redemption consummated pursuant to a Share Settlement or (subject to Section 11.01(b)) a Cash Settlement. If the Settlement Election Notice specifies that the Corporation has elected a Share Settlement, the Redemption shall be consummated in accordance with the provisions of Sections 11.01(c)-11.01(e) on a date no later than five (5) Business Days following the date on which the Settlement Election Notice is delivered (such date, or such other date as is mutually agreed by the Manager and the Redeeming Member, the "**Redemption Date**"). If the Corporation fails to deliver a Settlement Election Notice by the Corporation Election Deadline, the Corporation shall be deemed to have elected a Share Settlement and the Redemption shall be consummated as a Share Settlement in accordance with the provisions of Sections 11.01(c)-11.01(e) on a date no later than five (5) Business Days following the Corporation Election Deadline or such other date as is mutually agreed by the Manager and the Redeeming Member (and such date shall be deemed to be the "Redemption Date" for purposes of this Agreement).

(b) A Redemption shall not be consummated pursuant to a Cash Settlement unless such Cash Settlement has been approved by (i) the Corporation Board prior to issuing the Settlement Election Notice and (ii) the holders of at least a majority of the shares of Common Stock held by stockholders other than the Redeeming Member or any of its Related Persons, in each case in accordance with this Agreement, the Certificate of Incorporation, the Bylaws and the Stockholders Agreement (the approval pursuant to the foregoing clause (ii), the "**Cash Election Approval**"). If the Settlement Election Notice specifies that the Corporation has elected a Cash Settlement, the Corporation shall (i) cause the Unit Redemption Price to be determined pursuant to Section 15.01(c) (provided that if the Fair Market Value for purposes of the Unit Redemption Price is to be determined pursuant to an Independent Valuation, the Corporation shall use its commercially reasonably efforts to cause such Independent Valuation to be completed (and the resulting Fair Market Value to be determined) no later than forty-five (45) Business Days after the date of the Settlement Election Notice) and (ii) seek to obtain the Cash Election Approval by no later than fifteen (15) Business Days following the date that the Unit Redemption Price has been determined (the "**Cash Election Approval Deadline Date**"). No later than two (2) Business Days after the Cash Election Approval Deadline Date, the Corporation shall notify (the "**Cash Election Approval Decision Notice**") the Partnership, the Manager and the Redeeming Member in writing as to whether or not the Cash Election Approval has been obtained by the Cash Election Approval Deadline Date (and such notice shall include, if the Cash Election Approval has been obtained, the applicable Unit Redemption Price). If the Cash Election Approval has been obtained by the Cash Election Approval Deadline Date, the Redeeming Member shall be entitled to withdraw its Redemption request and its Redemption Notice by written notice (the "**Redemption Withdrawal Notice**") to the Partnership, the Manager and the Corporation within five (5) Business Days of its receipt of the Cash Election Approval Decision Notice (the "**Withdrawal Deadline**"). If the Redeeming Member fails to deliver a Redemption Withdrawal Notice by the Withdrawal Deadline, the Redeeming Member shall be deemed to have accepted Cash Settlement of the Redemption (at the Unit Redemption Price determined above) and the Redemption shall be consummated as a Cash Settlement in accordance with the provisions of Sections 11.01(c)-11.01(e) on a date no later than five (5) Business Days following

the date of the Withdrawal Deadline or such other date as is mutually agreed by the Manager and the Redeeming Member (and such date shall be deemed to be the "Redemption Date" for purposes of this Agreement). For the avoidance of doubt, any Cash Election Approval obtained after the Cash Election Approval Deadline Date shall be invalid and the Cash Election Approval shall be deemed not to have been received. If the Redeeming Member delivers a Redemption Withdrawal Notice, the Redemption Notice shall be deemed to be withdrawn and the Redemption shall not occur (for the avoidance of doubt, without limiting the Redeeming Member from submitting a Redemption Notice in the future with respect to any of its Paired Interests, in which case the provisions of this Article 11 shall again apply). If the Cash Election Approval has not been obtained by the Cash Election Approval Deadline Date, the Redemption shall be consummated as a Share Settlement in accordance with the provisions of Sections 11.01(c)-11.01(e) on a date no later than five (5) Business Days following the date of the Cash Election Approval Decision Notice or such other date as is mutually agreed by the Manager and the Redeeming Member (and such date shall be deemed to be the "Redemption Date" for purposes of this Agreement).

(c) On the Redemption Date:

(i) the Redeeming Member shall transfer and surrender, free and clear of all liens and encumbrances (other than those imposed under this Agreement, the Organizational Documents or applicable securities law), the Redeemed Interests to the Partnership;

(ii) the Partnership shall:

(A) cancel the Units included as part of such Redeemed Interests;

(B) transfer to the Redeeming Member the consideration to which the Redeeming Member is entitled under Section 11.01(a) or Section 11.01(b) (as applicable); and

(C) if the Units included as part of such Redeemed Interests are certificated, issue to the Redeeming Member a certificate for a number of Units equal to the difference (if any) between the number of Units evidenced by the certificate surrendered by the Redeeming Member pursuant to clause (i) of this Section 11.01(c) and the Redeemed Interests;

(iii) the Corporation shall cancel for no consideration the shares of Class B Common Stock included as part of such Redeemed Interests; and

(iv) the Redemption shall be deemed to be effective as of immediately prior to the close of business on such Redemption Date.

(d) The number of shares of Class A Common Stock or the Redeemed Interests Equivalent that a Redeeming Member is entitled to receive pursuant to Section 11.01(a) or Section 11.01(b) (as applicable) shall not be adjusted on account of any Distributions previously made with respect to the Redeemed Interests or dividends previously paid with respect to Class A Common Stock. For the avoidance of doubt, the Redeeming Member shall

remain the record holder of the Redeemed Interests until the effectiveness of the Redemption in accordance with Section 11.01(c)(iv) and shall be entitled to receive all Distributions for which the record date occurred prior to the Redemption. In the event a Redeeming Member received (or is entitled to receive because the record date occurred prior to the Redemption) a Distribution from the Partnership in respect of its Redeemed Interests, such Redeeming Member shall not be entitled (in respect of the Class A Common Stock received by such Redeeming Member in the Redemption, if applicable) to receive any dividend paid by the Corporation on the Class A Common Stock to the extent that such dividend is a dividend of amounts received by Holdco from the Partnership as a Distribution in connection with the Distribution that the Redeeming Member received (or is entitled to receive) (such dividend that the Redeeming Member is not entitled to receive, a "**Prohibited Dividend**"); *provided* that if the Corporation is required by Law to pay such Prohibited Dividend to the Redeeming Member in respect of the Class A Common Stock received by such Redeeming Member in the Redemption, the Redeeming Member shall repay such Prohibited Dividend to the Corporation immediately after receipt from the Corporation (and the Corporation shall be permitted, to the greatest extent permitted by Law, to set off the Corporation's obligation to pay such Prohibited Dividend to the Redeeming Member with the Redeeming Member's obligation to repay such Prohibited Dividend to the Corporation).

(e) In the case of a Share Settlement, in the event of a reclassification or other similar transaction as a result of which the shares of Class A Common Stock are converted into another security, then in exercising its Redemption Right a Redeeming Member shall be entitled to receive the amount of such security that the Redeeming Member would have received if such Redemption Right had been exercised and the Redemption Date had occurred immediately prior to the record date of such reclassification or other similar transaction.

(f) A Redemption Right may not be exercised at any time that the Corporation (or Intermediate or Holdco) holds more than a *de minimis* amount of cash or other assets (other than (i) equity interests in Intermediate, Holdco or the Partnership, (ii) cash received in a Corporation Tax Distribution which will be utilized to fulfill the Corporation's tax obligations, (iii) cash which will be utilized to pay Partnership-Related Expenses or (iv) cash advances of Redemption Expenses (as defined in the Stockholders Agreement)). If a Member delivers a Redemption Notice at any such time, such Redemption Notice shall be deemed to have been delivered only as of immediately after each of Holdco, Intermediate and the Corporation (as applicable) has taken the following actions: Holdco shall promptly distribute any applicable cash or other assets to Intermediate, Intermediate shall promptly distribute any applicable cash or assets to the Corporation, and the Corporation shall promptly distribute all such cash or assets to holders of shares of Class A Common Stock (in each case, other than (i) cash received in a Corporation Tax Distribution which will be utilized to fulfill the Corporation's tax obligations, (ii) cash which will be utilized to pay Partnership-Related Expenses or (iii) cash advances of Redemption Expenses (as defined in the Stockholders Agreement)).

(g) Notwithstanding anything to the contrary in this Section 11.01, in the event a Redeeming Member represents and warrants to the Partnership and the Corporation in its Redemption Notice (i) that such Redeeming Member is exercising its Redemption Right in connection with the sale of its Redeemed Interests to a *bona fide* third party that is not a Related Person of such Redeeming Member (a "**Third Party Purchaser**") and desires to effectuate a

Share Settlement so that it may deliver to the Third Party Purchaser the Redeemed Interests in the form of shares of Class A Common Stock upon the consummation of such sale, and (ii) as to the purchase price to be paid by the Third Party Purchaser with respect to the Redeemed Interests in such sale (the "**Third Party Purchase Price**"), then the Corporation shall within five (5) Business Days of the Corporation's receipt of the Redemption Notice notify the Partnership and the Redeeming Member in writing (the "**Third Party Purchase Election Notice**") whether the Corporation has elected to have the Redemption consummated pursuant to a Share Settlement or for a cash payment equal to the Third Party Purchase Price (which election shall be made by the Corporation Board, excluding the vote of any director appointed by, or otherwise affiliated with, the Redeeming Member or any of its Related Persons, and for the avoidance of doubt, shall not require any vote of the Corporation's stockholders), and in the case the Corporation has elected to pay the Third Party Purchase Price the procedures in Section 11.01(b) shall not apply (provided that if the Corporation elects a Share Settlement or fails to deliver a Third Party Purchase Election Notice within such five (5) Business Day period (in which case the Corporation shall be deemed to have elected a Share Settlement), the Share Settlement shall be consummated as set forth in Section 11.01(a) and the other applicable provisions of this Section 11.01). If the Corporation elects to pay the Third Party Purchase Price, the Redemption shall be consummated in accordance with the provisions of Sections 11.01(c)-11.01(e) (with any references to the consideration payable to the Redeeming Member in such Sections to be deemed to refer to the Third Party Purchase Price) on a date no later than five (5) Business Days following the last day of such five (5) Business Day period or such other date as is mutually agreed by the Manager and the Redeeming Member (and such date shall be deemed to be the "Redemption Date" for purposes of this Agreement). The Redeeming Member shall consummate the sale of the shares of Class A Common Stock received pursuant to the Share Settlement no later than 30 days (or if such sale is subject to the receipt of regulatory approvals, such 30 day period will be extended until five Business Days after such regulatory approvals are received, but such extension shall not exceed 150 days) after the consummation of such Share Settlement; *provided* that in no event shall the price per share obtained by the Redeeming Member in such sale be less than the price set forth in the Redemption Notice.

(h) Notwithstanding anything to the contrary in this Section 11.01, (i) for the avoidance of doubt, a Redemption Right may not be exercised, and a Redemption may not be consummated, except in compliance with Section 10.01(d), (ii) the Corporation Board may delay the consummation of any Redemption for a reasonable period if necessary or advisable (as determined by the Corporation Board in its reasonable discretion, provided that such delay shall not be in excess of fifteen (15) Business Days from the date such Redemption would otherwise have been consummated pursuant to the applicable provision of this Section 11.01) to permit the Corporation Board to determine, in consultation with outside counsel, whether a Redemption may be consummated in compliance with Section 10.01(d), and (iii) if a Member delivers a Redemption Notice and the consummation of the Redemption to which such Redemption Notice relates by Share Settlement would be prohibited under Section 10.01(d), (x) such Redemption Notice shall be null and void and (y) the Partnership shall not be obligated to consummate such Redemption (for the avoidance of doubt, without limiting such Member from submitting a Redemption Notice in the future with respect to any of its Paired Interests, in which case the provisions of this Section 11.01 shall again apply).

Section 11.02. *Contribution of the Share Settlement; Issuance to Holdco*. In connection with the consummation of a Redemption pursuant to a Share Settlement, on the Redemption Date (i) the Corporation shall contribute to Intermediate, Intermediate shall contribute to Holdco, and Holdco shall contribute to the Partnership, the applicable number of shares of Class A Common Stock the Redeeming Member is entitled to receive, and (ii) the Partnership shall thereafter (A) transfer such shares of Class A Common Stock to the Redeeming Member in accordance with Section 11.01(c)(ii)(B) and (B) issue to Holdco a number of Units equal to the number of Redeemed Interests surrendered by the Redeeming Member.

Section 11.03. *Direct Exchange with Holdco*. Notwithstanding anything to the contrary in this Article 11, in the event of a Share Settlement, the Corporation may, as determined by the Corporation Board (in accordance with the Certificate of Incorporation, the Bylaws and the Stockholders Agreement), elect to effect on the Redemption Date the exchange of Redeemed Interests for the Share Settlement through a direct exchange of such Redeemed Interests and such consideration between the Redeeming Member and Holdco (a "**Direct Exchange**"). Upon such Direct Exchange pursuant to this Section 11.03, Holdco shall acquire the Redeemed Interests and shall be treated for all purposes of this Agreement as the owner of such Units, and the Corporation shall cancel for no consideration the shares of Class B Common Stock included as part of such Redeemed Interests. In connection with the consummation of Direct Exchange, the Corporation shall contribute to Intermediate, and Intermediate shall contribute to Holdco, the applicable number of shares of Class A Common Stock the Redeeming Member is entitled to receive. A Direct Exchange shall be consummated pursuant to the same timeframe and in the same manner as the relevant Redemption would have been consummated.

Section 11.04. *Reservation of Shares of Class A Common Stock; Listing; Certificate of the Corporation*. At all times the Corporation shall reserve and keep available out of its authorized but unissued Class A Common Stock, solely for the purpose of issuance upon a Redemption or Direct Exchange, such number of shares of Class A Common Stock as shall be issuable upon any such Redemption or Direct Exchange pursuant to Share Settlements; *provided* that nothing contained herein shall be construed to preclude the Corporation from satisfying its obligations in respect of any such Redemption or Direct Exchange by delivery of purchased Class A Common Stock (which may or may not be held in the treasury of the Corporation). The Corporation covenants that all Class A Common Stock issued upon a Redemption or Direct Exchange will, upon issuance, be validly issued, fully paid and non-assessable. The provisions of this Article 11 shall be interpreted and applied in a manner consistent with the corresponding provisions of the Corporation's certificate of incorporation.

Section 11.05. *Effect of Exercise of Redemption or Exchange Right*. This Agreement shall continue notwithstanding the consummation of a Redemption or Direct Exchange and all governance or other rights set forth herein shall be exercised by the remaining Members and the Redeeming Member (to the extent of such Redeeming Member's remaining interest in the Partnership). No Redemption or Direct Exchange shall relieve such Redeeming Member of any prior breach of this Agreement.

Section 11.06. *Tax Treatment*. Unless otherwise required by applicable Law, the parties hereto acknowledge and agree a Redemption or a Direct Exchange, as the case may be, shall be

treated as a direct exchange between Holdco and the Redeeming Member for U.S. federal and applicable state and local income tax purposes.

Section 11.07. *Certain Required Adjustments*. There shall be no subdivision (by any stock or unit split, stock or unit dividend or distribution, reclassification, reorganization, recapitalization or otherwise) or combination (by reverse stock or unit split, reclassification, reorganization, recapitalization or otherwise) of the shares of Class B Common Stock or Units unless a substantively identical subdivision or combination of the Class A Common Stock is concurrently effectuated. There shall be no subdivision (by any stock or unit split, stock or unit dividend or distribution, reclassification, reorganization, recapitalization or otherwise) or combination (by reverse stock or unit split, reclassification, reorganization, recapitalization or otherwise) of the shares of Class A Common Stock unless a substantively identical subdivision or combination of the Class A Common Stock and Units is concurrently effectuated. The Corporation shall not redeem or repurchase any shares of Class A Common Stock unless there is a corresponding repurchase or redemption of Units by the Partnership from Holdco, except as set forth in Article 8 of the Stockholders Agreement. For the avoidance of doubt, it is the intent of this Section 11.07 to ensure that (i) the aggregate number of outstanding shares of Class A Common Stock equals the number of Units held by Holdco and (ii) the aggregate number of outstanding shares of Class B Common Stock equals the number of Units held by Persons other than Holdco.

Section 11.08. *Share Settlement Legends*. If in the good faith judgment of the Corporation or the Partnership any of the shares of Class A Common Stock issued as a Share Settlement are restricted securities or otherwise require a legend to be provided, such legend shall be included on any certificates of such shares or any book-entry entitlement of such shares. Such legend may be in substance similar to the legend set forth in Section 10.03.

Section 11.09. *Acknowledge of Prohibited Distributions*. In the event of a Class A Redemption (as defined in the Stockholders Agreement) pursuant to the Stockholders Agreement, each applicable Member acknowledges that it is not entitled to receive any Prohibited Distributions (as defined in the Stockholders Agreement).

## ARTICLE 12
## ADMISSION OF MEMBERS

Section 12.01. *Substituted Members*. Subject to the provisions of Article 10 hereof, in connection with the Transfer of a Unit, the Transferee shall become a Substituted Member in respect of the Units Transferred on the effective date of such Transfer, which effective date shall not be earlier than the date of compliance with the conditions to such Transfer, and such Transfer and the admission of such Substituted Member shall be shown on the books and records of the Partnership.

Section 12.02. *Additional Members*. Subject to the provisions of Article 10 hereof, any Person that is not a Member pursuant to the Plan of Reorganization may be admitted to the Partnership as an additional Member (any such Person, an "**Additional Member**") only upon furnishing to the Manager:

(a) a duly executed Joinder Agreement, a joinder to the Stockholders Agreement and counterparts to any applicable Other Agreements; and

(b) such other documents or instruments as may be reasonably necessary or appropriate to effect such Person's admission as a Member (including entering into such documents as may reasonably be requested by the Manager).

Such admission shall become effective on the date on which the Manager determines in its sole and reasonable discretion that such conditions have been satisfied and when any such admission is shown on the books and records of the Partnership.

## ARTICLE 13
## WITHDRAWAL AND RESIGNATION; TERMINATION OF RIGHTS

Section 13.01. *Withdrawal and Resignation of Members*. Except in the event of Transfers pursuant to Section 10.04, no Member shall have the power or right to withdraw or otherwise resign as a Member from the Partnership prior to the dissolution and winding up of the Partnership pursuant to Article 14. Any Member, however, that attempts to withdraw or otherwise resign as a Member from the Partnership without the prior written consent of the Manager upon or following the dissolution and winding up of the Partnership pursuant to Article 14, but prior to such Member receiving the full amount of Distributions from the Partnership to which such Member is entitled pursuant to Article 14, shall be liable to the Partnership for all damages (including all lost profits and special, indirect and consequential damages) directly or indirectly caused by the withdrawal or resignation of such Member. Upon a Transfer of all of a Member's Units in a Transfer permitted by this Agreement, subject to the provisions of Section 10.04, such Member shall cease to be a Member.

## ARTICLE 14
## DISSOLUTION AND LIQUIDATION

Section 14.01. *Dissolution*. The Partnership shall not be dissolved by the admission of Additional Members or Substituted Members or the attempted withdrawal, removal, dissolution, bankruptcy or resignation of a Member. The Partnership shall dissolve, and its affairs shall be wound up, upon the first of the following to occur:

(a) subject to the Stockholders Agreement, the decision of the Manager;

(b) a dissolution of the Partnership under Section 18-801(4) of the LLC Act, unless the Partnership is continued without dissolution pursuant thereto; or

(c) the entry of a decree of judicial dissolution of the Partnership under Section 18-802 of the LLC Act.

Except as otherwise set forth in this Article 14, the Partnership is intended to have perpetual existence. An Event of Withdrawal shall not in and of itself cause a dissolution of the Partnership, and the Partnership shall continue in existence subject to the terms and conditions of this Agreement.

Section 14.02. *Winding up and Termination*. Subject to Section 14.05, on dissolution of the Partnership, the Manager shall act as liquidating trustee or may appoint one or more Persons as liquidating trustee (each such Person, a "**liquidator**"). The liquidators shall proceed diligently to wind up the affairs of the Partnership and make final distributions as provided herein and in the LLC Act. The costs of liquidation shall be borne as a Partnership expense. Until final distribution, the liquidators shall continue to operate the Partnership properties with all of the power and authority of the Manager. The steps to be accomplished by the liquidators are as follows:

(a) as promptly as possible after dissolution and again after final liquidation, the liquidators shall cause a proper accounting to be made by a recognized firm of certified public accountants of the Partnership's assets, liabilities and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable;

(b) the liquidators shall pay, satisfy or discharge from Partnership funds, or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash fund for contingent, conditional and liabilities in such amount and for such term as the liquidators may reasonably determine) all of the debts, liabilities and obligations of the Partnership; and

(c) all remaining assets of the Partnership shall be distributed to the Members in accordance with Article 4 by the end of the Taxable Year during which the liquidation of the Partnership occurs (or, if later, by ninety (90) days after the date of the liquidation).

The distribution of cash and/or property to the Members in accordance with the provisions of this Section 14.02 and Section 14.03 below constitutes a complete return to the Members of their Capital Contributions, a complete distribution to the Members of their interest in the Partnership and all the Partnership's property and constitutes a compromise to which all Members have consented within the meaning of the LLC Act. To the extent that a Member returns funds to the Partnership, it has no claim against any other Member for those funds.

Section 14.03. *Deferment; Distribution in Kind*. Notwithstanding the provisions of Section 14.02, but subject to the order of priorities set forth therein, if upon dissolution of the Partnership the liquidators determine that an immediate sale of part or all of the Partnership's assets would be impractical or would cause undue loss (or would otherwise not be beneficial) to the Members, the liquidators may, in their sole discretion, defer for a reasonable time the liquidation of any assets except those necessary to satisfy Partnership liabilities (other than loans to the Partnership by Members) and reserves. Subject to the order of priorities set forth in Section 14.02, the liquidators may, in their sole discretion, distribute to the Members, in lieu of cash, either (a) all or any portion of such remaining Partnership assets in-kind, (b) as tenants in common and undivided interests in all or any portion of such Partnership assets or (c) a combination of the foregoing. Any such Distributions in kind shall be subject to (y) such conditions relating to the disposition and management of such assets as the liquidators deem reasonable and equitable and (z) the terms and conditions of any agreements governing such assets (or the operation thereof or the holders thereof) at such time. Any Partnership assets distributed in kind will first be written up or down to their Fair Market Value, thus creating Profit

or Loss (if any), which shall be allocated in accordance with Article 5. The liquidators shall determine the Fair Market Value of any property distributed in accordance with the valuation procedures set forth in Article 15.

Section 14.04. *Cancellation of Certificate*. On completion of the winding up of the Partnership as provided herein, the Partnership is terminated (and the Partnership shall not be terminated prior to such time), and the Manager (or such other Person or Persons as the LLC Act may require or permit) shall file a certificate of cancellation of the Certificate with the Secretary of State of Delaware, cancel any other filings made pursuant to this Agreement that are or should be canceled and take such other actions as may be necessary to terminate the Partnership. The Partnership shall continue in existence for all purposes of this Agreement until it is terminated pursuant to this Section 14.04.

Section 14.05. *Reasonable Time for Winding Up*. A reasonable time shall be allowed for the orderly winding up of the business and affairs of the Partnership and the liquidation of its assets pursuant to Section 14.02 and 14.03 in order to minimize any losses otherwise attendant upon such winding up.

Section 14.06. *Return of Capital*. The liquidators shall not be personally liable for the return of Capital Contributions or any portion thereof to the Members (it being understood that any such return shall be made solely from Partnership assets).

## ARTICLE 15
## DETERMINATION OF FAIR MARKET VALUE

Section 15.01. *Fair Market Value*. As used in this Agreement, "**Fair Market Value**" shall have such definitions and be determined as set forth below:

(a) With respect to a specific Partnership asset, Fair Market Value of such Partnership asset will mean the amount which the Partnership would receive in an all-cash sale of such asset in an arms-length transaction with a willing unaffiliated third party, with neither party having any compulsion to buy or sell, consummated on the day immediately preceding the date on which the event occurred which necessitated the determination of the Fair Market Value (and after giving effect to any transfer taxes payable in connection with such sale), as such amount is determined by the Manager (or, if pursuant to Section 14.02, the liquidators) in its good faith judgment using all factors, information and data it deems to be pertinent.

(b) With respect to a share of Class A Common Stock, Fair Market Value with respect to a particular date shall mean:

(i) if the Class A Common Stock (or any class of stock into which it has been converted) is listed on a National Securities Exchange, the arithmetic average of the volume-weighted average prices for a share of Class A Common Stock on the National Securities Exchange on which the Class A Common Stock trades or is quoted, as reported by Bloomberg, L.P., or its successor, for each of the five (5) consecutive full Trading Days ending on and including the second Trading Day immediately prior to such valuation date, subject to appropriate and equitable adjustment for any stock splits,

reverse splits, stock dividends or similar events affecting the Class A Common Stock or any ex-dividend adjustments during the relevant period; or

(ii) if the Class A Common Stock (or any class of stock into which it has been converted) is not listed on a National Securities Exchange, such fair market value as the Manager shall reasonably determine in good faith; *provided* in the case of this clause (ii), the Corporation Board may authorize the Manager to determine the Fair Market Value based on the most recent independent third-party valuation provided to the Corporation or the Partnership by a valuation firm or financial advisor retained by the Corporation or the Partnership (e.g. in connection with an Independent Valuation) if such valuation is not more than six months old.

(c) With respect to a Unit, Fair Market Value shall mean the value of a share of Class A Common Stock as determined pursuant to Section 15.01(b)(i) (if applicable) or otherwise by an independent third-party accounting, valuation, appraisal or investment banking firm of national standing mutually selected by the Redeeming Member and Corporation Board (excluding the vote of any member(s) of the Corporation Board appointed by the Redeeming Member or any of its Related Persons or otherwise Affiliated with the Redeeming Member or any of its Related Persons) (an "**Independent Valuation**").

In connection with any Independent Valuation, (i) the Corporation and the Partnership shall, and shall cause their Subsidiaries to, provide to the Person conducting such Independent Valuation all information relating to the business, operations, financial condition and prospects of the Corporation and the Partnership and their respective Subsidiaries as such Person may reasonably request and (ii) the Corporation and the Redeeming Member shall each bear one-half of the fees and expenses of the independent third-party accounting, valuation, appraisal or investment banking firm selected as set forth above.

## ARTICLE 16
## GENERAL PROVISIONS

Section 16.01. *Representations and Warranties*. Unless it is receiving its Units pursuant to the Plan of Reorganization, each Member represents and warrants to the Partnership and each other Member, and each Transferee or recipient of Units represents and warrants to the Partnership and each other Member, upon the Transfer of Units to, or receipt of Units by, such Person, that:

(a) such Member is acquiring the Units being acquired by it for investment and not with a view to distributing all or any part thereof in any transactions which would constitute a "distribution" within the meaning of the Securities Act;

(b) such Member acknowledges that the Units have not been registered under the Securities Act or any state securities Law, and the Partnership is under no obligation to file a registration statement with the SEC or any state securities commission with respect to the Units;

(c) such Member is able to bear the complete loss of his, her or its investment in the Units;

(d) such Member or entity is an "accredited investor" (as defined in Rule 501(a) of Regulation D promulgated under the Securities Act) or a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act);

(e) such Member understands that the exemption from registration afforded by Rule 144 (the provisions of which are known to such person or entity) promulgated by the SEC under the Securities Act depends upon the satisfaction of various conditions, that such exemption is currently not available and that, if applicable, Rule 144 may in many instances afford the basis for sales only in limited amounts;

(f) such Member, in making his, her or its decision to invest in the Units, (i) has relied upon an independent investigation made by such Member and his, her or its representatives (including financial, tax and legal advisors) to the extent believed to be appropriate by such Member and (ii) has been given the opportunity to examine all documents and to ask questions of, and receive answers from, the Partnership and its representatives concerning the business of the Partnership and the terms and conditions of such Member's purchase of his, her or its Units;

(g) such Member is duly authorized to join in this Agreement and the Person executing this Agreement on its behalf is duly authorized to do so;

(h) avoidance of the 100-partner limitation in Treasury regulations Section 1.7704-1(h)(1)(ii) is not a principal purpose of the use of such Member as the holder of Units in the Partnership.

(i) the execution, delivery and performance of this Agreement have been duly authorized by such Member and do not require such Member to obtain any consent or approval that has not been obtained and do not contravene or result in a default under any provision of any Law or regulation applicable to such Member or other governing documents or any agreement or instrument to which such Member is a party or by which such Member is bound; and

(j) this Agreement is valid, binding and enforceable against such Member (including, in the case of a Member that is a trust, the trust property) in accordance with its terms as limited by (A) applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, or other laws of general application relating to or affecting the enforcement of creditors' rights generally or (B) laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

Section 16.02. *Power of Attorney; Proxy*.

(a) Each Member hereby constitutes and appoints the Manager (or the liquidator, if applicable) with full power of substitution, as his, her or its true and lawful agent and attorney-in-fact, with full power and authority in his or her name, place and stead, to: execute, swear to, acknowledge, deliver, file and record in the appropriate public offices (i) this Agreement, all certificates and other instruments and all amendments thereof which the Manager deems appropriate or necessary to form, qualify, or continue the qualification of, the Partnership as a

limited liability company in the State of Delaware and in all other jurisdictions in which the Partnership may conduct business or own property; (ii) all instruments which the Manager deems appropriate or necessary to reflect any amendment, change, modification or restatement of this Agreement in accordance with its terms; (iii) all conveyances and other instruments or documents which the Manager deems appropriate or necessary to reflect the dissolution and winding up of the Partnership pursuant to the terms of this Agreement, including a certificate of cancellation; and (iv) all instruments relating to the admission, withdrawal or substitution of any Member pursuant to Article 12 or 13.

(b) The foregoing power of attorney and proxy is irrevocable and coupled with an interest, and shall survive the death, disability, incapacity, dissolution, bankruptcy, insolvency or termination of any Member and the transfer of all or any portion of such Member's Units and shall extend to such Member's heirs, successors, assigns and personal representatives. Each Member hereby revokes any and all previous proxies or powers of attorney with respect to its Units and shall not hereafter, unless and until this Agreement terminates or expires or unless requested pursuant to the terms of this Agreement or the Stockholders Agreement, including in connection with a Drag-Along Sale, purport to grant any other proxy or power of attorney with respect to any of the Units, deposit any of the Units into a voting trust or enter into any agreement (other than this Agreement), arrangement or understanding with any Person, directly or indirectly, to vote, grant any proxy or give instructions with respect to the voting of any of the Units, in each case, with respect to any of the matters set forth herein; *provided* that the foregoing shall not apply to any proxy or power of attorney granted pursuant to the terms of Stockholders Agreement.

Section 16.03. *Confidentiality*.

(a) Each Member agrees that Confidential Information furnished and to be furnished to it has been and may in the future be made available in connection with such Member's investment in the Partnership. Each Member agrees that it shall use, and that it shall direct any Person to whom Confidential Information is disclosed pursuant to clauses (i) through (v) below to use, the Confidential Information only in connection with its investment in the Corporation and not for any other purpose (including to disadvantage competitively the Corporation, the Partnership or any of their respective Subsidiaries). Each Member further acknowledges and agrees that it shall not disclose any Confidential Information to any Person, except that Confidential Information may be disclosed:

(i) to such Member's Representatives (other than a Competitor) in the normal course of the performance of their duties or to any financial institution providing credit to such Member;

(ii) for purposes of reporting to its, or its Related Persons', stockholders and direct and indirect equity holders and limited partners, in each case other than a Competitor, the performance of the Corporation, the Partnership and their respective Subsidiaries (or otherwise in connection with customary fundraising, marketing, information or reporting activities of such Persons) and for purposes of including applicable information in financial statements to the extent required by applicable Law or applicable accounting standards; *provided* with respect to the immediately preceding

clauses (i) and (ii), any such Persons receiving Confidential Information shall be informed by the Member of the Confidential Information, such Person shall agree or otherwise be obligated to keep such information confidential in accordance with the provisions of this Section 16.03 and any Member disclosing such Confidential Information will be liable for any unauthorized disclosures of such Confidential Information in violation of this Section 16.03 by any such Persons;

(iii) to any Person to whom such Member is contemplating a *bona fide* Transfer of its Units, other than a Competitor; *provided* that such Transfer would not be in violation of the provisions of this Agreement, the Certificate of Incorporation or the Stockholders Agreement and such potential Transferee is advised of the confidential nature of such information and agrees to be bound by a confidentiality agreement consistent with this Section 16.03 and any Member disclosing such Confidential Information will be liable for any breaches of this Section 16.03 by any such Persons;

(iv) to any regulatory authority or rating agency to which the Member or any of its Related Persons is subject or with which it has regular dealings; *provided* that such authority or agency is advised of the confidential nature of such information;

(v) to the extent related to the tax treatment and tax structure of the transactions contemplated by this Agreement (including all materials of any kind, such as opinions or other tax analyses that the Corporation, its Affiliates or its Representatives have provided to such Member relating to such tax treatment and tax structure); *provided* that the foregoing does not constitute an authorization to disclose the identity of any existing or future party to the transactions contemplated by this Agreement or their Affiliates or Representatives, or, except to the extent relating to such tax structure or tax treatment, any specific pricing terms or commercial or financial information;

(vi) if the prior written consent of the Chief Executive Officer, Chief Financial Officer or General Counsel of the Corporation or the Corporation Board shall have been obtained; or

(vii) to the extent required by applicable Law, rule or regulation (including complying with any oral or written questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process to which a Member is subject); *provided* that such Member agrees to give the Corporation and the Partnership prompt notice of such request(s), to the extent practicable and permitted by Law, so that the Corporation and/or the Partnership may seek an appropriate protective order or similar relief (and the Member shall cooperate with such efforts by the Corporation and/or the Partnership (at the expense of the Corporation or the Partnership, as applicable), and shall in any event make only the minimum disclosure required by such law, rule or regulation).

(b) Notwithstanding Section 16.03(a)(iii), in connection with a potential Drag-Along Sale, the Drag-Along Seller (as defined in the Stockholders Agreement) may provide Confidential Information to a *bona fide* potential Drag-Along Buyer (as defined in the Stockholders Agreement), and can require the Corporation and the Partnership to provide

reasonable access to information of the Corporation and its Subsidiaries to such potential Drag-Along Buyer, so long as (i) the potential Drag-Along Buyer enters into a customary non-disclosure agreement with the Corporation and the Partnership on terms reasonably acceptable to the Corporation and the Partnership and (ii) the Drag-Along Seller is fully liable for any breach of such non-disclosure agreement by the potential Drag-Along Buyer. For the avoidance of doubt, such Drag-Along Buyer may be a Competitor.

(c) Nothing contained herein shall prevent the use (subject, to the extent possible, to a protective order) of Confidential Information in connection with the assertion or defense of any claim by or against the Corporation, the Partnership, their respective Subsidiaries or any Member or will restrict in any manner the ability of the Corporation, the Partnership or their respective Subsidiaries to comply with its disclosure obligations under applicable Law. Furthermore, nothing contained herein shall in any way limit or otherwise modify any confidentiality obligations owed by any Member to the Corporation, the Partnership or their respective Subsidiaries pursuant to any other agreement entered into by such Member, the Partnership, the Corporation or any of their respective Subsidiaries, and this Section 16.03 shall be in addition to such other agreement.

Section 16.04. *Amendments*. Subject to the Stockholders Agreement (including Section 5.01(f) thereof), no provision of this Agreement may be amended, waived or otherwise modified except by an instrument in writing executed by the Manager, and any such amendment, waiver or modification shall be binding on the Partnership and all Members; *provided, however*:

(a) no amendment, waiver or modification of any provision of this Agreement which would reduce the amounts distributable to such Member pursuant to Article 4 or Article 14 in a manner that is not *pro rata* with respect to all Members shall be effective against such Member without the prior written consent of such Member;

(b) no amendment, waiver or modification of any provision of this Agreement that would materially and adversely affect the obligations, powers, preferences or rights of a holder of Units that also holds shares of Class B Common Stock in a manner disproportionate to the affect on any other holder of Units that also holds shares of Class B Common Stock shall be effective without the prior written consent of such adversely affected holder of Units; *provided* that this Section 16.04(b) shall not apply to any amendment, waiver or modification which is, according to its terms, facially proportionate or provides for equal changes or waivers to any of a Member's powers, preferences or rights under this Agreement as compared to any holder of Units.

(c) so long as any shares of Class B Common Stock are outstanding, no amendment, waiver or modification of any provision of this Agreement that would materially and adversely affect the obligations, powers, preferences or rights of the Members that also hold shares of Class B Common Stock in a manner that is disproportionate from the manner in which it affects Members who do not hold shares of Class B Common Stock shall be effective without the prior written consent of Members holding a majority of the Units held by all Members who also hold shares of Class B Common Stock;

(d) no amendment, waiver or modification of Section 6.07 (*Fiduciary Duties; Limitation of Liability of Manager*) shall be effective without the prior written consent of holders of a majority of all Units held by Members who also hold shares of Class B Common Stock; and

(e) no other amendment, waiver or modification of any provision of this Agreement that otherwise requires the vote, consent or approval of any Person or group of Persons pursuant to the terms of the Stockholders Agreement shall be effective without such vote, consent or approval having first been obtained.

Other than set forth in this Section 16.04, no other Member other than the Manager shall have the authority to vote, approve or consent to any action involving the Partnership and each Member will be deemed to have approved, voted in favor of and consented to any decision of the Manager.

Section 16.05. *Title to Partnership Assets*. Partnership assets shall be owned by the Partnership as an entity, and no Member, individually or collectively, shall have any ownership interest in such Partnership assets or any portion thereof. The Partnership shall hold title to all of its property in the name of the Partnership and not in the name of any Member. All Partnership assets shall be recorded as the property of the Partnership on its books and records, irrespective of the name in which legal title to such Partnership assets is held. The Partnership's credit and assets shall be used solely for the benefit of the Partnership, and no asset of the Partnership shall be transferred or encumbered for, or in payment of, any individual obligation of any Member.

Section 16.06. *Addresses and Notices*. Any notice, request, demand or instruction specified or permitted by this Agreement will be in writing and will be either personally delivered, or received by certified mail, return receipt requested, or sent by reputable overnight courier service (charges prepaid) to the applicable recipient or by facsimile, email or other electronic transaction at the address set forth below. Notices will be deemed to have been given hereunder when delivered personally or upon transmission in the case of email, facsimile or other electronic transmission; three (3) days after deposit in the U.S. mail; and one (1) day after deposit with a reputable overnight courier service. Whenever any notice is required to be given by Law or this Agreement, a written waiver thereof signed by the Person entitled to such notice, whether before or after the time stated at which such notice is required to be given, shall be deemed equivalent to the giving of such notice.

Notices to the Partnership, the Corporation, Intermediate, Holdco or the Manager shall be sent to:

GenOn Holdings, LLC
1360 Post Oak Blvd., Ste 2000
Houston, TX 77056
Attn: Monica Nguyenduc
Email: monica.nguyenduc@genon.com

Notices to any Member shall be sent to the address listed for such Member on its signature page hereto or if no such address is listed, to the address listed in the Schedule of Members, as may be updated from time to time. The Partnership, Corporation, Holdco or the

Manager and each Member may update their notice information from time to time by providing written notice in compliance with this Section 16.06.

Section 16.07. *Binding Effect; Intended Beneficiaries*. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns. Unless expressly provided in this Agreement, no provision is intended to confer on any Person other than the parties hereto, and their respective heirs, successors, legal representatives and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, except that the Indemnitee-Related Entities are third-party beneficiaries of Section 7.04(g).

Section 16.08. *Creditors*. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Partnership or any of its Affiliates, and no creditor who makes a loan to the Partnership or any of its Affiliates may have or acquire (except pursuant to the terms of a separate agreement executed by the Partnership in favor of such creditor) at any time as a result of making the loan any direct or indirect interest in Partnership Profits, Losses, Distributions, capital or property other than as a secured creditor.

Section 16.09. *Waiver*. Unless expressly set forth herein, the parties hereto may not waive any provision of this Agreement, except pursuant to a written instrument signed by the party or parties hereto against whom enforcement of such waiver is sought. No action taken pursuant to this Agreement, including any investigation by or on behalf of any party hereto, constitutes a waiver by the party taking such action of compliance with any provision of this Agreement. The waiver by any party hereto of any provision of this Agreement is effective only in the instance and only for the purpose that it is given and does not operate and is not to be construed as a further or continuing waiver of such provision or as a waiver of any other provision. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, duty, agreement or condition.

Section 16.10. *Counterparts; Effectiveness*. This Agreement may be executed in separate counterparts (including PDFs), each of which will be an original and all of which together shall constitute one and the same agreement binding on all the parties hereto. This Agreement shall become effective on the Effective Date.

Section 16.11. *Governing Law*. This Agreement and any claim, controversy or dispute arising under or related to this Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to the conflicts of laws rules of such state.

Section 16.12. *Jurisdiction*. The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in the Court of Chancery of the State of Delaware, or to the extent such court does not have subject matter jurisdiction, the United States District Court for the District of Delaware, or to the extent such court also does not have subject matter jurisdiction, another court of the State of Delaware, County of New Castle, so long as one of such courts shall have subject matter jurisdiction over

such suit, action or proceeding, and that any case of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of Delaware, and each of the parties hereby irrevocably consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party at the address provided pursuant to Section 16.06 shall be deemed effective service of process on such party.

Section 16.13. *WAIVER OF JURY TRIAL*. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 16.14. *Specific Enforcement*. Each party hereto acknowledges that the remedies at Law of the other parties for a breach or threatened breach of this Agreement would be inadequate and, in recognition of this fact, any party to this Agreement, without posting any bond, and in addition to all other remedies that may be available, shall be entitled to obtain equitable relief in the form of specific performance, a temporary restraining order, a temporary or permanent injunction or any other equitable remedy that may then be available.

Section 16.15. *Severability*. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or the effectiveness or validity of any provision in any other jurisdiction, and this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

Section 16.16. *Further Action*. The parties shall execute and deliver all documents, provide all information and take or refrain from taking such actions as may be necessary or appropriate to achieve the purposes of this Agreement.

Section 16.17. *Delivery by Electronic Transmission*. This Agreement and any signed agreement or instrument entered into in connection with this Agreement or contemplated hereby, and any amendments hereto or thereto, to the extent signed and delivered by means of an electronic transmission, including by a facsimile machine or via email, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No party hereto or to any such agreement or instrument shall raise the use of electronic transmission by a facsimile machine or via email to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through such electronic transmission as a defense to the formation of a contract and each such party forever waives any such defense.

Section 16.18. *Entire Agreement*. This Agreement, the other Organizational Documents, the Plan of Reorganization and any other documents expressly referred to herein or in the Plan of Reorganization embody the complete agreement and understanding among the parties and supersede and preempt any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way.

Section 16.19. *Incorporation by Reference*. Every exhibit, schedule and other appendix attached to this Agreement and referred to herein is hereby incorporated in this Agreement by reference.

Section 16.20. *Descriptive Headings; Interpretation*. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a substantive part of this Agreement. Whenever required by the context, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa. References to any Person shall be deemed to mean and include the successors and permitted assigns of such Person (or, in the case of any governmental authority, Persons succeeding to the relevant functions of such Person). Reference to any agreement, document or instrument means such agreement, document or instrument as amended or otherwise modified from time to time in accordance with the terms thereof, and if applicable hereof. Without limiting the generality of the immediately preceding sentence, no amendment or other modification to any agreement, document or instrument that requires the consent of any Person pursuant to the terms of this Agreement or any other agreement will be given effect hereunder unless such Person has consented in writing to such amendment or modification. All references to statutes shall include all amendments of the same and any successor or replacement statutes and regulations promulgated thereunder, and all references to regulations shall include all amendments and any successor or replacement regulations. Any definition incorporating, by reference to the Code or the Treasury Regulations, the term "Partner" or "Partnership" shall mean " Member" or "Partnership", respectively. Wherever required by the context, references to a Fiscal Year shall refer to a portion thereof. The use of the word "include", "includes" or "including" in this Agreement shall be by way of example rather than by limitation. References to "hereof," "herein," "hereby" and similar terms shall refer to this entire Agreement (including the schedules and exhibits hereto). The use of the words "or," "either" and "any" shall not be exclusive. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

Section 16.21. *Aggregation of Affiliates and Related Persons*. To the extent any action, consent or right under this Agreement requires a threshold level of ownership of Units by a given Member, the ownership of Units by such Member and its Related Persons shall be aggregated for the purposes of satisfying such threshold.

Section 16.22. *Independent Agreement by the Members*. The parties hereto acknowledge that this Agreement does not constitute an agreement, arrangement, or understanding with respect to acting together for the purpose of acquiring, holding, voting, or disposing of any Units and the Members do not constitute a "group" within the meaning of Rule 13d-5 under the

Exchange Act, as amended. Nothing contained in this Agreement, any of the other Organizational Documents or the Plan of Reorganization and no action taken by any Member pursuant to this Agreement shall be deemed to constitute or to create a presumption by any parties that the Members are in any way acting in concert or as a "group" (or a joint venture, partnership or association), and each of the Corporation, the Partnership and the Members agree to not assert any such claim with respect to such obligations or the transactions contemplated by this Agreement, the other Organizational Documents or the Plan of Reorganization.

Section 16.23. *Assignment*. Neither this Agreement nor any right, remedy, obligation or liability arising hereunder or by reason hereof shall be assignable by any party hereto pursuant to any Transfer or otherwise, except as expressly set forth herein.

Section 16.24. *Termination*. Other than Section 16.03, this Agreement shall terminate with respect to a Member as of the time at which such Member ceases to own Units.

Section 16.25. *No Inconsistent Agreements*. The Partnership shall not hereafter enter into any agreement with respect to its Units which is inconsistent with or violates the rights granted to the Members in this Agreement.

[*Signature Pages Follow*]